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An Agricultural Law Research Article

**‘Beastly Bureaucracy’
Animal Traceability, Identification and
Labeling in EU Law**

by

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*Bernd M.J. van der Meulen and Annelies A. Freriks**

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I. INTRODUCTION

A. Overview

This contribution discusses animal traceability, identification and labeling requirements in European Union (EU) law. The requirements are *lex specialis* to more general requirements in EU food law. The aim is to set out this body of EU law and provide some understanding regarding its background. Along with the article by

Margaret Rosso Grossman, it enables the reader to compare the EU system to the United States system.

Section I introduces the subject matter starting with a historical background and specific examples. Section II provides some general background on the EU and its legal system. Section III introduces the general principle of traceability in EU food law. Section IV discusses the different registration and identification requirements by group of animals concerned. Section V discusses specific provisions regarding slaughter. Section VI explains labeling, placing the specific requirements on the labeling of beef and veal within the context of the general labeling requirements and goes into more specific requirements for food of animal origin. Traceability requirements aim at preventing food safety crises. Section VII discusses crisis management, and Section VIII addresses the related subjects of official controls and enforcement. The Sections IX and X discuss bioterrorism and imports into the EU. The final section gives some concluding remarks.

B. The Dark 1990s

The food and agricultural sectors in the European Union emerged deeply traumatized from the 1990s. A series of crises resulted in a breakdown of consumer confidence in the authorities, industry and science.

Probably the biggest impact was felt from the bovine spongiform encephalopathy (BSE) crisis.¹ Subsequent food safety scares,² outbreaks of animal diseases³ and scandals over fraudulent practices

1. See Margaret Rosso Grossman, *Animal Identification and Traceability under the US National Animal Identification System*, 2 J. FOOD L. & POL'Y 231 (2007).

2. One example is the Belgian dioxin crises. It was caused by industry oil that had found its way into animal feed and subsequently into the food chain. Craig Whitney, *Brussels Journal*, *Food Scandal Adds to Belgium's Image of Disarray*, N.Y. TIMES, June 9, 1999, §A, at 4. Another example is the introduction of merxopyrogestosterone acetate (MPA) into pig feed in 2002. James Graff, *One Sweet Mess*, TIME, July 21, 2002, available at www.time.com/time/nation/article/0,8599,322596,00.htm. Sugar discharges from this production of MPA, a hormone used in contraceptive and hormone replacement pills, were used in pigs feed and by that route MPA entered the food chain. *Id.* In 2004 a dioxin crisis broke out in the Netherlands.

3. Like Food and Mouth Disease, SARS and lately Avian Influenza. See generally World Health Organization (WHO) *Avian Influenza*, http://www.who.int/topics/avian_influenza/en (last visited April 4, 2007); see also *Disease Spurs Meat Import Ban*, WASH. POST, Mar. 18, 2001, at AD3 (announcing U.S. ban of EU meat products due to foot-and-mouth epidemic).

of which the end does not yet seem to be in sight, added to a sense of urgency to take protective measures. These fraudulent practices included the discharge of waste in animal feed⁴ and the underworld involvement in the supply and employment of growth hormones⁵ mounting to the murder of the veterinarian who brought the use of these illegal substances to the attention of the authorities and the public.⁶

C. Orwell at the Animal Farm

The structure of a legal system capable of getting a firm grip on food production was set out in the 1997 Green Paper on the general principles of food law in the European Union⁷ and the 2000 White Paper on Food Safety⁸. These policy documents called for an integrated approach of the food production chain from farm to fork and for tuning in of animal health, animal welfare and food legisla-

4. Probably the cause of the first dioxin crisis. See Whitney, *supra* note 2.

5. Community and national legislatures in the EU have been battling the use of artificial hormones – DES in particular – for years. When it turned out to be impossible to separate their use from body-proper hormones and to get them under control, finally all hormones were banned. The legislation on the use and application of hormones started with Directive 81/602/EC (prohibiting certain matters with hormonal effects and of stuffs with thyreostatic effects). Directive 81/602/EC has been supplemented by Directive 85/308/EEC and replaced by Directive 88/146/EEC (prohibition of applications of certain stuffs with hormonal effect in the cattle breeding sector). A next one, Directive 88/299/EEC is aiming at the trade in animals and meat treated with stuffs with hormonal effect referred to in Directive 88/146/EEC.

6. See Katherine Butler, *Why the Mafia is into Your Beef: The EU Ban on Growth Hormones for Cows has Created a Lucrative Black Market*, INDEPENDENT (London), Mar. 19, 1996, at 13.

On Monday evening 20 February 1995 close to his home in Wechelderzande (Belgium) Karel van Noppen, a Belgian veterinarian and inspector, was shot after exposing cattle breeders who illegally used hormones, their suppliers and civil servants who turned a blind eye to these practices. *Id.* He had received several threats to discourage him from going after the “hormones-mafia.” *Id.* One of the inspectors accused by Van Noppen of corruption committed suicide in March 1996. In 2002 four people were found guilty by a jury, two of them cattle breeders. Katherine Butler, *Four Men Found Guilty of Contract Hit on Vet*, INDEPENDENT (London), June 5, 2002, at 11. The instigator of the assassination received a life sentence, the others 25 years each. Belgian Hormone Killers Jailed, BBC News, June 5, 2002, <http://news.bbc.co.uk/2/low/europe/2027719.stm> (last visited April 5, 2007).

7. Commission Green Paper, COM(97) 176. The general principles of food law in the European Union. For the text see: <http://www.foodlaw.rdg.ac.uk/eu/green-97.doc>. (last visited April 10, 2007)[hereinafter Green Paper].

8. Commission of the European Communities, White Paper on Food Safety, COM(1999) 719 (Dec. 1, 2000) [hereinafter White Paper]

tion.⁹ Existing legislation was revamped, put in a new context or replaced.¹⁰

Most EU legislation that was already in place focused on facilitating the free movement of goods, including animals, on the internal market of the European Union.¹¹ Under the influence of the crises, the policy goal of protecting human and animal health acquired equal rank to free trade.¹² This contribution focuses on legal measures of an administrative nature that have been taken in this context. A veritable paper trail has been connected to the rearing of animals and the production of food from animal origin.¹³ Businesses have to be registered and animals must have identification marks and a passport to show their identity. Systems are in place to trace where animals are located, as well as where they have come from and where they or their products went.¹⁴ In other words, a considerable bureaucracy surrounds production animals.

Considering the impact of the BSE crisis, it need not surprise that legislation on cattle and beef has been developed even further than legislation on other animals.

D. Application in everyday life

In order to ensure the health of animals and the safety of animal-products traceability requirements go far beyond inspecting these animals and products.¹⁵ The following example may illustrate the extent of traceability requirements. In October 2004, a routine inspection of milk at a farm near Lelystad in the Netherlands showed high levels of dioxin.¹⁶ An analysis performed by the

9. See generally White Paper, *supra* note 8; Green Paper, *supra* note 7.

10. See generally White Paper, *supra* note 8.

11. See Green Paper, *supra* note 7, at 8.

12. See generally Green Paper, *supra* note 7.

13. See Europa, *Trade and Import of Live Animals-Introduction*, http://ec.europa.eu/food/animal/liveanimals/index_en.htm (last visited April 11, 2007).

14. *Id.*

15. See Guidance on the Implementation of Articles 11, 12, 16, 17, 18, 19 and 20 of Regulation (EC) No. 178/2002 on General Food Law, Conclusions of the Standing Committee on the Food Chain and Animal Health at 8 (Dec. 20, 2004), http://ec.europa.eu/food/food/foodlaw/guidance/guidance_rev_7_en.pdf (last visited April 11, 2007).

16. Food Safety Authority of Ireland (FSAI), Dioxin in potato by-product used in animal food Alert Notification: 2004. 15 (RASFF 2004/555), Nov. 5, 2004, <http://www.fsai.ie/alerts/archive/fa20041105.asp> (last visited April 11, 2007).

RIKILT Institute for Food Safety¹⁷ at the request of the Dutch Food and Consumer Products Safety Authority¹⁸ demonstrated that the statutory maximum was exceeded six times.¹⁹ Initially, it was suspected that the high levels of dioxin were caused by a malfunction in a combustion furnace. However, further investigation led to the conclusion that the contamination of milk was brought about by dioxin in potato peels that had been processed to animal feed.²⁰ The potato peels turned out to originate from a factory producing French fries and other snacks for the international food market.²¹ The processed potatoes were not contaminated, but in the sorting process to separate high quality potatoes from lower quality ones, separator clay had been used.²² The clay in question was obtained from a marl quarry in Germany with a high level of natural dioxin. After this puzzle was unraveled, the cause of the problem could be eliminated and all the contaminated products that had not been identified until that moment could be tracked down and taken off the market.²³ During this process, all relocation of animals from 162 farms in the Netherlands, eight in Belgium, and three in Germany which received the animal feed, was blocked by the competent national authorities.²⁴ After it was established that the incident was not limited to the Netherlands, the Dutch authorities also notified the European Commission to coordinate further action within the so-called rapid alert system.²⁵

17. The RIKILT website is available at <http://www.rikilt.wur.nl/UK/>.

18. The Voedsel en Waren Autoriteit (VWA) is available at <http://www.vwa.nl>.

19. The risks of dioxin have become vivid in the public imagination after an attempt was made to assassinate the presidential candidate (now president of Ukraine) Viktor Yushchenko. *After the Victory Parties in Ukraine*, N.Y. TIMES, Jan. 28, 2005, at A1. The attempt failed but resulted in a severe disfigurement of his skin and face.

20. See FSIA, *supra* note 166.

21. Federal Ministry of Food, Agriculture and Consumer Protection (Germany), *Dioxin-contaminated animal feed from the Netherlands* (Brief report), http://www.bmelv.de/nn_757140/EN/08-AnimalWelfare/DioxinContaminatedAnimalFeed.html__nnn=true (last visited April 11, 2007).

