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Study on fees or charges collected by the Member States to cover the costs occasioned by official controls

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Final Report
PART ONE: MAIN STUDY AND CONCLUSIONS

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Acronyms

AVEC: Association of Poultry Processors and Poultry Trade in the EU countries

BIP/s: Border Inspection Post/s

CA/s: Competent Authority/ies

CCA/s: Central Competent Authority/ies

CIBC / IMV / IBC: International Butchers' Confederation

CLITRAVI: Liaison Centre for the EU Meat Processing Industry

DG: Directorate General

DG SANCO: DG Health and Consumers

EASVO - European Association of State Veterinary Officers (member of FVE)

ECB: European Central Bank

EDA: European Dairy Association

EU: European Union

EUCOLAIT: European Association of Dairy Trade

EUROPECHE: Association of the National Organisations of Fishery Enterprises in the EU

FBO/s: Feed/Food Business Operator/s

FCEC: Food Chain Evaluation Consortium

FCI: Food Chain Information

FEFAC: European Feed Manufacturers' Federation

FVE: The Federation of Veterinarians of Europe

GHP: Good Hygiene Practices

HACCP: Hazard Analysis Critical Control Points

MNCP: Multiannual National Control Plan

MS: Member State/s

NMS: New Member State/s

OCs: Official Controls

POAO: Products of Animal Origin

SCFCAH: Standing Committee on the Food Chain and Animal Health

SG: Steering Group (for this study)

ToR: Terms of Reference

UECVB: European Livestock and Meat Trading Union

PART ONE: MAIN STUDY AND CONCLUSIONS

Executive Summary

Regulation 882/2004[1] (hereafter referred to as 'The Regulation') sets out requirements for the authorities in EU Member States that have responsibility for monitoring and verifying compliance with, and enforcement of, feed and food law, animal health and animal welfare rules, i.e. the 'Competent Authorities' (CAs) responsible for organising and undertaking 'official controls' (OCs).

According to Article 65 of the Regulation, three years after its entry into force, the Commission should review the experience gained from its application, in particular in terms of scope and the fee-setting mechanism, and whether/how the current fees regime can be improved. The data collected and results of this study, which focused on the implementation of the financing provisions of the Regulation (Articles 26-29), will feed into a Commission Report to the European Parliament and Council for a possible modification of the current legislation.

The objectives of the study are two-fold:

a) to establish a detailed picture and evaluate the present situation as regards the application of the current fees regime, in particular the way in which the system operates in practice; and,

b) to assess the advantages and disadvantages of a range of policy options (regarding the scope of current rules and the fee-setting mechanism).

As such, the final aim is to provide input to the Commission's development of proposals to improve the fees system in future.

The assessment of the current system and future policy options take into account the wider objectives and principles of EU policy in this sector. As such, the study considers the overall objective of the Regulation to ensure a harmonised approach with regard to official controls, the objectives of EU food and feed law[2] to ensure a high level of protection of human life and health and achieve the free movement in the Community of compliant feed and food, and the objectives of the Lisbon Strategy to promote better regulation and support industry competitiveness. Furthermore, the principles of proportionality, subsidiarity (Article 5 of the Treaty) and FBO responsibility (in accordance with current food and feed law) frame the approach of this study.

The study was carried out in the period April-November 2008 through a survey of EU27 CAs, in depth analysis (case studies) in six MS representing a variety of fee regimes (Germany, the UK, Italy, Poland, France and Slovakia), interviews with key experts and stakeholders at EU level[3], and extensive literature and data review (including relevant FVO reports and national legislation).

The study has found that significant progress has been made in the application of the Regulation by MS, and in particular the financing provisions of Articles 26-29, since their entry into force on 1 January 2007. However, the enforcement of these provisions has been slow and gradual, with significant delays in most MS. In some cases, full implementation is still pending subject to the approval of draft national legislation enacting Article 27, despite the fact that the deadline for its

[1] 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.

[2] Regulation (EC) 178/2002 (General Food law) and the Hygiene Package (Regulations (EC) 852/2004, 853/2004 and 854/2004).

[3] Including consultations with the following EU professional organisations: AVEC, CIBC/IMV/IBC, CLITRAVI, EDA, FEFAC, FVE, and the UECBV.

definitive entry into force was 1 January 2008. In these cases the fee system in place is largely based on that laid down in previous, repealed legislation (Directive 85/73).

Despite progress a number of important shortcomings have been identified in the current state of implementation of Articles 26-29, as follows:

Competent Authorities (CAs): There are significant differences in the organisation, structure and staffing (number and profiles of staff) between MS, which have financial implications for the cost of official controls (OCs). Contrary to the Commission's expectations, more than one CA is involved in most cases, which may create lack of transparency and of central/overall responsibility. In MS with decentralised management, the central CA is not always in control and efficient/effective coordination is not always ensured. The study findings confirm issues which are already highlighted in relevant FVO reports. In several MS initiatives are under way to rationalize veterinary services, such as the use of appropriately trained contractual staff for the OCs rather than civil servants.

Activities for which fees are collected: A distinction is made throughout the study between OC activities for which fee collection is 'compulsory' (Article 27.2, activities of Annexes IV and V), and those for which fee collection is optional or 'non-compulsory' (Article 27.1). The study has found that, in the case of **'compulsory**' fees: 9 MS collect such fees only partly; fees for milk production and for residue controls were found to be 'controversial' and often not collected at all; on the other hand, in some MS fees are collected for the same OCs more than once along the production chain (e.g. at slaughter and cutting plant even within the same establishment, contrary to Article 27.7). In the case of '**non-compulsory**' fees: 19 MS collect fees for activities beyond those of Article 27.2, while 6 do not collect any such fees; fees are collected in some MS for OCs on products of non-animal origin.

Fee rates used: Regulation 882/2004 leaves it up to MS to define fee system: either minimum fees as defined in Annex IV (domestic controls) and V (import controls) or fee rates calculated on the basis of the actual costs of OCs ('flat rates'). In practice, a multitude of fee rates apply for the various activities: 18 MS use a mix of the two systems (flat rates and minimum rates); the current situation is quite complex, not transparent and confusing for FBOs; the CAs appear to have interpreted relevant provisions of Article 27 rather 'openly'. Furthermore, 12 MS apply fees below minimum rates, however it is not clear or sufficiently justified whether the conditions of Article 27.6 (controls of reduced frequency and criteria of para 5) are respected in these cases.

Fee calculation: Article 27.4 stipulates that where flat rates are used, fee levels need to be set within the limits of the minimum fees set out in Annexes IV and V, and a maximum set by the actual controls costs; the fee calculation in this case must respect the criteria of Annex VI. In practice: the calculation method used is not always available, or has not always been communicated to the Commission (contrary to requirements of Article 27.12); even when the method is available, it is not always transparent what type of costs are included under the various cost categories and what reference time period is used; in most cases it is not clear whether the actual costs included in the calculation respect the criteria of Annex VI (staff salaries; staff costs including overheads; lab analysis and sampling).

Fee collection & use of revenue: The rationale of the system is to ensure adequate financial resources to provide the necessary staff and other resources (Article 26). In practice: in the majority of MS the collected revenue is incorporated into the General State Budget, either entirely (11 MS) on in part (7 MS); only 9 MS claim to be 'ring fencing' revenues specifically for the CAs performing the controls; 14 MS indicated they do not cover the OC costs through the fees, while a further 6 MS claim this is occurring in some cases (regions, activities). This partial cost coverage may be due to inappropriate fee setting (insufficient fee levels) as well as inappropriate fee collection / use of revenue. The position appears to be better in the case of imports controls, partly because Article 27.8 stipulates that such fees should be paid to the CA in charge.

Enforcement of Article 27: Although the Regulation should be directly enforceable, Article 27 allows some discretion to MS on the actual fee system to use and the activities for which OCs should

be charged beyond those of Article 27.2. The study has found that, in practice, there is significant variation between MS in the enforcement of Articles 26-29. Underlying this, there is a strong perception - in some cases documented by FVO reports - of significant variation in the organisation and effectiveness of OCs, and that – as documented by the study findings - CAs have rather liberally interpreted provisions of Articles 26-29 (this is particularly a problem in some MS with decentralised management and lack of sufficient central control by the CCA).

The study has therefore concluded that, as it currently stands, the system of fees for OCs does not fully fulfil its key objective: to provide sufficient resources for the effective and efficient operation of the OCs. Furthermore, the actual implementation of the system raises issues with regard to its contribution to the functioning of the internal market and the cost-efficiency of the system of OCs.

Contribution to the functioning of the internal market: MS broadly agree with the rationale of Articles 26-29. However, could the heterogeneity in their application in practice cause distortions in competition? The study has investigated various potential distortions that may arise in this context. It has found that in practice:

- **Distortions at EU level**: There is a general concern amongst stakeholders in the various MS that implementation of rules by national authorities put them at disadvantage vis-a-vis other MS. However, it is difficult to substantiate these claims due to lack of clarity and uniformity in MS approaches which makes the comparison of actual fees difficult. Although evidence of unjustified variations in fee levels were found between MS, there is no evidence of significant distortion in competitiveness between MS caused by differing fee levels. Other key factors affecting competitiveness appear to be more significant.
- **Regional distortions** are a concern particularly in some MS with decentralised management e.g. amongst the case study countries (Germany, also Italy and Spain);
- Discrimination against the **meat sector**, which is seen as unfairly bearing the cost of the OCs, from which other sectors along the chain also benefit;
- Discrimination against **smaller or disadvantaged FBOs**, which compound the difficulties they face in the general economic climate; this is particularly evident for those MS that have not adopted special provisions for these businesses in line with Article 27.5.

Cost efficiency issues have been raised with regard to:

- **Staff costs**: Stakeholders argue that Regulation 882/2004 could go further than the general requirement to have "a sufficient number of suitably qualified and experienced staff". In practice, there are wide variations in the number and profile of staff involved in controls, and this has repercussions on salary costs;
- **Administrative costs**: There is lack of transparency on what type of costs are taken into account, the formulation of Annex VI is considered too broad (in particular criterion 2: 'associated costs'), resulting in wide variation between MS and unjustifiably high costs in some cases;
- **Proportionate and risk based controls:** important cost savings could be made in the costs of OCs if the guiding principles of OCs (risk basis, FBO responsibility and 'self-control' systems) were sufficiently taken into account by MS in implementing the provisions of Articles 26-29.

To address the various shortcomings in the current application of the Regulation[4], the study has examined the following key options: moving from the current system towards more harmonisation;

[4] It is noted that addressing some of the current shortcomings identified by this study requires action that extends beyond the financing provisions of Regulation 882/2004, to the wider legislation in the area of food and feed

moving towards more subsidiarity; and, the continuation of the *status quo*. A complementary option, which transcends the above three alternative options, is the extension of the financing obligation to sectors beyond those currently covered by the Regulation.

The key components of the financing system (basis of fee charging; level of fee rates; fee calculation method; fee reductions and penalties; and, list of activities covered by fees), as identified on the basis of the intervention logic of the current legislation (Articles 26-29), were combined to develop a range of scenarios within the above options (**Table 3-1**). The basis of fee charging is compulsory for all MS under the harmonisation option, optional under the subsidiarity option, and a mixed approach under the continuation of current rules.

The scenarios were assessed in terms of advantages and disadvantages, feasibility (whether and under which conditions they would work in practice), and the acceptance that they might have from the various groups of stakeholders. Key criteria for the assessment were the main goals and principles of the Regulation, as well as the wider objectives of Community food and feed law and the Lisbon strategy, in particular: improving the effectiveness and efficiency of the official controls; simplification of the current system; and providing the right incentives for FBOs to encourage compliance and discourage non-compliance. As these criteria may not necessarily point in the same direction, the initial assessment of the scenarios provided here aims to provide a balance between the various objectives and needs of stakeholders.

The assessment has shown that neither harmonisation nor subsidiarity would work in their most extreme expression. Although both scenarios would simplify the current system at the level of central management (particularly if full subsidiarity is pursued), they ultimately carry the risk that they may not lead to sufficient cost-recovery in some MS, and that the level of cost-recovery may vary significantly between MS. This could undermine the overall effectiveness of the official control system at EU level, and/or act as a disincentive to improving its efficiency.

An intermediate solution would clearly provide the most pragmatic way forward. Intermediate scenarios provide different degrees of balance between the flexibility that the majority of MS require, as an incentive *inter alia* to rationalise the system, with the simplification needed at the level of central management (Commission, MS CCAs). The study has found that the rationale for a flexible approach, which underlies the current Regulation, continues to apply today. The majority of MS CAs and stakeholders have indicated that a system that allows MS flexibility to set the fee rates, within a commonly agreed set of rules, continues to be the most favoured option. This approach is considered the most appropriate for the system to be able to adapt to national conditions.

On balance, amongst the various scenarios that can be envisaged at an intermediate level, those leading to more subsidiarity appear to be more attractive than those that lead to more harmonisation. This is because the degree of flexibility given to MS increases, while the degree of complexity of the legislation diminishes.

Moving towards more subsidiarity, if the primary aim of the legislation is to ensure that MS have the funds necessary to cover the costs of official controls whatever the means, scenario 4 (maintain only the general obligation for MS to provide adequate funding, in the line of a modified Article 26) could present an attractive alternative to pursue for the purposes of simplification.

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safety. The discussion of solutions to such shortcomings was therefore limited to its relevance to the costs and the financing of the official controls.

The disadvantage of this scenario would be that it could result in wider variations between MS than those created by the current system. To reduce these variations, conditions could be attached in the form of common principles at EU level for a more harmonised calculation of the fees and/or fee reductions/penalties across the EU (scenario 3).

Although the continuation of the *status quo* would be an alternative intermediate solution, the analysis of current shortcomings under section 2.2 has shown that to *do nothing* is clearly not an acceptable or a pragmatic option. However, if the current mixed approach of the Regulation (which represents the political reality of the evolution of the system since Directive 85/73) was to be maintained, certain improvements could be introduced as follows: at a general level improve the understanding of the Regulation; provide a rationale for setting minimum fee levels and review Annexes IV and V in the light of this rationale; reinforce transparency and accountability criteria; refine and define certain provisions more precisely at technical level; update Articles 26-29 with the progress made since the adoption of the General Food Law and the Hygiene Package.

Whatever the scenario to be pursued at an intermediate level, the study has identified the need for the definition of common principles that can apply for a more harmonised calculation of the fees and/or fee reductions/penalties across the EU. These could be general principles only or they could be more detailed criteria defined at a technical level. General principles would include: transparency in the calculation method of fee setting and for calculating fee reductions/penalties, on the basis of actual costs; and, the obligation for MS to communicate these to the Commission and the public. Detailed technical criteria would include for instance the calculation method to be followed for fee setting and for fee reductions/penalties, cost-recovery targets that should be sought, precise cost categories that should be taken into account, and even maxima/ceilings for each cost element.

The level at which common principles should be set needs to be further explored, as it is crucial in controlling MS flexibility and mitigating the potential disadvantages of subsidiarity. The greater the degree to which EU legislation moves from defining common principles and general guidelines (as is currently the case with Articles 27-29) to more technical criteria, the more difficult it will be for MS to deviate from a common denominator. On the other hand, this increases the complexity of the provisions and the extent of follow up needed at central level (Commission, MS CCAs).

In terms of the calculation of fee reductions and penalties, in particular, the principles could build on the advantages and benefits of self-control systems, as introduced at EU level by the Hygiene Package. Both MS and stakeholders are in principle in favour of providing incentives to FBOs to assume greater responsibility. The study has examined the possibility to follow an integrated approach more consistently linking compliance and non-compliance, and therefore fee reductions and penalties, to the uptake of self-control systems by industry (through a *bonus-malus* system). Such systems have already been developed in few MS (e.g. Belgium), highlighting the advantages of an integrated approach. The study has concluded that, although the development of such systems needs to be encouraged at EU level, their actual design can at present only be pursued at MS level.

Furthermore, the cross-cutting theme of the extension in scope of the Regulation was favourably assessed, in relation in particular to the inclusion of all stages along the food chain. The case of the extension of the system to stages upstream and downstream of the slaughtering and meat cutting operations along the meat production chain was a case in point. The study has concluded that an extension in this form would spread the costs of controls currently pursued only at a particular point in the chain but for the benefit of stages upstream/downstream more equitably along the food chain. Again, this approach is currently being adopted/explored in several MS.

This forward looking element of the project aimed to provide an initial assessment of certain key scenarios. The purpose was not to provide a full feasibility analysis (whether at political or technical

level). Nonetheless, specific recommendations were made to develop these scenarios, or indeed other potential combinations of their components, including through future impact assessments.

1. Introduction to the study

1.1. Background

Regulation 882/2004[5] (hereafter referred to as 'The Regulation') sets out requirements for the authorities in EU Member States that have responsibility for monitoring and verifying compliance with, and enforcement of, feed and food law, and animal health and animal welfare rules, i.e. the 'competent authorities' (CAs) responsible for organising and undertaking 'official controls' (OCs).

According to Article 65 of the Regulation, three years after its entry into force, the Commission should review the experience gained from its application, in particular in terms of scope and the fee-setting mechanism, and whether/how the current regime can be improved. This study, which was launched in April 2008, aims to respond to this requirement. The data collected and results of the study will feed into a Commission Report to the European Parliament and Council (which will also be discussed at the SCFCAH) for a possible modification of the current legislation.

Part One of this Final Report outlines the methodology and overall results, including conclusions and recommendations, of the work carried out by the study team (FCEC - Food Chain Evaluation Consortium, led by Agra CEAS Consulting for this evaluation).

Part Two (provided in a separate volume) describes in detail the system and conclusions of the work in the six case study countries.

The Final Report (Parts One and Two) forms the basis of the Final meeting with the Steering Group for this study, scheduled before end 2008.

[5] EU legal acts quoted in this Report refer, as applicable, to the last amended version. Full references to the acts quoted in this Report are given in **Annex 1.1**.

1.2. Objectives

The objectives of the study are two-fold:

c) to establish a detailed picture and evaluate the present situation as regards the application of the current fees regime in the EU, in particular the way in which the system operates in practice; and,

d) to assess the advantages and disadvantages of a range of policy options (regarding the scope of current rules and the fee-setting mechanism).

As such, the final aim is to provide input to the Commission's development of proposals to improve the system in future.

1.3. Scope

The study covers activities related to the official controls in relation to establishments based in the EU and in relation to goods introduced into the EU, with regards to the product sectors where the current rules apply, in particular the livestock and livestock product sectors.

Although the study focuses on the financing provisions of Regulation 882/2004, as contained in Articles 26-29 of Regulation 882/2004 (and in particular Article 27), a range of other Community legislation is relevant to the study. This legislation is summarised in **Annex 1.1**.

It is noted that reference to 'mandatory' and 'non-mandatory' fees throughout this Report is made with respect to MS obligations and possibilities under **Regulation 882/2004**, **Article 27 para 2 and para 1** respectively, not with respect to whether the fee is charged on a compulsory or other basis.

1.4. Methodology

1.4.1. Overall methodological approach and objectives

The activities undertaken during the study have been based on the following main methodological tools:

- Desk research, including data and documentation analysis;
- Survey of competent authorities at MS level (for the EU27);
- Interviews with European stakeholders/partners (including the Commission);
- Case studies, based *inter alia* on detailed interviews with MS stakeholders/authorities in 6 MS (Germany, UK, Italy, France, Poland, and Slovak Republic);

The study team has undertaken the design and implementation of the survey and interview process, with the following two key criteria in mind:

1. To have an open and transparent dialogue, involving all potentially interested partners and stakeholders at European and MS level. Our commitment to this objective is demonstrated by the fact that the survey has been addressed to all competent authorities in the EU-27, with the process closely monitored by our team. We have also contacted all representatives of the various relevant stakeholders at both EU and MS level.

2. To provide a synthetic and concrete analysis of the results, so as to be able to deliver actionable recommendations to the Commission services, in particular in the context of the Commission's review of Regulation 882/2004.

To this end, the study team has tried to ensure maximum flexibility throughout the survey and interview process. Flexibility was sought both in terms of adjusting the sample of relevant partners/stakeholders, but also in terms of updating the detailed list of questions used during the interviews with new findings and comments. New insights have thus been built into the process as the interviews were progressing.

At the same time, the team has sought to ensure that the Commission's reporting deadlines are adhered to and that a sound and robust basis for the synthesis at EU level is provided. This has involved the establishment of a clearly set out analytical framework and of a tight reporting and synthesis system for the inputs provided by the various phases of the project.

The study was carried out during the period March to October 2008.

1.4.2. Desk research

For the purposes of this study, key relevant literature and material reviewed includes the following:

1. Background legislation and other official documents of relevance. A non-exhaustive list of the main background legislation at EU level is provided in **Annex 1.1**. The purpose of the review has been to understand in detail the subject matter of this study and the way in which the various legal instruments interrelate.

2. The notification letters submitted by the MS to DG SANCO, in complying with Article 12 of Regulation 882/2004. To date, 18 MS have notified the Commission of the measures taken to enforce the financing provisions of the Regulation (**Annex 1.2**).

3. FVO reports carried out in the EU-27, in particular those relating to hygiene controls and import controls. A list of the reviewed FVO reports, indicating where available reference to the issue of fees, is provided in **Annex 1.2**. The purpose of our review has been to obtain a first view of the situation, and – where possible/applicable - to cross-check with the information provided by MS in their answers to the survey questionnaire. These reports, together with the FVO country profiles on the system of official inspections in the

areas covered by Regulation 882/2004[6] and the National Controls Plans[7] where available, also provide useful background material on the structure of the CAs in the MS. This has been useful in the context of identifying the relevant stakeholders both for the EU-27 survey and the case studies, and key issues of relevance to the financing of official controls.

4. Background material available at national level, including national legislation implementing Article 27 of Regulation 882/2004.

5. Material and data provided by industry stakeholders. Such material has included data on fees collected independently by some of the EU professional organisations (including notably the UECBV and CLITRAVI).

Desk research continued throughout the project course as new material and data, in all of the above categories, became available.

1.4.3. Survey of competent authorities (CAs)

The survey of CAs was addressed to all MS of the EU-27, including the case study countries. It was based on a questionnaire, developed in consultation with the Commission services, which covered the various issues of the fees system under Regulation 882/2004, including all sectors of Annexes IV and V of the Regulation (in the meaning of Article 27.2) but also other sectors to which non-compulsory fees may be currently applied by MS (in the meaning of Article 27.1). The questionnaire is attached in **Annex 2**.

The aim has been to collect facts/hard data on the current operation of the system (Section 1 of the questionnaire), and views/suggestions for the future (Section 2 of the questionnaire).

The process of questionnaire completion has been monitored closely by the Consultants via targeted meetings and communication, both with the desk officers responsible for hygiene and official controls in the MS Permanent Representations and directly with the CAs in the EU-27 MS. Requests for further clarification, following questionnaire submission, were also made to a number of MS.

A challenge from the outset has been to identify the relevant CAs in the MS, given the scope and complexity of the sectors to which fees for official controls apply, and the fact that several CAs and/or delegated bodies are often involved in the organisation of official controls (this issue is further discussed in section 2.2.1). As a result, questionnaire completion has necessitated extensive internal consultations within the MS, involving not only the CAs (notably, in most MS, the Ministry of Agriculture and the Ministry of Health), but also the national/local authorities, in some cases even the laboratories and veterinary institutes.

[6] FVO country profiles on food and feed safety, animal health, animal welfare and plant health.

[7] NCPs are to be drawn by MS pursuant to Article 41 of Regulation 882/2004.

The outcome has been a full response to the survey by all EU-27 MS[8]. It is also noted that this has largely been within the anticipated timelines (nearly two thirds of MS responded by the deadline of 27 June). For the case study countries, the survey results were incorporated and followed up in the discussions with MS authorities and stakeholders at national level.

The full analysis of the survey results (both quantitative and qualitative) is submitted as a separate spreadsheet file[9], while some of the results are used in this Report.

1.4.4. Case studies

The study covered the EU as an entity with treatment of all MS of the EU-27. Given the potentially wide scope of this coverage, further in-depth analysis was undertaken in six MS, as follows:

1. Germany
2. Italy,
3. UK,
4. France,
5. Poland
6. Slovakia

The selection of these countries represents a mix of different situations as identified during the Inception Phase of the study, in terms in particular of centralised/decentralised organisation and management of the system for the collection of the fees, and the nature of the system applied (whether minimum rates or flat rates). Two NMS have also been included in this selection.

The case studies were carried out and drafted using a common framework. In practice, any differences in the final presentation are due to the specific character of the administration of the official controls system and the administrative structures in each country. For the same reason, the partner and stakeholders contacted/interviewed in each country may be slightly different, with interviews focussed on the key relevant partners and stakeholders in each case.

The case studies are presented in full in a separate volume (Part Two) of the Final Report. Results and information from this work are incorporated in the analysis that follows in this main part of the Report.

[8] In some cases (4 MS) more than one response were received by the various CAs involved.

[9] A package of the completed questionnaires has been submitted separately to the DG SANCO services.

1.4.5. Interviews with key partners and stakeholders

The partners and stakeholders selected for interview at EU and MS level (for the case study countries) cover the range of sectors of relevance to this study.

1.4.5.1. At EU level

At European level, the interview programme has included, as partners, the Commission services (DG SANCO, other relevant DGs in particular DG Agriculture and DG MARE). In terms of the stakeholders, it has included both EU and national professional organisations.

All of the interviews were carried out face-to-face. In view of the large number of experts/representatives involved in some cases, where applicable, interviews were conducted by grouping together some of the partners/stakeholders. The latter has been particularly the case in terms of the interviews with the European professional associations.

The final list of interviewed professional organisations is presented in **Table 1-1**. Several of these interviews have been conducted with a group of relevant experts or representatives. The aim has been to enlarge the debate process to a larger number of people from the various MS, so as to provide different perspectives for the discussion and our analysis. This approach was also dictated by the fact that several of the professional associations are umbrella organisations representing a wide and often divergent range of views from their national members.

For the same reason, these interviews were conducted using a step by step approach with most of the EU professional associations. This has involved:

1. A preparatory phase with the lead organisation prior to the full interview with its members. The objective has been to focus the discussion during the main interview on identifying key issues for the organisation as a whole, including common points and points where an internal debate may be in evidence;

2. Main interview with the organisation and its members (where appropriate, e.g. UECBV, CLITRAVI, EDA, AVEC).

3. A second interview which took place towards the end of the study period, to confirm the points expressed during the first interview and also to focus the discussion on the options for the future (second 'group' interviews were conducted with the UECBV, CLITRAVI and AVEC).

Table 1-1 European professional organisations interviewed

Organisation	***Full name***
UECBV	European Livestock and Meat Trading Union
CLITRAVI	Liaison Centre for the EU Meat Processing Industry
AVEC	Association of Poultry Processors and Poultry Import/Export Trade
CIBC/IMV/IBC	International Butchers' Confederation
EDA	European Dairy Association
EUCOLAIT (a)	*European Association of Dairy Trade*
EUROPECHE (a)	*Association of the National Organisations of Fishery Enterprises in the European Union*
FEFAC	European Feed Manufacturers' Federation
FVE	Federation of Veterinarians of Europe

(a) This organisation was contacted for an interview, but no interview was conducted due to limited member interest. Member organisations in the case study countries were approached/interviewed in some cases.

The study team has synthesised the information and views collected through this process, and these are incorporated in the analysis of this Report.

In addition, the Consultants were invited by the French Ministry of Agriculture to attend a conference co-organised with the French Presidency on the modernisation of sanitary inspections in slaughterhouses, and in particular the section dealing with the costs of official inspections and the fee system[10]. The conference was attended by relevant CAS and delegated bodies from various MS of the EU-27 and gave the opportunity to liaise and get feedback both a wider base of MS than the case studies alone.

1.4.5.2. At MS level (case studies)

The case studies have involved a detailed investigation of the system applied, the issues raised, and the implications of the different systems. To this end, a second round of detailed interviews was conducted in the case study countries. This interview process, in terms of the stakeholders contacted and the issues addressed, was developed in all of the six case study

[10] Lyon 7-11 July 2008. Conference details can be found at:
http://pfue-inspectionsanitaireenabattoir.lso-intl.com/

countries in close consultation with their permanent representations in Brussels, the central national CAs, and the European professional organisations.

On average, the interview programme in each of the selected MS has covered at least 6-8 interviews for the large case studies (Germany, Italy, the UK) and 4-5 for the small case studies (France, Poland and Slovakia)[11]. Typically the interviews have included the relevant Ministries (Ministry of Agriculture, Ministry of Health), industry representatives (live animals, traders, meat processors, dairy processors, poultry sector, animal feed industry, fish industry), and a national veterinary institute (where applicable and if active in this area). The full list of authorities/stakeholders selected for interview in the case study countries is provided in Annex in Part Two of the Final Report.

