



# **Outcomes Workshops BTSF October 2019**

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# Workshop on the role of stakeholders

- **Purpose:** explore the role of stakeholders in implementing the OCR
- **3 areas:**
  - A) Calculation of fees (art. 85)
  - B) Synergies official controls- own-check systems/third party assurance schemes
  - C) Obligation of providing CA with certain information (art. 15)

# -Fees-

- **What does “relevant stakeholders” mean?**

*Policy makers, operators of various kinds, commercial establishments, consumer organisations*

- **What does “consult” mean in this context?**

*Giving the opportunity to stakeholders to provide their opinion*

- **How do you foresee the implementation of this article?**

*No consensus: from working in groups/committees to not having yet a concrete way. Main idea: complex but feasible issue*

# -Fees-

- **What are your experiences in performing similar consultations?**

*Working groups, public consultation for one month, allowing private feedback*

- **What difficulties arose from these consultations?**

*Transparency, reaching small operators, challenging for new areas (plant health)*

- **In light of your experience, what would constitute best practices in this regard?**

*Thorough explanations, clarifications and transparency towards stakeholders while involving them in the decision making process.*



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# -Quality Schemes-

- **What is your experience in this regard?**

*In general, these are not used for control purpose on a regular basis*

- **Are your competent authorities well aware of the different third party assurance schemes?**

*In general, all competent authorities are aware of the existing schemes.*

# -Quality Schemes-

- **What would be the advantages and disadvantages?**

## Advantages:

- *Reducing frequency of controls by CA*
- *Potential efficiency and better use of resources*
- *Shorter inspections*

## Disadvantages:

- *Audits not designed to check performance in line with legislation*
- *Possible conflict of interest*
- *Auditors may not have the necessary competence*
- *Potential misleading of consumers/inspectors certificates may give false confidence or expectations*
- *Difficulties in accessing data by the CA*



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# -Quality Schemes-

- **Are these auditors competent and experienced enough to perform controls?**

*Overall feeling: not experienced/competent/ not familiar enough with specific legal requirements*

- **Is there any other source of data that could potentially be used for control purposes?**

- *Public data gathered by quality schemes*
- *Economic data, production data and commodity data*
- *Annual reports from RASFF, AAC, OFIS...*
- *History of compliance*
- *Approved sectoral programmes*
- *FVO reports*
- *Whistleblowers*



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# -Obligations of operators-

- **What is your experience in accessing operators' data, particularly computerised information management systems and documents?**

*Operators usually cooperative, data provided is not always useful or reliable, no direct access to data from the CA*

- **What difficulties do operators claim to encounter?**
  - *Confidentiality*
  - *Problems with IT systems/recording information in a timely manner Documentation missing from the premises*
  - *Staff in charge of the databases not present*
  - *Operators' IT systems are not adapted to CAs needs*
  - *Difficulties for small operators to keep data due to its cost*
  - *Avoiding private or classified information*



# -Obligations of operators-

- What would be the most efficient way in accessing relevant information while ensuring the privacy of the operator remains safeguarded?
  - *A database only for CA with relevant information*
  - *Penalisation for CA sharing information with other parties*
  - *Informing the operator in advance of the information needed*
  - *Encrypting data and/or provide only the data that is really necessary*
  - *Common platform under the Commission (efficient but potentially unreliable)*

# Workshop on enforcement

- **Purpose:** explore the new requirements of the OCR in relation to enforcement
- **3 areas:**
  - A) General obligations and enforcement actions
  - B) Penalties
  - C) Protection of whistle-blowers

# -General obligations and enforcement actions-

- **How would you prioritise actions in case of multiple or conflicting risks?**

*Human health (and food fraud) most important to address.*

- **How would you qualify the level of “suspicion” necessary to take action?**

*Case-by-case decision, based, among others, on:*

- *The number of reports/complaints*
- *Source of information and type of evidence*
- *Level of urgency and risk*
- *Other factors: clinical signs, country of origin and the background of the operator (RASFF)*
- *Precautionary principle*

# -General obligations and enforcement actions-

- Which is your practical experience as regards the challenges of on-line enforcement?
  - *Enforcement very difficult (and costly), especially if the operator/website is based in another country*
  - *Closing a website is not enough if the operator does not cooperate. Websites tend to reopen quickly*
  - *Considered as entrapment in certain Member States*

# -Penalties-

- In your experience, which penalties have proven to be most effective and dissuasive, while still being proportionate, in the past?
  - *Enforcement measures more effective than penalties*
  - *Publication of non-compliant operators*
  - *Penalties eliminating economic gain are effective, especially when combined with prison sentences*
- How advanced is your country as regards the establishment of the new rules on penalties under the OCR, which have to be notified to the Commission by 14 December 2019?
  - *Still a work in progress in most Member States*

# -Penalties-

- How will you ensure, in practical terms, that the financial penalties for violations of the OCR and the rules referred to in Article 1(2) therein perpetrated by fraud, reflect either the operator's economic advantage or a percentage of his turnover?
  - *Operator's turnover easier to calculate*
  - *Difficult for the inspector to access to financial data*
  - *In some Member States, this will be a matter for the courts (as fraud is a crime) while in others, penalties imposed by CA*
  - *Variety of financial penalties between Member States*
  - *Clear criteria needed*

# -Protection of whistleblowers-

- Which mechanisms or practical arrangements would you consider necessary in order to effectively enable reporting of actual or potential infringements of the OCR (whistle-blowing)?
  - *Ensure the anonymity of the whistle-blower*
  - *Make clear channels to report concerns*
  - *Rewards for reporting would encourage further reports*
- How would you best ensure a proper follow-up of reports of infringements?

*Control visits to gather evidence, followed by notices and sanctions/penalties as appropriate.*

## - Protection of whistleblowers-

- How would you best protect the whistle-blowers from retaliation, discrimination or unfair treatment?

*Get other authorities involved*

- How would you to best protect the personal data of whistle-blowers?

*Secrecy and anonymity to be ensured*