22. *Id.* The clay is used to manipulate the specific gravity in water in such a way that potatoes depending on their quality either float or sink. *Id.*

23. See Press Release, European Commission, Dioxin contamination: EU traceability and alert notifications systems work well, reference IP/04/1343 Brussels, (5 November 2004) <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/1343&format=HTML&aged=1&language=EN&guiLanguage=en> (last visited April 11, 2007).

24. *Id.*

25. *Id.*

The course of this incident shows the spreading of a source of contamination through the food industry where it was used as a processing aid. From there, it moved on as a part of the by-products used as animal feed for milk-producing cattle. Finally, the dioxin surfaced in the dairy industry. Thus, several links in the food and feed chain were involved as well as consumers who had bought contaminated milk. This incident is a striking example of the interdependence within the feed and/or food production chain. Furthermore, such an incident involving industry and competent authorities in one or more Member State(s) and the European Commission cannot be redressed by control measures on a national level.

II. EUROPEAN LAW

In order to give insight in the requirements on traceability, identification and labeling, we will first discuss general characteristics of European law.

A. Institutions

The European Union (EU) is a network of two supra-national organizations— the European Community²⁶ (EC or the Community) and the European Atomic Energy Community (Euratom)²⁷—and several intergovernmental policies.²⁸ Sovereignty lies in principle with the Member States.²⁹ The twenty-seven Member States cooperate in these policies and have only transferred some more or less well-defined parts of their sovereignty to the supra-national organizations.³⁰ For the average EU citizen, politics is centered at Member State level.³¹ The EU is perceived as a bureaucracy at a distance.³²

26. The former European Economic Community (EEC) established by the Treaty of Rome (1957).

27. Treaty Establishing The European Atomic Energy Community (1957).

28. BERND VAN DER MEULEN AND MENNO VAN DER VELDE, *FOOD SAFETY LAW IN THE EUROPEAN UNION: AN INTRODUCTION* 61-63 (2004, 2nd reprint 2006), Wageningen Academic Publishers, Wageningen, the Netherlands (www.wageningenacademic.com/foodlaw/), [hereinafter VAN DER MEULEN].

29. P.S.R.F MATHIJSEN, *A GUIDE TO EUROPEAN UNION LAW* 68-69 (8th ed. 2004).

30. See generally Cas 26/62, Van Gend en Loos v. Nederlandse Administratie der Belastingen, 1966 E.C.R. I, available at <http://eur-lex.europa.eu>; see also MATHIJSEN, *supra* note 29, at 8-9.

31. VAN DER MEULEN, *supra* note 28, at 62.

32. *Id.* at 62-64; see also XIYUN YANG, THE WATSON INST. FOR INT'L STUDIES, BROWN UNIV., *EU BUREAUCRACY STALLS ACTION ON SANCTIONS* (2007),

In 1967 the institutions governing these organizations and coordinating these policies were merged.³³ Since then, the European Parliament represents the people in these different fields.³⁴ The European Commission (hereinafter “the Commission”) consisting of independent members, one from each Member State is responsible for day-to-day administration.³⁵ Within the Commission, food law is the responsibility of the Commissioner of Health and Consumer Protection.³⁶ His directorate-general (the administrative organization) is known by its French acronym: D-G Sanco.³⁷

Probably the most powerful institution is the Council of Ministers³⁸ (hereinafter “the Council”). Unlike the Commission, the Council is not a permanent body with permanent members.³⁹ It is a conference of ministers from the governments of the Member States.⁴⁰ The composition of the Council depends on the matter at hand.⁴¹ Matters relating to animal health and food safety are usually discussed by the ministers of public health or the ministers of agriculture.⁴²

As agriculture and food law are completely within the ambit of the EC which is part of the EU⁴³, some publications refer to agriculture and food law as part of EC law and in others as part of EU law. In this publication the latter way is chosen; however, it should be borne in mind that—because it is EC law—food law is EU-law of a supra-national (Member State-binding and overriding) nature.⁴⁴

<http://www.watsoninstitute.org/news-detail.cfm?id=575> (last visited April 10, 2007).

33. Treaty Establishing a Single Council and a Single Commission of the European Communities, Fr.-It., Apr. 8, 1965, O.J.1967 (152).

34. Treaty Establishing the European Community, Nov. 10, 1997, 2002 O.J. (C 325) Arts 189-201 [hereinafter EC Treaty].

35. EC Treaty arts. 211-219.

36. EUROPA, DG Health & Consumer Protection, Commissioner, http://ec.europa.eu/commission_barroso/kyprianou/index_en.htm (last visited April 8, 2007).

37. EUROPA, DG Health & Consumer Protection, http://ec.europa.eu/dgs/health_consumer/index.en.htm (last visited April 8, 2007).

38. VAN DER MEULEN, *supra* note 28, at 95.

39. EC Treaty, arts. 202-203.

40. MATHIJSEN, *supra* note 29, at 74.

41. VAN DER MEULEN, *supra* note 28, at 95.

42. *Id.*

43. EC Treaty, title II.

44. *See generally* VAN DER MEULEN, *supra* note 28, at 61-93.

B. Legislation

EC legislation comes in two major forms: regulations and directives.⁴⁵ Regulations are comparable to the legislation known in virtually all countries on the globe that addresses the citizens directly conferring rights and obligations to them.⁴⁶ Directives address the legislatures in the Member States.⁴⁷ These legislatures have to harmonize national legislation as prescribed in the directives.⁴⁸ Regulations are immediately applicable in all the Member States and therefore result in uniform law within the EU.⁴⁹ Directives result in harmonized national legislation.⁵⁰ Where reference is made to directives, it should be borne in mind that for stakeholders the legal requirements do not follow immediately from these directives, but from national legislation in the Member States harmonized through implementation of these directives.⁵¹

EU law has been strongly influenced by the civil law tradition.⁵² Generally speaking, civil law approaches are more cautious than common law approaches.⁵³ For almost a millennium, common law has developed in reaction to problems that took place and were dealt with in terms of liability.⁵⁴ In civil law on the other hand, legislatures make it their business to foresee and prevent societal problems.⁵⁵ In other words, civil law lays down the rules before the game is started, while common law invents the rules while the game is in progress.⁵⁶

The distinction between the two legal families is no longer very sharp; nevertheless it has left its traces in a more or less cautious approach to societal issues and also in legal analysis.⁵⁷ Where case

45. *Id.* at 82-86.

46. MATHIJSEN, *supra* note 29, at 26-27.

47. *Id.* at 27.

48. *Id.* at 27-28.

49. *Id.* at 26-27.

50. *Id.* at 27-28.

51. MATHIJSEN, *supra* note 29, at 27-28.

52. WALTER CAIRNS, *INTRODUCTION TO EUROPEAN UNION LAW* 11 (2nd ed. 2002).

53. John C. Coffee, Jr., *The Rise of Dispersed Ownership: The Roles of Law & the State in the Separation of Ownership and Control*, 111 *YALE L.J.* 1, 62-63 (2001).

54. *Id.*

55. *Id.*

56. *Id.*

57. CAIRNS, *supra* note 52.

law is the core to common law analysis, civil law analysis focuses on structure and uses case law mainly to fill in the gaps.⁵⁸

C. Competent authority

The sovereignty of the Member States is recognized among others in the so-called principle of institutional autonomy.⁵⁹ EU law has little to say about the organization of the public sector in the Member States. Usually, obligations in regulations or directives are conferred to the national “competent authority”.⁶⁰ It is for the national legislature to decide which state organ will be the competent authority in any given matter and to endow it with the powers necessary to fulfill its obligations under EU law. In most Member States food law is in the domain of either the minister of agriculture or the minister of public health.⁶¹ Most Member States also have a more or less independent food safety authority.⁶²

D. Aim of the EU

What is today the EU, started as a customs union of six Member States.⁶³ The EU gradually expanded its scope to include and surpass the most important areas of economic policy.⁶⁴ For the subject of this contribution, health and safety (control) measures seems to be the most important part of EU Policy. The removal of border controls and other controls, such as quarantine, has necessitated the introduction of additional measures such as improved animal identification and traceability.⁶⁵

58. Coffee, *supra* note 533.

59. CHRISTOPH DEMMKE & DANIELLE BOSSAERT, EIPASCOPE, EUROPEANISATION THROUGH INFORMAL COOPERATION: THE CASE OF EPAN 53.

60. See generally EC Treaty, *supra* note 26.

61. VAN DER MEULEN, *supra* note 28, at 95.

62. See White Paper *supra* note 8, at 4. This contribution is mainly limited to the common (EU) level. Readers interested in the situation in different Member States of the EU (or even in third countries) may find useful information in the inspection reports of the Food van Veterinary Office as these reports usually start with an overview of the regulatory background of their inspection, available at http://ec.europa.eu/food/fvo/index_en.htm.

63. CAIRNS, *supra* note 52, at 5.

64. *Id.* at 5-7.

65. See: J. McGrann, H. Wiseman, Animal traceability across national frontiers in the European Union, *Rev. Sci. Tech. Off. Epiz.*, 2001, **20** (2) p. 406.

III. GENERAL PRINCIPLES OF EUROPEAN UNION FOOD LAW

The White Paper on Food Safety⁶⁶ sparked a stream of legislative initiatives, the first of which resulted in Regulation 178/2002, the so-called General Food Law (GFL).⁶⁷ GFL sets out principles on which food legislation is to be based, both on EU level and in the Member States.⁶⁸

One of these principles is that food and food producing animals be traceable.⁶⁹ To this effect Article 18 of the GFL states:

Traceability

1. *The traceability of food, feed, food-producing animals, and any other substance intended to be, or expected to be, incorporated into a food or feed shall be established at all stages of production, processing and distribution.*

2. *Food and feed business operators shall be able to identify any person from whom they have been supplied with a food, a feed, a food-producing animal, or any substance intended to be, or expected to be, incorporated into a food or feed.*

To this end, such operators shall have in place systems and procedures which allow for this information to be made available to the competent authorities on demand.