The bulk of the interviews were conducted face-to-face. As was the case with the European stakeholders, several of the national interviews were carried out with a group of relevant officials/representatives, and involved extensive preparatory work and meetings. All interviews were conducted in the national language, by appointing native language experts from the Consultants' team in charge of the case study in each country.

The study team has processed the data and information from these interviews in two steps:

- The first step involved the analysis and synthesis of the interview results in a MS report, summarising the key points of the MS position per question. This analysis was incorporated in particular in Part Two of the Final Report.

- The second step was the comparison and cross-referencing of the analysis carried out per MS, with the results of the analysis of the information, data and views collected through the EU interviews and the survey. This analysis is incorporated in particular in this main part of the Report.

[11] Case study definition in accordance with the project contract (FCEC/Agra CEAS offer of January 2008).

2. Description and assessment of the current system of fees

This section presents the intervention logic of EU policy in this area, in particular of the financing provisions of Regulation 882/2204 (Articles 26-29) as set within the context of EU food and feed law and wider EU policy principles and objectives. Based on this, the analysis describes the current enforcement of Articles 26-29 by the MS, assesses the extent to which the various principles and objectives have been achieved, and highlights shortcomings.

The analysis is based on the synthesis of data and information resulting from the stakeholder interviews, the survey and the case studies, as well as from the desk research and analysis of secondary data and sources of information.

2.1. Intervention logic

2.1.1. Principles and objectives of EU policy

The analysis aims to establish the extent to which the financing provisions of Regulation 882/2004 serve the objectives and principles both of this Regulation and the wider objectives within which this is set, in particular those of EU food and feed law and the Lisbon Strategy.

In terms of objectives, the assessment of Articles 26-29 includes consideration of the following:

- Objectives of **Regulation 882/2004**:

  ⇒ to ensure a harmonised approach with regard to official controls;

- Objectives of **EU food and feed law** (Regulation 178/2002 and the Hygiene Package):

  ⇒ to ensure a high level of protection of human life and health and the protection of consumers' interests, including fair practices in food trade, taking account of, where appropriate, the protection of animal health and welfare, plant health and the environment;

  ⇒ to achieve the free movement in the Community of food and feed manufactured or marketed according to the general principles and requirements of EU law;

- Objectives of the **Lisbon Strategy** (*inter alia*):

  ⇒ to promote better regulation and maintain/support competitiveness.

In terms of principles, the analysis takes into account the need for Articles 26-29 to ensure respect of:

- The principle of **proportionality**: as set out in Article 5 of the Treaty, EU Regulation should not go beyond what is necessary in order to achieve the objectives pursued[12];

- The principle of **subsidiarity**: as set out in Article 5 of the Treaty, where objectives cannot be sufficiently achieved by the Member States and would therefore, by reason of their complexity, trans-border character and, with regard to feed and food imports, international character, be better achieved at Community level, the Community may adopt measures[13];

- The principle of **FBO responsibility**: actual Community food and feed law is based on the principle that FBOs at all stages within the business under their control are responsible for ensuring product safety[14].

2.1.2. The requirements for official controls

Regulation 882/2004 sets out requirements for the authorities in EU MS that have responsibility for monitoring and verifying compliance with, and enforcement of, feed and food law (and animal health and animal welfare rules), i.e. the 'competent authorities' (CAs) responsible for organising and undertaking 'official controls' (OCs)[15].

This regulation sets out the general approach that must be taken, and the principles that must be adopted, by the authorities in EU MS. It also provides the legal basis for the European Commission to assess the effectiveness of national official control arrangements.

Most of the provisions applied from 1 January 2006, while others applied from 1 January 2007. However, a 1-year derogation (to 1 January 2008) was given to MS for the entry into force of the financing provisions of Regulation 882/2004 (Articles 26 to 29), which are the subject of this study.

A novelty of the new Regulation has been that CAs can delegate specific tasks to relevant control bodies provided these meet certain conditions (experience, accreditation, staff qualifications, impartiality etc.) and are audited by the CA. This is a very sensitive issue as it raises concern that MS use their right to delegate to avoid accountability (including vis-à-vis the Commission). From the Commission's point of view there should be only one central/single competent authority (or at least only one per type of controls, e.g. veterinary, phytosanitary, aquatic).

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[12] Preamble (48) of Regulation 882/2004; preamble (66) of Regulation 178/2002.

[13] Preamble (48) of Regulation 882/2004.

[14] Preamble (4) of Regulation 882/2004; Article 17.1 of Regulation 178/2002.

[15] According to Article 2(1) of Regulation 882/2004, *"'official control' means any form of control that the Competent Authority or the Community performs for the verification of compliance with feed and food law, animal health and animal welfare rules"*.

2.1.3. The financing of official controls

The provisions of Regulation 882/2004 relating to the financing of official controls are contained in Articles 26-29.

In summary, the main principles pursued in these provisions are the following:

- Member States must ensure that adequate financial resources are made available for official controls (Article 26);
- Inspection fees are imposed on feed and food business operators, common principles must be observed for setting the level of such fees and the methods and data used for the calculation of the fees must be published or otherwise made available to the public (Article 27);
- When official controls reveal non-compliance with feed and food law, the extra costs that result from more intensive controls must be borne by the feed and food business operator concerned (Article 28).

The requirements laid down in Regulation 882/2004 as regards charges for meat hygiene official controls were previously contained in Council Directive 85/73, as last amended by Directive 96/43 (**Annex 1.1**). Regulation 882/2004, which supersedes the Directive, requires that, from 1 January 2007, MS must charge no more than the actual costs of controls and, other than in specified cases, no less than specified minimum charge rates. The Regulation effectively allows MS to retain the charge rates set out in Directive 85/73 until 1 January 2008, though as minima rather than as standard amounts. Some MS have altogether used this opportunity to look at possible options to review their fee system.

Within these boundaries, the Regulation leaves it to MS to determine the level of fees or charges. For certain activities for which fee charging is 'compulsory' (Article 27.2), the minimum levels laid down in Annex IV (controls on domestic production) and Annex V (import controls) must be respected. Beyond this, the Regulation provides MS with some flexibility within which to determine the fee system, provided that specified factors are taken into account. The key requirement is that fees should not be higher than the actual costs of the official controls.

The minimum fee or charge rates in the Directive and in the Regulation (Annexes IV and V) are throughput rates for inspection costs relating to the slaughter per species/type of animal or bird. For controls and inspections connected with cutting operations, the fee is per tonne of meat entering the cutting plant for the purpose of being cut up or boned there.

2.2. System description

This section outlines and comments on the key elements of the operation of the current system (*Task 1: system description*) of the ToR.

It is noted from the outset that in several MS the current system continues to be based on the previous financing legislation (Directive 85/73); in these cases, draft proposals to enforce Regulation 822/2004 are currently undergoing the national legislative making process.

2.2.1. Competent Authorities

As already noted in the methodology section of this Report, a key observation – and challenge - of this study from the outset has been the very different level of structure and organisation of the CAs involved in the system of official controls in the MS. This includes both the administrative structures in place for the collection of fees for the controls, and for the conduct of the controls. Two issues have in particular been identified:

1. The organisational structure of the CAs responsible for the official controls. Depending on the MS and often depending on the product sector, this may include central, regional and district level administrations, as well as external delegated bodies (Agencies, Laboratories etc.). This issue is demonstrated simply by the list of CAs that responded to the survey (**Annex 1**). It is also confirmed by our review of the CAs performing official controls from relevant FVO reports and MNCPs (where available), which is presented in **Annex 3**.

   It is noted that current structures are dictated by the constitutional law and particular administrative traditions of a MS, and are therefore not readily amenable to change.

2. The staff composition (official veterinarians, hygienists and assistants) of the CAs and executive bodies responsible for performing the official controls also varies significantly between MS. In contrast to the overall administrative structures referred to above, the staff composition is subject to change.

   In particular, there is currently a trend in several EU MS to seek to rationalise public services, and as part of this trend, the veterinary services and their staff are being reformed/restructured. In some MS (e.g. NL) the model of employment of the staff performing the official controls is shifting away from the higher-cost direct payroll of the public service towards lower cost/freelance contractual arrangements; such options are currently also being examined in other MS (e.g. France, the UK).

Both issues have financial implications in terms of the actual cost of official controls, and these are of relevance to this study:

- The addition of several layers of competent/executive bodies in the system of official controls would *à priori* be expected to have cost implications and needs to be justified/supported on efficiency/effectiveness grounds.

- Similarly, the use of appropriately trained (in the context of EU rules) staff employed on a contractual basis over the alternative of highly qualified staff employed as official civil servants – without compromising the quality of the controls – could create significant cost savings. This appears to be the main motivation in the case of MS that have adopted or are currently thinking of adopting this approach.

More generally, both these issues have been a challenge for this study, as it is not easy to separate the review and evaluation of the fees system from the overall organisation, structure and therefore cost of the official controls. They also have significant implications when examining the options for the future.

The involvement of several layers of administration (either vertically within the same CA, or horizontally across CAs, or at regional/local level) raises questions of conformity with Regulation 882/2004. The Regulation envisages that one central CA (Article 2.4[16]) would normally be responsible for the overall supervision and operational control of the system of OCs. Furthermore, when the competence to carry out official controls has been delegated to an authority or authorities other than the central CA, efficient and effective coordination should be ensured between the CAs involved including at regional/local level (Article 4.3) and at vertical level (Article 4.5). More stringent provisions, including audits by the CAs, apply when control tasks are delegated to control bodies (Article 5).

Both the desk review (analysis of FVO reports) and the case studies have shown that, in practice, these provisions are not always complied with, and that the CCA does not always have full control or information on the actual operation of the system when a number of CAs or delegated bodies are involved.

It is noted that Regulation 882/2004 requires MS to draw up multi-annual control plans (MNCP) which will provide information on the structure and organisation of the systems of food and feed control, including *inter alia* the designation of CAs at central, regional and local level and delegation of tasks to control bodies (Article 42.2(c) and (f)). However, to date, such plans are not available in all MS, and even where they exist they are not publicly available but can only be provided at the request of the Commission[17]. Consequently, it is difficult on the basis of objective sources to establish how exactly competence for the official controls falling under Regulation 882/2004 is organised at MS level.

From the survey of EU-27 CAs it is clear that in many cases more than one CA is involved[18]. This issue was also highlighted in the case studies (Part Two of the Final Report).

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[16] Article 2.4 reads: *'Competent authority' means the central authority of a Member State competent for the organisation of official controls or any other authority to which that competence has been conferred.*

[17] Despite efforts to consult the MNCPs on this, the Consultants have only seen the MNCP in two of the case study countries. It is not known how many MS have drawn MNCPs, or how many MS have submitted those to the Commission.

[18] Indeed, as is highlighted in the methodology part of this Report, separate responses to the survey were received from more than one CA in the case of four MS. One of these was Germany, for which responses were separately received from 13 out of the 16 Lander. In most of the other MS, although one response was received, there was a significant consultation process between the various CAs and/or bodies involved for the completion of the survey questionnaire.

2.2.2. Activities for which fees are collected

The study has found that in practice fees are currently collected for the official control of the following types of goods, establishments and activities:

a) Fees collected on a 'compulsory' basis (Article 27.2)

The types of goods, establishments and activities, for the official control of which fees are to be collected, is established in section A of Annex IV (concerning domestic production) and Annex V (imports) of Regulation 882/2004. Fee collection for these activities is 'compulsory' within the meaning of Article 27.2.

From the results of the survey, 18 MS (including France, Germany, Italy, Poland and Slovakia) collect fees for all the activities according to Article 27.2; however, the remaining 9 MS (including the UK) collect such fees only partly (*Question 1.4, **Annex 2***). Fees for milk production controls and fees for residue controls are the two types of control activities for which several of these MS do not collect fees, and at least 3 MS do not collect fees for a wider range of activities.

In the case of **milk production** controls, although Regulation 882/2004 states that charges for official controls in dairy plants are compulsory (under Annex IV, section B, Chapter IV). In fact, however, these charges are not made - at least - in the following MS: UK, Germany, Netherlands, Latvia. Two main reasons are given for this:

- It appears that this reflects the fact that there was some debate during the negotiations on Regulation 882/2004 as to whether fees in the dairy sector should be charged on a 'compulsory' basis (within the meaning of Article 27.2) or not (in this case falling under Article 27.1). This point was made in the UK case study, but also by some other MS in the survey. Some MS argued that they should be considered to be compulsory, as they were also mandatory under the previous charging legislation, Directive 96/43/EC (which amends and consolidates Directive 85/73/EEC). Other MS were opposed to the introduction of mandatory fees in this area under the new Regulation. In the event, it was agreed that MS would be required to impose fees on a compulsory basis only when they had previously done so under Directive 96/43/EC, but with the compromise that the minimum rates for milk production controls remained and could be applied by those MS where fees are imposed.

- According to the European Dairy Association (EDA), the minimum fees charged on a compulsory basis (Article 27.2) for controls on specified substances and residues in milk production exceed as much as 20 times the previous fee on these controls[19].

[19] The EDA have already expressed their concerns on this in a letter sent to DG SANCO on 13 February 2007. According to the fee calculation provided by the EDA, for the EU-25 the fee revenue collected according to Directive 85/73 amounted to Euro 2.64 million, while under Regulation 882/2004 it would reach Euro 44.32 million (if applied in full throughout the EU-25).

- The CAs of some MS complain of a lack of clarity on how minimum fees should be collected. This point was made in the Germany and Slovakia case studies, but also by some other MS in the survey. In particular, the CAs in Germany claim that it is unclear who is liable to pay fees for milk production inspections (dairies or farmers) and which time span the quantity of raw milk specified in Annex IV/B/IV refers to. Similarly, the CAs in Slovakia, although they are charging fees for milk production controls, they nonetheless commented that they were unclear whether dairy farmers or milk processing companies should pay these fees and the milk quantity to which this refers (whether total annual production or the volume subjected to controls).

b) 'Non-compulsory' fees (Article 27.1)

According to the survey, 19 MS (including the UK and Poland) collect fees for activities falling under Article 27.1, i.e. for which fee collection is 'not-compulsory' within the meaning of Article 27.2 (*Question 1.3a,* ***Annex 2***). On the other hand, 6 MS (including France, Italy and Slovakia) do not collect fees for activities beyond those that they are obliged to collect under Article 27.2, and 2 MS (Germany, Spain, i.e. with a decentralised management of the system) collect such fees in some regions but not in others.

It would also appear that some MS use significant leeway in interpreting the term 'routine controls' of Article 28 of the Regulation (which provides for additional fees on expenses arising from additional official controls beyond the 'routine controls'). The case of the feed sector is an example here. It would appear that Denmark is the only MS that charges fees for 'routine' controls in the feed sector[20]. This situation is causing concern to the EU feed federation (FEFAC).

c) Fees collected at several points along the production chain (Article 27.7)

Another observation from the survey and the case studies is that, in practice, fee collection can occur more than once along the production chain for what would effectively constitute the same controls. This is contrary to Article 27.7 which specifies that where several OCs are carried out at the same establishment, these should be considered as a single activity and be charged a single fee. Evidence of double charging was found for instance in the meat sector in Italy, where industry stakeholders complained they paid double fees at both slaughter and meat cutting points; and in Portugal and France where the fish industry appears to be paying fees at more than one of the three stages listed in Annex IV/B/V of Regulation 882/2004.

Cross-charging or overcharging may also be occurring for the same controls performed more than once when products are traded across MS. For example, dairy products from another EU MS brought to the NL to be further processed into other products for further export are re-examined on residues. The fact that these products are coming from an approved EU-factory and from a MS applying a residue plan does not appear to be sufficient.

[20] These are in addition to the 'compulsory fee' for the approval of feed establishments provided under section A of Annex IV of the Regulation, which are indeed collected in most MS (and which according to FEFAC do not pose a problem to the EU feed industry).

d) Fees collected for OCs on products of non-animal origin

It is noted that both the survey and the case studies identified cases where fees are collected for products of non-animal origin. For example, in Belgium the current fee system collects a base contribution from all FBOs along the food chain including catering and controls on products of plant origin. The proposed draft law for the full enforcement of Regulation 882/2004 in Italy is also moving to this direction. Fees for some plant health controls also appear to be currently being collected in Bulgaria and Greece.

Fees are collected in several MS (including the UK, Denmark, Hungary, NL, Poland, and Sweden) on import controls on products of plant origin (these can include food and non-food items). This appears to be taking place within Directive 2002/89/EC21 (import controls for plant health). This Directive, which came into full effect on 1 January 2005, required that all consignments of regulated material be subject to a documentary, identity and plant health check prior to customs clearance. The directive also introduced phytosanitary fees to cover the costs associated with performing these checks. Minimum fees are contained in Annex VIII of the Directive and several of the above mentioned MS are following these fees.

2.2.3. Fee rates used

Regulation 882/2004 leaves it up to MS to define the actual fee system they will use, provided that the two main boundaries set by the Regulation (minimum fees of Annexes IV and V, and a maximum set by the actual controls costs) are respected.

In practice, the study has found that a multitude of scenarios arise out of these possibilities. The resulting picture is quite complex and can be confusing, or at least lack transparency for FBOs, with a multitude of fee rates applied for the various activities. It appears that the original intention of the legislator was that only one of the two systems would be used, or at the most, a combination of the minimum rates for all activities listed in Annex IV and V and flat rates for the other activities. From our interviews in the case study countries and the responses to the survey it can be concluded that CAs have interpreted the relevant provisions of Article 27 in various ways and rather 'openly'; this is often attributed, by both the CAs and stakeholders, to a perceived vagueness or confusion in the formulation of the provisions in the Regulation.

In particular, the following possibilities currently exist:

[21] Council Directive 2002/89/EC of 28 November 2002 amending Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community. Directive 2002/89 and Annexes amend Directive 2000/29/EC.

i. Flat rates or minimum rates

According to Article 27.4(b) fees collected for the purposes of official controls may be fixed at a **'flat-rate'** or, where applicable, at the amounts fixed in section B of Annex IV and V (**'minimum rates'**).

The survey of EU-27 CAs has demonstrated that 18 out of the 27 MS (including Germany, Italy and the UK amongst the case study countries) in practice use a mix of flat rates and minimum rates (*Question 1.6a, **Annex 2***). A further 6 MS (including Poland and Slovakia) use minimum rates for the activities outlined in Annexes IV and V (and do not collect fees for any other activities); on the other hand, only 3 MS (including France) use flat rates throughout all activities for which fees are collected (within the meaning of either paragraph 1 or paragraph 2 of Article 27).

In the majority of cases where a mix of the two systems is used, the combination of flat rates and minimum rates were for different activities but could also be for the same categories of activities within Annex IV and V.

ii. Reduction below minimum rates

In a number of cases the fee applied is below the minimum rates of Annexes IV and V. In particular, 12 MS may apply fees below the minimum rates, at least in some cases (*Question 1.8a, **Annex 2***).

A provision for a reduced fee is made under certain conditions in Article 27.6 ("*controls carried out with a reduced frequency or to take account of the criteria referred to in paragraph 5"*). In practice the lower fees are not necessarily always applied in accordance with this provision. In most cases, MS were not able to provide a clear and complete justification for the fee reduction or the method applied for the calculation of the reduction as required by Article 27.6(c). This clearly contravenes Article 27.3 which stipulates that fees *"shall not be lower than the minimum rates"* specified in section B of Annexes IV and V. In some cases (e.g. France, Italy), lower fees appear to apply simply because they are based on previous legislation (notably Directive 85/73/EC). However, it is noted that the transitional period during which such fees could continue to be charged expired on 1 January 2008[22].

iii. Flat rates on throughout or time basis

Where flat rates are used, the rates can be expressed on a throughput basis, as is currently the case for the minimum rates specified in Articles 26-29 (i.e. on an animal or tonnage basis), or they may be on a time basis i.e. for the actual time during which the OCs are performed multiplied by the fee of the staff performing the OCs. In the latter case, the rates are frequently expressed in complex calculations involving different fee rates (e.g. depending on whether official veterinarians or auxiliaries are involved) and the particular time of the

[22] Both France and Italy are currently discussing legislation with a view to *inter alia* adjust all rates to comply with at least the minimum rates indicated in Annexes IV and V.

inspections (e.g. different rates for normal business hours and non-business hours, holidays, overtime etc.). In several MS, a flat minimum rate topped up by a time based fee is used.

2.2.4. Determination of the fee

Article 27.4 stipulates that, where flat rates apply, these may be fixed *"on the basis of the costs borne by the CAs over a given period of time"* (paragraph 4(b)) and that they *"shall not be higher than the costs borne by the responsible CAs in relation to the items listed in Annex VI"* (paragraph 4(a)).

Again, both the survey results and the case studies have demonstrated that the provisions of Article 27.4 are not being fully respected. In particular the following problems have been identified:

- The calculation method used for the determination of the flat rate is not always available, or at least has not always been communicated to either the Commission or the Consultants (although Article 27.12 requires MS to make the calculation method public and to communicate it to the Commission). From our review of the notification letters submitted by MS to the Commission pursuant to this Article, MS have not always made this explicit to the Commission (**Annex 1.2**);

- In several of those cases, where the calculation method has been made available, it is not transparent what exactly the various cost categories of the calculation have included and/or by which CA they have been incurred, and which time period these costs refer to;

- In the case of the 3 'criteria' or cost categories that should be included in the calculation according to Annex VI (1. staff salaries; 2. staff costs including overheads; 3. laboratory analysis and sampling), it is not sufficiently transparent whether the actual costs used by MS strictly reflect the costs directly associated with the carrying out of official controls. It is noted that this has emerged as the most controversial point of the fee calculation. The lack of precision from MS CAs on these costs is often attributed to the perceived vagueness in the formulation of criteria in Annex VI, which results in MS considering it their right to add costs that are not necessarily justified in that they are directly linked to the official controls.

Finally, as already discussed under section 2.2.3, in most cases of fee reduction neither the justification nor the calculation applied has been clearly communicated by MS.

2.2.5. Fee collection method and use of fee revenue

The rationale for the whole system of the charging and collection of fees is to cover the costs of the official controls, thereby ensuring that "*adequate financial resources are available to provide the necessary staff and other resources*" (Article 26).

In practice, in the majority of MS the revenue from the collected fees is incorporated into the State's general budget, either in its entirety (11 MS, including France and Slovakia), or in part

(7 MS, including Germany, Italy, Poland and the UK). Where this occurs, especially where the entire amount of the fees collected is incorporated into the general budget, there is for the most part no guarantee how this is to be used subsequently. Only 9 MS claim to be i.e. 'ringfencing' revenues specifically for the CAs performing the controls (*Question 1.10*, ***Annex 2***).

Most likely related to this, 14 MS (including Italy, Slovakia and the UK) have clearly indicated that they do not cover the costs occasioned by the official controls through these fees (*Question 1.9a*, ***Annex 2***). Only 7 MS (including Poland) claim costs are being covered, while a further 6 MS (including France and Germany) claim this is possibly occurring in some cases (some activities; some regions) but not in others. An overview of the extent to which MS manage to cover the costs of the official controls through the collected fees is provided below in **Table 2-1**.

Table 2-1 Share of the costs of official controls covered by fee revenue

Country/Year	Sector (a)	2005	2006	2007
BELGIUM		41,99%	45,86%	38,74%
BULGARIA		n.a.	25%	29,3%
CZECH REPUBLIC		36%	33%	28%
		52%	49%	46%
ESTONIA		31%	28%	20%
FINLAND	Feed control	104%	n.a.	54%
	State Food control (meat inspection)	98%	99%	92%
	Municipal food control	20%	20%	20%
	Veterinary Border Control	97%	97%	97%
HUNGARY		60%	60%	60%
IRELAND	Meat	48,5%	37,7%	42,0%
	Milk	90,0%	90,0%	90,0%
	Animal feed	82,0%	80,0%	76,0%
	Imports of POAO	n.a.	n.a.	27,0%
ITALY (b)		~50%	~50%	~50%
LUXEMBOURG		70%	65%	65%
MALTA		36,5%	36,9%	39,4%
NETHERLANDS		75%	86%	81%
ROMANIA		n.a.	60%	50%
SLOVAKIA		52,2%	55,3%	51,6%
UK		43%	41%	43%

(a) all sectors covered, unless explicitly specified

(b) approximate estimate provided by the CAs; detailed data not available

Source: survey of the EU-27 CAs

Table 2-1 for the most part covers all controls conducted under Regulation 882/2004, the situation appears to be better in the case of import controls, for which Article 27.8 stipulates that these fees should be paid to the CA in charge of import controls. However, even in this case, the information collected from the survey suggests that Article 27.8 may not always necessarily be complied with particularly in those 11 MS where the fee revenue is incorporated into the general budget[23].

While the manner of fee collection and use is one key reason why the costs of the official controls are in most cases and in most MS only partially covered, another key reason is that the level of fees is often insufficient to cover the costs. This would suggest that fees have been inappropriately determined in the first place, and then inappropriately collected and used.

These results suggest that for the EU as a whole, in part due to ambiguities within the text, the rationale and desired interpretation of Regulation 882/2004 has not been sufficiently clearly understood and that as a consequence the objective in terms of the establishment of a more uniform system of fee collection has largely not been achieved to date.

Neither the survey, nor the case studies, established any cases where a direct or indirect refund of the fee was made, unless in cases where this was collected in error (Article 27.9). There is therefore no evidence to suggest that this may be occurring.

2.3. Evaluation of the current situation

This section responds to the questions raised in *Task 2* of the ToR (evaluation of the current situation), notably to:

- Indicate the main strengths and weaknesses from the operation of the current system; and,
- Identify key problems and shortcomings that need addressing in the future (*Task 3*).

Within the wider context of the EU intervention logic in this area (section 2.1), the current situation is evaluated in particular in terms of the system's contribution to the achievement of the following two objectives:

i. A functioning internal market;

ii. Improving and maintaining efficient and effective Official Controls (OCs) in the Community.

Before addressing these issues, an overview is provided of the current state of enforcement of Regulation 882/2004, summarising the key points from the previous section.

[23] In the case of France and Slovakia, which were case study countries, fees were used for these controls and covered their cost.

2.3.1. Enforcement of Article 27 of Regulation 882/2004

A priori, the provisions of a Regulation should be directly enforceable in MS. However, Article 27 of Regulation 882/2004 generally follows the subsidiarity principle in that MS can decide whether to use the specified minimum rates or to charge for official control activities according to the actual cost of undertaking them[24]. This effectively allows some discretion to MS to opt for one of the two fee systems, and in the case of the flat rate system to set the level of fees according to the costs of OCs actually incurred. There are further provisions allowing MS to reduce fees below minimum rates under certain conditions.

The analysis of section 2.2 has demonstrated clearly that there is a significant degree of variation in the enforcement of the financing provisions of Regulation 822/2004.

Underlying this, there is a perception – documented in some cases by hard evidence (e.g. FVO reports) - of significant variation in the organisation and effectiveness of the OCs both between and within MS. It has not been within the scope of this study to address the issue of the performance of the OCs as such. However, this variability has important implications in terms of the actual costs of the controls and in terms of the national approaches that are followed to recover the costs incurred through the fees[25].

Clearly many of the origins of these variations reside in the differing evolution of administrative structures and of the system of official controls in each MS.

Beyond this, however, there is a strong and generalised perception that CAs have rather liberally interpreted the provisions of Articles 26-29, in ways that diverge from the intention of the legislator, and that this was made possible *inter alia* because of shortcomings in both the underlying principles and the formulation of Regulation 882/2004.

Furthermore, the study has found that, in MS with decentralised management of the system, the relatively 'liberal' interpretation of the Regulation by the CAs has compounded the issues stemming from the devolution of powers, to create a situation of limited central control over the regional/district authorities in terms of fee determination, collection and use. This was commonly observed in MS such as Germany, Italy and Spain.

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[24] This is not the case with respect to Article 28 on charges where additional costs are incurred following non-compliance. Here the actual cost of further work by the CAs must be charged, although this Article is also interpreted differently in the different MS.

[25] Insufficient training, staff resources, facilities and equipment are often noted in FVO reports on official controls for which fees are normally collected under Regulation 882/2004, such as those in connection with controls on imports of products of animal origin at BIPs, controls on animal feed, residue controls and food hygiene inspections and controls (**Annex 1.2**). These shortcomings are in most cases due to insufficient financial resources. Our review of relevant FVO reports has identified several such cases, even in more recent missions (2008). More recent examples of FVO reports noting insufficient resources include: Romania (2008-7748), Greece (2008-7724 and 2008-7695), Portugal (2008-7745 and 2008-7696), and Bulgaria (2008-7747). Earlier examples (from 2006, 2007) include a large number of MS.

This in turn gives rise to various concerns relating to the functioning of the internal market and the effectiveness and efficiency of the system to deliver the level of OCs required by Regulation 882/2004, the Hygiene Package and other relevant legislation (as listed in **Annex 1.1**). These issues are discussed in the following sections.

2.3.2. Contribution to the functioning of the internal market

In terms of achieving internal market objectives, MS generally welcome EU legislation with respect to fees for official controls and they broadly agree with the rationale of Regulation 882/2004.

While there is consensus on the rationale, the key question that arises here is whether the heterogeneity in the application in practice of the financing provisions of Regulation 882/2004 results in situations of unfair competition within the internal market. This encompasses any potential distortions in competition that can occur between MS, within MS, between sectors of the food industry, according to the scale of establishments, as well as distortions at the level of imports.

These issues of distortion of competition at all these levels have been raised during the study as follows.

2.3.2.1. Distortions between MS

The issue of potential distortion at EU level was raised particularly by the EU meat industry. Stakeholders in the sector are generally concerned that the way in which the system of fees or charges for OCs are set out in Regulation 882/2004 can cause distortions in competition between MS. In almost all of the countries visited, stakeholders are concerned that the implementation of Regulation 882/2004 by the national authorities can put them at a disadvantage compared to other MS competitors.

In most cases, however, the industry was unable to substantiate these comments because of the lack of precise information on how rates are set and what they include in the different MS, and the consequent difficulty in comparing data.

It is noted that the professional organisation representing the meat industry at EU level (UECBV) attempted recently to make a comparison of the various fee rates charged for OCs at slaughter and meat cutting points. Although detailed data were collected for a number of MS, the UECBV came to the conclusion that it is virtually impossible to compare across the EU because fee rates are expressed in so many different ways.

The results of the survey and of the case studies have confirmed the lack of clarity, transparency and uniformity in the approach of the various fee systems, which make the direct comparison of actual fee levels across the EU (and between sectors) difficult.

As already highlighted above (section 2.2.3), current fee rates in the various MS may be minimum rates and/or flat rate; flat rates calculated using different calculation methods; or rates expressed on a throughput or time basis (the latter including many additional factors

influencing the final level of the fee). Furthermore, there are differences in the range of control activities covered by the various fee rates (e.g. these may include laboratory and sampling costs for residue controls in some MS but not in others). For the purpose of making a comparison it is therefore not clear whether the comparison is being made for the provision of the same services. Finally, the whole production chain (from farm to slaughter to meat processing and retail/catering) differs in many ways between MS, making it difficult to isolate differences in competitiveness caused by the fee system or the level of fees as such.

Across the EU fee rates currently vary within a considerable range. For example, fee rates paid for the control on the slaughter of adult bovine animals can vary from Euro 2.3/head in some autonomous communities in Spain, to Euro 8.2/head in Denmark and between Euro 10-20/head in Sweden (against a minimum fee of Euro 5/head in Annex IV). Similar variations in scale can be seen on the fees charged for controls on the slaughter of pigs and sheep. Even within MS the scale of the variation can be significant. For example, in Germany within Bavaria fee rates for the slaughter inspection of adult bovine animals ranges from Euro 9.4/head to 12.9/head depending on the district.

In summary, the following key factors may be included in the calculation affecting the final level of the fee:

- Whether the rate is set per head-tonnes or on a time basis (time of staff performing the official controls);
- The specific activities and services covered by the fees;
- Whether residue controls are included in the calculation;
- Whether other type of controls (e.g. BSE tests) are included in the calculation;
- The range of other costs included in the calculation of flat rates (criteria 2 and 3 of Annex VI);
- The number of official veterinarians/auxiliaries on the slaughter-line, and whether the speed of the slaughter-line is taken into account;
- Whether the size of the establishments is taken into account;
- Whether only veterinarians are employed for the OCs or also auxiliaries;
- Whether the staff performing the OCs are civil servants or under contract;
- Whether transport time is taken into account in the time calculation;
- Whether special provisions for increased staff fee rates apply after normal business hours, public holidays etc.;
- The tasks carried out by FBOs' own staff (such as in the case of the poultry sector);
- The level of salaries/cost of living in MS and of associated (social security) costs in the case of flat rates (criterion 1 of Annex VI of Regulation 882/2004);
- Whether MS aim for full cost-recovery;

- Whether any reductions are made for FBOs under Article 27.5 and 27.6 (risk-based reduced frequency controls and/or the interests of small transitional and geographically remote businesses);
- Whether only the meat sector is charged for the official controls.

Moreover, several external factors will affect the overall cost of the official controls (and thus the final level of the fee):

- Efficiency factors: the efficiency with which the official control services are organised and official controls carried out in the MS;

- Technological developments: for example, new technological advances that change the way in which official controls are performed[26];

- Market/trade volumes and the structure of the industry in the MS: in the case of import controls the costs of the inspection will depend to some extent on the volume of trade entering the BIP; in the case of domestic controls, the size of slaughterhouses / meat cutting plants and the speed of the line will affect the time needed to perform the necessary official controls.

As a result, it is not always easy to attribute variations in fees between and within MS to specific factors. For example, in the case of one meat company operating in both Sweden and Finland, in both MS it appears that the conditions and size of operations are the same, but in Finland the fees paid (pro-rata) are only 60% of what is paid in Sweden.

On the other hand, beyond the widely held perception of the potential for distortion, the study has not identified any concrete cases or examples of distortion in competition between MS. Some MS (e.g. France and the UK) have commented that, taking the potential significance of other factors into account, the current differences in fees alone are not considered to be sufficient to induce a distortion in competition between MS or to be decisive determinants of the competiveness of the meat industry in one MS compared to another. This is because all the other factors influencing the costs of meat production are far more important than potential differences in fees.

For example, a distortion would be caused if the impact of different fee regimes and fee levels between MS leads to a greater movement of livestock in order to reduce slaughter costs. However, the cost of transportation would have to be lower than the difference in fee to justify this and this will tend to limit intra-EU movements (whether between or within MS).

Differences in fees are nonetheless acknowledged as one of the factors that can affect competitiveness, especially when other factors (such as production costs, transport costs, costs relating to animal health and welfare, market conditions etc.) exist at the same time, and

[26] For example, inspection by camera appears to be developed in the poultry industry replacing previous, more costly, physical inspections.

therefore the compounded impact can put the meat industry in a MS at a competitive advantage or disadvantage. For example, the pig and sheep sectors across the EU have suffered significantly in recent years from rising production costs, animal health problems and adverse market conditions. These problems have been particularly acute in some MS and regions, and differences in fee levels could bring the sector in these markets closer to the point of collapse.

It is important also to consider fee levels in relation to the unit value of products. Differences in the level of fees can be a more important factor in those livestock sectors where the unit value of products is relatively low. For example, a small difference in fee in relation to beef might not be significant, but the same difference in monetary terms in relation to pigs would be significant and in relation to sheep could be very significant.

Finally, it is noted that, while the industry recognised that there are likely to be legitimate reasons for differences in the fees charged such as the cost of living differences between MS, the common concern shared by all is that they should not pay more for the OCs than is the case in other MS.

2.3.2.2. Distortions within MS (between regions)

The issue of potential distortion in competition between regions within MS was of particular concern to those MS that have devolved power from central to regional and even district level. This included such MS as Germany, Italy and Spain (but not the UK at present). A common perception in these MS is that the financing provisions of Regulation 882/2004, as they currently stand, allow MS sufficient room for a relatively open interpretation which results in widely divergent fee systems and fee levels.

Here too, it has been difficult to substantiate this perception with concrete examples of distortions, although it has been less difficult than in the case of the alleged distortions of competition between MS. Again, as explained in the previous section, it is noted that differences in fees are considered to be a relatively insignificant factor of competitiveness when compared to the actual costs of production, but can compound the impact of these key competiveness factors.

The most documented examples on regional distortions at present can be found in **Germany** where a number of court cases have been filed since the beginning of the system (Directive 85/73) regarding various issues of implementation (and more recently in relation to Regulation 882/2004). These cases, which are all driven by industry complaints, point to the relatively liberal approach taken at Lander and district level in defining their own systems: to determine the activities for which fees are charged, the fee calculation method and the various cost components taken into account for the calculation of the flat rates. This situation results in highly divergent levels of fees for the different activities across Germany. According to the German industry, the outcome is significant confusion and lack of transparency in the system, and a loss of competiveness for FBOs located in regions/districts which pay what are seen as unreasonably high fees defined on the basis of relatively high costs of official controls.

The inclusion in the calculation of administrative costs as well as of some other costs listed under the 3 criteria of Annex VI of the Regulation (e.g. laboratory and testing costs), has been a particularly controversial issue. These costs are defined largely at the discretion of the regional/local authorities, and can vary significantly between regions/districts as they are only broadly defined in the Regulation.

Another controversial provision is the reference to "minimum rates" which is interpreted by some CAs strictly as an absolute minimum that should not be undercut under any circumstances, notwithstanding the provisions of Article 27.6 that allow a reduction in the rates. In MS where this occurs, meat establishments and slaughterhouses complain that they suffer a competitive disadvantage vis-a-vis their competitors in other regions paying fees below the minimum rates.

In **Italy**, stakeholders expressed serious concerns that the heterogeneous application of minimum fees among Italian regions and provinces leads to distortion of competition among FBOs at regional and local level. Although current drafts for a new law attempt to reduce these discrepancies, there is scepticism regarding the likelihood of implementation.

Similar concerns relating to regional variations were expressed in **Spain**, the key issue being that there are regions which require payment of the minimum fees, regions which require reduced fees, and regions which do not require any fees to be paid at all.

The **UK** does not have any such issues at present as the devolved administrations within the country implement Regulation 882/2004 in the same way. However, distortions may become apparent in future if different systems are implemented in different parts of the UK (the UK system is currently under review the intention being to move to fuller cost recovery from 1 April 2009).

2.3.2.3. Distortions between sectors

The following elements of potential distortions between the various sectors covered by Regulation 882/2004 were identified by the study:

- The meat sector appears to be at a disadvantage vis-à-vis other sectors of the food industry. Although Regulation 882/2004 covers the entire food and feed industry, the fee system as designed at present particularly targets the primary processing stages of the meat sector. The detailing of activities for which fees should be charged as a minimum in Annexes IV and V is focused on these stages of the meat industry, in particular the red meat industry. The meat sector considers this unfair:
    - Their main argument is that the performance of hygiene controls at slaughter or meat cutting point is done for the purposes of food safety along the entire meat value chain, which means downstream chain participants benefit from the controls without contributing to cover their costs. It is therefore argued that the total costs of official controls incurred by establishments along the meat production chain should be distributed among the actors involved, and this could be done *inter alia* according to the degree of actual risk to food safety;

- Furthermore, it is argued that with the evolution of the food value chain, hygiene risks have shifted from slaughterhouses/meat cutting plants to the downstream stages of the production chain (processing, catering, etc.), and consequently the entire rationale of the current official controls needs to be redesigned (this issue is dealt with under section 2.3.3). Both industry stakeholders but also CAs and state veterinary officers considered that the meat sector is, on the basis of risk to food safety, unfairly targeted by the current OC system. The processing sectors (for example, manufacturers of meat products) and the catering sector (where a growing percentage of the final preparation and consumption of meat or meat-based products actually occurs) were highlighted as areas where risk to the consumer can be considered to be at least as high as those generated at the point of slaughter.

- In terms of potential distortions between the poultry sector and red meat sectors, the main point of difference is the ability of the poultry sector to use its own - appropriately trained - staff to assist official inspectors appointed by the government. This possibility currently exists for the poultry sector under Regulation 854/2004[27]. Although only used at present by a relatively limited number of MS (e.g. the Netherlands and the UK,) other MS are currently considering similar approaches as this input can reduce costs and the fee payable.

- Potential distortions between red meat sectors were also identified in more marginal cases, where MS/regional/local differences between fee rates can lead the currently sensitive pig sector and the particularly fragile sheep sector to become more adversely affected than the beef sector. Such issues were for example highlighted in the UK and French case studies.

- The milk sector is also considered to be unfairly targeted by Regulation 882/2004. The most significant observation here is that the milk industry was largely unaware of its inclusion in Annex IV of the Regulation up to its publication in 2004, as well as of the basis on which fee rates were established in Chapter IV, section B of this Annex ("minimum rates for fees or charges applicable in milk production"). Although it is assumed that the milk sector was simply included in the Regulation because it was included in the repealed Directive 85/73, the industry does not appear to have been consulted, and the fee rates are considered to represent a very significant and unjustified increase from the rates provided in this Directive[28]. As a result, there continues to be great confusion and divergent approaches amongst MS in the application of Article 27 in the milk sector. As indicated in section 0, the study established that for these reasons, fees are not collected in this sector in a number of MS (UK, Germany, Netherlands, Latvia), and

[27] Under Article 5(6)(a): "Member States may allow slaughterhouse staff to assist with official controls by carrying out certain specific tasks, under the supervision of the official veterinarian, in relation to the production of meat from poultry and lagomorphs".

[28] Annex B of Directive 85/73, as amended by Directive 96/23, provides for a fee of ECU 0.02 per 1000 litres of raw milk, while Annex IV of Regulation 882/2004 provides for a minimum fee of EUR 1 per 30 tonnes and EUR 0.5 per tonne thereafter. Although the Regulation does not specify the unit of milk production to which this fee applies, if the fee quoted in the Directive is compared to the fee quoted in the Regulation on the same basis, it would come to an approximate equivalent of EUR 0.6 per 30 tonnes of raw milk, i.e. the fee quoted in the Regulation represents a very large increase from the original level.

there are extensive complaints from the industry in the MS where fees are collected (e.g. Slovakia).

2.3.2.4. Distortions according to scale

In anticipation of potentially adverse impacts on small scale, traditional and geographically isolated meat establishments, Regulation 882/2004 provided for reductions below the minimum rates (Article 27.6) for business with a *'low throughput'* or *'traditional methods used for production, processing or distribution'* or *'businesses located in regions subject to particular geographical constraints'* (Article 27.5 (b), (c) and (d) respectively).

The study has found that:

- First, the general economic context within which this sector operates needs to be noted. The structure of the slaughtering and meat cutting industry has undergone significant rationalisation in the last decade, continuing past trends whereby production is increasingly concentrated in a smaller number of larger scale, more technologically advanced establishments. This trend has been driven by a number of factors, including technological progress, market developments (e.g. the need of the sector to respond to the increasingly powerful buyers of the retail and catering sector), as well as the need to comply with increasingly stringent legislation and the rising costs of compliance. Both the industry stakeholders and the CAs have consistently indicated that the fees paid for OCs, although not a sufficient factor on their own, are nonetheless an additional factor in the costs of the operation of smaller scale and traditional establishments, thus affecting final business performance.

- Second, smaller slaughterhouses are generally more disproportionately hit by the current fee system, including even cases where the special provisions of Articles 27.5 and 27.6 have been used by MS. Small scale slaughterhouses and cutting plants generally complain that the costs of fees for OCs are too high for the limited number of animals they slaughter, or for the small volume of throughput. This is generally felt more in MS where flat rates based on actual inspection costs or time based charges apply, and/or where no reductions below the minimum rates apply for this type of businesses. For example, the charging system in place in the UK prior to 2001 was based solely on time costs and inspection times; as these were increasing rapidly, the system quickly posed a particular problem for smaller plants, many of which became uneconomic.

- Only a number of MS have adopted the provisions of Article 27.5. Such MS include the UK, Belgium and France. For example in the UK, there appear to be no distortions under the current system because operators have the choice of using charges based on throughput or according to actual cost. In France and Belgium special provisions are made for smaller FBOs or according to scale (volume of throughput).

- Some MS have not used this possibility, either due to a strict interpretation of the 'minimum rate' provisions (whereby they have not accepted these should be undercut, e.g. in the case of Germany) or because it was considered it would complicate the fee

system to have differential fees (e.g. in the case of Slovakia under the new law enforcing the provisions of Regulation 882/2004). In the case of Germany, the industry pointed to the extensive closures of small slaughterhouses in recent years, which are, at least partly, blamed on the disproportionately high fees these slaughterhouses pay under the current system. Representatives of small and medium sized slaughterhouses (e.g. from Bavaria) stressed that, in setting the fees, authorities should take into account *inter alia* the type of business concerned, as stipulated by Article 27(5), which it is argued is not happening at present;

- The situation is changing, however, as several MS are currently in the process of discussing new legislation to fully enforce Regulation 882/2004. It is not clear whether this will leave small-scale, traditional and remote businesses better or worse off. For example, in the UK, the proposed time-based charging regime is expected to lead to some distortions against this type of businesses as a result of the scale and degree of slaughterhouse mechanisation, but a proposed subsidy system may correct for this, depending on how it will be implemented[29]. In France, where the current system of fees has achieved what is considered a sensitive balance between larger and smaller operators, the current debate on reforming both the official inspections system and the fee charging scheme has raised concerns for smaller businesses that the change may lead to higher fees.

- The main advantage of the current EU system, where Member States can, in effect, charge anywhere from 0% to 100% of the full cost of controls, is seen by some MS (both at the level of industry stakeholders and at the level of CAs) as allowing the possibility for lower costs to be charged for these more 'fragile' plants.

2.3.2.5. Distortions at the level of imports

Some concerns were raised at the potential distortion at the level of imports under the current system, as BIPs can charge different rates across Europe depending on whether they follow the minimum rates of Annex IV or flat rates (based on actual costs).

Currently 7 MS charge flat rates and 3-5 other MS charge a combination of flat and minimum rates on imports (i.e. flat rates on some products and minimum rates on others) (*Question 1.6b*, ***Annex 2***). Flat rates can be higher than the minimum rates, but in some cases were also found to be lower (e.g. France, Hungary, Spain for live animals, Ireland in some cases for high volume fish consignments).

[29] If implemented as the proposals currently stand, the future system will involve a 12% increase in charges to FBOs (including 3% for inflation) while maintaining support for small and geographically isolated FBOs. It appears that the UK government intends to direct subsidy towards some smaller operators as part of a policy to retain small, geographically isolated abattoirs because they contribute to other policy goals such as reductions in carbon footprint, disease control and support for rural economies. The industry would not object to this policy if it is targeted to micro-businesses (which, account for between 1% and 2% of total UK throughput) such as remote abattoirs in, for example, the Highlands and Islands of Scotland, but would not support the policy if it is targeted to small/medium sized establishments located anywhere in the country.

Again, in practice, whether this potential distortion will actually occur will depend on a range of other factors, notably the transport costs involved and logistical considerations.

No documented evidence of such distortions was found, but both the industry and the CAs have expressed concern this may well be occurring, especially in closely situated BIPs.

2.3.3. Contribution to maintaining the efficiency and effectiveness of OCs

Throughout this study, widespread concern has been expressed by stakeholders at all levels (authorities, industry) that the activities listed in Annex IV (and to a lesser extent the import control listed in Annex V) do not cover the same range, level and standard of controls throughout the EU. This raises questions of efficiency and effectiveness in the system of official controls *per se*, which are beyond the scope of this study. However, of relevance to this study is the extent to which the financing of OCs contributes to alleviating or to intensifying this lack of homogeneity and the potential deficiencies in the EU system of official controls.

Articles 26-29 of Regulation 882/2004 lay down the principle and the means for the financing of official controls with a view to ensuring that MS have sufficient financial resources to carry out the controls.

A priori, the principle of guaranteeing sufficient funds for the financing of the official controls in all MS of the EU-27 (Article 26) should contribute to alleviating any lack of homogeneity in carrying out the controls, or - at the very least - guarantee that a certain homogenous (minimum) level of controls is applied throughout the EU. This principle is widely endorsed by all stakeholders.

Beyond the principle as such, the question arises of whether the means that Articles 27-29 put at the disposal of MS contribute to this objective. This refers in particular to the extent to which the compulsory application of a fee to finance these controls (Article 27) can guarantee that MS have adequate funds to carry out the controls, at least at a certain (minimum) uniform level throughout the EU. This point is widely contested by stakeholders in all MS.

In particular, the study has found that two key questions are raised: first, in terms of the adequacy of financial resources available to MS to carry out the controls; and, second, in terms of whether the controls are currently carried out in the most cost-efficient manner. The second question touches on issues of the organisation and the principles of the official controls which are beyond the scope of the study, they are therefore included here only to the extent they are relevant to the discussion.

2.3.3.1. Adequacy of the financial resources

As indicated in section 2.2.5, the survey results suggest that the rationale for the system of fee collection (to ensure adequate financial resources in the meaning of Article 26) is largely not fulfilled at present for the EU as a whole.

In the majority of MS the revenue from the collected fees is incorporated into the State's general budget, either in its entirety (11 MS, including France and Slovakia), or in part (7 MS, including Germany, Italy, Poland and the UK). Where this occurs, especially where the entire amount of the fees collected is incorporated into the general budget, there is for the most part no guarantee how this is to be used subsequently. Only 9 MS claim to be 'ringfencing' revenues specifically for the CAs performing the controls (*Question 1.10*, ***Annex 2***).

Most likely related to this, 14 MS (including Italy, Slovakia and the UK) have clearly indicated that they do not cover the costs occasioned by the official controls through these fees (*Question 1.9a*, ***Annex 2***). Only 7 MS (including Poland) claim costs are being covered, while a further 6 MS (including France and Germany) claim this is possibly occurring in some cases (some activities; some regions) but not in others. An overview of the extent to which MS manage to cover the costs of the official controls through the collected fees is provided in **Table 2-1**. As illustrated, the costs of the official controls are in most cases and in most MS only partially covered by the collected fees. This is due both to the manner of fee collection and channelling (via the State Budget), but also because the level of fees is often inadequate to cover the costs.

Although the partial coverage of the costs of official controls by the collected fees does not necessarily imply that the financial resources put at the disposal of the system of official controls are not sufficient, it would be difficult to establish that they are.

The reason is that there is lack of transparency at MS level in trying to determine both the total costs of the official controls, and the actual standard of controls that this represents. Furthermore, it is difficult to compare between MS, because both the costs and the actual control activities encompass different elements in the various MS (as discussed in section 2.3.2).

This is reflected in the manner of calculation of the flat fee, in the MS/cases where flat rates apply, where in most cases little information is available beyond the generalised statement of the application of the 3 criteria of Annex VI of Regulation 882/2004. In practice, it appears that the 3 criteria are applied rather liberally, encompassing a whole range of cost factors, which are not necessarily the same in all MS, and do not necessarily relate to the actual costs of the official controls. The study has established that there are cases where the fees seem to be charged at a higher level than what would be justified by the controls undertaken, while in others the fees are not adequate to cover the costs.

In terms of comparing across the EU, an important determinant factor in assessing the adequacy of funds, is the actual cost of living in the various MS. The available data suggests that there is wide variation across the EU-27. According to Eurostat, labour costs vary by a factor of one to twenty in the EU27[30] (2006 data, based on full time employment in industry and services). Comparative price levels by Eurostat show that in 2007 prices paid by consumers in the NMS remain typically at less than 80% of the average price levels in the

[30] This was the difference in terms of average hourly labour costs in Bulgaria and Romania (the lowest in the EU) compared to the EU27 average.

EU-27[31]. Statistics on the costs of living suggest that this can vary by up to 20 percentage points across key cities of the EU-15[32].

It is therefore not surprising that in the MS/cases where the minimum rates apply, in some cases the level of fees is not sufficient to cover the costs of the controls while in others it is considered excessive, the final outcome being highly dependent on the cost of living in the various MS.

2.3.3.2. Cost-efficiency issues

A number of cost-efficiency issues have been identified during this study, and these relate both to the current organisation and principles of the official controls and their implementation in practice. As already indicated, some of these issues extend beyond the scope of the study; they are therefore only discussed here to the extent they are relevant in the context of this study.

a) Staff costs

The most important element of the costs of official controls is staff costs. In relation to this, the following factors account for significant differences between MS:

i. The number of official staff employed to carry out the controls;

ii. The profile of the staff used in the official controls; and,

iii. The wide variation in salary and costs of living levels, as discussed above.

Regulation 882/2004 refers only to the general requirement to have "*a sufficient number of suitably qualified and experienced staff*" (preamble 11 and various Articles of the Regulation). In practice, there is wide variation between MS in the numbers and profiles of staff employed to carry out official controls, and this appears to reflect long-standing institutional and organisational issues rather than real need. Here too, there is a certain lack of transparency: no up to date data are currently available (example from the FVE) that would allow a comparison between MS[33].

[31] Eurostat: comparative price levels of final consumption by private households including indirect taxes (EU-27=100), 2007 data.

[32] Source: Mercer's 2008 Quality of Living survey.

[33] If formal data was available it would allow, for example, a comparison of official veterinarian and auxiliary numbers between MS and in relation to the human population, or in relation to production and trade volumes. Such a comparison is not always straightforward, because the national and local structures of both the administration and the food sector need to be taken into account. Despite such shortcomings, the comparison would still be valuable in that it would enable some preliminary observations to be made, which would highlight whether there is a need for the review of the current structures.

In the case of products of animal origin, the profiles and tasks of the staff involved in the official controls are laid down in Regulation 854/2004[34]. The Regulation provides for the tasks to be undertaken by the official veterinarian per type of activity, and the tasks that can be carried out by official auxiliaries under certain conditions; in the case of the poultry industry, own staff can be involved in these inspections. Within these general parameters MS are given the freedom to implement the staff structure that best fits their needs.

The study has found that the current organisation of the veterinary services staff in the MS generally lacks motivational character and does not provide any incentives to cut back on these costs. In particular:

- The balance in the use of official veterinarians versus auxiliaries for the official controls, appropriately trained in both cases, is currently generally considered to be unsatisfactory in most MS.

- The employment and remuneration conditions of the staff are in many cases questioned for raising costs.

  The UK industry criticises the absolute requirement to use government employees as the official veterinarians for the inspections, which it argued imposes high costs on the inspection function. The case studies established that such criticisms are shared by the meat industry in Germany, Italy, France and Poland, as well as more generally across the EU (UECBV).

  There are further criticisms on the way salaries and working conditions are negotiated between the CAs and these employees, reportedly leading to higher costs (e.g. Poland, Germany[35], Denmark[36]).

- The fees paid by the industry do not appear to be based on the actual level of services provided, at least in the red meat sector. This therefore acts as a disincentive to rationalise costs.

  According to the UECBV, the fixing of the minimum fees paid by slaughterhouses (Annex IV) on a per head basis, in combination with minimum inspection times and

[34] According to preamble 9 of Regulation 854/2004: "*official veterinarians to carry out audits and inspections of slaughterhouses, game handling establishments and certain cutting plants. Member States should have discretion to decide which are the most appropriate staff for audits and inspections of other types of establishments*"

[35] In Germany, the level of fees is negotiated between the district or municipal authorities and the German Civil Servants' Union (*DBB Beamtenbund und Tarifunion*). The meat industry criticised the negotiation process which, to their view, hinders an efficient deployment of the existing veterinary personnel.

[36] In Denmark, the exact number of official inspectors to be used per number of animals is stipulated within the Law. The setting of this number is reported by industry to be largely union driven. The industry claims that it does not realistically take into consideration key factors of the production process, such as the speed of the line.

maximum inspection targets as has been introduced by several MS (e.g. Denmark), leads to disproportionately high veterinarian fees and does not reflect actual costs[37].

At cutting plant level, it is argued that the existing fees based on meat volume do not appear to relate directly to the costs involved. Official controllers only need to be present in cutting plants for a limited time (as little as twice/week for a few minutes, which is the frequency appropriate to achieving the objectives of Regulation 854/2004), but cutting plants have to pay on a throughput basis for the whole production volume (Euro 2 per tonne in the case of red meat).

Consequently, the industry stakeholders see the need for a relaxation of the rules, to allow *inter alia* the involvement of appropriately trained staff on contract, rather than higher cost government officials, to provide these services. They argue that effectively opening the competition between service providers would lead to a more cost-efficient system, which would be reflected in lower fees.

In a number of MS reforms of this kind have already started (e.g. Netherlands), or a debate is currently under way (e.g. the UK, France), targeting these issues. In the Netherlands, since January 2008, a new system is in place that uses contracted experts for the inspections. These are appropriately trained in accordance with the requirements of the Hygiene Package and are not civil servants. The new system is believed to have opened up competition, and to have created the right incentives to improve efficiency.

b) Administrative costs

This is the second most important cost element, reportedly accounting in some cases for as much as 25-30% of the total costs (e.g. some German Lander) [38].