3. *Food and feed business operators shall have in place systems and procedures to identify the other businesses to which their products have been supplied. This information shall be made available to the competent authorities on demand.*

4. *Food or feed which is placed on the market or is likely to be placed on the market in the Community shall be adequately labeled or identified to facilitate its traceability, through relevant documentation or information in accordance with the relevant requirements of more specific provisions.*

5. *Provisions for the purpose of applying the requirements of this Article in respect of specific sectors may be adopted in accordance with the procedure laid down in Article 58(2).⁷⁰*

The concept of traceability is defined as "... the ability to trace and follow a food, feed, food-producing animal or substance in-

66. See generally *White Paper*, *supra* note 8.

67. See Council Regulation 178/2002, 2002 O.J. (L 31) 1 (EC).

68. See generally Regulation 178/2002; see van der Meulen, *supra* note 28, at 47 n.16. On EU food law see: Bernd van der Meulen and Menno van der Velde, *Food Safety Law in the European Union* (footnote 28); Debra Holland and Helen Pope, *EU Food Law and Policy*, Aspen Publishers 2004, and Raymond O'Rourke, *European Food Law* 3rd edition Thomson/Sweet & Maxwell 2005. The leading journal on EU food law is the *European Food & Feed Law Review* (EFFL), see: www.effl.eu.

69. See Regulation 178/2002.

70. Regulation 178/2002, art. 18.

tended to be, or expected to be incorporated into a food or feed, through all stages of production, processing and distribution.”⁷¹ The aim of traceability is to be able to quickly identify the source of a food safety problem and to conduct well aimed recalls to take affected products from the market.⁷² If no other, more specific requirements apply based on this provision, businesses must be able to trace their inputs and outputs one step up and one step down.⁷³ On the majority of farm animals more specific requirements do apply.⁷⁴ An identification system must be regarded a prerequisite for effective traceability.⁷⁵ When discussing traceability of animals and animal products it is important to note that although of primary importance, identification is only one of the issues at stake .

IV. IDENTIFICATION OF ANIMALS

Legislation on living animals goes well beyond the general requirements of food law, including veterinary aspect into their framework.⁷⁶ That is to say that infectious diseases are not only being controlled for food safety reasons in a strict sense, but also for economic reasons including preventing residues of veterinary products to enter the food chain, the protection of healthy animals and the protection of the reputation of the EU and its Member States of safe agricultural products of high quality.⁷⁷ Identification further plays a role in the common agricultural policy—in particular, for the supervision of premiums.⁷⁸

The basic requirements in European legislation to provide for an adequate system of identification are laid down in two Directives.

71. Regulation 178/2002, art. 3(15).

72. Regulation 178/2002, whereas 28.

73. Regulation 178/2002, whereas 29; see Margaret Rosso Grossman, Traceability and Labeling of Genetically Modified Crops, Food and Feed in the European Union, *Journal of Food Law & Policy*, Vol. 1, 2005, 1, 43-85, for more specific requirements for food derived GMOs.

74. See S. Ammendrup & A. E. Füssell, *Legislative Requirements for the Identification and Traceability of Farm Animals within the European Union*, *Rev. Sci. Tech. Off. Int. Epiz.* 437 (2001).

75. Regulation 178/2002, art. 18.

76. See EUROPA, Identification-Introduction, available at http://ec.europa.eu/food/animal/identification/index_en.htm, for information on animal identification and related subjects in the EU.

77. *Id.*

78. See generally EUROPA, Agriculture & Rural Development, *The Common Agricultural Policy-A policy evolving with the times*, available at http://ec.europa.eu/agriculture/publi/capleaflet/cap_en.htm.

Article 3(1)(c) of Directive 90/425/EEC of June 26, 1990 states that animals for intra-Community trade must be identified in accordance with the requirements of Community rules and be registered in such a way that the original or transit holding, center or organization can be traced.⁷⁹ These identification and registration systems are to be extended (before 1 January 1993) to the movements of animals within the territory of each Member State.⁸⁰ In addition, Article 14 of Directive 91/496/EEC of 15 July 1991,⁸¹ states that the identification and registration as provided for in Article 3 (1) (c) of Directive 90/425/EEC of imported animals must be carried out before area-specific checks have been made, except in the case of animals for slaughter and registered equidae.⁸²

The Member States must collect all information in a database. The database is discussed below in the section on bovine animals. Originally the implementing rules concerning the identification and registration of animals in aforementioned Directives were laid down in Council Directive 92/102/EEC of 27 November 1992 on the identification and registration of animals.⁸³ Following several crises, specific requirements were drafted for bovine, ovine, and caprine animals. However, the original Directive from 1992 is still in force for porcine animals. The relevant provisions will be set out below.

A. Porcine animals

On the basis of Directive 92/102/EEC Member States must have in place systems for the identification and registration of groups of pigs, including ear tags, registers per holding and a computerized database at national level.⁸⁴

79. Council Directive 90/425, art. 3(1)(c), 1990 O.J. (L224) 29, (EEC).

80. Council Directive 90/425, art. 3(1)(c); *see also* Council Directive 2002/33, 2002 O.J. (L315) (EC) (amending directive 90/425).

81. Council Directive 91/496, art. 14, 1991 O.J. (L268) 56, (EEC); *see also* Council Directive 96/43, 1996 (L162) (EC) (amending Directive 91/496).

82. Council Directive of 15 July 1991 laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (91/496/EEC), OJ L 268, 24.9.1991, most recently amended by Council Directive 96/43/EC of 26 June 1996 L 162, 1.7.1996.

83. Council Directive 92/102/EEC 1992 O.J. (L337) 32.

84. Directive 92/102/EEC at 32-36, O.J. L (355), amended by Council Regulation (EC) No 21/2004 of 17 December 2003 L 5, 9.1.2004; *see also* Commission Decision 2000/678/EC 2000, O.J. (L 281), 16-17.

1. Identification

Following Art. 5 of Directive 92/102/EEC porcine animals (pigs) have to be identified with an ear tag or tattoo.⁸⁵ The identification marks must be applied before animals leave the holding of birth.⁸⁶ Marks may not be removed or replaced without the permission of the competent authority.⁸⁷ Where a mark has become illegible or has been lost, a new mark shall be applied.⁸⁸ The keeper has to record any new mark in the holding register (see below). The mark has to be applied as soon as possible, and in any case before the animals leave the holding.⁸⁹

The competent authority of the Member State of destination may decide not to keep the identification mark allocated to the animal in the holding of origin.⁹⁰ Where the mark has been replaced, a link shall be established between the identification allocated by the competent authority of the Member State of dispatch and the new identification allocated by the competent authority of the Member State of destination; that link shall be recorded in the holding register.⁹¹ This option may not be invoked in the case of animals intended for slaughter which are imported without bearing a new mark.⁹²

Any animal imported from a third country which has passed the checks at the border inspection post and remains within Community territory shall, within thirty days of undergoing the aforesaid checks, and, in any event, before their movement, be identified by a mark unless the holding of destination is a slaughterhouse situated on the territory of the competent authority responsible for veterinary checks and the animal is actually slaughtered within that thirty-day period.⁹³ A link shall be established between the identification established by the third country and the identification allocated to it by

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. Directive 92/102/EEC, art. 6, at 32-36. Member States may, pending the decision provided for in Article 10 of this Directive and by derogation from the second subparagraph of Article 3(1)(c) of Directive 90/425/EEC, apply their national systems for all movements of animals in their territories. Art. 10 provides for a review of the Directive's requirements with a view to defining a harmonized community identification and registration system. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. Directive 92/102/EEC, art. 8, at 32-36.

the Member State of destination. That link shall be recorded in the register provided for in the holding register.

2. Registration

On the basis of Art. 3 of Directive 92/102/EEC, Member States have to ensure the competent authority has an up-to-date list of all the holdings situated on its territory which keep porcine animals.⁹⁴ The species of animals kept and their keepers are mentioned in the register.⁹⁵ This list shall also include the mark or marks that identify the holding. The holding must remain on the list until three consecutive years have elapsed with no animals on the holding. The Commission, the competent authority and any authority responsible for supervising aid schemes can have access to all information obtained.⁹⁶

3. Holding register

Additionally, every keeper⁹⁷ of porcine animals listed in Directive 64/432/EEC and contained in the list provided for in Article 3(1)(a) keeps a register stating the number of animals present on the holding.⁹⁸ This register shall include an up-to-date record of movements (numbers of animals concerned by each entering and leaving operation) at least on the basis of aggregate movements, stating as appropriate their origin or destination, and the date of such movements. The identification mark shall be stated in all cases.

4. Access to information

If animals are moved to or from a market or collection center, the keeper must provide the operator who is keeper of the animals on a temporary basis with a document containing the details of the

94. *Id.*

95. *Id.*

96. Directive 92/102/EEC, art. 8 at 32-36. Member States may be authorized under the procedure laid down in Article 18 of Directive 90/425/EEC to exclude from the list in paragraph 1(a) natural persons who keep one single pig which is intended for their own use or consumption, or to take account of particular circumstances, provided that this animal is subjected to the controls laid down in this Directive before any movement. Directive 92/102/EEC, art. 3 at 32-36.

97. Directive 92/102/EEC, art.2 at 32-36, par. (c): *keeper* shall mean any natural or legal person responsible, even on a temporary basis, for animals.