In any case, there is a lack of transparency on the magnitude and the composition of the administrative costs. This causes widespread confusion as well as concern amongst industry stakeholders that the CAs are in fact charging for costs which do not relate to the actual official controls, which in its turn creates mistrust regarding the efficiency and effectiveness of the current system of official controls.

These issues are particularly prominent in Germany, where the relative share of administrative costs that are taken into account when fees are calculated appears to vary significantly between and within individual *Bundesländer*. This results in significant variation in final fee levels and, due also to the lack of transparency on how fees are actually calculated, creates doubts with regards to the cost-efficiency of the system. Despite numerous court cases on this

[37] Fees on a per head basis were introduced by Directive 85/73 and Decision 88/408. This denomination was maintained in Regulation 882/2004.

[38] According to information provided by the German industry. Again, limited data are available on this element of the costs. Where data is available, the relative share of administrative costs tends to be very modest, suggesting that data only become available in the good cases.

and other related issues on the fee calculation in Germany, to date this issue remains largely unresolved.

Although most prominent in Germany, similar concerns were expressed by industry representatives of other MS (e.g. Italy, Poland, Sweden, Denmark).

The main criticism in all cases is actually directed at Annex VI of Regulation 882/2004, which defines the three types of costs on the basis of which fee calculation should take place. In particular, the point is made that Annex VI is formulated too broadly, thus leaving too much room to MS authorities for an open interpretation. As a result, it is largely left to the discretion of MS to define and incorporate the various cost criteria in their fee calculation and, in particular administrative costs, which are not defined as such in Annex VI but appear to be covered by the general term '*associated costs*' (point 2 of Annex VI). As it stands, the critics argue the system does not provide any incentive for authorities to rationalise on the various costs, particularly the administrative costs, and it is the industry that has to pay for this.

c) The guiding principles of official controls

According to Article 3.1 of Regulation 882/2004, official controls should be carried out regularly, **on a risk basis and with appropriate frequency**, taking account of the following four factors:

(a) Identified risks;

(b) FBOs' past record as regards compliance with the rules;

(c) The reliability of 'self-control' systems (own FBO checks already carried out); and,

(d) Any information indicating non-compliance.

In practice, the study has found that currently these four factors are not sufficiently taken into account in the way MS plan and implement their systems of official controls.

Currently, the implementation of the provisions of Article 3.1 is very inconsistent across the EU-27. The discretion given to MS to implement the rules according to their needs and priorities results in various approaches and modes of operation of the official controls. Whilst this guarantees flexibility for MS to adapt the provisions to their own national and local conditions, there is scepticism on the part of the industry that MS are in fact avoiding much-needed reforms of the traditional organisation and implementation of official controls that would improve cost-efficiency as well as the overall effectiveness of the controls. This, in turn, has repercussions in the way fees are charged under Regulation 882/2004.

In particular, the following points have been made during the case studies:

The **UK** meat industry considers the above factors are not currently sufficiently taken into account. They argue there is a need for greater consideration of risk, in particular the risk to human health, for which the meat industry considers itself disproportionately targeted vis-à-vis sectors downstream the chain (in particular the retail and catering sectors); greater use of

risk assessments should therefore be made to correct this imbalance and provide a further incentive for good performance, which would result in lower costs. Also, at the moment, there is little incentive in the system to promote the efficiency of the inspections at FBO level. It is argued this would help keep inspection costs down. Although Article 28 of Regulation 882/2004 can be used to target FBOs with inefficient inspection structures and create an incentive to improve them, there are doubts as to how effectively these powers are currently used across the EU.

In **Germany**, the meat industry strongly criticises the current basis of the frequency of controls for failing to take sufficient account of the risk parameters involved and the actual risk exposure. The industry believes that, in practice, meat hygiene controls could be conducted by less veterinary personnel than currently employed, by adjusting control frequency to an establishment's actual risk profile; in many cases, the opposite appears to be taking place currently[39]. There have been some efforts on the part of the industry to correct the problem, for example through the use of risk assessment models that assess the risk of individual establishments and appropriately adjust the frequency of the controls (e.g. poultry industry; "*Güthersloher Modell*" in the meat products industry). These models have been developed by the industry and approved by the CAs,. however, these initiatives are relatively limited at present, having been implemented on a pilot basis in only few *Bundesländer*[40].

In **Italy**, all of the different sectors acknowledged that the meat sector is, on the basis of the actual risk to safety, unfairly targeted by the system[41]. New draft legislation enforcing Regulation 882/2004 that is currently under discussion appears to address, at least in part, some of these issues: it spreads some of the fee charging across the various sectors, and it introduces fee reduction for efficient large-scale establishments in the red meat sector on the basis of the reduced unit time required for the inspections due to the high level of efficiency in the way the sector operates (speed of the chain).

Across the EU, the meat industry as represented by the UECBV, highlights what it considers to be the current failure of the implementation of Regulation 882/2004 to move in the direction of proportionate and risk-based controls, and more self regulation and FBO involvement, according to the aims and principles of the General Food Directive (Regulation 178/2002) and the Hygiene Package (in particular Regulation 854/2004). It is noted that the financing provisions of Regulation 882/2004 still refer to outdated legislation and make no reference to the Hygiene Package. The EU meat industry argues that, as it stands and as

[39] There are cases where control frequency is adjusted to the number of establishments in place, rather than actual risk. For example, if a veterinary works in a district where e.g. there are two meat establishments, control frequency will increase accordingly and be different than in a district where a veterinary e.g. has ten or more establishments to control.

[40] For example, the "*Güthersloher Modell*" model is applied mainly in North-Rhine Westphalia only.

[41] The meat industry in Italy is further penalised by the fact that fees are charged twice, at slaughter and meat cutting points even where these activities are carried out in the same establishment. The current draft law enforcing Regulation 882/2004 complicates this issue further, as it appears to extend fee charging also to meat processing establishments.

currently implemented, the system of fees lacks incentives to promote improvements at both administrative and business level that would result in cost-efficiency gains. Such improvements would include the adjustment of controls on a risk-basis along the food chain, also taking into account the new tools available such as traceability and food chain information, and incentivising the adoption of HACCP and self-control systems by the industry.

This position is increasingly endorsed by a growing number of stakeholders. In a recent seminar on the modernisation of inspections in slaughterhouses organised by the French Presidency, there was wide consensus across the EU amongst industry stakeholders and representatives of the CAs, that due account needs to be taken of technological progress and the increasing uptake of self-control systems (notably GHP and HACCP) following the introduction of the General Food Law and the Hygiene Package[42].

[42] See for example, Seminar on the "Modernisation of sanitary inspection in slaughterhouses", organised by the French Presidency, Lyon, 7-11 July 2008.

3. Options for the future

3.1. The development and assessment of the various options

3.1.1. Range of options and scenarios

The analysis of the current situation has outlined various shortcomings arising from the enforcement of Articles 26-29 of Regulation 882/2004. In doing so, it has also highlighted the main challenges going forward in this sector, as imposed by both internal and external factors affecting the outlook for the future.

External factors would include technological progress and its implications for the way official controls are performed, globalisation issues and the need to support and maintain the competitiveness of EU industry in international trade, and the ongoing enlargement of the EU leading to increased variation in administrative structures between MS.

At the same time, the orientation and principles of EU legislation are continuously evolving to respond to these challenges. In particular, the 2002 General Food Law and the 2004 Hygiene Package have introduced a new integrated approach to feed and food safety which aims to ensure a high level of food safety, animal health, and welfare and plant health within the EU through coherent farm-to-table measures, while ensuring the effective functioning of the internal market.

The study has investigated how the identified shortcomings relating to the current fee system and to the future challenges lying ahead could be addressed via a series of options for improvement of the financing provisions of the Regulation (*Task 3*).

A priori, the options to consider for the future would range from full harmonisation to full subsidiarity (**Table 3-1**). Full harmonisation would involve a completely harmonised system across the EU27 with all MS paying the same fees for the same activities. Full subsidiarity would mean repealing Articles 26-29 of the Regulation, thus allowing MS to develop their own systems for the financing of official controls.

A range of other possible scenarios can be identified between these two extremes. Indeed, as they currently stand, Articles 26-29 combine subsidiarity (by giving MS the freedom to decide whether to use the minimum rates of Annexes IV and V or to calculate flat rates based on costs, and the fact that MS can decide which sectors to include *inter alia* via Article 27.1) with a certain degree of harmonisation (in that MS can adopt the same minimum rates and should comply with certain common rules and criteria). Maintaining the status quo *(do nothing*) is indeed one of the options for the future considered by the study.

In order to illustrate the various options and scenarios, the key components of the system are presented in **Table 3-1** and set against certain key scenarios. It is noted that the presented scenarios consist of various possible combinations of the individual components of the financing system, as identified by the study.

Table 3-1 Range of options, scenarios and components

R 882/2004 (a)	Components	**Harmonisation *(b)***			***Status quo*: current system**	**Subsidiarity *(b)***		
		Full	**Scenario 1**	**Scenario 2**	**Mix**	**Scenario 3**	**Scenario 4**	**Full**
Art 26, Art 27.2 Art 27.1	Fees compulsory or optional	Compulsory	Compulsory	Compulsory	Combination	Optional (Article 26)	Optional (Article 26)	Repeal Articles 26-29
Art 27.3	Fee level	Common fee levels (define fee levels)	Common fee levels (define fee levels)		Common fee levels for compulsory fees only		Repeal Articles 27-29	
Art 27.4 Annex VI	Fee calculation	Common method/model	Common method/model	Common principles	Common principles	Common principles		
Art 27.5 to 27.7	Fee reductions	Common level of reductions	Common principles	Common principles	Common principles	Common principles		
Art 27.3, Annex IV and V	List of activities	Common activities (define list of activities)	Common activities	Common activities	Common list only for compulsory fees			
		Potential to extend to other sectors / along the food chain						
Art 27.8	Fee collection				CA defined for import controls			
Art 28, Art 29	Penalty system	Common penalties	Common principles	Common principles	Common principles	Common principles		
Art 28.12	MS reporting to Commission	Compulsory full MS reporting (regular report on operation of system and amount of collected fees)	Compulsory full MS reporting (regular report on operation of system and amount of collected fees)	As currently (MS obliged to publish calculation method)	MS obliged to publish fee calculation method, including for fee reductions	As currently (MS obliged to publish calculation method)	MS obliged to communicate the costs of OCs and how costs are covered	

(a) Reference in the current provisions of Regulation 882/2004 to the various components of the fee system

(b) 'Common' refers to the application of the same rules across all EU27 MS

In particular, a number of scenarios were assessed within the following options[43]:

1. Moving from the current system **towards more harmonisation** across the EU;
2. Moving from the current system **towards more subsidiarity**, or leaving more responsibility to MS;
3. The **extension of the system to cover other sectors** along the food chain;
4. **Maintaining the status quo (mixed system)**, but introducing certain improvements.

The first three options were defined *à priori* in the ToR and were developed further in the course of the study. Each option covers a range of scenarios, depending on the degree of harmonisation, subsidiarity and sector coverage envisaged. It is noted that Option 3 relates more to the scope of the system than the mechanism to be used and therefore transcends the various harmonisation/subsidiarity scenarios of (**Table 3-1**).

The fourth option, which was developed during the study, is based on the current combined approach and principles of Regulation 882/2004. It explores the type of changes that need to be made, if the status quo is maintained, for a more effective and efficient implementation of the Regulation.

The two extreme scenarios of full harmonisation and full subsidiarity represent polarised solutions which are not feasible to pursue, at least not at present. In particular, both options would require closer economic integration and greater harmonisation of the system of official controls in the EU-27 than is the case currently. Due to the significant differences in economic conditions and the costs of living between MS which affect the actual cost of the official controls (as discussed in chapter 2), applying a fully harmonised system is likely to result in overcharging in certain MS (particularly some of the NMS) and undercharging in others. On the other hand, due to the significant differences between MS in the current implementation of EU hygiene legislation as well as in the uptake of self control systems, full subsidiarity (repealing Articles 26-29) could risk undermining the standard of the controls carried out in parts of the EU, thus potentially threatening the operation of the entire EU official controls system and the progress achieved so far.

Both the survey and the case studies have demonstrated the need to maintain a balance between the two extremes. In the survey the majority of MS CAs indicated that subsidiarity or a mixed system (both of which allow a certain flexibility for MS to set the rates, within a commonly agreed set of rules) were the most favoured options (*Question 2.1*, **Annex 2**). All MS, including those that opted for harmonisation, indicated the need to maintain flexibility to adapt the system to national conditions.

[43] The ToR referred to three specific options: harmonisation; subsidiarity; and, extension to other sectors. Following consultations with DG SANCO, these were re-formulated to the structure followed in this Report.

The need to maintain flexibility, as well as promote simplification, is also central to the operation of the enlarged Union of 27 MS.

The various scenarios combine a number of different basic components which are discussed in more detail in the following section.

3.1.2. Key components

Based on the intervention logic of the financing system for official controls laid down in the current legislation (Articles 26-29 of Regulation 882/2004), a number of key components were identified, from which the various initial options were developed into the scenarios examined by this study. These components are depicted in **Table 3-1** as follows:

- **The basis of fee charging**: fees can be charged on a compulsory or on an optional basis, or (as in the current system) as a combination of the two (i.e. for certain activities fees would be charged on a compulsory basis while for others they would be charged on a compulsory basis);

- **The level of fee rates**: fee rates can be totally harmonised (same fees throughout the EU-27), or can be flexible but based on a calculation method, or (as in the current system) can be a combination of the two (i.e. for those activities for which fees are charged on a compulsory basis minimum fees are laid down; where costs are beyond these levels and for other activities for which fees are charged on an optional basis, fees can be charged up to a total cost-recovery basis);

- **The fee calculation method**: this can be a standard method/model throughout the EU-27, or can be flexible but based on certain key principles. A key principle in particular would be that the fee is aiming at cost recovery as in the current legislation (i.e. fees cannot be lower than the minimum, and cannot be higher than costs). The degree of cost recovery (partial or full) to be achieved/allowed would need to be established. Also, the question of whether the method needs to be defined by sector, by activity or for the entire food chain would need to be addressed;

- **Fee reductions and penalties**: these can be standard applying throughout the EU-27, or can be flexible but based on certain key principles. These principles could be those set out in the current legislation (Articles 27.5/6 and Article 28 respectively) or could expand on these;

- **List of activities covered by fees**: the list can be finite and harmonised, or can be flexible but based on certain key principles, or totally flexible. Also, the list can remain as per the status quo, or revised (expanded/condensed).

In terms of the **principles** that can apply for a more harmonised calculation of the fees and/or fee reductions/penalties across the EU, the level at which these should be set needs to be further discussed. This refers in particular to whether these should be general principles only or whether they should be more detailed criteria defined at a technical level:

- General principles would include: transparency in the calculation method of fee setting and for calculating fee reductions/penalties, on the basis of actual costs; and, the obligation for MS to communicate these to the Commission and the public.

- Detailed technical criteria would include for instance the calculation method to be followed for fee setting and for fee reductions/penalties, cost-recovery targets that should be sought, precise cost categories that should be taken into account, and even maxima/ceilings for each cost element.

General principles are essentially already foreseen in Article 27 (although, as shown in section 2.3, these are not always respected by MS). Some broad criteria are also defined in Annex VI. More detailed criteria would take the principles to a more precise technical level which could help to ensure that MS have less room to deviate from the general principles. At the same time, these details are more difficult to define and make acceptable at EU level.

The principles and criteria are discussed further under the presentation of the various options below.

The level at which common principles will be established will be key in controlling MS flexibility and mitigating the potential disadvantages of subsidiarity. The greater the extent to which a move is made from defining more common principles and general guidelines (as is currently the case with Articles 27-29 of Regulation 882/2004) to defining technical criteria, the more difficult it will be for MS to deviate from a common denominator. On the other hand, this increases the complexity of the provisions and the extent of follow up needed at central level (Commission, MS CCAs).

In terms of the calculation of **fee reductions and penalties**, in particular, the principles could be those established by the provisions of Articles 27.5/6 and Article 28 respectively. However, the study has demonstrated that these principles are currently not fully adhered to by the majority of MS. In practice, as is evidenced by the description of the current system, the provisions of Articles 27.5/6 and 28 are enforced to varying degrees and with considerable differences between MS. Moreover, the meat industry in particular appears to be penalised by the lack of a clear link to the advantages and benefits of self-control systems, as introduced at EU level by the Hygiene Package.

To address these concerns, the study has examined the possibility of expanding on the current provisions, by introducing:

a. A common approach across the EU;

b. An integrated approach linking more consistently compliance and non-compliance, therefore fee reductions and penalties, to the uptake of self-control systems.

Thus in all scenarios of **Table 3-1** where principles for the calculation of fee reductions/penalties would apply, these would expand on the current provisions of Articles 27.5/6 and Article 28 by linking compliance/non compliance to the uptake of self-control systems by industry through an integrated *bonus-malus* system.

Both MS and stakeholders are in principle in favour of providing incentives to FBOs to assume greater responsibility. The extent to which this can be encouraged will depend on the degree to which an approach on how to reward compliance can be developed (Articles 27.5/6) and, conversely, how to penalise non-compliance (Article 28). This could be through an integrated *bonus-malus* system. Such systems have already been developed at MS level in a few MS (e.g. Belgium) and these highlight the advantages of an integrated approach.

3.1.3. Assessment criteria

The assessment of the various scenarios was based on the analysis of the views and data collected from stakeholders (both at administrative and business/industry level). All of the methodological tools used in this study (survey, interviews and case studies) have included suggestions for overcoming the various shortcomings of the present system. The final formulation of the various scenarios and their analysis emerged as a result of this work.

Each scenario is assessed in terms of its advantages and disadvantages, feasibility (whether and under which conditions it would work in practice), and the acceptance that it might be expected to have from the various groups of stakeholders.

In the context of the main goals and principles of Regulation 882/2004, as well as the wider objectives of Community food and feed law and the Lisbon strategy (section 2.1.1), three key criteria are applied throughout the assessment, as follows:

a) Improving the **effectiveness and efficiency of the official controls**;

b) Moving to a **simplification** of the current system;

c) Providing the **right incentives for FBOs**, in particular in terms of the provisions of Article 27.6 and Article 28 of Regulation 882/2004, thus encouraging compliance and penalising non-compliance respectively.

It is noted that the above criteria may not necessarily point to the same direction, indeed they can point to different directions. For example, the objective of pursuing simplification may not be compatible with the increasing complexity required to ensure a harmonised approach across the EU. The initial assessment of the scenarios provided here aims to provide a balance between the various objectives and needs of stakeholders.

Furthermore, as already indicated, some of the issues raised by the study extend beyond its scope as such. For example, overcoming certain cost-efficiency issues requires action not only at the level of the financing provisions of Regulation 882/2004 but also of the Hygiene Package[44]. Addressing these issues is therefore only discussed here to the extent it is relevant in the context of the costs and the financing of the official controls.

[44] For example, the requirement of Regulation 854/2004 to use official veterinarians to carry out audits and inspections of slaughterhouses, game handling establishments and certain cutting plants is generally considered as a key obstacle to pursuing cost efficiencies in the control process. At the same time, Regulation 882/2004

This forward looking element of the project aims to provide an initial assessment of certain key identified scenarios. The purpose is not to provide a full feasibility analysis (whether at political or technical level). Nonetheless, specific recommendations are made to develop these scenarios, or indeed other potential combinations of their constituting components, including through future impact assessments.

3.2. Towards more harmonisation

As indicated in **Table 3-1**, moving from the status quo towards more harmonisation could involve a range of scenarios depending on the degree of harmonisation sought. A constant feature of all scenarios under this option is that fee charging would be **compulsory** for all MS. This effectively sets targets for the recovery of the costs of official controls through fee collection, moreover in the form of targets which are common across the EU. It would no longer be at the discretion of MS to define the activities for which fees are to be charged as is currently foreseen by Article 27.1. This would aim to a more harmonised approach for the financing of official controls across the EU-27 (as an intermediate objective for the achievement of more harmonised controls across the EU, as discussed in section 2.1).

3.2.1. Full harmonisation

The most extreme version of this option, full harmonisation, would be described as follows:

1. All MS pay the same fees at the same level (fixed rates) for the same activities. It is noted that:

    i. The fees could be set at the level of the minimum rates currently established by Annexes IV and V, or at a different level. In any case, the fee level would be established on the basis of a common calculation method defined at EU level, aiming at a certain level of cost recovery (to be determined at EU level);

    ii. The list of activities could be as currently established by Annexes IV and V, or could be different (expanded/condensed).

    iii. Fee rates could be subject to regular review (e.g. every two years as provided by current Regulation) inter alia to adjust rates in line with inflation.

2. Penalties and reductions (for complying and non-complying firms, in the spirit of Article 27.6 and Article 28 respectively) are the same (fixed rates) for all MS.

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refers only to the general requirement to have "a sufficient number of suitably qualified and experienced staff". As the scope of this study only concentrates on Articles 26-29 of Regulation 882/2004, the options discussed here do not address possible changes to the relevant provisions of the Hygiene Package.

This option was generally the least favoured, with only 7 of the 27 MS CAs indicating their preference for a common system (*Question 2.1*, ***Annex 2***). All the MS that opted for full harmonisation are new MS, and in most cases these have faced considerable difficulty in introducing Regulation 882/2004 in the first place. Also, all of the 7 MS in favour of this option commented that there should nonetheless be some flexibility within the rules. At the level of the industry, full harmonisation was largely considered to be unrealistic.

Other than some potential advantages under certain conditions, such as possibly allowing for a simplification of the system at least at the level of central management (Commission, MS Central Competent Authority) and greater transparency as the same rates would apply throughout the EU27, full harmonisation is thus overall seen as having many disadvantages (**Table 3-2**).

A key problem is establishing the level at which fees should be set. This level would depend on the extent of cost recovery sought. However, there are currently no objective measures by which to establish the optimal level of fees at EU level for each activity. While such measures could be broadly based on the current criteria of Annex VI, there is currently a lack of the essential parameters that would enable us to provide an objective calculation of an optimal minimum fee at EU level. Such parameters would include for example, the optimal amount of time needed for the inspections for each activity and per type of business. In theory this should be the same figure for all MS; in practice it may differ depending on administrative, inspection staff and industry structures in each MS. In addition, there are certain parameters that cannot be defined as a common figure across the EU, notably staff costs and administrative costs.

The current differences in living costs and salary levels amongst MS, and their impact on the costs of staff employed to carry out the official controls and on administrative costs, mean that some MS would be net losers while others could be net gainers under this system (net losses and gains in this case refer to the potential revenue from the fees compared to the real costs of the controls for the administration). In any case, this appears to be the reality today, with the current level of minimum rates deemed to be too low or inadequate to cover the real costs of OCs for some MS while it is too high for others.

Although fees would be set at the same level throughout the EU, full harmonisation does not create a level playing field for the industry either, because it is the relative value of the fee (compared to production costs and producer prices) that is important and not the absolute level of the fee.

Consequently, trying to find a common basis for the EU-27 could simply result in fees being set in relation to the lowest common denominator, which is below the current rates of Regulation 882/2004. This is evidenced by the fact that several MS, particularly many of the new NMS, had considerable difficulty in introducing and enforcing the minimum rates currently foreseen by the Regulation. During the survey and case studies, several MS openly criticised the minimum rates of the Regulation for being too high and not taking into account their national economic reality. This situation has often forced MS to apply exceptions and derogations which, as seen in section 2.2, have not always been transparently applied.

It would therefore appear that pursuing a policy of full harmonisation of fee rates entails certain non-negligible risks. If the rates are set too high the risk is that they would not provide incentives for efficiency gains to be made in those sectors and MS where this is considered appropriate. If set too low, there is considerable risk that this may undermine the level and standard of controls actually carried out.

A full list of the advantages and disadvantages of this option, as put forward by the various MS, is provided in **Annex 2.1 (***Question 2.2***)**.

3.2.1. Intermediate scenarios

To introduce some flexibility into this option, fees and/or penalties/reductions could be calculated at MS level, rather than fixed for all MS. However, to maintain a certain level of harmonisation, the calculation methods to be used would adhere to certain common principles.

Thus, in scenario 1, fee reductions and penalties are established at MS level by applying a calculation method that follows common principles, but fees are fixed at the same level for all MS. In scenario 2, both the fees and the fee reductions/penalties are established at MS level by applying calculation methods that follow common principles. These principles are described in section 3.1.2. To ensure appropriate follow up of MS transposition of the rules and principles, MS would be obliged to communicate the calculation methods to the Commission.

In terms of the principles that can apply to promote a more consistent approach for the calculation of fee reductions/penalties (as discussed in section 3.1.2), pursuing the development of a common *bonus-malus* system on a totally harmonised basis across the EU is not considered to be practically implementable at present. This is due to the significant differences between MS in terms of industry structures and the organisation of official controls, which would not allow a one-fits-all approach. It would be difficult in practice to develop a common *bonus-malus* system for the EU-27 that would fit all national conditions and structures (both at the level of the industry and at the level of the competent authorities).

While therefore the need remains to reinforce the link between fee reductions/penalties (Articles 27.5/6 and Article 28, respectively) and the increasing uptake of self-control systems by industry (in line with the Hygiene Package), the development of a common system across the EU27 does not appear to be possible. Instead it appears MS need rather to be encouraged by the legislation to develop their own systems moving in the direction of an integrated *bonus-malus* approach for an effective and consistent implementation of Articles 27.5/6 and Article 28.

Table 3-2 Moving towards more harmonisation: overall assessment

HARMONISATION scenarios
Description
Full harmonisation: 1. All MS pay the same fees (fixed rates) for the same activities; 2. Penalties and reductions (for complying and non-complying firms, Article 27.6 and Article 28 respectively) are the same (fixed rates) for all MS. Introducing some flexibility: Scenario 1: Fee reductions/penalties established at MS level on the basis of common principles. Scenario 2: Fees and fee reductions/penalties established at MS level on the basis of common principles.
Advantages/benefits
• Full harmonisation could result in potential simplification in monitoring MS compliance with the rules, at least at central level (Commission, MS CCAs). This advantage diminishes as we move to scenario 1 and 2; • Transparency for all stakeholders, as both fees and activities would be fixed in EU law; • Potential to reduce distortions in competition amongst MS/regions - however questionable whether fees alone are an important factor affecting competitiveness within the EU27 (see section 2.3.2); • Harmonisation of fee levels for border controls, thereby addressing concerns for potential distortions at this level (see section 2.3.2.5); • Distortions currently caused by different MS approaches on fee charging for 'non-compulsory' (Article 17.1) activities, could be reduced/eliminated; • Greater harmonisation of official controls if description per activity defined in detail on a common basis, e.g. concerning the ante and post mortem inspections, to guarantee the same level and standard of controls throughout the EU.
Disadvantages/drawbacks
• In terms of domestic controls, in view of the differences in cost of living and salary costs, full harmonisation is not creating a level-playing field in the EU27. On the contrary, it can alleviate differences if some MS are unable to cover their costs on this basis, or if the rate of cost-recovery that is achieved through these fees varies greatly between MS; • Considered difficult, if not impossible, in practice to find a common denominator between MS in terms of the level of fees for domestic controls, and developing a common *bonus-malus* system; • Concern that finding a common basis for all EU27 may result in the lowest common denominator, thereby jeopardising the overall progress achieved so far in the effectiveness and efficiency of the official controls at EU level; • Would not provide incentives for efficiency gains to be made where needed / considered necessary; • To ensure uniform application, this should be a rigid system: it may pose interpretation problems, and actually result again in different approaches, if the provisions are not explicit;

HARMONISATION scenarios
• Scenario 2 is more complex, hence more difficult and cumbersome to implement and control at central level (Commission, MS CCAs).
Stakeholder position
In its fuller version, largely considered unworkable in practice, therefore acceptability by stakeholders, both industry and MS CAs, very low. Need to maintain some flexibility (scenarios 1 and 2).
Conclusion
Although rejected in its fuller version, this option becomes increasingly more acceptable if some flexibility is introduced in the rules (scenarios 1 and 2). It is noted that this increases the complexity of application and monitoring at central level. But, if the objective of the legislation is to ensure a minimum level of cost-recovery, then scenarios 1 or 2 would appear most appropriate. If the harmonisation approach is to be pursued further, some elements need further consideration, as follows: • The need to provide a transparent basis for the setting of fees, whether these are to be fixed for all MS (scenario 1) or calculated at MS level based on common principles (scenario 2); • The need for a more precise definition and common approach for the list and description of activities for which fees would be charged (all scenarios); • The need to adjust and incentivize the system based on actual risk levels and FBO performance (‘*bonus-malus’* system), although defined at MS rather than at EU level (scenarios 1 and 2).

3.3. Towards more subsidiarity

Moving from the status quo towards more subsidiarity could involve a range of scenarios depending on the degree of subsidiarity sought (**Table 3-1**). A constant feature of all scenarios under this option is that fee charging would be **optional** for all MS. This effectively means that there would no longer be any obligation for MS to charge fees, as is currently foreseen by Article 27.2. MS would be given full discretion not to collect any fees at all, or only to collect fees for any activities that they judge appropriate and necessary. Therefore, MS would be free to choose the level of cost recovery that best suits their needs and interests.

3.3.1. Full subsidiarity

If taken to its most complete expression the scenario of full subsidiarity would involve a total repeal of Articles 26-29. MS would be left entirely free to design the financing of the official controls.

This scenario was the least favoured by MS CAs. In particular there is concern that, by eliminating the possibility for MS to charge fees so as to ensure adequate funding, there is significant risk that the standard of the official controls could be undermined. Giving full discretion to MS would - given the current variation in the level of economic, administrative

and business development between the 27 MS - risk disintegrating the EU official controls system. This could potentially jeopardise the ultimate objectives of the system to guarantee food safety and the protection of public health as well as the free circulation of goods within the internal market.

The hypothesis made in this case is that MS would not be able to raise adequate funds through alternative means, notably general taxation. However, this possibility is currently provided by Article 26. As demonstrated by **Table 2-1**, some MS partially cover the costs of official controls through the public budget.

On the other hand, the meat industry has expressed more radical views on this point. The industry is in favour of a total review of the financing system for such controls, with a view to having this covered entirely from the public budget. The main argument has been that this is a public service of benefit to the final consumer, and that therefore the taxpayer should cover this cost though the public budget. It is argued that consumers are already paying for this through the higher prices of meat, as the extra cost of the fees is passed on by FBOs; this creates lack of transparency and may inflate prices unnecessarily as the cost may be passed more than once along the supply chain.

As noted from the outset this scenario has not been pursued further because - as it currently stands across the EU27 - neither the EU system of official controls nor the EU meat industry can be considered ready to adopt such a radical approach. A key reason is that the various MS are currently at very different levels of enforcement of official controls both at administrative and at industry level. Furthermore, for a totally publicly funded system of official controls to work, FBO responsibility and self regulation would need to have reached an adequate minimum level of compliance to EU rules across the EU27; this is far from being the situation today[45]. With the promotion and further encouragement of FBO responsibility, it is conceivable that scenarios of full subsidiarity, including a totally publicly funded system of official controls, could be examined longer term.

A less radical version of full subsidiarity could be scenario 4, whereby only the obligation for MS to ensure the availability of adequate funds for official controls (Article 26) is maintained. In this case, no explicit reference as to how these funds are to be raised would be made (currently, Article 26 is explicit on this[46]). This would provide a simplification of the current system in terms of Commission and CCA monitoring of the system as such, and could work if it could be sufficiently guaranteed that MS would provide the means necessary for these controls. In order to achieve this, MS could be obliged to report to the Commission the funds available for the official controls and the extent to which the funds available cover the costs of these controls (this obligation does not currently exist).

[45] As evidenced, *inter alia*, by the country FVO reports on the implementation of official controls within the EU and border controls on EU imports.

[46] Last part of Article 26 reads: *"including through general taxation or by establishing fees or charges"*.

3.3.2. Intermediate scenarios

Subsidiarity could be made less radical if some common rules and criteria are introduced into the system. A number of possibilities exist for combining the various components of **Table 3-1**, of which scenario 3 in particular has been assessed. This can be described as follows:

1. MS design the fee system that suits them best. This includes the definition of the activities for which fees are to be charged, and the fee-setting and calculation method.

One additional element 'controls' the flexibility given to MS under subsidiarity:

2. The condition that certain commonly defined principles are respected for the calculation of the fees and fee reductions/penalties (as discussed in section 3.1.2). To ensure appropriate follow up of MS transposition of the rules and principles, MS should communicate the calculation methods to the Commission.

Once this condition is attached to the subsidiarity option, it becomes increasingly attractive for a number of MS. In total, 16 out of the 27 MS CAs favoured some form of flexibility to be provided to MS to set the fees, within a commonly agreed framework of rules, and 7 of the 27 MS CAs indicated their explicit preference for a subsidiarity system of this form). At the level of the industry too, scenario 3 was largely considered to be more realistic than the more harmonised scenarios 1 and 2.

Key advantages or benefits of this option include the flexibility given to MS to adapt the fee system to a country's economic reality and administrative/industry structures (**Table 3-3**). As this system would provide a more customised fit to national/regional/local conditions, this ultimately can ensure better coverage of costs at MS level, compared to a situation where fees would be fixed at EU level (under the harmonisation scenarios).

Similarly, this option could ultimately provide more incentives for cost-efficiency gains. By allowing MS the discretion to fix the level of fees on the basis of actual costs, the possibility opens for authorities and stakeholders at national level to promote a common agenda for cost rationalisation through a more efficient and effective organisation of the official controls system.

Key disadvantages or drawbacks of this option include the potential for distortions in competition at the various levels investigated by the study, which may be caused by the variability in fees across the EU if, as would appear to be likely, MS end up adopting very different approaches. As discussed in section 2.3.2, this variability already exists under the current system. Although generally currently considered to be a relatively minor factor in affecting competitiveness between MS, the variability is higher in MS where flat rates rather than minimum rates apply, especially where these are determined on a decentralised basis (e.g. Germany, Italy).

The extent to which such disadvantages may occur will depend on MS' uptake of the discretion given to them to determine for which activities fees are to be collected and the level of the fees, on the basis of actual costs, as well as the power of the business community in the individual MS to force changes and to ensure the transparency of the system.

As discussed in section 3.1.2, this will depend *inter alia* on the level at which commonly defined principles are set across the EU. It can therefore be anticipated that as we move towards more subsidiarity, where not only common minimum rates no longer apply but also no common principles are used, variability in fees and the potential for distortions within the EU would tend to increase.

A full list of the advantages and disadvantages of this option, as put forward by the various MS, is provided in **Annex 2.1** (*Question 2.2*).

Table 3-3 Moving towards more subsidiarity: overall assessment

SUBSIDIARITY scenarios
Description
Full subsidiarity: Repeal Articles 26-29 Scenario 4: MS only obliged to ensure the availability of adequate funds for OCs (repeal Articles 27-29) Controlling MS flexibility: Scenario 3: 1. MS design the fee system that suits them best (incl. list of activities, fee setting & calculation); 2. The condition is that certain commonly defined principles are respected; the level at which these should be set (whether general principles or technical criteria) needs to be defined.
Advantages/benefits
• Full subsidiarity/scenario 4 could result in potential simplification in monitoring MS compliance with the rules, at least at central level (Commission, MS CCAs). This advantage diminishes as we move to scenario 3; • Flexibility to adapt to country specific economic conditions and administrative/industry structures; • Greater flexibility to adapt to changing situations at MS/EU level; • Greater potential to cover real costs; potential to engage CAs and FBOs in common agenda to push reforms to promote greater cost-efficiency and effectiveness of OCs; • If a more common agenda can be achieved across the EU, potential for greater transparency.
Disadvantages/drawbacks
• Can increase variability in fees between MS, particularly as we move to full subsidiarity, or if the common principles of scenario 3 are not applied or are not effectively enforced; • This would stimulate various distortions in competition, and distortions would be higher the more the system fails to implement effectively the common principles of scenario 3; • It would also risk increasing the variability in the effectiveness and efficiency of the controls at MS levels, thus undermining the performance of the system also at EU level; • Scenario 3 is more complex, hence more difficult and cumbersome to implement and control at central level (Commission, MS CCAs); • Can lack transparency in situations where the system fails to motivate the CAs and the business

SUBSIDIARITY scenarios
community to pursue common objectives.
Stakeholder position
More acceptable by MS at both CA and industry level than the harmonisation scenarios, particularly if common principles are set (scenario 3) to control MS discretion. At the same time, considered higher risk, as highly dependent on acceptance and effective enforcement by MS of these principles.
Conclusion
Although rejected in its fuller version, this option becomes increasingly more acceptable if some control is introduced in the rules. MS are currently found to be at excessively divergent stages of economic and industry development for full subsidiarity to work, especially on an unconditional basis. Potential failure of this option would lead to more serious distortions of competition at EU level, and would risk undermining the effectiveness and efficiency of the official controls system. The inclusion of common principles (scenario 3) could ensure that this option would work better, but this also increases the difficulty of reaching agreement on common conditions set at EU level. It also increases the complexity of application and monitoring at central level. For the purposes therefore of simplification, if the primary aim of the legislation is to ensure that MS have the funds necessary to cover the costs of official controls, whatever the means, scenario 4 could present an attractive alternative to pursue.

3.4. Extension to other sectors

This option examines the potential to extend to sectors, other than those listed in Section A of Annexes IV and V of Regulation 882/2004, the obligation to contribute to the financing of official controls, within the meaning of Article 27.2.

Such sectors could include stages upstream/downstream the feed and food chain (e.g. farmers and processors/retailers/caterers, respectively), and/or other product sectors (e.g. plant health controls). This option was formulated in an open way, to allow MS CAs and stakeholders more freedom to respond with their views. Hence, no list of potential sectors or scenarios was developed *a priori* on this option.

In total, 16 out of the 27 MS CAs favoured some form of extension of the financing obligation to other FBOs/activities *(Question 2.3**, Annex 2.1**)*.

In terms of product sectors, the sporadic evidence and arguments provided by MS, both during the survey and the case studies, did not allow the development and analysis of a consistent scenario under this option (**Questions 2.4 and 2.5, Annex 2.1**). No particular product sector consistently came up as eligible to be included in an extended system.

The most consistent scenario put forward by both MS and industry was the extension of the financing obligation across the food chain. For example, the extension to cover stages upstream and downstream of the slaughtering and meat cutting operations. The analysis below therefore focuses on this scenario. Ultimately, some of the conclusions drawn here could be of relevance for an extension of this approach to game and fish/aquaculture products.

At the level of the industry, the meat sector would favour extending to stages upstream and downstream of the slaughter and meat cutting operations the obligation to contribute to financing the costs of these controls. As discussed in section 2.3.2.3, this element of the chain is generally considered to be unfairly and disproportionately bearing the costs of official controls that are of benefit to the entire food chain. Spreading the costs along the chain would therefore represent a more equitable option (**Table 3-4**).

Such a system, covering the entire food chain, has already been developed in Belgium and is currently being proposed in Italy. Several other MS, including for example France and Spain, have expressed their positive reaction to such a model. Both the CAs and the professional organisations contacted in the various MS (e.g. France, Italy, and at the level of the EU meat industry the UECBV and CLITRAVI) were keen to introduce such an extension of the fee regime to cover other sectors along the food supply chain.

It is generally acknowledged[47] that an extended system would be more consistent with the integrated approach on food safety and the responsibility of FBOs, or the 'farm to table' approach, which the General Food Law (Directive 178/2002) and the Hygiene Package are seeking to promote. By involving all stakeholders, operators would have an interest in ensuring that the entire control system is solid and functions well. This would be further encouraged when combined with a model that adjusts fees to the level of risk and individual FBO responsibility (such as a *bonus-malus* system as discussed in section 3.1.2).

Furthermore, it is argued that such models should be regulated at EU level, because leaving the option to MS could lead to a distortion of competition between those MS in which fee charging is extensively spread along the food chain and those MS which collect fees at only a few points of the chain. This could result in situations where the fees paid, for example by the slaughter sector, in the MS that spread the costs are significantly lower than in the MS that do not. It could also put sectors/activities covered in some MS but not in others at a competitive disadvantage[48].

The justification for this approach is that it better addresses the food safety risks that the EU food industry is actually facing today. In particular, it is argued that the risks related to food safety and human health have evolved with the development of the food supply chain, and the slaughterhouses and meat cutting plants should no longer alone bear the cost of controls nor

[47] See, for example, the conclusions of EU Seminar on the "Modernisation of Inspections in Slaughterhouses". Organised by the French Presidency of the EU, 11 July 2008, Lyon France.

[48] In Italy, for example, a number of sectors not currently paying fees but included in the new draft law have opposed the draft on the grounds that they are disadvantaged *vis á vis* their competitors in other MS that are not charged fees, and have requested that the relevant provisions of the draft law are deleted from the current text.

should they be the only focal points of the controls. Advances in traceability and HACCP systems could be used as a tool to provide the official controls system with relevant information ('*food chain information*'[49]) to assist a better targeting of risks within an integrated food chain safety approach, as advocated by the Hygiene Package.

There is some debate as to which activities should potentially be covered by an extended scheme, in particular how far upstream of downstream along the feed/food chain such a model would extend to. Although this might extend to downstream elements of the chain including distribution, it is generally considered more difficult to extend it as far as the catering segment as this would make it significantly more complex to administer. Generally, the more extensive the system is the fairer it would be in principle, but at the same time, the more cumbersome and costly it will be to administer in practice.

The stakeholders consulted at both industry and at CA level agree that, ultimately, the key criterion for developing an extended system should be the level of potential risk to public health. The controls would in all cases need to be proportionate and risk based. On this basis, both the frequency and focus of the controls and hence their costs would be adjusted to the critical control points along the entire supply chain. Business operators along the various stages of the supply chain would then contribute according to the costs incurred, possibly in addition to a base contribution that all FBOs would pay. These principles are at the basis of the Belgian system as it currently stands.

It is noted that, in designing the system, it is important to avoid a situation where FBOs are eventually contributing at several points during the food supply chain for the same controls. As discussed in section 2.2.2, this situation already arises in the meat sector in Italy and there are concerns that the new draft Law may exacerbate, rather than correct, this problem.

The position of those sectors not currently paying fees also needs to be carefully considered in designing such a system. As the experience of countries that have already introduced this approach demonstrates (e.g. Belgium, Italy), there is likely to be strong opposition from these sectors, therefore fee levels and incentives to adhere would need to be appropriately established. Linking fees and incentives to the level of risk and FBO responsibility is crucial in this respect.

In conclusion, the main advantages of an extended system would be that the costs of the controls would be more widely and fairly distributed along the feed/food chain, while the

[49] Food Chain Information (FCI) is an important component of the 'farm to table' approach to food safety. As well as contributing to food safety it can also be used to improve both animal health and welfare. The purpose of FCI is to inform FBOs about decisions relating to acceptance of animals for human consumption and any abnormal conditions found during processing. It is also used to inform the official veterinarians about inspection and testing requirements. To this end, FCI reports must be sent within brief delays in advance of the animals arriving for slaughter. These provisions are laid down in Section III of Annex II of Regulation 853/2004 and in Section II (Chapter II) of Annex I of Regulation 854/2004. The FCI provisions were immediately applicable in the poultry sector, but several MS are using transitional provisions to implement FCI in other sectors by the end of 2009 (Regulation 2076/2005).

involvement of all FBOs along the supply chain would provide an incentive to take on responsibilities and promote transparency.

These advantages would need to be balanced with the need to contain the increased costs that will be required to administer an extended system. In larger MS with decentralised management the feasibility of such an approach is likely to be lower and the costs involved higher. It is noted that the opposition likely to be encountered by sectors not currently obliged to pay fees also has to be taken into account.

The regulation of an extended system at EU level is likely to be highly cumbersome and complex. For this reason, and given the current variations in MS industry structures and levels of development of the food chain, it would be best for the system to be designed at MS level, with only general principles and guidelines laid down at EU level.

A full list of the advantages and disadvantages of this Option, as put forward by the various MS, is provided in **Annex 2.1** *(Question 2.3)*.

Table 3-4 Extension to other sectors: overall assessment

EXTENSION TO OTHER SECTORS: key scenarios
Description
Extend to sectors, other than those listed in Section A of Annexes IV and V of Regulation 882/2004, the obligation to contribute to the financing of official controls, within the meaning of Article 27.2. The key scenario examined here is the extension of the financing obligation to stages upstream and downstream of the slaughter and meat cutting operations. Ultimately, some of the conclusions drawn here could be of relevance for an extension of this approach to game and fish/aquaculture products.
Advantages/benefits
• Spreads the costs over the extended food chain, hence more equitable than current system (more FBOs along the food chain pay, cost per FBO is reduced); • Consistent with the integrated food safety chain approach ('farm to table') advocated by the General Food Law and the Hygiene Package; • Allows better targeting of risk, provided it is based on appropriate risk assessment and full use of the new tools available (Food Chain Information, including via traceability and HACCP systems); • Can encourage FBO responsibility, provided that the fee calculation is adjusted to the level of risk and responsibility; • Promotes transparency, as more FBOs participate in the system; • These advantages are reinforced the more extensive (upstream/downstream) the chain coverage becomes.
Disadvantages/drawbacks
• More cumbersome and costly to administer; • Cost and complexity increase the more extensive (upstream/downstream) the chain coverage

EXTENSION TO OTHER SECTORS: key scenarios
becomes.
Stakeholder position
The thinking in many MS is increasingly moving to this direction. The current system in Belgium was quoted as an example by several MS (both by CAs and by industry stakeholders) throughout the study, while Italy is currently proposing such an approach. The meat industry is favourable. While non-currently paying sectors would be initially opposed, there is evidence that if the right incentives and fee adjustment based on risk and FBO responsibility are attached to the system, they will eventually adhere.
Conclusion
The strong advantages and relatively high acceptability of an extended system (upstream/downstream the meat production chain) make this worth further consideration. This is also consistent with the general principles and objectives of the current integrated approach to food safety (‘*farm to table’*). The system would work best if fees payable by FBOs at each stage of the chain are adjusted to real risks and FBO responsibility; these adjustments are now made possible with the advances in the availability of Food Chain Information, *inter alia* via traceability and HACCP systems. Although the cost and complexity disadvantages can be mitigated if the system is not too extensive upstream or downstream the chain, this decreases the solidarity and participatory approach of the system. These two considerations have to be balanced for the design of the optimal approach. Given the current variations in MS industry structures and levels of development of the food chain, it would be best for the system to be designed at MS level, with only general principles and guidelines laid down at EU level.

3.5. Status-quo (mixed system)

3.5.1. *Do nothing* option

Amongst the options for the future, the study has also examined the continuation of the current system (status quo). The current financing system for official controls represents the political reality of the evolution of a system first established by Directive 85/73. As discussed in the first part of this study, the intervention logic and rationale of this system continue to apply today. In practice, however, significant shortcomings with the application of the current system were identified by the study. These lead to a large variation in the extent and method of application of the rules by MS, and affect the ability of the Commission to monitor the situation and ensure that a harmonised approach is applied across the EU.

Given these shortcomings, the continuation of the system as it currently stands (*do nothing*) is clearly not an acceptable or a pragmatic option.

3.5.1. Status quo with improvements

Essentially, the financing provisions of Regulation 882/2004, as it currently stands, represent a mixed system. Article 27 generally follows the subsidiarity principle in that MS can decide whether to use the specified minimum rates of Annexes IV and V, or to charge for official control activities according to the actual cost of undertaking them based on the criteria of Annex VI.

During the study it became evident that, at the time of the adoption of Regulation 882/2004, several MS supported this flexible approach (possibility to opt for the common minimum rates or for flat rates) for political reasons, i.e. because it was considered too difficult to reach agreement on acceptable fee rates amongst the 15 MS (it was EU15 at the time).

This study has found that a similar debate exists in the EU27 today. Since the adoption of the Regulation in April 2004, this debate has been further enriched by the new dimensions brought about by the accession of 12 NMS to the EU and by the significant changes that have occurred in the EU food industry from the implementation of the '*farm to table*' approach to food safety. The findings of the present study add further arguments to this debate.

The fundamental approach and principles of Regulation 882/2004 would therefore appear to remain valid today. On the one hand, flexibility needs to be provided to MS to guarantee the best adaptation of the system to national/local conditions. On the other hand, certain common parameters need to be defined at EU level to guarantee maximum homogeneity in application throughout the EU. The appropriate balance between flexibility and homogeneity will guarantee maximum efficiency and effectiveness of the official controls system.

The study has examined a range of improvements that can be introduced if the current approach of a mixed or flexible system was to be maintained. These improvements were developed in the course of the study. They relate to various components of the system and, as such, would be also applicable in the case of the other scenarios presented in **Table 3-1**. These are as follows:

1. At a general level improve the understanding of Regulation 882/2004.

The problems encountered by the CAs and stakeholders in the interpretation of the financing provisions of Regulation 882/2004 were often attributed to the complexity in the formulation and interrelation of the various provisions. For example, failure to understand in practice how to link the first four paragraphs of Article 27 is a problem that was commonly mentioned.

These problems appear to create two shortcomings:

- Considerable deviation from the subsidiarity principle as pursued in the Regulation. It appears that the original intention of the legislator was that either of the two systems would be used, not both in combination as is occurring in practice (i.e. minimum rates for some products/activities and rates defined at MS level for others).

This study has found that a combined approach could only be justified for a distinct group of official controls, such as common fee rates for import controls and fee rates defined at MS level for domestic controls (as further discussed under point 2 below).

- Considerable scope for variations in interpretation between MS and regions. The variations in the application of Articles 26-29 were discussed at length in section 2.2. Although attributed to many factors, incorrect understanding or interpretation of the Regulation was often identified to be a key factor. For example, the fact that minimum rates are interpreted by some MS as a floor that cannot be undercut under any conditions (e.g. Germany), while for other MS they can be maximum ceilings, can create a very different application of the rules between MS.

Although a more in-depth legal analysis would be required to establish what type of improvements can be made to the text, the fact remains that as it currently stands there is significant scope for open or erroneous interpretation. This is demonstrated by the extent and complexity of court cases related to Article 27 in the case of Germany.

Beyond improvements to the text as such, it would be recommended that DG SANCO provide **a guidance document** targeted to the CAs on how to implement the financing provisions of the Regulation. Such guidance documents are provided in other cases, for example, in the case of the microbiological sampling and testing of foodstuffs under Regulation 882/2004 or on import requirements under Regulation 852/2004.

2. Provide a rationale for the setting of common (minimum) fee levels and review the rates of Annexes IV and V in the light of this rationale.

The study has indentified a lack of rationale for the setting of minimum fees and for the fee levels currently indicated in Annexes IV and V[50].

A number of shortcomings have been identified as a result, suggesting that a review is necessary to provide more explicitly the rationale for the setting of these fees. If common fees are to be used, their levels should be revised in the light of this rationale. MS, particularly the NMS that joined the EU after the adoption of Regulation 882/2004, as well as stakeholders, need to understand the rationale for the setting of minimum fee rates in Regulation 882/2004.

It appears that it was not the original intention of the legislator to fix minimum rates in the first place[51]. In the deliberations that followed, particularly at Council level, it was decided

[50] There is no justification in the Regulation at present on how the rates of Annexes IV and V were fixed at the indicated levels. The rates previously applying under Directive 85/73 were used as a basis from which the rates of Annexes IV and V of Regulation 882/2004 were fixed. It is not clear and there is no documented evidence on whether and what criteria were used for this adjustment. In some cases, e.g. domestic controls in the dairy sector, the study has found that the EU dairy industry faced unjustified rises multiple times above previously applying levels, with repercussions on the dairy business in many cases (e.g. Netherlands).

[51] Commission proposal for Regulation 882/2004: COM(2003)52 of 5/2/2003.

that minimum rates should be introduced. This decision was based on the rationale that EU-wide uniform fees should apply as a minimum in order to prevent distortion of competition between MS.

This rationale appears to be more relevant in the case of veterinary checks on imports (Annex V) than in the case of domestic controls (Annex IV). The principle that the EU is a single bloc is applied vis-à-vis third country suppliers via a unique EU border line designating BIPs as the only entry points for third country imports into the Community. Promoting a harmonised level of controls is the key to the success of this approach. Ensuring that fees are collected at the same level throughout all entry points to the EU would therefore be consistent with this objective. This is demonstrated by the fact that the minimum fee rates of Annex V are respected by the majority of MS today[52].

In terms of the domestic controls, the study has found that – given the extent of the variation in costs of living and salary levels amongst the EU-27 – the rationale for common minimum fee rates for these controls appears to be rather weak. Furthermore, even though there is significant deviation from the minimum rates of Annex IV, there is no clear evidence of a distortion to competition at present. This appears to suggest that if common minimum rates for these fees were replaced by a subsidiarity approach by which MS are allowed to set these fees within commonly defined parameters (as discussed under points 3 and 4 below), the system would be more effective and more efficient.

As indicated in section 2.2, the current application of the financing provisions of Regulation 882/2004 has resulted in significant variation from the minimum rates in most cases. The majority of these cases concern fee rates applying to domestic controls under Annex IV. Of the 20 MS that apply minimum rates, at least 5 MS apply these in combination with flat rates, and in at least 10 MS the actual rates charged are below the minimum rates because the MS apply also fee reductions on the basis of Articles 27.5 and 27.6 (although, in many cases, full conformity to these paragraphs is also questionable).

The fact that MS are, in practice, finding it necessary to deviate from the minimum rates, to apply either higher rates or lower rates on the basis of real costs and/or taking into consideration other factors such as those of Articles 27.5 and 27.6, calls into question the rationale for the setting of minimum rates for domestic controls. Moreover, as will be discussed further below under point 5, it would appear appropriate to enlarge the scope of these controls over a larger part of the food chain. In this case, the rationale of setting minimum rates would be further called into question.

Consequently, there appear to be good reasons for fees on domestic controls to be defined on a MS basis, while fees on import controls could be defined on a common basis. If common fee rates are to be pursued on border controls, then the level at which these should be set should be reviewed. This could be done on the basis of actual costs and in finding a common denominator across the EU.

[52] With few exceptions, e.g. France charges lower rates defined on the basis of lower costs.

3. Improve transparency and accountability (to reinforce the provisions currently provided by Regulation 882/2004).

The principles of transparency and accountability are important for the smooth operation of the system, under all options. This could be ensured through: the definition of a transparent method for setting the fees, and for calculating fee reductions/penalties; the obligation for MS to communicate these to the Commission and stakeholders; and, some guarantee that the fee revenue goes back into the system.

Although certain such criteria currently exist in Articles 26-29 of Regulation 882/2004, the study has found that they are largely not respected by MS.

a) Transparency of fee setting

As discussed in section 2.2, fee setting is currently not transparent. The use of more refined criteria to establish the rates - as suggested under point 4 below - should partly address this problem.

The lack of transparency drives many stakeholders to suspect that the rates charged are higher than the real costs of the controls. This is particularly evident in the case of significant year-on-year rises in the level of fees, which are not otherwise justified by normal inflationary pressures (e.g. Sweden and Denmark on slaughterhouse fees).

To address this issue, some stakeholders suggest the use of maximum rates as ceilings for the amounts that MS may charge under the flat rate calculation. The danger of this approach is that it may be used to 'freeze' fee rates at the higher level, so it would only work in combination with a minimum fee level, to give effectively a range within which MS can set fees. Also, as discussed under the harmonisation option, fixing common fee rates would deviate from the principle of creating a level-playing field in the EU given the variation in economic and cost of living levels across the EU27.

b) Obligation of MS to communicate to the Commission / stakeholders

The lack of transparency in fee setting is made worse by the fact that MS are largely not reporting back to the Commission or to stakeholders the precise method and criteria they have used in the calculation.

Regulation 882/2004 needs to reinforce the obligation to communicate this information. Article 27.12 requests that MS make this information public. Article 27.6. refers to the obligation to communicate the conditions for fee rate reductions only to the Commission, while Article 28 does not make any provisions on this at all. As already noted elsewhere in this Report, to date only 18 MS have sent notification letters to the Commission. Furthermore, there are few cases where this information is communicated to stakeholders. The study has found that MS simply publish the transposition of the Regulation into national legislation, without providing further explanation to stakeholders and without any consultation (with the notable exception of a few MS).

At political level, stakeholders in the MS may be able to exert more pressure on their national governments for accountability. However, this would be considerably reinforced if it was specifically laid down in the Regulation.

Another measure to improve accountability would be to systematically introduce a section on fees and financing, or the implementation of Articles 26-29, under the FVO missions that are conducted on the basis of Regulation 882/2004[53].

c) Guarantee that fee revenues go back to finance the system

Although this is essentially the main rationale for the financing provisions of Regulation 882/2004, the study has found that, apart from the general lack of transparency on the channelling of these revenues, the use of these finances to refund the official controls system appears to be very diversified amongst the EU27 (2.2.5).

It would therefore appear appropriate, subject to the ability of EU institutions to enforce such rules within the general Community subsidiarity principles on public finances, to ensure greater transparency and accountability by MS on this issue.