98. Directive 92/102/EEC, art. 4 at 32-36.

animals in question.⁹⁹ The keeper must supply upon request to the competent authorities all information concerning the origin, identification and, where appropriate, the destination of animals which he has owned, kept, transported, marketed or slaughtered.¹⁰⁰

B. Bovine animals

Before the Bovine spongiform encephalopathy (BSE) crisis, the rules concerning the identification and the registration of bovine animals (cattle and buffaloes) were laid down in Council Directive 92/102/EEC of November 27, 1992 on the identification and registration of animals.¹⁰¹ In the mid 1990s, the BSE crisis destabilized the market for beef and beef products. The implementation of this Directive for bovine animals had not been entirely satisfactory and needed further improvement. In order to re-establish market stability, the European legislature held that the transparency of the conditions for the production and marketing of the products concerned, particularly in regards to traceability, had to be improved. This led to the establishment of, on the one hand, a more efficient system for the identification and registration of bovine animals at the production stage and, on the other hand, a specific Community labeling system in the beef sector.¹⁰² The new system was laid down in Council Regulation (EC) No 820/97 of April, 21 1997 establishing a system for the identification and registration of bovine animals and regarding the labeling of beef and beef products.¹⁰³ Apart from identification requirements, the Regulation introduced a labeling system that was optional for operators and organizations marketing beef until 1 January 2000 in the sense that operators and organizations wishing to label their beef should do so in accordance with the Regulation. A compulsory beef-labeling system for all the Member States had to be introduced after 1 January 2000.

The improvements in the regulatory system brought about by this Regulation, exerted a positive influence on consumption of beef. "In order to maintain and strengthen the confidence of consumers in beef and to avoid misleading them, it was necessary to further develop the framework in which the information was made available to consumers by sufficient and clear labeling of the prod-

99. Directive 64/432/EEC, art. 3(3)(b).

100. Directive 64/432/EEC, art. 3(3)(a).

101. Directive 92/102/EEC at 32-36.

102. *Id.*

103. Council Regulation 820/97, 1997 O.J. (117)

uct.”¹⁰⁴ This led to a compulsory labeling system that is laid down in Regulation (EC) no. 1760/2000 of the European Parliament and of the Council of July 17, 2000¹⁰⁵ (Regulation 1760/2000) that replaces the former Regulation entirely. Since 2000, both the identification and labeling requirements are therefore set out in Regulation 1760/2000. Although the system has been set out in a regulation, to a large extent, it addresses the national legislatures in the Member States.¹⁰⁶ Member States must set up a cattle identification and registration system.¹⁰⁷ The system for the identification and registration of bovine animals must be comprised of ear tags to identify animals individually, computerized databases, animal passports, and individual registers on each holding.¹⁰⁸

The basic objectives of the requirements set out in Regulation 1760/2000 are:

- 1) the localization and tracing of animals for veterinary purposes, which is of crucial importance for the control of infectious diseases;
- 2) the traceability of beef for public health reasons, and
- 3) the management and supervision of livestock premiums as part of the reform of management of de the common agricultural policy.¹⁰⁹

1. Identification

The identification requirements are set out in Art. 4 of Regulation 1760/2000. All animals on a holding¹¹⁰ born after December

104. O.J. (L204) Nov. 8, 2001.

105. Council Regulation 1760/2000, 2000 O.J. (204) at 1-10.

106. As indicated above (in Section II B), theory of EU law has it that regulations apply immediately (to the subjects of law in the Member States) while directives address national legislatures with a view to harmonization of national legislation. *See also* on Law making in the EC Margaret Rosso Grossman, Traceability and Labeling of Genetically Modified Crops, Food and Feed in the European Union, *Journal of Food Law & Policy*, Vol. 1, 2005, 1, 43-85

107. Council Regulation 1760/2000, art. 1(1), 2000 O.J. (204) at 1-10.

108. Specific requirements on ear tags, passports and holding registers are laid down in Commission Regulation (EC) No 911/2004 implementing Regulation 1760/2000 of the European Parliament and of the Council as regards ear tags, passports ad holding registers, Commission Regulation 887/2004, 2004 O.J. (163), art. 3 at 65.

109. *See* Report from the European Commission to the Council and the European Parliament on the Possibility of Introduction of Electronic Identification for Bovine Animals, at 5, COM(2005) 9 final, Jan. 25, 2005.

110. ‘Holding’ means any establishment, construction or, in the case of an open-air farm, any place situated within the territory of the same Member State, in which

31, 1997, or intended for intra-Community trade after January 1, 1998, must be identified by an ear tag approved by the competent authority, applied to each ear.¹¹¹ Both ear tags must bear the same unique identification code. The identification code enables the identification of each animal individually to the holding on which it was born.¹¹² The ear tags must be allocated to the holding, distributed, and applied to the animals in a manner determined by the competent authority.¹¹³ The ear tag must also be applied within a period to be determined by the Member State as from the birth of the animal and in any case before the animal leaves the holding on which it was born.¹¹⁴ The period may not be longer than twenty days.¹¹⁵ Animals that are born after December 31, 1997, may not be moved from a holding unless they are identified, and have to retain their original ear tag which may only be removed or replaced with the permission of the competent authority.¹¹⁶ Identification requirements are applicable to animals imported from a third country that remain within the Community territory.¹¹⁷ After they have passed the checks at a border inspection point laid down in Directive 91/496/EEC, the animals must be identified on the holding of destination by an ear tag, within a period to be determined by the Member State, but not exceeding twenty days following the checks.¹¹⁸ In any event they have to be identified before leaving the holding. Regulation 1760/2000 holds a specific provision for the situation in which the holding of destination is a slaughterhouse situated in the Member State where the checks are carried out and the animal is slaughtered within twenty days of undergoing the checks. In that case, no identification is required.¹¹⁹

The original identification established by the third country must be recorded in the computerized database that is referred to hereinafter, together with the identification code allocated to it by the

animals covered by this Regulation are held, kept or handled. Regulation 1760/2000, art. 2 at 3rd indent.

111. Regulation 1760/2000, art. 4 at 1.

112. *Id.*

113. *Id.*

114. *Id.*

115. At the request of a Member State and in accordance with the procedure referred to in Article 23(2), the Commission may determine the circumstances in which Member States may extend the maximum period. Regulation 1760/2000, art. 6 at 5.

116. Regulation 1760/2000, art. 4.

117. *Id.*

118. *Id.*

119. *Id.*

Member State of destination. Identification requirements are less strict for bovine animals intended for cultural and sporting events (with the exception of fairs and exhibitions). These animals may, instead of by an ear tag, be identified by an identification system offering equivalent guarantees and authorized by the Commission.

2. Computerized database

The competent authorities of the Member States are under the obligation to have a computerized database in place (from December 31, 1999) in accordance with Articles 14 and 18 of Directive 64/432/EC.¹²⁰ Pursuant to the latter Directive the computer database must contain at least the following information:

(1) For each animal: identification code, date of birth, sex, breed or color of coat, identification code of the mother or, in the case of an animal imported from a third country, the identification number given following inspection under Directive 92/102/EEC and corresponding to the identification number of origin, identification number of the holding where born, identification numbers of all holdings where the animal has been kept and the dates of each change of holding, date of death or slaughter.

(2) For each holding: an identification number consisting of not more than 12 figures (apart from the country code), name and address of the holder.¹²¹

Additionally, the database must also be able to supply at any time: the identification number of all animals of the bovine species present on a holding, or in the case of groups of animals of the porcine species, the registration number of the holding of origin or herd of origin and the number of the health certificate where applicable; a list of all changes of holding for each animal of the bovine species starting from the holding of birth, or the holding of importation in the case of animals imported from third countries; and for groups of pigs the registration number of the last holding or last herd and for imported animals from third countries the holding of importation.¹²² The information must be kept in the database until three consecutive years have elapsed since the death of the bovine

120. Regulation 1760/2000, art. 5 at 5; Council Directive of June 26, 1964 on animal health problems affecting intra-Community trade in bovine animals and swine (64/432/EEC), OJ L 121, 29.7.1964, last amendment by Council Regulation (EC) No 21/2004 of December 17, 2003, L 5, 9.1.2004.

121. *Id.*

122. *Id.*

animal or until three consecutive years have elapsed since the record was made in the case of records for pigs.¹²³

3. Passport

From January 1, 1998, the competent authority has to issue a passport for each animal which has to be identified on the basis of the Regulations' requirements.¹²⁴ Whenever an animal is moved, the animal should be accompanied by its passport.¹²⁵ The passport has to be issued within "fourteen days of the notification of its birth, or, in the case of animals imported from third countries, within fourteen days of the notification of its re-identification by the Member State concerned."¹²⁶ "The competent authority may issue a passport for animals from another Member State under the same conditions."¹²⁷ In such cases, the passport accompanying the animal on its arrival shall be surrendered to the competent authority, which shall return it to the issuing Member State.¹²⁸

Art. 6 of Regulation 1760/2000 stresses the importance of a computer database. In case of a fully operational computerized database, Member States "may determine that a passport is to be issued only for animals intended for intra-Community trade and that those animals shall be accompanied by their passports only when they are moved from the territory of the Member State concerned to the territory of another Member State, in which case the passport shall contain information based on the computerized database."¹²⁹ "In these Member States, the passport accompanying an animal imported from another Member State shall be surrendered to the competent authority on its arrival."¹³⁰

"In the case of the death of an animal, the passport shall be returned by the keeper¹³¹ to the competent authority within seven days

123. *Id.*

124. Regulation 1760/2000, art. 6 at 5.

125. *Id.*

126. *Id.*

127. *Id.*

128. Regulation 1760/2000, art. 6 at 5. At the request of a Member State and in accordance with the procedure referred to in Article 23(2), the Commission may determine the circumstances under which the maximum period may be extended.