4. Refine and define certain provisions more precisely at technical level.

As already discussed, to ensure a harmonised approach to the implementation of the financing provisions of Regulation 882/2004, in addition to the general principles of point 3 above, some common criteria could also be more clearly defined at a technical level. As we move towards fuller harmonisation such criteria would include for instance a common calculation method, common cost-recovery targets, precise cost categories that should be taken into account, and even maximum ceilings for each cost element.

In practice, to define the appropriate level of these criteria, it is important to strike the balance between harmonisation and subsidiarity: i.e. maximising flexibility while minimising the potential for deviation from the principles of the Regulation. Taking this sensitive balance into consideration, it would be difficult to introduce certain criteria. For example, it would be difficult to agree on a common calculation method or cost-recovery targets given that current methods and targets vary considerably between MS. Therefore, the criteria below (under point a) are presented in a stepwise approach as we move towards fuller harmonisation:

a) Criteria of Annex VI

To improve the coherence in the calculation of the fees by MS, there is a need for a more precise definition of the three categories of costs listed in Annex VI.

[53] This refers to FVO missions conducted in the wider context of Regulation 882/2004 and not specifically on Articles 26-29. Some of the relevant FVO reports (food hygiene, official controls on POAO, and import controls) cover more explicitly the subject of financing (**Annex 1.2**).

A first step would be to:

- Clarify the individual cost elements under the general heading "salaries for the staff involved in the official controls" (**criterion 1**). This will need to address current differences in the approach taken by MS with regards to the inclusion of social security and welfare costs. It will also need to specify whether the costs refer to the staff carrying out the controls or staff working in the overall system of official controls (including in this case adjacent services and administration), and whether this relates to the costs of time spent on the controls or total staff time.

- The scope of the various costs under **criterion 2**, in particular of 'associated costs', will need to be more strictly defined. The study has demonstrated the significant divergence between MS and within MS with regards to the inclusion of this type of costs.

- Provide an explicit list of laboratory analysis and sampling costs that can be included under **criterion 3**. This would need in particular to address current discrepancies between MS in terns of the inclusion of the costs of residues sampling/testing and BSE sampling/testing under this criterion.

- The time period over which all of the above costs are incurred needs to be defined.

In a further step to effectively harmonise the system across the EU, these criteria could be tied together in a **single calculation formula**, to be laid down in Annex VI. The availability of a formula would allow the Commission and stakeholders to check the validity of the MS CA calculation against an objective and standardised measure.

Such a formula could, for example, calculate the charge per hour of the staff employed to carry out the controls, as follows:

$$\textit{charge per hour} = \frac{\textit{(FTE/year x SC) AC (\%) x LC (\%)}}{h}$$

where:

FTE (full time equivalent)	= calculated on the basis of the total number of staff and number of working hours
SC	= staff costs (criterion 1)
AC	= administrative costs (criterion 2)
LC	= laboratory costs (criterion 3)

Further harmonisation could be pursued by establishing maximum ceilings, or a range, within which these costs will need to move in relation to the total costs. For example, administrative costs may be fixed at a maximum (e.g. 10%) or a range (e.g. 5-10%), as a ratio of total costs.

The definition of these limits requires more detailed technical analysis. For example, in establishing the ratios, due consideration needs to be paid to the relative importance of these costs in each MS as affected by the cost of living differences[54]. There are also arguments against the use of upper limits, because they may risk 'locking in' current inefficiencies of the system. For example, MS may interpret such limits as a guideline, thereby neglecting reforms that could improve the ratio of each type of costs. In conclusion, at present it would be difficult and risky to do this at an EU level, but could be done on a MS basis.

Many stakeholders and some MS have expressed the view that, in order to provide greater incentives for inspection efficiency, Regulation 882/2004 could be more explicit on the number and profile of staff that is required to perform the official controls. In particular, it is suggested that the actual number of official veterinarians and auxiliaries per number of animals inspected should be specified in EU law[55].

As already discussed in section 2.3.3.2, this would be difficult to achieve at present at EU level for the EU27. It may also reduce the flexibility to incorporate in the legislation the provisions on reduced frequency and incentives for FBO responsibility. However, it can and should be explicitly defined at MS level for each MS.

On the other hand, the profile and contractual conditions of the staff employed to carry out the official controls could – at least in part - be addressed at EU level. In particular, this issue calls for a review of the requirements of Regulation 854/2004 that only official veterinarians[55] can carry out audits and inspections of slaughterhouses, game handling establishments and certain cutting plants[56]. This requirement is considered to impose high costs. If this requirement was to be relaxed, it could lead to more cost-efficient controls. However, such issues fall outside the scope of the current analysis.

Finally, stakeholders in particular argue that incentives to achieve greater cost efficiencies at CA level could be achieved via some form of cost-sharing of at least part of these costs. The most eligible cost item in this respect would be costs which FBOs have no power to control, in particular administrative costs and some aspects of staff costs. In the first instance,

[54] While staff costs greatly vary between MS, and administrative costs may also be expected to vary significantly, the costs of laboratory analysis are expected to be more harmonised across the EU. This will affect the relative weight of each type of costs in the total costs for each MS, e.g. in Bulgaria where staff costs are some of the lowest in the EU, the ratio of staff costs will be lower and of laboratory costs higher than in the UK or Germany where staff costs are relatively far more important.

[55] Regulation 854/2004 of the Hygiene Package provides a broad definition of the terms 'official veterinarian' and 'official auxiliary' (Article 2.f/g and Article 2.h, respectively).

[56] Member States have discretion to decide which are the most appropriate staff for audits and inspections of other types of establishments.

administrative costs could be shared 50:50 between the government and stakeholders. Such a scheme would work better under a *bonus-malus* system encompassing the extended food chain (as discussed under point 5 below). Again, the principle of the scheme only should be laid down in EU law, with actual implementation details (e.g. establishing the actual amount of these costs and the relative weight in the total cost calculation) left to MS.

b) Criteria of Article 27.5 (small, traditional and geographically remote FBOs)

Regulation 882/2004 envisages special treatment for business operating under difficult conditions, such as small, traditional and geographically remote FBOs. Again, as discussed in section 2.3.2.4, the application of these provisions has been variable amongst the EU27. Overall, as it currently stands, the application of the Regulation has worked to the detriment of this type of businesses.

It may be appropriate therefore to ensure that the turnover of a business is taken into account in the fee calculation, for example in the form of a reduction according to scale. The exact level or scale of turnover below which reductions can apply can be established at MS level, in accordance with the need to maintain some flexibility as judged most suitable to national/local conditions.

5. Update Articles 26-29 of Regulation 882/2004 with the progress made since the adoption of the General Food Law and the Hygiene Package.

Regulation 882/2004 was adopted at the same time as the General Food Law and the Hygiene Package. It is therefore normal that 5 years after the adoption of this legislation the progress achieved by its parallel implementation will need to be taken into account.

The General Food Law and the Hygiene Package place the primary legal responsibility for ensuring feed and food safety to feed and food business operators (FBOs). This principle is incorporated into Regulation 882/2004, which *inter alia* calls for the "*frequency of official controls to be regular and proportionate to the risk, taking into account the results of the checks carried out by FBOs under HACCP based control programmes or quality assurance programmes, where such programmes are designed to meet requirements of feed and food law, animal health and animal welfare rules*" (preamble 13).

The study has identified the need for an update, both in form and in principle, of the financing provisions of Regulation 882/2004 to the changing circumstances brought about by this legislation. In particular the following recommendations can be made:

a) Improve/update reference to the Hygiene Package

To improve the consistency of Regulation 882/2004 with this approach, precise reference to the Hygiene Package should be made in Articles 26-29.

As the text currently stands, Article 27.6 refers to the possibility to reduce fees below the minimum rates where official controls are carried out with a reduced frequency "in view of

own check and tracing systems". There is no further reference to EU legislation in this respect.

At the same time, Annexes IV and V refer to preceding legislation which is now partly repealed or replaced by the Hygiene Package (e.g. Directive 89/662, see Annex 1.1).

b) Reinforce incentives (and disincentives) to improve FBO responsibility

As already discussed in length elsewhere in this Report, the need to adjust official controls to the actual risks stems in particular from two trends:

- The growing introduction of self-control (GHP and HACCP) and traceability systems in the meat and dairy industry (and all sectors for which fees are collected on a compulsory basis), whereby there is less need for actual inspections on the product and more need for verification of compliance. Hence, there appears to be a need to tie incentives/disincentives more closely to risk reduction where such systems have been introduced and operate effectively.

- The changing structure and operation of the food industry and food consumption, whereby risk occurrence and the dangers to public health are increasingly spread along the food chain rather than concentrated in a few points of the chain only. Hence, there appears to be a need to actively engage, by providing incentives/disincentives, the extended chain of FBOs involved from 'farm to table' (as discussed under **point c** below).

There is wide consensus amongst the industry and MS that the revision of the financing provisions of the Regulation presents a unique opportunity to provide an incentive to reinforce the uptake of self-control by the industry, which would be consistent with the principles and objectives of the General Food Law and the Hygiene Package.

This opportunity remains largely untapped at present. The study has found that there is currently substantial variation and lack of consistency in the application of the provisions of Article 27.6 by MS. This creates a situation whereby the industry is not facing a level playing field in Europe, while respect of the principle of self-regulation is undermined. Similarly, although Article 28 can be used to target FBOs with inefficient control systems and create an incentive to improve them, there are doubts as to how effectively these powers are currently used across the EU.

Consequently, fee reductions need to be further encouraged and non-compliance further discouraged. At the same time, the calculation of the reduction could be further refined and made more transparent, in line with the recommendations under points 3 and 4 above.

The study has identified the potential to effectively implement this on a *'bonus-malus'* basis. This would expand on the provisions currently made by Article 27.6 (for the *'bonus'*, i.e. rate reduction), and Article 28 (for the *'malus'*, i.e. charge non-compliance costs). Tying together, through a single system, the reward for compliance with the penalty for non-compliance, would provide a more coherent and transparent system of incentives/disincentives than the current provisions of the Regulation.

It is noted that some MS, in consultation with the industry, are already moving in this direction. There may be a need to ensure that a harmonised approach is followed on this across the EU. Indeed, as such models are currently at an early stage of development, there is an opportunity to do this based on the principles and objectives of EU law. Although it would be extremely difficult – if not impossible - at present to develop a common *bonus-malus* system across the EU27, it would be appropriate to guarantee that any national *bonus-malus* systems designed by MS are based on common principles as laid down in EU legislation. In particular, the reductions and penalties envisaged under MS *bonus-malus* systems should be based on the general principles of Articles 27.6 and Article 28 of Regulation 882/2004.

Such criteria should include specific reference in Articles 26-29 to:

- The requirement to reduce fee rates for FBOs with established HACCP systems; conversely, penalties for FBOs with non-established HACCP systems;

- The requirement to reduce fee rates for FBOs with a record of compliance to EU hygiene requirements over a given number of years; conversely, penalties for FBOs with a record of non-compliance over a given number of years.

The use of additional criteria, such as private assurance schemes developed in consultation with the CAs of MS, or quality assurance systems based on international standards (e.g. EN 29000) may also be considered.

The actual modalities of these criteria (e.g. rates and progression over time of reductions/penalties; number of years over which to measure compliance and non-compliance etc.) could be left to MS to define. At the same time, it will be important to ensure that the needs of small, traditional and geographically remote business are taken into account (as discussed above under point 4.b), so that they are not discriminated against.

Transparency and accountability of the application of these rules by MS would need to be ensured along the lines discussed under point 3 above.

c) Enlarge scope to the wider food chain

As already noted, the meat industry in particular feel disadvantaged vis-à-vis other food sectors, especially the processing and catering sectors where the risk to human health can also be relatively high. This can be done by extending the financing obligation to stages upstream and downstream of the slaughter and meat cutting operations, according to the modalities of Option 3, i.e. encourage extension of the system but leave it up to MS to define (**Table 3-4**).

4. Conclusions and recommendations

Significant progress has been made in the application of Regulation 882/2004 by MS, and in particular the financing provisions of Articles 26-29, since their entry into force on 1 January 2007. However, the enforcement of these provisions has been slow and gradual, with important delays in most MS. In some cases, full implementation is still pending subject to the approval of draft national legislation enacting Article 27, despite the fact that the deadline for its definitive entry into force was 1 January 2008. In these cases the fee system in place is largely based on that laid down in previous, repealed legislation (Directive 85/73).

In conclusion therefore, despite progress, currently the application of the financing provisions of the Regulation can be considered incomplete at EU level.

Apart from the delays in transposition, a number of shortcomings have been identified in the application in practice of the current system for the financing of official controls, as laid down in the Regulation. As outlined in detail in section 2, such shortcomings include:

- In some MS, despite enacting legislation being in place, fees are not collected or are only partially collected (e.g. collected below the minimum fee rates or not collected in all sectors where the collection of a fee is compulsory).

- There is significant variation between MS in the interpretation of the various provisions of Article 27. Overall, there are extensive complaints, both from industry and from MS authorities, that there is excessive scope for wide and open interpretation of the rules due to the ambiguous formulation of Article 27 and Annexes and the lack of a clear understanding of these provisions. The following issues have been identified as providing scope for misinterpretation:

    - Reference in Regulation 882/2004 to outdated legislation, e.g. in Annex IV to the old Directives on official controls preceding the Hygiene Package regulations. This has led to confusion in the implementation of the provisions both for the authorities and for business operators;

    - The general formulation of the three criteria of Annex VI. In particular, the problem appears here to be the lack of definitions for some of the terms used. For example, the term 'associated costs' (criterion 2) is believed to lead to the inclusion of administrative costs which may not be directly justified by the official controls in place. This has led to a lack of uniformity in approach, and is considered to be a key factor explaining the wide variation in fee rates between MS or even within MS.

    - The complex structure of Article 27, in particular the interrelation and formulation of its various paragraphs, make the various provisions difficult to comprehend. This has led to a situation where in some MS a combination of minimum rates and flat rates apply, which was not the original intention of the legislation (the intention being that either one or the other should apply).

  - The lack of a rationale for the minimum rates of Annex IV and V. The study has identified the need for a clear and transparent basis for the setting of these fees, particularly in the case of domestic controls. As it currently stands, the minimum fee rates are not fully respected and there are many complaints from industry that these are too high or unfairly set.

- Where flat rates (rather than the minimum rates of Annex IV and V) are used, there is generally a lack of transparency on the calculation method that has been followed. This can be seen both from the notification letters sent by MS to DG SANCO pursuant to Article 27.12 of the Regulation, and from the results of our survey. Very few countries describe their calculation methods, and even in these cases there is no clarity on the various elements covered by the 'administrative costs' which are always taken into account in the calculation.

- There is significant variation in the channelling and use of the revenues raised from the fees. Although the use of these revenues to finance the official controls system is the main rationale for the financing provisions of Regulation 882/2004, as it stands the Regulation does not make any reference to the obligation of MS to ensure this is taking place. The study has found that there is generally a lack of transparency on the channelling of these revenues, and the information collected through the survey demonstrates that the extent to which these funds are used to refund the official controls system appears to be very variable amongst the EU27.

In addition, the study has identified some overarching challenges which go beyond the scope of the study and of Regulation 882/2004 as such. These issues are nonetheless discussed in this Report, as it is not easy to separate the review and evaluation of the fee system from the overall organisation and structure of official controls. They also have significant implications when examining the options for the future:

- The fact that there appear to be widespread variations in the level, frequency and standard of the official controls performed in the MS of the EU-27. Although not dealt with directly by this study, this point is relevant, because *à priori* the cost of controls (and the associated fee for cost-recovery) should in practice relate to the quantity and quality of the services provided. The need to address this point has therefore emerged in our interviews with industry in particular. From a review of FVO Reports on official controls carried out in MS under the Hygiene Package, it is evident that the level and standard of the controls remains highly variable between MS (some less extensive issues of variability appear to exist also with import controls performed at BIPs).

  At the same time, there are on-going discussions concerning the improvement of the inspection services, e.g. in slaughterhouses, to take into account technological progress and the increasing uptake of self-control systems (notably GHP and HACCP) following the introduction of the General Food Law and the Hygiene Package.

- The significant variation in the structure and organisation of the CAs in the MS, and of the staff (veterinarians, hygienists) performing these controls. This point also has financial implications of relevance to this study.

It is noted that the addition of several layers of competent/executive bodies is usually dictated by constitutional law and the administrative traditions of a MS, and is therefore difficult to change as such. On the other hand, there is currently a trend in the EU to rationalise public services, and this includes consideration of alternative employment models for the staff responsible for the official controls.

- A number of external factors can be added to these challenges, such as technological progress, market trends and the structure of the industry, which can affect the efficiency with which official controls are organised and performed.

These issues call into question the principles and objectives of the Regulation to ensure a harmonised approach across the EU with regard to official controls. The study has found that the current organisation of the fees system in the MS creates some distortions in competition (particularly discriminating against the meat industry and smaller businesses) as well as having implications for the efficiency and effectiveness of the controls. This can potentially undermine the ultimate objectives of the system to guarantee food safety and the protection of public health as well as the free circulation of goods within the internal market.

The identified shortcomings can be broadly attributed to:

- **Problems within the EU legislation**. This refers to the various issues identified in the formulation of Articles 26-29 of Regulation 882/2004 as such (including broad definitions in Annex VI, confusion in the structure and interception of the various paragraphs of Article 27 & Annexes IV and V, and concerns on the level of minimum fees and the fact they are expressed on a tonnage basis). It also includes issues identified in the wider context of Regulation 882/2004 (such as broad reference to official staff requirements) and its relation to other legislation (particularly the Hygiene Package). It is worth noting that, even in the case of the minimum rates of Annexes IV and V, stakeholders as well as most CAs were unclear on how this particular level of fees was set in the legislation in the first place;

- **Problems in MS interpretation**. These appear to arise largely as a consequence of the discretion given to MS to implement the rules, within a broadly defined set of criteria, and the relatively limited accountability of authorities at MS level. Although Regulation 882/2004 implicitly refers to a central authority as having the ultimate responsibility for effective and efficient coordination even in cases where competence is conferred to authorities at a more decentralised level (Article 4.3), the study has found that in practice this is not always guaranteed and that a large number of authorities may be involved with little coordination between them. This, in turn, has implications for the accountability of the central competent authorities of the MS to the EU institutions.

To address the various shortcomings in the current application of the Regulation[57], the study has examined various scenarios within the following key options: moving from the current system towards more harmonisation, moving towards more subsidiarity; and, the continuation of the *status quo*. A complementary option, which in fact transcends the above three alternative options, is the extension of the financing obligation to sectors beyond those currently covered by the Regulation.

The scenarios were developed by combining key components, which were identified on the basis of the intervention logic of the system as laid down in the current legislation (Articles 26-29). These are: the basis of fee charging; level of fee rates; fee calculation method; fee reductions and penalties; and, list of activities covered by fees (**Table 3-1**). A constant feature of all scenarios under each option is the basis of fee charging: compulsory for all MS under the harmonisation option, optional under the subsidiarity option, and a mixed approach under the continuation of current rules.

The scenarios were assessed in terms of advantages and disadvantages, feasibility (whether and under which conditions they would work in practice), and the acceptance that they might have from the various groups of stakeholders.

The key criteria applied for the assessment were defined in the context of the main goals and principles of Regulation 882/2004, as well as the wider objectives of Community food and feed law and the Lisbon strategy, as follows: improving the effectiveness and efficiency of the official controls; simplification of the current system; and providing the right incentives for FBOs to encourage compliance and discourage non-compliance.

It is noted that these criteria may not necessarily point in the same direction. For example, pursuing simplification may not be compatible with the increasing complexity required to ensure a harmonised approach towards cost-recovery across the EU. It would be important therefore to define the overall objective of the policy approach to be followed at EU level. The initial assessment of the scenarios provided here aims to provide a balance between the various objectives and needs of stakeholders.

The assessment has shown that neither harmonisation nor subsidiarity would work in their most extreme expression. Determining a uniform level of fees across the EU-27, under the fuller harmonisation scenarios, may be unworkable in practice, because the large variation between MS in the actual cost of the controls would make it difficult to find a common denominator in terms of fee levels. Leaving full discretion to MS to develop their own system for the financing of official controls under full subsidiarity, given the current divergence in economic and industry development between MS, may not provide the resources to maintain (or improve) the current standard of controls. Although both scenarios would simplify the current system at the level of central management (particularly if full subsidiarity is pursued),

[57] It is noted that addressing some of the current shortcomings identified by this study requires action that extends beyond the financing provisions of Regulation 882/2004, to the wider legislation in the area of food and feed safety. The discussion of solutions to such shortcomings was therefore limited to its relevance to the costs and the financing of the official controls.

they ultimately carry the risk that they may not lead to sufficient cost-recovery in some MS, and that the level of cost-recovery may vary significantly between MS. This could undermine the overall effectiveness of the official control system at EU level, and/or act as a disincentive to improving its efficiency.

An intermediate solution would clearly provide the most pragmatic way forward. Intermediate scenarios provide different degrees of balance between the flexibility that the majority of MS require, as an incentive *inter alia* to rationalise the system, with the simplification needed at the level of central management (Commission, MS CCAs). The study has found that the rationale for a flexible approach, which underlies the current Regulation, continues to apply today. The majority of MS CAs and stakeholders have indicated that a system that allows MS flexibility to set the fee rates, within a commonly agreed set of rules, continues to be the most favoured option. This approach is considered the most appropriate for the system to be able to adapt to national conditions.

On balance, amongst the various scenarios that can be envisaged at an intermediate level, those leading to more subsidiarity appear to be more attractive than those that lead to more harmonisation. This is because the degree of flexibility given to MS increases, while the degree of complexity of the legislation diminishes.

Moving towards more subsidiarity, if the primary aim of the legislation is to ensure that MS have the funds necessary to cover the costs of official controls whatever the means, scenario 4 (maintain only the general obligation for MS to provide adequate funding, in the line of a modified Article 26) could present an attractive alternative to pursue for the purposes of simplification.

The disadvantage of such a system would be that it could result in wider variations between MS than those created by the current system. To reduce these variations, conditions could be attached in the form of common principles at EU level for a more harmonised calculation of the fees and/or fee reductions/penalties across the EU (scenario 3).

Although the continuation of the *status quo* would be an alternative intermediate solution, the analysis of current shortcomings under section 2.2 has shown that to *do nothing* is clearly not an acceptable or a pragmatic option. However, the current situation represents the political reality of the evolution of the system since Directive 85/73. Thus, if the current mixed approach of the Regulation was to be maintained, certain improvements could be introduced as follows: at a general level improve the understanding of Regulation 882/2004; provide a rationale for the setting of minimum fee levels and review the rates of Annexes IV and V in the light of this rationale; improve transparency and accountability criteria (to reinforce the provisions currently provided by Regulation 882/2004); refine and define certain provisions more precisely at technical level; update Articles 26-29 of Regulation 882/2004 with the progress made since the adoption of the General Food Law and the Hygiene Package.

Whatever the scenario to be pursued at an intermediate level, the study has identified the need for the definition of common principles that can apply for a more harmonised calculation of the fees and/or fee reductions/penalties across the EU. These could be general principles only or they could be more detailed criteria defined at a technical level. General principles would

include: transparency in the calculation method of fee setting and for calculating fee reductions/penalties, on the basis of actual costs; and, the obligation for MS to communicate these to the Commission and the public. Detailed technical criteria would include for instance the calculation method to be followed for fee setting and for fee reductions/penalties, cost-recovery targets that should be sought, precise cost categories that should be taken into account, and even maxima/ceilings for each cost element.

The level at which common principles should be set needs to be further explored, as it is crucial in controlling MS flexibility and mitigating the potential disadvantages of subsidiarity. The greater the degree to which EU legislation moves from defining common principles and general guidelines (as is currently the case with Articles 27-29 of Regulation 882/2004) to more technical criteria, the more difficult it will be for MS to deviate from a common denominator. On the other hand, this increases the complexity of the provisions and the extent of follow up needed at central level (Commission, MS CCAs).

In terms of the calculation of fee reductions and penalties, in particular, the principles could build on the advantages and benefits of self-control systems, as introduced at EU level by the Hygiene Package. The study has examined the possibility to expand on existing provisions of the Regulation, by following an integrated approach more consistently linking compliance and non-compliance, and therefore fee reductions and penalties, to the uptake of self-control systems by industry (through a *bonus-malus* system). Both MS and stakeholders are in principle in favour of providing incentives to FBOs to assume greater responsibility. The extent to which this can be encouraged will depend on the degree to which an approach on how to reward compliance can be developed (Articles 27.5/6) and, conversely, how to penalise non-compliance (Article 28). This could be through an integrated *bonus-malus* system. Such systems have already been developed at MS level in a few MS (e.g. Belgium) and these highlight the advantages of an integrated approach. The study has concluded that, although the development of such systems needs to be encouraged at EU level, their actual design can at present only be pursued at MS level.

In addition to the above, the cross-cutting theme of the extension in scope of the Regulation was favourably assessed, in relation in particular to the inclusion of all stages along the food chain. The case of the extension of the system to stages upstream and downstream of the slaughtering and meat cutting operations along the meat production chain was a case in point. The study has concluded that an extension in this form would spread the costs of controls currently pursued only at a particular point in the chain but for the benefit of stages upstream/downstream more equitably along the food chain. Again, this approach is currently being adopted/explored in several MS.

This forward looking element of the project aimed to provide an initial assessment of certain key scenarios. The purpose was not to provide a full feasibility analysis (whether at political or technical level). Nonetheless, specific recommendations were made to develop these scenarios, or indeed other potential combinations of their components, including through future impact assessments.

Annex 1

1.1 List of relevant background legislation

Note: EU legal acts quoted in this Report refer, as applicable, to the last amended version.

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

Hygiene Package:

- Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs
- Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin
- Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption

Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene. In particular Article 10 "Approval of feed business establishments".

Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

Commission Regulation (EC) No 2076/2005 of 5 December 2005 laying down transitional arrangements for the implementation of Regulations (EC) No 853/2004, (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004.

Previous legislation:

Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat

As amended by:

Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC

Internal market (Annex IV, Regulation 882/2004)

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 (Annex listing checks is now replaced by Annexes to Regulation 853/2004)

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

Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing

Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC

Imports (Annex V, Regulation 882/2004):

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

Council Directive 91/496/EEC 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

Not mentioned in Regulation 882/2004 but related:

Regulation (EC) NO 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC :

Official controls of MRLs

Article 26

Official controls

1. Without prejudice to Directive 96/23/EC (1), Member States shall carry out official controls on pesticide residues in order to enforce compliance with this Regulation, in accordance with the relevant provisions of Community law relating to official controls for food and feed.

2. Such controls on pesticide residues shall, in particular, consist of sampling and subsequent analysis of the samples and identification of the pesticides present and their respective residue levels. Such controls shall also be carried out at the point of supply to the consumer.

Council Directive 2002/89/EC of 28 November 2002 amending Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community:

Article 13d

1. Member States shall ensure the collection of fees (Phytosanitary fee) to cover the costs occasioned by the

documentary checks, identity checks and plant health checks provided for in Article 13a(1), which are carried out pursuant to Article 13. The level of the fee shall reflect:

(a) the salaries, including social security, of the inspectors involved in the above checks;

(b) the office, other facilities, tools and equipment for these inspectors;

(c) the sampling for visual inspection or for laboratory testing;

(d) laboratory testing;

(e) the administrative activities (including operational overheads) required for carrying out the checks concerned effectively, which may include the expenditure required for pre- and in-service training of inspectors.

2. Member States may either set the level of the Phytosanitary fee on the basis of a detailed cost calculation carried out in accordance with paragraph 1, or apply the standard fee as specified in Annex VIIIa.

Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community

1.2 List of reviewed FVO reports and MS notification letters to DG SANCO

Note: Refers to the latest relevant FVO Reports, and notification letters, as available up to 15 October 2008.