129. Regulation 1760/2000, art. 6 at 5.

130. *Id.*

131. 'Keeper' means any natural or legal person responsible for animals, whether on a permanent or on a temporary basis, including during transportation or at a market. Regulation 1760/2000, art. 7 at 5.

after the death of the animal.”¹³² “If the animal is sent to the slaughterhouse, the operator of the slaughterhouse shall be responsible for returning the passport to the competent authority.”¹³³ “In the case of animals exported to third countries, the passport shall be surrendered by the last keeper to the competent authority at the place where the animal is exported.”¹³⁴ “Where applicable and having regard to Article 6, each animal keeper shall complete the passport immediately on arrival and prior to departure of each animal from the holding and ensure that the passport accompanies the animal.”¹³⁵

4. Holding register

Any keeper (with the exception of transporters) is under the obligation to keep an up-to-date holding register, and “report to the competent authority all movements to and from the holding and all births and deaths of animals on the holding, along with the dates of these events, within a period fixed by the Member State of between three and seven days of the event occurring.”¹³⁶

Information concerning the origin, identification and destination of animals, which he has owned, kept, transported, marketed or slaughtered, the keeper must provide to the competent authority on request.¹³⁷ The register shall be in a format approved by the competent authority, kept in manual or computerized form, and be available at all times to the competent authority, upon request, for a minimum period to be determined by the competent authority but which may not be less than three years.¹³⁸

5. Electronic identification

In Art. 4 of Regulation 1760/2000 the European Commission was required to examine the feasibility of using electronic means of identification of bovine animals. For this purpose a project called IDEA (Identification Electronic des Animaux) was launched in

132. Regulation 1760/2000, art. 7 at 5.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. Regulation 1760/2000, art. 7at 5.

1998.¹³⁹ The project focuses on the reliability and advantages offered by an electronic identification system for the purposes of disease monitoring, subsidy eligibility, and breeding management.¹⁴⁰ Annual reports on identification and registration, as well as inspection by commission services, have shown three main shortcomings in the current system. First of all, a main concern is incorrect identification and loss of ear tags. The latter problem might be addressed by electronic identification by bolus or electronic transponder.¹⁴¹ Furthermore, holding registers that are not kept up to date turned out to be a fundamental problem area.¹⁴² The use of electronic identification is a possible improvement in this respect because of the possibilities of automatic reading and the possibility of automatic entry into the holding register, which reduces administrative work.¹⁴³ Finally, the most frequently detected deficiencies in the existing system is the delay in, absence of, or incorrect reporting of events to the central database.¹⁴⁴ Electronic identification can facilitate the reporting of data and will generate a higher level of accuracy compared to traditional administration.¹⁴⁵ Based upon the IDEA-project the Commission concluded in its report that it is desirable to move overtime to electronic identification of bovine animals.¹⁴⁶ The preferred implementation would be to introduce electronic identification as an optional system at first.¹⁴⁷ After evaluation a compulsory system could be introduced.¹⁴⁸

C. Ovine and caprine animals

The rules concerning the identification and the registration of ovine and caprine animals (sheep and goats) were originally laid

139. See Report from the European Commission to the Council and the European Parliament on the Possibility of Introduction of Electronic Identification for Bovine Animals, at 4, COM(2005) 9 final (January 25, 2005).

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. See Report from the European Commission to the Council and the European Parliament on the Possibility of Introduction of Electronic Identification for Bovine Animals, at 4, COM(2005) 9 final (January 25, 2005).

145. *Id.*

146. *Id.* at 15.

147. *Id.*

148. *Id.*

down in the aforementioned general Directive 92/102/EEC.¹⁴⁹ In respect of ovine and caprine animals, experience, and in particular the foot-and-mouth disease crisis, had shown that the implementation of Directive 92/102/EEC has not been satisfactory and therefore needed improvement.¹⁵⁰ In 1998 the Commission launched a large-scale project on the electronic identification of animals (IDEA), as discussed above.¹⁵¹ The final report was completed on April 30, 2002.¹⁵² The project demonstrated that a substantial improvement in ovine and caprine animal identification systems could be achieved by using electronic identifiers for those animals, provided that certain conditions concerning the accompanying measures were fulfilled.¹⁵³ The technology for the electronic identification of ovine and caprine animals had developed to the stage where it could be applied.¹⁵⁴

Given the aforementioned developments, ovine and caprine animals were excluded from the scope of Directive 92/102/EEC in 2004, as had been done in an earlier stage for bovine animals.¹⁵⁵ Based upon Art. 3 (1) of Regulation 21/2004 the system for the identification and registration of animals comprises the means of identification to identify each animal, up-to-date registers kept on each holding, movement documents and a central register or a computer database.¹⁵⁶

1. Identification

Animals on a holding born after 9 July 2005, must be identified within a period to be determined by the Member State as from the birth of the animal and in any case before the animal leaves the

149. Council Regulation (EC) No. 21/2004, Establishing a System for the Identification and Registration of Ovine and Caprine Animals, 2004 O.J. (L5) 8.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. See for this background of the current legislation the recitals of Council Regulation 21/2004.

155. Council Regulation 21/2004, *supra* note 149, at 8. In order to formally exclude bovine animals from the scope of this Council Regulation 21/2004 explicitly removed all references to bovine animals in Directive 92/102/EEC. Although the European legislature had already intended the exclusion of bovine animals from this Directive by the establishment of the provisions in Council Regulation 1760/2000, the relationship was not sufficiently made clear in the latter Regulation, and was therefore clarified in Council Regulation 21/2004.

156. *Id.* at 10.

holding on which it was born.¹⁵⁷ That period cannot be longer than six months.¹⁵⁸

On the basis of Regulation 21/2004 animals are to be identified by two means of identification.¹⁵⁹ First, all animals must be identified by an ear tag that complies with paragraph A.1 to A.3 of the Annex to Regulation 21/2004, which specifies the requirements with regard to identification codes, approval of ear tags by the competent authority, and the material used for ear tags.¹⁶⁰ Second, identification may consist of an ear tag, a tattoo (except for animals involved in intra-Community trade), a mark on the pastern (solely in the case of caprine animals), or an electronic transponder.¹⁶¹ The specific requirements for electronic transponders are set out in paragraph A.6 of the Annex.¹⁶²

Until January 1, 2008, a transitional regime applies as far as the second means of identification is concerned, except in the case of animals involved in intra-Community trade.¹⁶³ During the transitional period, the system requires the identification of animals both by holding and individually, provides for a replacement procedure where a means of identification has become illegible or has been lost, under the control of the competent authority and without compromising traceability between holdings, the objective being to control epizootic diseases, and allow the animals' movements to be traced within the national territory, with the same objective.¹⁶⁴ The system must be approved by the European Commission.¹⁶⁵ Until 1 January 2008, Member States that have introduced electronic identification on a voluntary basis shall ensure that the individual electronic identification number and the characteristics of the means used are mentioned in the relevant certificate accompanying animals involved in intra-Community trade.¹⁶⁶

157. *Id.*

158. Regulation 21/2004, art. 4. By way of derogation Member States may extend the period, which may not, however, exceed nine months, for animals kept in extensive or free-range farming conditions. Member States concerned shall inform the Commission of the derogation granted. If necessary, implementing rules may be laid down in accordance with the procedure referred to in Article 13(2).

159. *Id.* at art. 4(2).

160. Council Regulation 21/2004, *supra* note 149, at 10.

161. *Id.* See art. 4, par. 2(b) and A.4 of the Annex.

162. *Id.*

163. *Id.* at 10, 12.

164. *Id.* at 15.

165. Council Regulation 21/2004, *supra* note 149, at 10.

166. *Id.* at 11.

An alternative means of identification may be allowed by the competent authority for animals intended for slaughter before the age of twelve months intended neither for intra-Community trade nor for export to third countries.¹⁶⁷ In that situation, the method described in Section A.7 of the Annex may be authorized and the animals are identified by an ear tag applied to one ear approved by the competent authority.¹⁶⁸ The ear tag must be of non-degradable material, tamper-proof, easy to read and designed to remain attached to the animal without being harmful to it.¹⁶⁹ The ear tag may not be re-usable and must bear only non-removable inscriptions.¹⁷⁰ The ear tag must contain at least the two-letter country code and the identification code of the holding of birth.¹⁷¹ Member States using this method must inform the Commission and the other Member States.¹⁷² If animals identified in accordance with this point are kept beyond the age of twelve months or are intended for intra-Community trade or export to third countries, they must be identified in accordance with the general rules.¹⁷³

Animals imported from a third country after 9 July 2005 remaining within the territory of the Community shall be identified by the regular two means of identification: first, at the holding of destination where livestock farming is carried out within a period, to be determined by the Member State, of no more than fourteen days from undergoing checks at the border inspection post; and second, in any event, before leaving the holding.¹⁷⁴ The original identification established by the third country must be recorded in the holding register together with the identification code allocated to it by the Member State of destination.¹⁷⁵ The identification requirements for imported animals are not obligatory for an animal intended for slaughter if the animal is transported directly from the veterinary border inspection post to a slaughterhouse situated in the Member State where the checks are carried out and the animal is slaughtered within five working days of undergoing those checks.¹⁷⁶

167. *Id.* at 10.

168. *Id.* at 16.

169. *Id.*

170. Council Regulation 21/2004, *supra* note 149, at 16.

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.* at 10.

175. Council Regulation 21/2004, *supra* note 149, at 10.

176. *Id.* at 11.

Any animal originating in another Member State must retain its original identification which may not be removed or replaced without the permission of the competent authority.¹⁷⁷ Where a means of identification has become illegible or has been lost, a replacement bearing the same code must be applied.¹⁷⁸ In addition to the code and distinct from it, the replacement may bear a mark with the version number of the replacement.¹⁷⁹ However, the competent authority may allow the replacement means of identification to bear a different code, provided that the objective of traceability is not compromised.¹⁸⁰ The means of identification must be allocated to the holding, distributed and applied to the animals in a manner determined by the competent authority.¹⁸¹

Beginning 1 January 2008, electronic identification according to guidelines for the implementation and in accordance with the relevant provisions of Section A of the Annex, will be obligatory for all animals.¹⁸² Member States having a total number of ovine and caprine animals of 600,000 or less may make such electronic identification optional for animals not involved in intra-Community trade.¹⁸³ Member States having a total number of caprine animals of 160,000 or less may also make such electronic identification optional for caprine animals not involved in intra-Community trade.¹⁸⁴

2. Holding register

Following Art. 5 (1) of Regulation 21/2004, each keeper of animals, with the exception of the transporter, must keep an up-to-date register containing at least the information listed in Section B of the Annex.¹⁸⁵ Beginning 9 July 1995, the holding register must include the identification code of the holding, the address of the holding and the geographical coordinates or equivalent indication of the geographical location of the holding, the type of production, the result of the latest inventory and the date on which it was carried out, the name and address of the keeper, in the case of animals leaving the holding, the name of the transporter, the registration num-

177. *Id.*

178. *Id.*

179. *Id.*

180. Council Regulation 21/2004, *supra* note 149, at 11.

181. *Id.*

182. *Id.* at 12.

183. *Id.*

184. *Id.* at art. 9.

185. Council Regulation 21/2004, *supra* note 149, at 11.

ber of the part of the means of transport carrying the animals, the identification code or the name and address of the holding of destination or, in the case of animals moved to a slaughterhouse, the identification code or name of the slaughterhouse and the date of departure, or a duplicate or a certified copy of the movement document referred to in Article 6 of Regulation 21/2004, in the case of animals arriving on the holding, the identification code of the holding from which the animal was transferred and the date of arrival, information on any replacement of tags or electronic devices.¹⁸⁶ By way of derogation, the register of information shall be optional in any Member State where a centralized computer database already containing this information is operational.¹⁸⁷

Beginning 1 January 2008, specified information for each animal born after that date must be entered in the holding register including the identification code of the animal, the year of birth and date of identification, the month and the year of death of the animal on the holding, the race and, if known, the genotype.¹⁸⁸ The register must be in a format approved by the competent authority, kept in manual or computerized form, and be available at all times on the holding and to the competent authority, upon request, for a minimum period to be determined by the competent authority but which may not be less than three years.¹⁸⁹ Each keeper must supply the competent authority, upon request, with all information concerning the origin, identification and, where appropriate, the destination of animals which the keeper has owned, kept, transported, marketed or slaughtered in the last three years.¹⁹⁰

3. Movement document

Whenever an animal is moved within the national territory between two separate holdings, it must be accompanied by a movement document based on a model drawn up by the competent au-

186. *Id.* at 16. Member States may require keepers to enter further information in the register referred to in paragraph 1, in addition to that listed in Section B of the Annex.

187. *Id.* at 11.

188. *Id.* at 16. However, for animals for animals intended for slaughter before the age of 12 months, intended neither for intra-Community trade nor for export to third countries the information referred to in point 2 of that Section must be provided for each batch of animals having the same identification and must include the number of animals.

189. *Id.* at 11.

190. Council Regulation 21/2004, *supra* note 149, at 11.

thority, containing at least the minimum information listed in Section C of the Annex, and completed by the keeper if the competent authority has not already done this.¹⁹¹ The movement document must be completed by the keeper on the basis of a model drawn up by the competent authority.¹⁹² It must contain the identification code of the holding; the name and address of the keeper; the total number of animals moved; the identification code of the holding of destination or of the next keeper of the animals or, when animals are moved to a slaughterhouse; the identification code or the name and location of the slaughterhouse, or, in the event of transhumance; the place of destination; the data concerning the means of transport and the transporter, including the transporter's permit number, the date of departure, the signature of the keeper.¹⁹³ From the date on which electronic identification becomes obligatory in addition to the information mentioned above, the movement document must contain the individual identification code for each animal.¹⁹⁴

The keeper at the holding of destination must keep the movement document for a minimum period to be determined by the competent authority, but not less than three years.¹⁹⁵ On request, he shall supply the competent authority with a copy thereof.¹⁹⁶

4. Central Register

Since 9 July 2005, a central register included in a computer database is obligatory.¹⁹⁷ The register holds the information of all the holdings relating to keepers of animals in their territory, except transporters.¹⁹⁸ The computer database has to meet the requirements set out in Section D.1 of the Annex to the Regulation.¹⁹⁹ A

191. *Id.* at art. 6. By way of derogation the movement document shall be optional in any Member State where a centralized computer database containing at least the information required by Section C of the Annex, except for the keeper's signature, is operational.

192. *Id.*

193. *Id.* at 16.

194. *Id.* Member States may enter further information, in addition to that contained in Section C of the Annex, on the movement document referred to in paragraph 1, or require that such information be entered.

195. Council Regulation 21/2004, *supra* note 149, at 11.

196. *Id.*

197. *Id.* at 11-12, art. 7 and 8.

198. *Id.* at 12.

199. *Id.* The computer database must contain at least the following information for each holding: the identification code of the holding, the address of the holding

holding remains on the central register until three consecutive years have elapsed with no animals on the holding.²⁰⁰ In addition from 1 January 2008, each separate movement of animals must be registered.²⁰¹ The entry must comprise at least the number of animals being moved, the identification code of the holding of departure, the date of departure, the identification code of the holding of arrival and the date of arrival.²⁰²

D. Equine animals

Compared to other farm animals, the identification requirements for equidae (horses, donkeys, zebras) and their crossings are far less tense. The requirements are limited to an identification document that has to accompany the animals during their movement on foot as well as during transport.²⁰³ The identification requirements are further specified in Commission Decision 93/623/EEC of October 20, 1993,²⁰⁴ establishing the identification document (passport) accompanying registered equidae, amended by Commission Decision 2000/68/EEC of December 22, 1999.²⁰⁵ By the latter Commission Decision the identification of equidae for breeding and production was established.²⁰⁶ Amendments on the identification and registration requirements for equidae are cur-

and the geographical coordinates or equivalent indication of the geographical location of the holding, the name and address and occupation of the keeper, the species of animals, the type of production, the result of the inventory of animals and the date when the inventory was carried out, a data field reserved for the competent authority in which it may enter animal health information, for example restrictions on movements, status or other relevant information in the context of Community or national programs.

200. Council Regulation 21/2004, *supra* note 149, at 12.

201. *Id.*

202. *See* par. D.2 of the Annex to the Regulation, *supra* note 149, at 17.

203. *See generally* the applicable legislation Council Directive 90/427/EEC of 26 June 1990 on the zootechnical and genealogical conditions governing intra-Community trade in equidae, OJ L 224, 18.8.1990, p. 55-59; Commission Decision 93/623/EEC of 20 October 1993, establishing the identification document (passport) accompanying registered equidae, OJ L 298, 3.12.1993, p. 45; Council Directive 90/426/EEC of 26 June 1990 on animal health conditions governing the movement and import from third countries of equidae, OJ L 224, 18.8.1990, p. 42-54 and Commission Decision 2000/68/EEC of 22 December 1999 amending Commission Decision 93/623/EEC and establishing the identification for equidae for breeding and production, OJ L 23, 28.1.2000, p. 72-75.

204. *See generally* Commission Decision 93/623/EEC, 1993 O.J. (L 298).

205. *See generally* Commission Decision 2000/68/EEC, 2000 O.J. (L 23).

206. *Id.*

rently on their way. First of all, a draft Regulation was published that will replace Commission Decisions 93/623/EEC and 2000/68/EEC.²⁰⁷ The Draft was discussed in the Standing Committee on the Food Chain and Animal Health in May 2006, and was forwarded by the Member States to the individual national experts for potential comments.²⁰⁸ It is the Commission's intention to introduce electronic identification of horses in this new Regulation.

V. SLAUGHTER

Hygiene legislation for food of animal origin continues the above line of legislation during and after slaughter.²⁰⁹ Establishments handling products of animal origin must be approved by the competent authority in their Member State.²¹⁰ Member States must keep up-to-date lists of approved establishments, which are given an approval number with additional codes indicating the type of products of animal origin manufactured.²¹¹

Regulation 853/2004 requires food business operators operating slaughterhouses to request or receive, check, and act upon information,²¹² known as Food Chain Information ("FCI").²¹³ The FCI, which may be provided electronically or as a standardized declaration signed by the producer, must include:

- The status of the holding of provenance or the regional animal health status; the animals' health status; and relevant reports about previous ante-mortem and post-mortem inspections of animals from the same holding of provenance, including, in particular, reports from the official veterinarian. This information does not need to be provided if the opera-

207. Draft Commission Regulation of implementing Council Directives 90/426/EEC and 90/427/EEC as regards the method for identifying equidae, SANCO/10061/2006-Rev. 1.

208. See Summary Record of the Standing Committee on the food Chain and Animal Health held in Brussels on 3-4 May 2006 (Section Animal Health and Welfare) (Section Controls and Import Conditions), SANCO D1 – D(06)411479.

209. See generally Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 20 April 2004 laying down specific hygiene rules for food of animal origin, O.J. (L 226), 22-82 (corrigendum).

210. *Id.* at 26.

211. *Id.* at 36-37.

212. *Id.* at 37-39. Specified in Section III of Annex II of Regulation 853/2004.

213. The text of this paragraph is based on a draft by Michael Fogden intended for publication in a book on EU food hygiene legislation by M. Fogden, B.M.J. van der Meulen and M. van der Velde.

tor is already aware of this information or if the producer declares there is no relevant information to report;

- Veterinary medicinal products or other treatments administered to the animals within a relevant period and with a withdrawal period greater than zero, together with their dates of administration and withdrawal periods;
- The occurrence of diseases that may affect the safety of meat;
- The results, if relevant to the protection of public health, of analysis of samples taken from the animals or of other samples taken to diagnose diseases that may affect the safety of meat, including in relation to the monitoring and control of zoonoses and residues;
- Production data that indicate the presence of disease, unless the producer declares there is no relevant information to report; and
- The name and address of the private veterinarian normally attending the holding of provenance, unless the operator is already aware of this information.