		FVO Reports available**	-		***Fees mentioned in Report: Y=yes N=no***							**Notification letters**
		OCs FH	***fees***	**ICs BIPs**	***fees***	**ICs PH**	***fees***	**PRCs**	***fees***	**Other**	***fees***	*Availability*
1	Austria	8176/2006*	*N*									Y
2	Belgium	7196/2007	*N*	8121/2006*	*N*	7426/2007	*Y*					N
3	Bulgaria	7950/2008* 7197/2007	*N* *N*	7571/2007	*Y*							Y
4	Cyprus	8173/2006*	*N*	8057/2006	*Y*							N
5	Czech Republic	8177/2006* 7838/2008	*N* *N*	7746/2008 7727/2005	*N* *Y*							Y
6	Denmark	8153/2006*	*N*			7378/2007	*Y*			8004/2006 (fish) 7349/2007 (ICT LAs)	*Y* *N*	Y
7	Estonia	8194/2006*	*N*	8058/2006	*Y*							Y
8	Finland	8170/2006*	*N*	7582/2007	*Y*			8108/2006	*N*			Y
9	**France**	**7223/2007**	***N***	**7185/2007***	***N***			**8113/2006**	***N***			**Y**
		8179/2006*	***N***	**8055/2006**	***Y***							
10	**Germany**	**7430/2007*** **8183/2006***	***Y*** ***N***	**7917/2007**	***Y***							**Y**
11	Greece	7201/2007	*Y*	7242/2007	*Y*			7218/2007	*N*	7695/2008 (VRCs) 7724/2008 (feed OCs)	*Y* *N*	Y
12	Hungary	8209/2006*	*N*	7235/2007	*Y*	7419/2007	*Y*			8012/2006 (VRCs)	*N*	Y
13	Ireland	8166/2006*	*Y*									Y
14	**Italy**	**7193/2007**	***N***	**7275/2007**	***Y***	**8119/2006**	***N***	**7194/2007**	***N***			**N**
15	Latvia	8206/2006*	*N*	7280/2007	*Y*							Y
16	Lithuania	7190/2007	*N*	7277/2007	*Y*					8007/2006 (VRCs)	*N*	Y
17	Luxembourg	8189/2006* 7662/2005	*N* *Y*	8133/2006*	*N*			8099/2006	*N*			Y
18	Malta	7588/2007*	*N*	7283/2007	*Y*							N
19	Netherlands	8146/2006* 8059/2006	*N* *Y*	7583/2007	*Y*	8258/2006	*Y*					N
20	**Poland**	**7442/2007** **7728/2005**	***N*** ***Y***	**8063/2006**	***N***	**7376/2007** **8132/2006**	***Y*** ***N***					**Y**

		FVO Reports available**	-		***Fees mentioned in Report: Y=yes N=no***							**Notification letters**
		OCs FH	***fees***	**ICs BIPs**	***fees***	**ICs PH**	***fees***	**PRCs**	***fees***	**Other**	***fees***	*Availability*
21	Portugal	8172/2006* 7443/2007*	*N* *N*	8097/2006	*Y* *N*			7222/2007	*N*	7696/2008 (VRCs)	*N*	N
22	Romania	7383/2007*	*N*	7748/2008 7301//2007	*N* *Y*							N
23	**Slovakia**	**8192/2006***	***N***									**Y**
24	Slovenia	8195/2006*	*N*	7289/2007	*Y*							Y
25	Spain	8205/2006* 7448/2007*	*Y* *Y*	8062/2006	*Y*	8128/2006	*N*	7179/2007	*N*			N
26	Sweden	8186/2006* 7449/2007*	*Y* *Y*	8330/2006	*Y*	7433/2007	*Y*	8115/2006	*N*			N
27	**UK**	**7192/2007** **8323/2006*** **8190/2006***	***N*** ***N*** ***N***	**8098/2006**	***N***	**7429/2007**	***Y***					**Y**

FVO Reports:

OCs FH: Official Control Systems in place for Food Hygiene (within the meaning of Regulation (EC) 852/2004) Traceability and Labelling
Reports marked with*: Official Controls on the Safety of Food of Animal Origin (meat , milk and their products)
ICs BIPs: Import/Transit Controls and Border Inspection Posts
Reports marked with*: Imports Controls on Food and Feed of non-Animal Origin
ICs PH: Import Inspections for Plant Health
PRCs: Controls of Pesticide Residues
VRCs: Veterinary Residues Controls
ICT Las: Intra-community trade live animals
CP: Country Profile

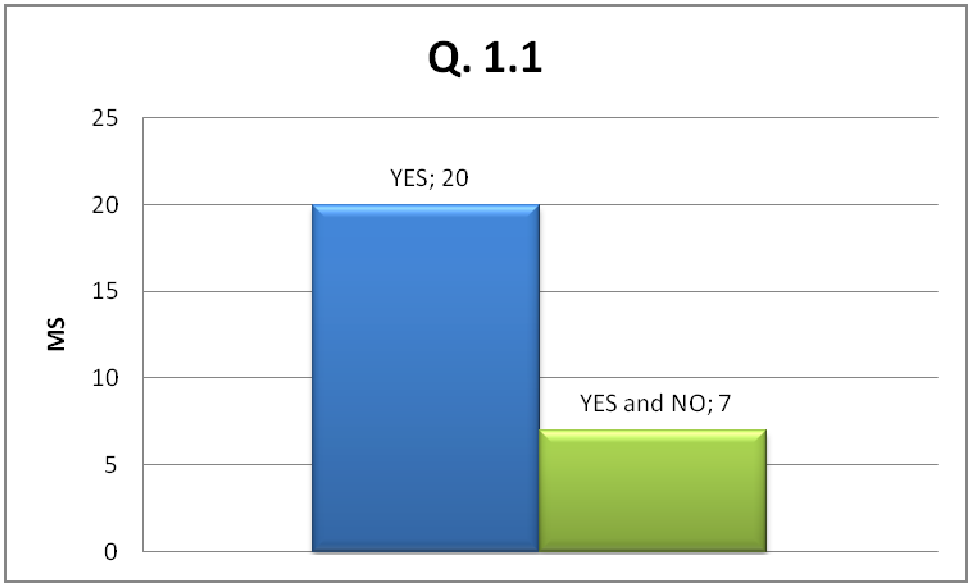
** Only latest Report is mentioned under each category

Bold: case study countries

Annex 2

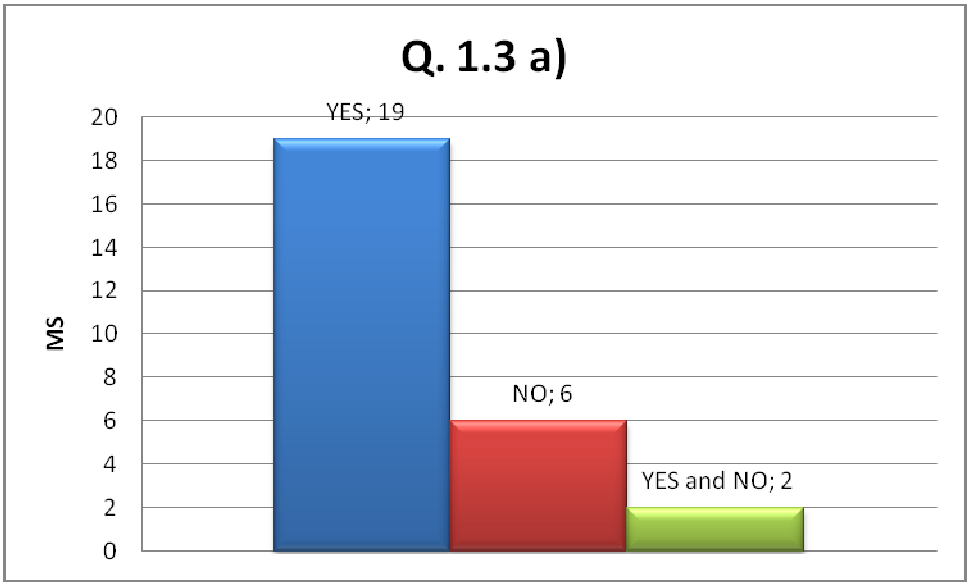
2.1: SURVEY of EU-27 CAs: results

1.1 Are fees or charges collected for covering the costs incurred through official controls in the areas covered by Regulation 882/2004?



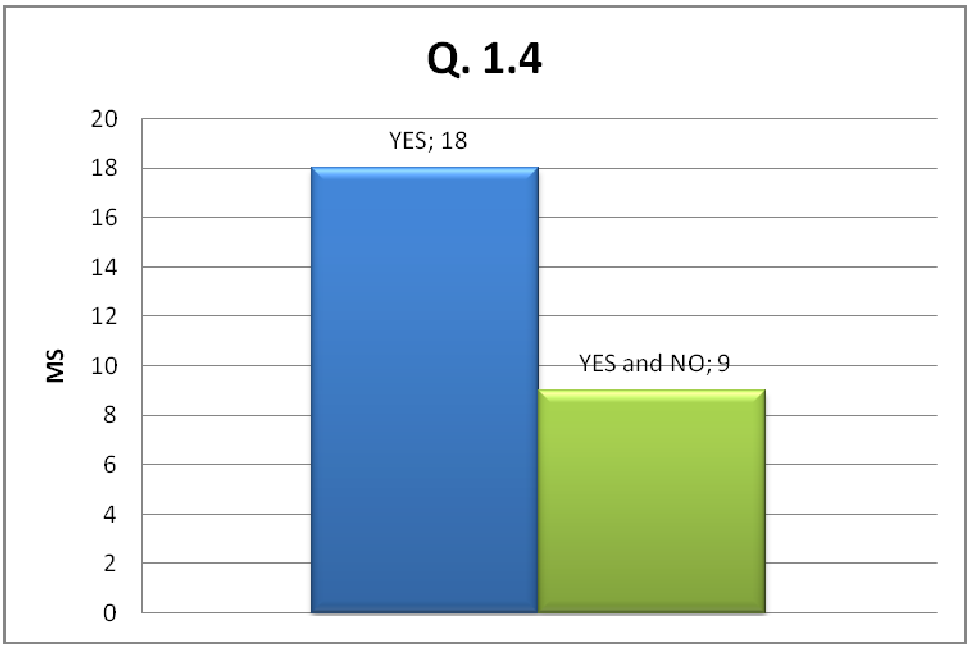
NB. YES & NO means there are cases of official controls for which fees are not collected.

1.3 a) Are fees collected to cover the costs occasioned by official controls (within the meaning of Art.27 (1) of Reg.882/2004)? (PLEASE INDICATE NON-COMPULSORY FEES ONLY)



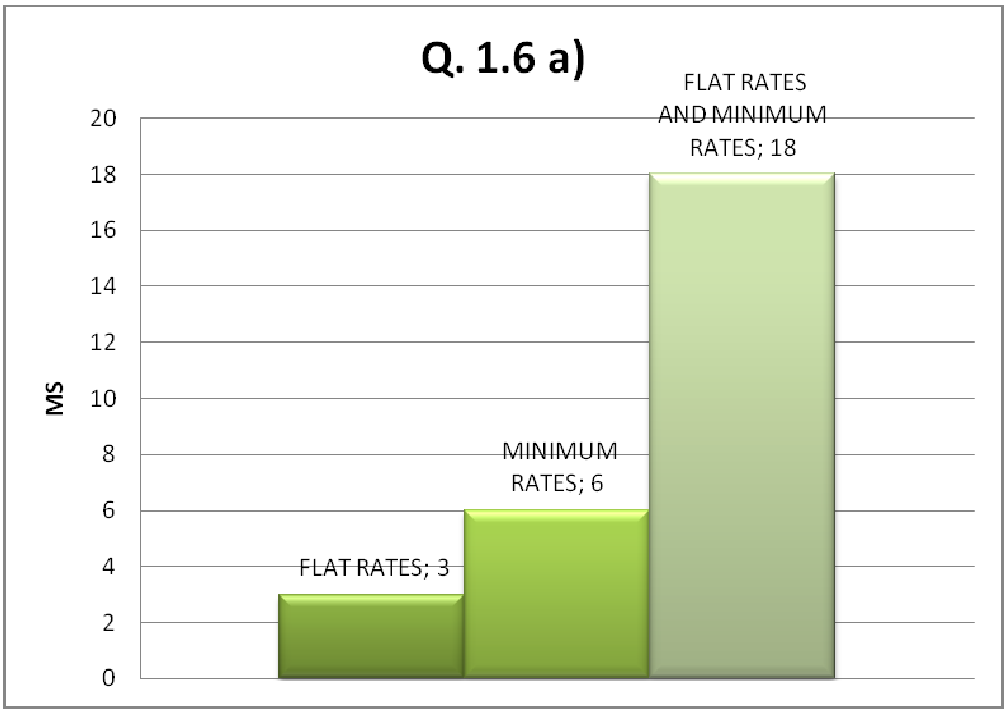
NB. YES & NO means there are only some regions within the MS for which such fees are collected.

1.4 Are fees or charges collected according to Art.27 (2) of Reg.882/2004 (COMPULSORY COLLECTION OF A FEE)?



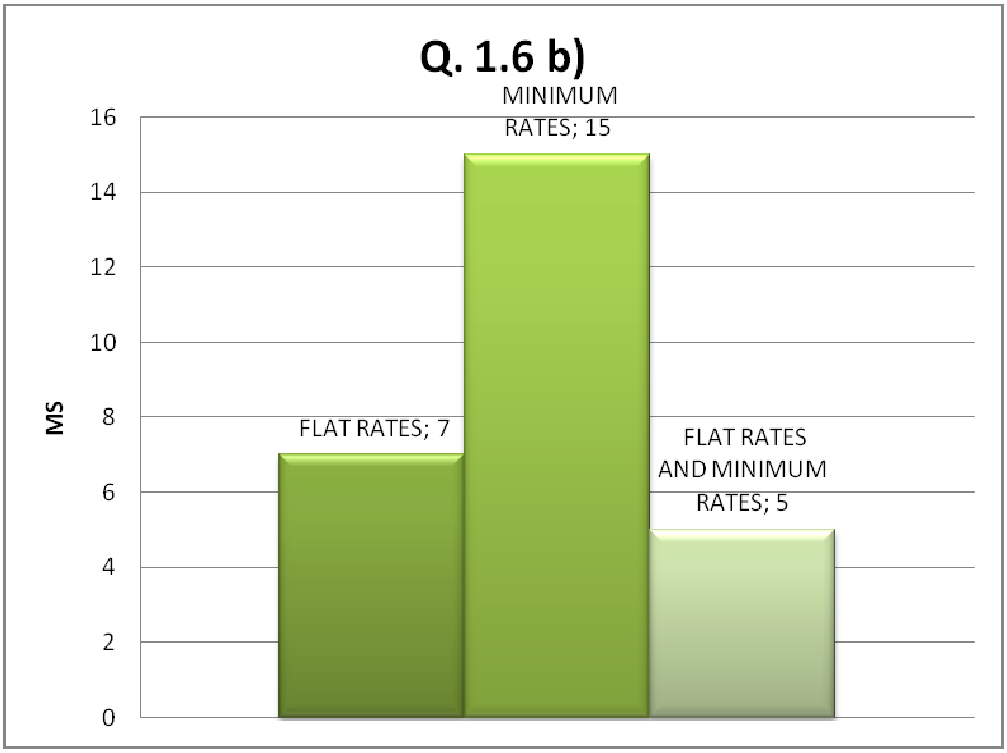
NB. YES & NO means there are some activities of Annex IV and V for which fees are not collected.

1.6 a) Which system is being applied for setting fees/charges (system defined according to paragraph 4b of Art.27 of Reg. 882/2004?



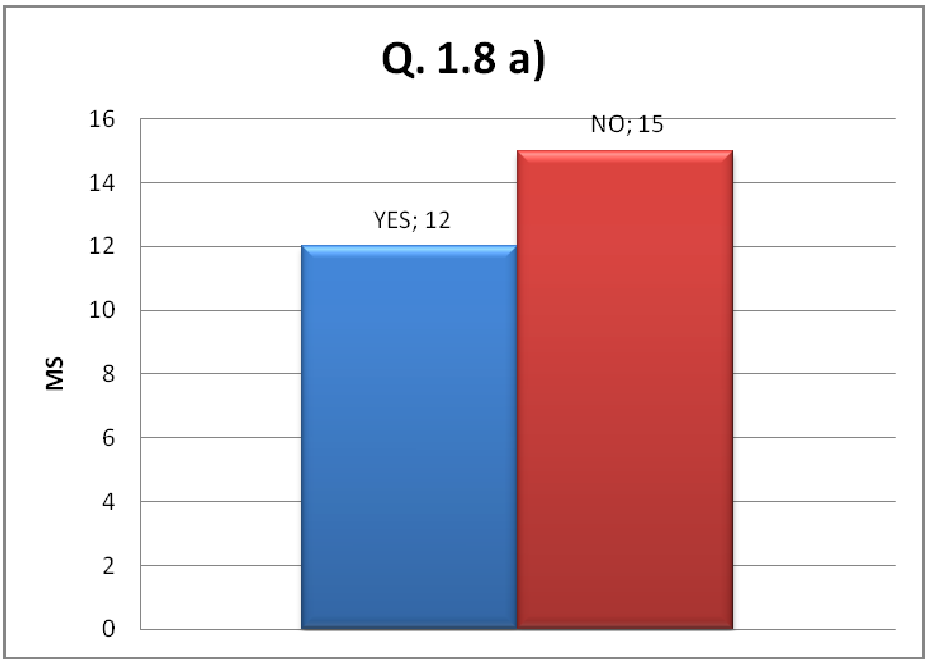
NB. Combination of flat rates and minimum rates can be for same or for different categories of activities

1.6 b) Imports: which system is being applied for setting fees/charges (system defined according to paragraph 4b of Art.27 of Reg. 882/2004?



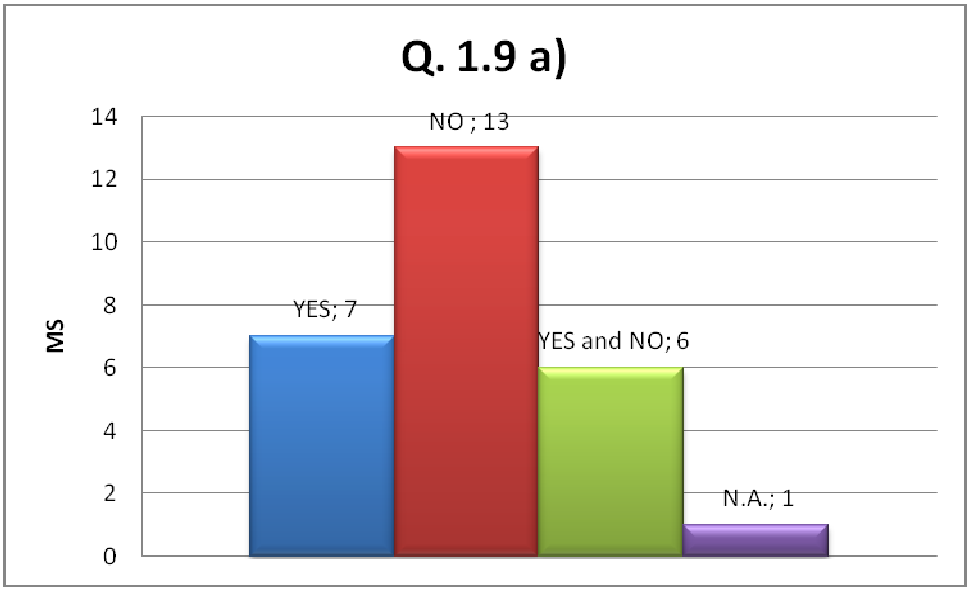
NB. Combination of flat rates and minimum rates can be for same or for different categories of activities

1.8 a) Are there cases where a fee below the minimum rate is being applied (according to Art.27 (6))?



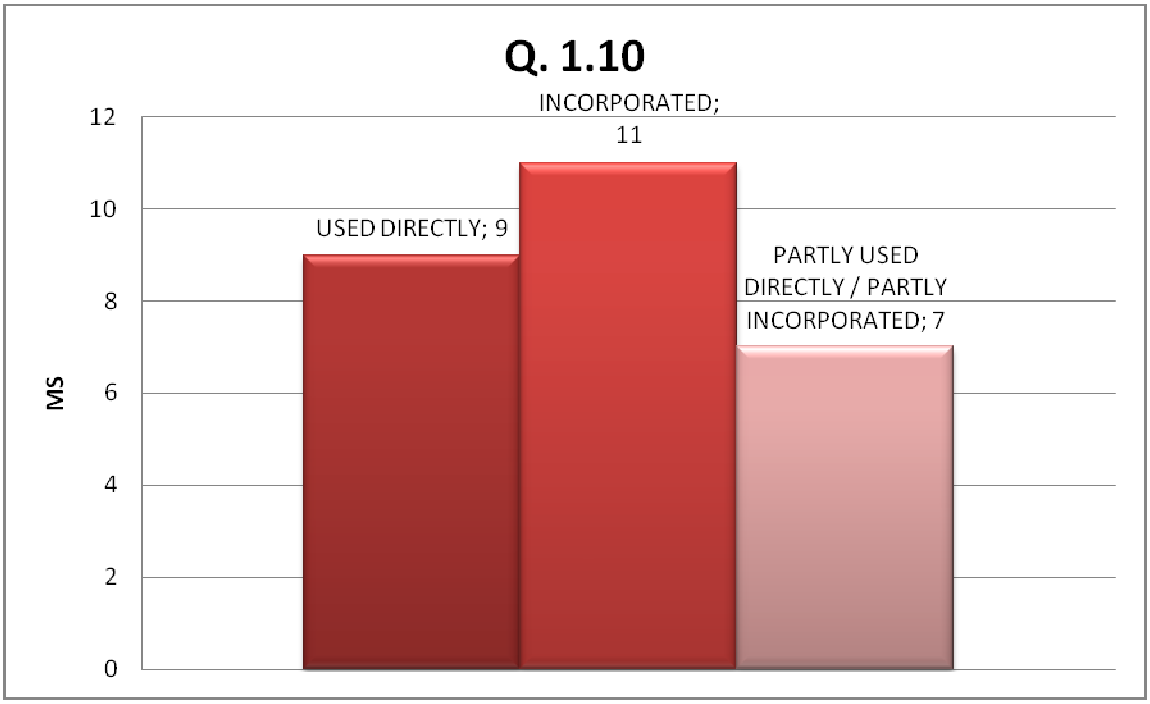
NB. In practice, the lower fee is not applied always necessarily in accordance with Art. 27(6)

1.9 a) Are the actual costs borne by the CA covered entirely by the fees/charges collected?

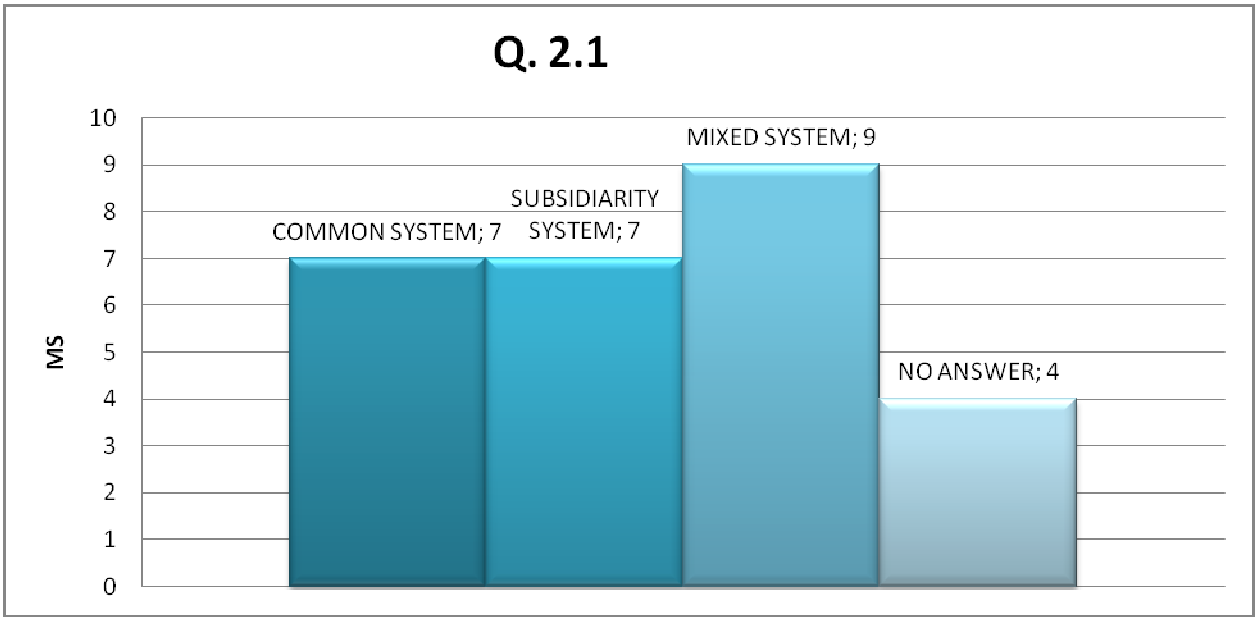


NB. YES & NO means costs are covered for some activities but not for others.

1.10 How is the revenue from the fees or charges collected pursuant to Art.27 of reg 882/2004 used in the country?

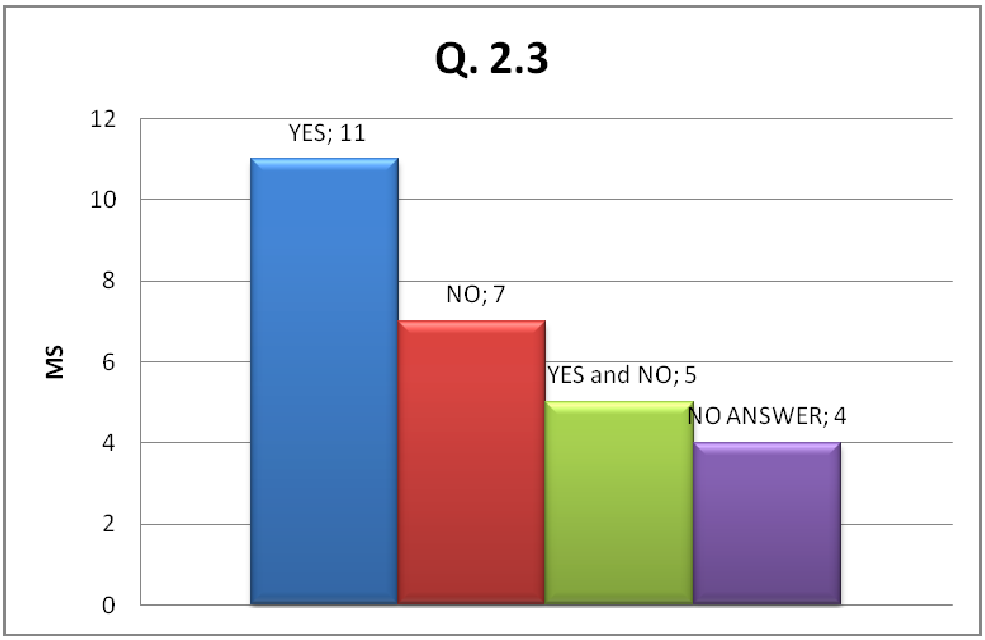


2.1 Would your services be in favour of common system/subsidiarity system?



NB. Definition of subsidiarity system and mixed system, as it appears to be understood by MS, is very close. Both allow for a certain flexibility to MS to set the rates, within a commonly agreed set of rules. On the other hand, some MS that have opted for a common system, have highlighted nonetheless the importance of keeping some flexibility.

2.3 Would your services be in favour of extending to other sectors (than the ones specified in Reg. 882/2204) the obligation to contribute to the financing of official control activities?



NB. YES & NO may reflect difference in opinion between the CAs that responded to the survey, (e.g. CzR, Germany); or an undecided position at present (e.g. France); or under certain conditions (e.g. Ireland, Spain)

SECTION 2 – OPTIONS FOR THE FUTURE

Question 2.2 – What would your services consider as the advantages/benefits, or disadvantages/drawback of either system?