Slaughterhouse operators must not accept animals onto the slaughterhouse premises, unless they have requested and been provided with relevant food safety information contained in the records kept at the holding of provenance in accordance with Regulation 852/2004.²¹⁴ They must be provided with the FCI at least twenty-four hours before the arrival of animals at the slaughterhouse, except in prescribed circumstances and with the permission of the competent authority, in which case the FCI may accompany the animals to which it relates.²¹⁵ The operator must evaluate the relevant information and, if the animals are accepted for slaughter, the documents relating to the status of the holding or the regional health status and to the use of veterinary medicinal products or other treatments must be given to the official veterinarian; the animals must not be slaughtered or dressed until the official veterinarian has given permission.²¹⁶ Relevant FCI must be made available to the official veterinarian without delay and no less than twenty-four hours before the arrival of the animals, in relation to animals ac-

214. Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs, 2004 O.J. (L 226), 3-21 (corrigendum).

215. Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 20 April 2004 laying down specific hygiene rules for food of animal origin, O.J. (L 226), 22-82 (corrigendum).

216. *Id.*

cepted onto the slaughterhouse premises.²¹⁷ The operator must also notify the official veterinarian of any information that gives rise to health concerns before ante-mortem inspection of the animal concerned.²¹⁸ In the case of domestic solipeds, food business operators must check passports accompanying these animals to ensure they are intended for slaughter for human consumption and, if they accept the animal for slaughter, they must give the passport to the official veterinarian.²¹⁹ Should an animal arrive without FCI, the operator must immediately notify the official veterinarian, and its slaughter is prohibited until the official veterinarian permits this.²²⁰

VI. LABELING

A. *General principles*

The GFL sets out the principle that labeling shall provide a basis for consumers to make informed choices, to protect them from fraudulent or deceptive practices, adulteration of food and any other practices that may mislead them.²²¹ The general labeling directive gives the general requirements of labeling, like the mandatory statement of the name of the product, the quantity, the list of ingredients and the like.²²²

B. *Food of animal origin*

Products of animal origin must be given a health mark or, failing this, an identification mark applied during or after production; this mark must be oval in shape, legible, indelible and clearly visible for the competent authorities, and must show the name of the exporting country and the establishment's approval number. The Commission draws up lists of third countries from which imports of

217. *Id.*

218. *Id.*

219. Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs, 2004 O.J. (L 226), 3-21 (corrigendum).

220. Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 20 April 2004 laying down specific hygiene rules for food of animal origin, O.J. (L 226), 22-82 (corrigendum).

221. *See* EC 178/2002, O.J. (L 31), art. 8.

222. Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, O.J. (L 109), 29-42.

products of animal origin are permitted in accordance with the Regulation on official controls.²²³

C. Beef and veal

In addition to the general labeling requirements, Regulation 1760/2000 holds some compulsory provisions and some voluntary measures.²²⁴ The regulation, replacing earlier legislation, aims at maintaining and strengthening consumer confidence in beef and to avoid misleading them by ensuring that information is made available by sufficient and clear labeling.²²⁵

1. Compulsory

Following Art. 13 of Regulation 1760/2000, operators and organizations marketing beef in the Community are obliged to label beef in accordance with this Article.²²⁶ The compulsory labeling system shall ensure a link between, on the one hand, the identification of the carcass, quarter or pieces of meat and, on the other hand, the individual animal or, where this is sufficient to enable the accuracy of the information on the label to be checked, the group of animals concerned.²²⁷

Further, the label must show:

- in which country the animals were born;
- in which country the animals were fattened/bred;
- a code for the country and the slaughterhouse where the slaughter took place.²²⁸

For minced meat some derogations apply.²²⁹ For example, the three issues mentioned above may be replaced by an indication of the country (Member State or third country) where the meat was prepared and 'origin' if this is not the same country.²³⁰ Beef imported from a third country may be labeled 'Origin: non-EC' and

223. Council Regulation (EC) 882/2004 OJ L 191, 28.5.2004, p. 1-52.

224. Council Regulation (EC) 1760/2000 17.7 2000, O.J. (L 204), 1-10.

225. *Id.* at Whereas 4.

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.* at art. K1.

230. Council Regulation (EC) 1760/2000, *supra* note 224.

'Slaughtered in: (name of third country)' if all the required information is not available.²³¹

2. Voluntary

If businesses want to include information beyond the mandatory information on the label, they must send a specification for approval to the responsible authority in the Member State where the product is sold.²³² Member States must notify the labels they approve to the EU Commission (Art. 16). Commission Regulation (EC) no. 1825/2000 gives more detailed rules.²³³

Voluntary labeling specifications must indicate:

- the information to be included on the label;
- the measures to be taken to ensure the accuracy of the information;
- the control system which will be applied at all stages of production and sale, including the controls to be carried out by an independent body recognized by the competent authority and designated by the business. These bodies shall comply with the criteria set out in European Standard EN/45011;
- in the case of an organization of businesses, the measures to be taken in relation to any member which fails to comply with the specifications. Member States may decide that controls by an independent body may be replaced by controls by a competent authority. The competent authority shall in that case have at its disposal the qualified staff and resources necessary to carry out the requisite controls. The costs of controls shall be borne by the business(es) using the labeling system.²³⁴

VII. CRISIS MANAGEMENT

A. TRACES

In April 2004 the European Commission adopted a new system to manage animal movements and prevent the spread of animal dis-

231. *Id.*

232. *Id.*

233. Commission Regulation (EC) No. 1825/2000 of 25 August 2000 laying down detailed rules for the application of Regulation (EC) No. 1760/2000 of the European Parliament and of the Council as regards the labeling of beef and beef products, O.J. (L 216), 8-12.

234. *Id.* at art. 16.

eases.²³⁵ The TRAdE Control and Expert System (TRACES) is a single central database to track the movement of animals and certain types of products both within the EU and from outside the EU.²³⁶ TRACES is designed to facilitate action in case of an outbreak of an animal disease. According to the Press release concerning TRACES, the system works as follows:²³⁷

“Trade within the EU: for example, a consignment of cattle being sent from Spain to Italy via France. If registered in TRACES, the dealer can fill in all details of the consignment online, sending this electronic form to the relevant Spanish competent authority. The electronic form is controlled and if the animals comply with the relevant requirements, the form is validated. As soon as validation is given, TRACES sends the information to the competent authority at the destination, to the central competent authority in France and to all staging points, so that controls can be made en route and at the final destination. In case of a disease outbreak, it is easy to trace the consignment backwards and forwards.

Import of products from outside the EU: for example, a consignment of products arrives in Antwerp. If registered in TRACES, the agent at the Border Inspection Post (BIP) will be able to fill in part I of the Common Veterinary Entry Document (CVED) describing the details of the consignment. After controlling the products, the veterinary authority at the BIP will give or refuse authorization. If authorized, the CVED is sent to the competent authority at the destination. If the consignment is rejected, all BIPs within the EU will be informed via TRACES”.²³⁸

B. RASFF

The EU Commission operates several networks intended to ensure prompt communication of identified product safety or animal health problems. Relevant for the subject under discussion is the Rapid alert system for food and feed (RASFF). Results of inspections are not only used for enforcement measures within the jurisdiction of the inspection agency concerned, but must in particular be made available for risk management in the whole area that may be affected by a food safety problem.²³⁹ The GFL establishes a rapid

235. See TRACES: Commission adopts new system to manage animal movements and prevent the spread of animal diseases, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/04/487&format=HTML&aged=1&language=EN&guiLanguage=en>.

236. *Id.*

237. *Id.*

238. *Id.*

239. Arts. 50-52 GFL. 178/2002 O.J. (L 31), 1-24. For information on RASFF and for weekly overviews of alerts visit their website at http://ec.europa.eu/comm/food/food/rapidalert/index_en.htm.

alert system for the notification of a direct or indirect risk to human health deriving from food or feed (RAS or RASFF).²⁴⁰ It involves the Member States, the Commission and the European Food Safety Authority (EFSA).²⁴¹ The Member States, the Commission and the EFSA have each designated a contact point, which is a member of the network.²⁴² The Commission is responsible for managing the network. When a member of the network has any information relating to the existence of a serious direct or indirect risk to human health deriving from food or feed, this information shall be immediately notified to the Commission under the rapid alert system.²⁴³ The Commission shall transmit this information immediately to the members of the network. EFSA may supplement the notification with any scientific or technical information, which will facilitate rapid, appropriate risk management action by the Member States.²⁴⁴ The Member States shall immediately notify the Commission under the rapid alert system of:

- a) any measure they adopt which is aimed at restricting the placing on the market or forcing the withdrawal from the market or the recall of food or feed in order to protect human health and requiring rapid action;
- b) any recommendation or agreement with professional operators which is aimed, on a voluntary or obligatory basis, at preventing, limiting or imposing specific conditions on the placing on the market or the eventual use of food or feed on account of a serious risk to human health requiring rapid action;
- c) any rejection, related to a direct or indirect risk to human health, of a batch, container or cargo of food or feed by a competent authority at a border post within the European Union.

The notification must be accompanied by a detailed explanation of the reasons for the action taken by the competent authorities of the Member State in which the notification was issued followed by supplementary information in good time, in particular where the measures on which the notification is based are modified or withdrawn. The Commission immediately transmits the notification

240. *Id.*

241. *Id.* The EFSA has been instituted by the GFL. It is an independent agency responsible for scientific risk assessment and risk communication. Risk management through law making and enforcement is the responsibility of the European Institutions, the Commission in particular, and the Member States. EC 178/2002 O.J. (L 31) arts. 50, 62.

242. *Id.*

243. *Id.*

244. *Id.*

and supplementary information received under the first and second subparagraphs to members of the network. Where a batch, container or cargo is rejected by a competent authority at a border post within the European Union, the Commission shall immediately notify all the border posts within the European Union, as well as the third country of origin. Where a food or feed which has been the subject of a notification under the rapid alert system has been dispatched to a third country, the Commission shall provide the latter with the appropriate information. The Member States shall immediately inform the Commission of the action implemented or measures taken following receipt of the notifications and supplementary information transmitted under the rapid alert system. The Commission shall immediately transmit this information to the members of the network. Participation in the rapid alert system may be opened up to applicant countries, third countries or international organizations, on the basis of agreements between the Community and those countries or international organizations, in accordance with the procedures defined in those agreements. The latter is based on reciprocity and must include confidentiality measures equivalent to those applicable in the Community.

Alert notifications are sent when the food or feed presenting the risk is on the market and when immediate action is required. Alerts are triggered by the Member State that detects the problem and has initiated the relevant measures, such as withdrawal/recall. The notification aims at giving all the members of the network the information to verify whether the concerned product is on their market, so that they can take the necessary measures. Information notifications concern a food and feed for which a risk has been identified, but for which the other members of the network do not have to take immediate action, because the product has not reached their market. These notifications mostly concern food and feed consignments that have been tested and rejected at the external borders of the EU. They avoid attempts to import them through another point of entry, thus preventing the placing on the market of a food or feed which presents a risk to the consumer.

VIII. CONTROLS AND ENFORCEMENT

A. Role of Member States

Generally speaking, the enforcement of food safety, animal health and animal welfare legislation is the responsibility of the

Member States.²⁴⁵ They have duty to organize official controls and to impose penalties that are effective, proportionate and dissuasive.

B. Veterinary checks

European legislation on veterinary checks can be divided into four areas:

- 1) Veterinary checks on intra-Community trade in animal products: Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market;²⁴⁶
- 2) Veterinary checks on intra-Community trade in live animals: Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market;
- 3) Veterinary checks on imports of animal products from third countries: Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries and repealing Directive 90/675/EC;
- 4) Veterinary checks on import of live animals from third countries: Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC.

C. Official Controls

Although Article 17 General Food Law holds the Member States responsible for enforcement, European law increasingly sets standards for national enforcement and provides for supervision. On 30 April 2004 two Regulations were published in the Official Journal of the European Union: 'Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules'²⁴⁷ and 'Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organization of official controls on products of animal origin intended for human con-

245. Council Regulation 178/2002, 2002 O.J. (L 31) 1 (EC).

246. OJ L 395, 30.12.1989, p. 13-22.

247. OJ L 191, 28.5.2004, p. 1-52.

sumption'.²⁴⁸ These Regulations have become effective as from January 1, 2006. National inspectors supervise the application of the requirements of feed, food, animal health and animal welfare law. The national inspectors have powers under national law to inspect premises where animals are kept or where food is handled and to report on irregularities. Such irregularities may result in sanctions.

Regulation 882/2004/EC is concerned with food-related controls in general. Member States are responsible for ensuring that official controls are carried out regularly, with appropriate frequency proportionate to the risk for food safety posed by the business where the official controls take place. What frequency is appropriate depends amongst other things on identified risks and past performance. Good past performance by a business operator may lead to a reduced frequency in inspections. The Member States may collect fees or charges to cover the costs occasioned by official controls. For some activities they are even under obligation to do so in order to avoid a distortion of intra-community trade by different practices. If non-compliance leads to extra official controls, then the operators responsible will be charged.

D. Second line inspections

The Commission, in its role as guardian of the Treaties is responsible for making sure food safety law is implemented and enforced. This is the foundation for the work of the Food and Veterinary Office (FVO). The main role of FVO inspectors is to check how national authorities implement and enforce relevant EU legislation. Inspections are primarily targeted towards evaluating the nature and effectiveness of the national control systems in place and whether they are capable of delivering the required standards. At the same time, FVO inspectors also carry out on-the-spot checks on farms, markets, food processing establishments, and other places where food is prepared or handled, to make sure that the reality matches what should be implemented.

The Member States must give all necessary assistance and provide all documentation that the Commission experts—the FVO—request. Each year, the FVO prepares a program of inspections that is published on the website of DG Sanco. Inspections can be carried out in response to requests from (third) countries looking for ap-

248. OJ L 139, 30.4.2004, corrigendum O.J. 226, 25.6.2004.

proval to export to the EU. Following an inspection, the FVO produces a report of its findings and conclusions, making recommendations for actions to be taken by the national authorities to correct any shortcomings that may have been identified. The authorities have to frame an action plan, showing how to deal with problems, and including deadlines for corrective action. The final report of the inspection is published on the DG's website, together with any comments from national authorities.

Should a serious, general health risk be identified, the Commission can impose a safeguard clause on the Member State or third country concerned. This allows for a wide range of additional controls, varying from systematic testing of imports to the imposition of a total ban on trade in certain animals or products. Non-compliance by Member States may result in infringement proceedings.²⁴⁹

E. Controls in third countries

Although the FVO formally has no jurisdiction outside the EU, Regulation 882/2004/EC provides for official controls in third countries in Article 46:

Commission experts may carry out official controls in third countries in order to verify [...] the compliance or equivalence of third-country legislation and systems with Community feed and food law and Community animal health legislation. The Commission may appoint experts from Member States to assist its own experts.

These controls in third countries may only be executed if the authorities in those countries agree to them. However, as such controls may be a condition for export to the EU, these authorities have little alternative. Imports of animal products from third countries are only allowed if the exporting state and the specific establishment appear on a list of approved countries/establishments. The FVO performs controls in third countries in order to establish whether or not the approval can be given and maintained. Where a specific problem is identified—for example where a food-processing establishment in a third country is found to be operating in an unsafe manner—the Commission can remove it from the list of establishments approved for export to the EU. Both Regulation

249. Article 226 EC Treaty. On enforcement see further: Bernd M.J. van der Meulen and Annelies A. Freriks, *Millefeuille: The emergence of a multi-layered controls system in the European food sector*, *Utrecht Law Review*, Volume 2, issue 1 (June 2006), pp. 156-176; www.utrechtlawreview.org/publish/articles/000022/article.pdf.

882/2004/EC and 854/2004/EC elaborate on the criteria that have to be met by third countries.

F. Cross compliance

To the primary sector a system of enforcement applies that is absent in all other stages of the food chain. In addition to the usual penalties, a new instrument has been added to the arsenal of penalties in the context of the reform of the Common Agricultural Policy. In response to international criticism on agricultural subsidies, the EU reforms its Common Agricultural Policy (CAP) in such a way that subsidies on agricultural production are abolished. In their place a so-called Single Farm Payment has been introduced to support farmers. The CAP reform agreement is implemented by Regulation 1782/2003.²⁵⁰ This regulation sets out standards and requirements, known as Cross Compliance, which farmers have to meet as a condition of receiving their Single Farm Payment. They have to comply with certain statutory requirements listed in an annex to the regulation. These requirements concern the fields of public, animal and plant health, environment and animal welfare. Farmers, who do not meet these obligations, risk losing their payments in whole or in part. Among the requirements mentioned in the annex is Article 17 of the General Food Law. This article makes food business operators responsible to ensure that all stages of production, processing and distribution within the businesses under their control, satisfy the food and feed safety requirements of food law, which are relevant to those activities, and to verify that such requirements are met. This single article therefore brings practically the whole area of food law within the ambit of Cross Compliance. For our subject this means that primary producers who receive Single Farm Payment, risk to lose this payment if they do not comply with the requirements of the EU law.

250. Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, OJ L 270, 21.10.2003, p. 1-69.

IX. BIO SECURITY

So far bioterrorism has surfaced on a limited scale only in the EU. Some two decades ago in supermarkets, oranges were found injected with mercury. Probably the intention was to scare off consumers from buying products of the apartheid regime in South Africa. A case of olive oil poisoning in Spain causing hundreds of casualties has not been satisfactorily explained as crime or accident. More recently, companies have been blackmailed through threats to poison their products—Anthrax threats that have been made on persons by sending them letters or packages contaminated with white powder can also be seen in this context.²⁵¹ Though incidental, these examples nevertheless show that society's dependence on food supply and the vulnerability of the food supply chain are such that caution is warranted. The EU has opened research regarding the question how the existing legal infrastructure can best be applied and, if need be, modified, to protect the food supply from willful menaces.

X. IMPORTS INTO THE EU

Article 11 General Food Law states 'food and feed imported into the Community for placing on the market within the Community shall comply with the relevant requirements of food law or conditions recognized by the Community to be at least equivalent thereto or, where a specific agreement exists between the Community and the exporting country, with requirements contained therein.' The EU Commission has published an interpretation document on the GFL²⁵² which, in spite of the text of this provision, expresses the point of view that the general traceability requirements only apply from the EU border onwards.

Regulation 1760/2000 makes an exception on its labeling requirements for imported beef and veal. If the animals have been slaughtered in a third country, the label may indicate: 'origin: non-EC'. On 30 April 2006 Directorate D (Animal Health and Welfare)

251. See on this topic: http://ec.europa.eu/health/ph_threats/Bioterrorisme/bioterrorisme_en.htm.

252. http://ec.europa.eu/food/food/foodlaw/guidance/guidance_rev_7_en.pdf. See on the requirements for import; http://ec.europa.eu/food/international/trade/interpretation_imports.pdf and with regard to imports of life animals: http://ec.europa.eu/food/international/trade/guide_thirdcountries2006_en.pdf.

of DG Sanco published a General guidance on EU import and transit rules for live animals and animal products from third countries.²⁵³

XI. CONCLUDING REMARKS

The interconnectedness of animal health and food safety was felt acutely in the European crises of the 1990s. The EU reacted by creating a system of law that integrates elements that used to be studied under the headings of 'agrarian law' and 'food law', into a coherent structure aimed to ensure animal health, animal welfare and food safety from farm to fork.

This contribution has focused on the bureaucratic part of the system: the paperwork involved. Food law in general requires registration of businesses and traceability of goods. Requirements are more stringent with regard to foods of animal origin than with regard to other foods. Requirements on living animals are more stringent than requirements on food products. Most elaborate is the legislation with regard to cattle. Although the system is based on general principles and shows common features in general approach, the details appear to be patchwork. The system is best understood if we take into consideration that it emerged as an attempt to come to terms with (the threat of) crises.

253. http://ec.europa.eu/food/international/trade/guide_thirdcountries2006_en.pdf