"COMMON SYSTEM"

ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
COMPETITION ISSUES	
1. Reduction of distortions - Equality of production costs induced by administration to all industries in Europe, not introducing factors that could interfere with free competition; - Competitive conditions of operators retained; - Avoid discrepancies in final product price due to fees; - Avoid distortion of competition between MS; - The competition among MS (on the basis of fees alone) is eliminated; - Cost of controls burdens products in the same way across the EU.	1. Unequal basis for competition - Taking into account the different economic and financial conditions of MS, these charges can be considered as barriers for food business operators in some MS; - Unequal competition conditions. Reinforces gap between direct support levels between MS due to CAP (for NMS), thus creating unequal basis for competition;
LEVEL OF FEES	
1. Uniformity/Less variability - Equal amount of fees charged among all MS (common fees for all MS); - All import controls costs harmonized throughout EU for imports; - Harmonised fees, identical rates for all MS; - For the same type of controls carried out uniformly in all the MSs there should apply the same/harmonized fee levels; - Less variability within MS; - Equalization of these charges in MS; - Uniform costs for operators in all MS; - All operators are charged equally (Equal treatment);	1. Lack of consideration of national economic conditions (costs) - The national peculiarities of MS are not taken into account; - Different costs of OCs among MS due to differences in salary, materials, analysis etc. - Ignores specific economic conditions of MS; - Different economic state between MS; - The specific geographic location of Bulgaria means higher expenses for the border veterinary inspection control; - Different costs for the same activity in different MS; - Variable working conditions; - Variable national life costs; - Less flexibility to react to the business reality of the different MS

ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
2. Clear definition of criteria - Same criteria/approach in all MS for application of fees; - Having the guarantee of harmonised OCs based on key pre-defined points (e.g. ante and post mortem inspection) - Clear principles of calculation of the taxes; - Uniformity of criteria	- Costs are different in MS, therefore these might result in insufficient revenues or excessive costs for the stakeholders; - Same import controls do not mean same costs; - Imports: larger BIPs that handle larger throughputs can have certain economies of scale that allow them to operate more cost-efficiently. 2. Risk of insufficient coverage of actual expenses - Payment does not correspond to actual costs of controls; - Some activities and their expenses may not be covered; - Possibly not full coverage of the cost of controls in some MS; - Fee revenue would not necessarily cover the actual costs. 3. Difference in financial burden for governments - The costs paid by the governments in MS would be different; - Higher share of the state budget for financing the controls 4. Differences on the financial burden for business operators - Businesses with low throughput may pay higher fees in order to cover the cost of inspection; - Eventually, the same level of fees throughout the EU would not be adequate for all plants (depends on plant size/amount of goods to be controlled); - For the very large establishments, the amount of fees could become disproportionate to the actual cost of inspection 5. Difference in the levels of controls - Differences in the cost of controls that exist between MS could affect the level of control that would be applied

ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
IMPLEMENTATION	
1. Simplification - Simpler application; - Makes easier the activity of the competent authority; - Can be applied faster if rates included in the Regulation; - No need to do extensive economic evaluation; - Simplification of fee collection; - Simplification for stakeholders; 2. Enforcement - CAs are obliged to apply Community law 3. Acceptance from the business operators - More acceptable from the business operators;	1. Problems of interpretation - Interpretation problems with the Regulations which are not always explicit 2. Limited coverage - May not cover all control activities in all MS 3. Lack of flexibility - Inflexible; - Rigidity of the system and greater burden on some MS - Reduces potential for flexible decisions to be taken by MS; - The system is not dynamic and does not allow the correction of payments according to changes in the costs of controls; - Not many possibilities for exemptions

Note: each bullet point corresponds to the comment made by a single MS. Comments have been grouped together by main subject and key type of advantage/disadvantage.

Question 2.2 – What would your services consider as the advantages/benefits, or disadvantages/drawback of either system?

"SUBSIDIARITY SYSTEM"

ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
COMPETITION ISSUES	
	1. <u>Distortion of competition</u>: - Potential distortion of competition between MS. Official control priorities may be different between MS; - Fee differences could be used for commercial competition; - The competition among MS might deepen; - Distortion of the internal market, if some MS compete on fees; - Distortion of the Common Market; - If absence of harmonised fee regulation in the EU, industry will be indirectly supported by MS not collecting fees, to the disadvantage of collecting MS; - Different rates, thus, possible differences in veterinary costs for the operators and, therefore, unequal competition; - Can be used for competition between MS, if fees are reduced or abolished to attract industries of other MS; - This system could create differences between MS that would be harmful to the single market and relevant discussions on equivalence with third countries; - Discrepancies in the final price of the product due to the fees

ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
LEVEL OF FEES	
1. Adaptation to country's economic situation - Better evaluation of national realities; - Takes into consideration regional and national characteristics; - Fees adapted to variable national living costs; - Each MS has the possibility to choose the best solution, given its economic level; - This system can be adapted more easily to the different situations in the MS's reality; - Each MS, knowing their economic and financial status, can establish the fees to cover the expenses generated by official controls that can be accessible to food business operators; - Based on certain criteria the fees may be adapted to the local production conditions; - Fee will be closer to the actual costs of control; - Fees proportionate to special conditions of sector and the control costs in each MS; - More accurate and adapted assessment of costs of the costs of official controls in each MS and consequent level of fees; - Fees more justified/cost-based; - Flexibility for MS to adapt costs to the fees and vice versa. **2.** Adaptation to sector's specific situation - Milk: MS know their own industry and what level of fee is acceptable; - Milk: MS can adjust fees to meet actual costs; - Meat: systems are different in each MS so important to have flexibility to fix fees for particular activities **3.** Coverage of costs - All costs can be covered by the fees/charges, if cost data exist and	1. Variability among MS - Differences between MS; - Variability among MS and business operators; - Fees not harmonised 2. Different criteria - Non uniform criteria within the EU 3. Difference in financial burden for governments - To cover the difference between actual revenues from controls and the running and maintenance costs, budget resources are required; these needs may be very different for the various MS 4. Differences on the financial burden for business operators - Different conditions for operators in the different MS; - Non-harmonised fees put operators in different MS in an unequal position; - Complication for stakeholders to determine their expenses due to the different fees in different MS; - Non equivalent costs and conditions for producers in the different MS

ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
are transparent; - Adaptation for each MS based on actual needs: the calculation will be closer to actual expenses - Modulation (fee adjustment) based on rational and objective criteria (conformity with self-control and traceability, production capacity, production methods etc.)	
IMPLEMENTATION	
1. <u>More transparency</u> - FBOs would be involved in negotiations to establish the fees, therefore system favours consensus/ transparency; - Allows the inclusion of a fee modulation system taking into account industry actions e.g. staff participation in the controls; - Introduces more responsibility at all levels (CAs, FBOs); - System's management more accurate because adapted to national conditions **2.** <u>Flexibility</u> - Freedom to set fee rates by the individual MS; - Flexibility of national rules; - In case of a national crisis, a MS will have more autonomy to react promptly and more efficiently on the financial level; - Allows easier adaptability to changing situations/scenarios; - Possibility to correct the amount of fees without affecting the principle of equality, to maintain them on an adequate level without increasing state subsidies	1. <u>Difficulties in application</u> - Difficulties in negotiations with the industry in case of non-harmonised EU legislation; - This system could be subject to political pressure and require a lengthier process; - Difficulties in fee setting (justification) and in application 2. <u>Higher administrative costs</u> - Indirect administration costs can hike fee levels above reasonable levels; - Fee may not be fully covering extra costs of control that are basically linked to running and technical maintenance costs

<u>Note</u>: each bullet point corresponds to the comment made by a single MS. Comments have been grouped together by main subject and key type of advantage/disadvantage.

Question 2.4 – What would your services consider as the advantages/benefits, or disadvantages/drawback of extending the obligation to other sectors?

MS	*Q 2.3*	ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
BELGIUM	*Yes*	• Phytosanitary sector has already been placed under the Agency control, and therefore, it shall contribute • Each sector concerned to some extent with the food chain safety must at the very least be recorded and in the majority of the cases it shall contribute to the controls of this sector/channel	
BULGARIA	*Yes*	• Cover the activities that are the object of controls • Encourage business operators to implement the legislative requirements	• Additional financial burden for business operators • Additional administrative regulations
CZECH REP.	*Yes/no*	• To create adequate conditions for farmed game and wild game processing	• Increased administrative - bureaucratic burden for business operators
ESTONIA	*Yes*	• Common approach throughout the food chain (including feed production) • Unification of the system for financing of the controls in MS	• Additional financial burden on producers, processors and distributors
FRANCE	*Yes/no*	• Spreads the cost over the whole of the industry - Dir 178/2002 talks about responsibility at all levels of the chain; each level has to be effectively responsible - even a small fee would make FBOs conscious of their responsibility. • Makes the fees system a motor for the industry as well as for the control bodies.	• An extended system on this basis would be hard to implement
GREECE	*No*	• Part of the cost of official controls is shared with all food-feed sectors; • Would provide sufficient financial resources to cover the costs of OCs.	• Fees for OCs overcharge the consumer; • Opposition of business operators; • Additional administrations cost for fee collection; • The economic situation is already difficult for the industry in general and particularly the food industry.

MS	*Q 2.3*	ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
IRELAND	*Yes/no*		• Fees can only be applied to areas which are subject to direct supervision and controls
ITALY	*Yes*	• Division of costs to all productive activities subjected to controls.	
LATVIA	*Yes*	• Could be extended to cover some sectors, other than food, not currently covered by Regulation 882/2004.	
LITHUANIA	*Yes*	• Unified system for all sectors	
LUXEMBOURG	*No*	• More responsibility for the industry • Increased authority for the controller • Incentive to supplementary hygienic efforts to reduce the control frequency	• Additional productions costs in charge of the consumer • Financial disadvantage for controlled business establishments
MALTA	*Yes*	• More revenues for the CAs provided that the revenues are utilised for training and official controls.	• Lower profits for those subjected to official controls might generate higher costs for end products and, therefore, consumers might also be affected
PORTUGAL	*Yes*	• Under Reg 852/2004, all operators must be controlled. Today only a few are being taxed to cover all the OC costs. It doesn't cover all costs, and it is unfair for the few sectors which must pay the controls done to all.	• Administrative implementation.
ROMANIA	*Yes*	• Harmonising MS legislation for the non animal and animal sector, in accordance with food definition provided by Art. 2 of Regulation 178/2002	
SLOVENIA	*Yes*	• Harmonised fees for all feed business operators (approved/registered) and harmonised fees for imported feed	• Problem is the great diversity of FBO activities • Difficulties in harmonisation: fees should be related also to production (quantity) • As regards imports, the place of fee collection should be laid down, as to whether the fee shall be collected on entry or on release into circulation

MS	*Q 2.3*	ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
SPAIN	*Yes/no*	• Covering the costs of official controls; • Better financing system, better service	• Difficulties for collection of fees; • Adverse social reactions • Negative impact on the society; • Excessive fiscal pressure on the paying sectors

Note: Only the MS that provided answers to Q2.4 are included in this Table. Second column indicates their answer to Q2.3.

Question 2.5 – Which sectors would your services consider as the most appropriate for inclusion in an extended scope of Regulation 882/2004 and why?

MS	MS	SECTOR/S	REASON/S
BELGIUM	Yes	Belgium already cover a very large selection of operators, on the basis of data provided by the TVA Administration.	
BULGARIA	Yes	• Animal welfare; • Control on imports of honey and bee products for human consumption; • Control on imports of milk and milk products; • Control on imports of feedingstuffs of plant origin; • Control on residues and environmental contaminants; • Control on imports of eggs and egg products for human consumption; • Control on production establishments; • Control of storage	• There all entail expenses for the competent authority
		• Feed sector	• Attribution of the costs arising by the feed control activities to the feed business operators; • Approximation of the approach in all MS; • Encouragement of FBOs to implement the legislative requirements adequately and efficiently
CZECH REP.	Yes/no	• Slaughter of farmed game	• This sector is currently not charged although it used to be charged in the past. Slaughter of other species including wild game is charged.
DENMARK	Yes	• Production, storage and transport of non animal foods	• There is no obvious reason for letting the producers of meat and milk pay for controls, while for producers of other food products it is free

MS	MS	SECTOR/S	REASON/S
ESTONIA	Yes	• Processing and distribution of feed	• Common approach throughout the feed chain (incl. feed production)
		• Processing and distribution of food of non-animal origin	• Common approach throughout the food chain
GREECE	No	• Animal herd free status certification (for zoonoses, e.g. Salmonella, Brucella, TSEs, etc)	• For sampling cost: staff salaries, movements, sampling materials, etc • For testing cost: staff salaries, sample dispatching, testing material, etc. • For animal keepers: free of charge supply
ITALY	Yes	• Vegetable foods	• Division of costs to all productive activities subjected to controls
LATVIA	Yes	• Possibly some non-food border controls currently not covered by Regulation 882/2004: controls laid down in Reg. 339/93 and Decision 93/583 (quality control on medicines intended for humans and animals, toys, fruits and vegetables, etc.).	• These are also creating a big financial burden that should be paid for.
LITHUANIA	Yes	• Only sectors currently paying on a 'non-compulsory' basis.	
LUXEMBOURG	No	• Perhaps egg-products	• For public health reasons
PORTUGAL	Yes	• Some actions on animal health, animal feed control, farm licensing; Survey of OCs; Audits. • In conclusion all sectors under Regulation 852/2004, which CAs must control, or at least, all sectors and establishments under Regulation 853/2004, which CAs must approve/control.	• To support partially the rising costs of animal health as well as OC surveys and audits.

MS	MS	SECTOR/S	REASON/S
ROMANIA	Yes	• All the sectors provided in Art. 2 of Regulation 178/2002	
SLOVENIA	Yes	• Animal feed	• See 2.4
SPAIN	Yes/no	• Retail, catering, prepared and distributed food; • food of non-animal origin	• These sectors account for an important share of the official controls • Fees are insufficient to cover these activities at present.

<u>Note:</u> Only the MS that provided answers to Q2.5 are included in this Table. Second column indicates their answer to Q2.3.

Question 2.6 – Do you have any further recommendations for the improvement of the system of fees or charges for official controls?

	Recommendations
1.	In favour of certain autonomy for each MS to set the fee amount charged to the food sector. It appears important to avoid the significant distortion of competition through a certain harmonisation of the collected fees/charges. Minimum amounts fixed by the EU authorities, comparable procedures on controls and financing of each MS and the publication of these national data appear to be necessary to obtain that goal/objective.
2.	Introduce minimum amount of fees, according to the control activities, to be laid down in the European legislation.
3.	Explicit fee rate for the control of feed business operators needs to be introduced in EU legislation.
4.	Regulation 882/2004 does not stipulate how to cope with minimum rates in countries outside the Eurozone. This causes some problems in implementation. Need to include provisions similar to Art 7 of Directive 85/73/EEC or stipulate that rates of ECB should be used.
5.	To define what is meant with adult bovine animal, missing such a definition which complicates the collection of fees.
6.	Introduce maximum limits or cancel all fees or charges for official controls. Costs for official controls should be borne by individual MS (on a case by case basis).
7.	In order to establish the fees, the economic status of each individual MS must be taken into account.
8.	The European Commission must establish minimum and maximum limits for fees (e.g. adult bovine slaughtering - between 1-5 euro).
9.	Collect fees for transit of all products.
1(	Fees charged under Art. 27 of Regulation 882/2004 should be incorporated in the TRACES system; as a first step, at least the fees required under Annex V of Reg. 882/2004.
1]	Further harmonization needed.

	Recommendations
12	More precise definition needed of the fee calculation for the fees charged under Art 29 (and Art 28) of Reg 882/2004.
13	Provide guidelines regarding the interpretation of Art.27 and 28 incl. Annexes, inter alia: what type of costs may be taken into account when setting the fees (overhead costs, and if so, to what extent? Accommodation costs?). This would contribute to the creation of a more level-playing field.
14	Taking into account the general principle that fees or charges should not be higher than the costs borne by CAs, it is the MS responsibility to fix the amounts of the fees or charges and the activities for which fees or charges should be collected. Especially for activities of official controls in relation to community establishments.
15	Whatever system of fees or charges would be designed for official controls at EU level, it is without effect at a national level, because of the administrative structure of the economic and food safety control authorities.
16	Common fees for all MS to avoid any discrepancies in the final price of the product due to fees, calculated by taking into consideration the specific economic situation of some MS.
17	Establish the list of activities for which fees are collected in Annex IV of Regulation 882/2004 on the basis of the same criteria across sectors. These criteria could eventually be as proposed in Rec. #3.
18	In favour of actual system, with common minimum fees, with possibility to raise fees to adjust to the real costs of OCs in some very particular conditions equal for all MS. Effectively a combination of common and subsidiarity systems.
19	Enlarge the scope of Regulation 882/2004 to cover all sectors and establishments, adopting the actual criteria of the new EU food hygiene legislation (Regulations 178/2002, 852/2004 and 853/2004). This would result in raised revenue for MS, as a greater number of operators will pay, consequently diminishing fee levels for each one. Eventually, perhaps the fee could be charged to the operator, not the activities.

Note: each bullet point corresponds to the recommendation made by a single MS.

2.2: SURVEY of EU-27 CAs: questionnaire

A study on the collection of fees or charges for official controls pursuant to Article 27 of Regulation (EC) No 882/2004

SURVEY of EU-27

INTRODUCTION

This survey takes place in the framework of an ongoing study by the European Commission, Directorate-General for Health & Consumers (DG SANCO), on fees or charges collected by the Member States (MS) to cover the costs occasioned by official controls under Article 27 of Regulation 882/2004[58] (hereafter referred to as 'the Regulation').

According to Article 65 of the Regulation, three years after its entry into force, the Commission needs to review the experience gained from its application, in particular in terms of scope and the fee-setting mechanism, and whether/how the current regime can be improved. The objective of this survey is to collect your views on these issues.

This questionnaire is addressed to the Competent Authority (CA) of each MS, defined as the central authority of a MS that is competent for the organisation of official controls or any other authority to which that competence has been conferred (Article 2.4 of the Regulation).

DG SANCO has recently circulated a letter to the MS, in response to questions raised by the German government, concerning the interpretation of Articles 26-29 of the Regulation. This letter clarifies questions that may arise in the context of the transition from the previous fee system, under Directive 85/73/EEC[59], to the new rules of Regulation 882/2004 which apply with effect from 1 January 2008. According to the Commission's interpretation, the official control activities for which ***compulsory fees*** are charged within the meaning of Article 27.2 of Regulation 882/2004 under the new hygiene package (Regulations 852/2004, 853/2004 and

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58 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 issues.

59 Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultry meat.

854/2004) [60] remain the same as those mentioned in Articles 1, 2 and 3 of Directive 85/73 EEC. The full letter is attached in **Appendix 1**.

ALL QUESTIONS IN SECTION 1 NEED TO BE COMPLETED.

THE QUESTIONNAIRE CAN BE COMPLETED IN ENGLISH, FRENCH, SPANISH OR GERMAN.

60 Hygiene Package: Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs; Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin; Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption.

Please return the completed questionnaires by e-mail to Agra CEAS Consulting (DG SANCO's external Contractor for this project),

to the attention of:

Maria.Christodoulou@ceasc.com

DEADLINE: 27 June 2008

For any questions on this survey or questionnaire please contact the survey manager:

Dr Maria Christodoulou
Agra CEAS Consulting
20-22 rue du Commerce
1000 Brussels, Belgium

tel: +32 2 736 00 88
fax: +32 2 732 13 61

IDENTIFICATION DATA

- **Member State:**

- **Competent Authority (CA) completing the questionnaire:**

- **Contact person (s):**

- **Position held:**

- **Phone number (s):**

- **E-mail:**

SECTION 1. CURRENT SYSTEM

1.1 Are fees or charges collected for covering the costs incurred through official controls in the areas covered by Regulation 882/2004?

(please tick the appropriate box)

Yes ☐ **No** ☐

*If the answer is '**No**', please justify your answer, by referring to:*

a) The reasons why:

---

b) Whether any other system is in place for ensuring the coverage of the costs of official controls:

1.2. Since when have the fees/charges pursuant to Article 27 of Regulation 882/2004 been collected?

(please tick the appropriate box)

Prior to 1.1.2007 ☐

Since 1.1.2007 ☐

Since 1.1.2008 ☐

Other date ☐

1.3. a) Are fees collected to cover the costs occasioned by official controls (within the meaning of Article 27 (1) of Regulation 882/2004)? PLEASE INDICATE <u>NON-COMPULSORY</u> FEES ONLY (compulsory fees are dealt with in Question 1.4).

(please tick the appropriate box)

Yes ☐ **No** ☐

b) For which sectors/activities are such fees collected? Which CA is responsible for setting and collecting such fees/charges, and at which level?

Sector/activity	**Title of the Authority responsible for:**		
	Level	**FEE SETTING**	**FEE COLLECTION**
A:	Central		
----------	Regional		
----------	Local		
B:	Central		
----------	Regional		
----------	Local		
C:	Central		
----------	Regional		
----------	Local		
D:	Central		
----------	Regional		
----------	Local		
E:	Central		
----------	Regional		
----------	Local		

Sector/activity	**Title of the Authority responsible for:**		
	Level	**FEE SETTING**	**FEE COLLECTION**
F:	Central		
----------	Regional		
----------	Local		
etc ([1]):	Central		
----------	Regional		
----------	Local		

([1]) *If A to F is not sufficient, please add more lines as appropriate*

*If the answer is '**No**', please justify your answer, by referring to:*

c) The reasons why:

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d) Whether any other system is in place for ensuring the coverage of the costs of official controls:

1.4. Are fees or charges collected according to Article 27 (2) of Regulation 882/2004 (COMPULSORY COLLECTION OF A FEE)?

(please tick the appropriate box)

Yes ☐ **No** ☐

*If the answer is '**No**', please justify your answer, by referring to:*

a) The reasons why:

---

b) Whether any other system is in place for ensuring the coverage of the costs of official controls:

1.5. Which CA is responsible for setting and collecting the fees/charges according to Article 27 (2) of Regulation 882/2004, and at which level?

Level	*Title of the Authority responsible for:*	
	FEE SETTING	**FEE COLLECTION**
Central	----------	----------
Regional	----------	----------
Local	----------	----------

1.6. a) Which system is being applied for setting fees/charges (systems defined according to paragraph 4b of Article 27 of Regulation 882/2004)?

(please tick the appropriate box/es)

- **Flat-rates (calculated on the basis of the costs borne by the CA)** ☐

- **Minimum rates (Annex IV & V, section B of Regulation 882/2004)** ☐

b) Please specify the system of fees/charges applied by activity:

(please tick the appropriate box)

Activity	**Flat-rate**	**Minimum rate**
▪ Slaughter inspections (Annex IV, Section B, Chapter I)		
▪ Cutting plants control (Annex IV, Section B, Chapter II)		
▪ Game processing houses (Annex IV, Section B, Chapter III)		
▪ Milk production (Annex IV, Section B, Chapter IV)		
▪ Fishery products and aquaculture products (Annex IV, Section B, Chapter V)		
▪ Imported meat (Annex V, Section B, Chapter I)		
▪ Imported fishery products (Annex V, Section B, Chapter I I)		
▪ Meat products, poultry meat, wild game meat, rabbit meat, farmed game meat, by-products and feed of animal origin (Annex V, Section B, Chapter III)		
▪ Transit through the community of goods and live animals (Annex V, Section B, Chapter IV)		
▪ Imported live animals (Annex V, Section B, Chapter V)		
▪ Directive 96/23 (official controls on residues)		
▪ Other activities (*please specify*): ----------		

1.7. Please specify the criteria (Annex VI of Regulation 882/2004) and the method that is being applied to calculate the fees/charges:

a) Criteria:

---

b) Method:

1.8. a) Are there cases where a fee below the minimum rate is being applied (according to Article 27(6) of Regulation 882/2004)?

(please tick the appropriate box)

Yes ☐ **No** ☐

b) Where such cases exist, please specify:

Food or Feed or activity concerned	Criteria applied for the reduction	Method applied for the reduction

1.9. a) Are the actual costs borne by the CA covered entirely by the fees/charges collected?

(please tick the appropriate box)

Yes ☐ **No** ☐

b) If 'No', please indicate which percentage of the actual costs has been covered by the fees collected, for each year over the past three years:

2005: % ----------

2006: % ----------

2007: % ----------

1.10. How is the revenue from the fees or charges collected pursuant to Article 27 of Regulation 882/2004 used in your country?

(please tick the appropriate box)

- **It is directly used by the CA for funding the controls covered by Reg. 882/2004.** ☐
- **It is incorporated into the State's General Budget and only a percentage is used to cover the costs of the controls carried out.** ☐

SECTION 2. OPTIONS FOR THE FUTURE

2.1. Would your services be in favour of:

▪ **A common fee or charge system based on minimum rates for a common list of control activities carried out in Community establishments and at the time of import (*"common system"*)?**	
▪ **A system that leaves up to the MS the responsibility to fix the amounts of the fees or charges and the activities for which fees or charges should be collected (*"subsidiarity system"*)?**	

2.2. What would your services consider as the advantages/benefits, or disadvantages/drawbacks of either system?

"*Common system*":

Advantages / Benefits	**Disadvantages / Drawbacks**
▪ ----------	▪ ----------
----------	▪ ----------
----------	▪ ----------
----------	▪ ----------
----------	----------

"*Subsidiarity system*":

Advantages / Benefits	**Disadvantages / Drawbacks**
▪ ----------	▪ ----------
----------	▪ ----------
----------	▪ ----------
----------	▪ ----------
----------	----------

2.3. Would your services be in favour of extending to other sectors (than the ones specified in Regulation 882/2004) the obligation to contribute to the financing of official control activities?

(please tick the appropriate box)

Yes ☐ **No** ☐

2.4. What would your services consider as the advantages/benefits, or disadvantages/drawbacks of extending the obligation to other sectors?

Advantages / Benefits	**Disadvantages / Drawbacks**
▪ ----------	▪ ----------
----------	▪ ----------
----------	▪ ----------
----------	▪ ----------
----------	----------

2.5. Which sectors would your services consider as the most appropriate for inclusion in an extended scope of Regulation 882/2004 and why?

Sector/s:	**Reason/s:**
▪ ----------	---------- ----------
----------	---------- ----------
----------	---------- ----------

2.6. Do you have any further recommendations for the improvement of the system of fees or charges for official controls?

(*please type your recommendations*)

Recommendation N° 1

Recommendation N° 2

Recommendation N° 3

Thank you very much for your precious collaboration!

Annex 3

Competent authorities responsible for the various Official Controls (OCs) covered by the scope of this study

Notes: The information provided in the following Table is based on the latest FVO Reports and Country Profiles available.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Austria	- Ministry of Health and Women (BMGF); - Austrian Agency for Health and Food Safety (AGES). At Land level, the Provincial Governor (LH), with competencies shared between: - the Food Inspectorates (controls on milk processing establishments and retail sector); - the Provincial Vet Services ('Magistrat') (controls in meat establishments and milk production holdings).	- BMGFJ o Department IV/B/5, responsible for supervising BIPs and coordinating activities - Customs Authorities of Ministry of Finances (BMF)
Belgium	- FPS (Federal Public Service for Health, Food Chain Safety and the Environment) ; - AFSCA (Federal Agency for the Safety of the Food Chain)	- AFSCA (Federal Agency for the Safety of the Food Chain). - Customs and Excise Administration of the Federal Public Service for finance (Central Customs Service) - 11 Provincial Control Units (PCU) carry out the official controls, including import controls - FPS is indirectly involved since it is responsible for the policy, standards and requirements for all products occurring in the food and feed chain. o The Directorate-General for Animals, Plants and Foodstuffs is involved in food safety and feed policy making and legislation ; o The Department of Control Policy (DG Control Policy) develops the Import control program (i.e. risk analysis); o The Department of Control (DG Control) elaborates the import control plan for the points of entry.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Bulgaria	- Ministry of Health (overall control of food establishments, OCs of food of non-animal origin); - Ministry of Agriculture & Forestry (OCs for food of animal origin at retail and catering sector)	- Border Veterinary Control Directorate (BVCD) of the National Veterinary Service (NVS) within Ministry of Agriculture and Forestry. Plus Border Veterinary Inspection Controls of regional veterinary offices, and BIPs. Co-operation between veterinary services and Customs in place.
Cyprus	- Ministry of Agriculture, Natural Resources and Environment (MANRE). o The Veterinary Public Health Division (VPHD), within the Veterinary Services (VS) is responsible for the processing and production level. - Ministry of Health o The Health Services (HS) are responsible for the retail level. At a regional level VPHD consists of 5 district veterinary offices (DVOs). Some DVOs have the rural veterinary offices.	- MANRE o Animal Health and Welfare Division (AHWD), within the Veterinary Services (VS). - At a local level, there are 5 District Veterinary Offices (DVO) The BIPs function under direct instructions from the Imports and Animal Trade Control Section (IATCS) within the AHWD.
Czech Republic	- Ministry of Health (MH), - Ministry of Agriculture (MA) and its supervisory body the Czech Agriculture and Food Inspection Authority (CAFIA). The Czech Rep. has a clearly defined structure of CAs responsible for food hygiene, with adequate vertical and horizontal communication.	- Ministry of Agriculture o Export and import Division within the State Veterinary Administration of the Czech Republic (SVA-CR). It is responsible for coordination and management of the import/transit control system and BIPs, as well as for execution of import/transit controls. It also has the responsibility for supervisory inspections/audits of the BIPs. - Customs within the Ministry of Finance are organised operationally into eight Regional Directorates and 54 operational offices, who carry out Custom's clearance and check at entry points. The Municipal Veterinary Administration (MVA) for the city of Prague has direct responsibility for the BIP Praha-Ruzyne.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Denmark	- DVFA (Danish Veterinary and Food Administration) under the Ministry of Food, Agriculture and Fishery (MFAF) is responsible for policy co-ordination. Within DVFA there are several divisions responsible for food hygiene (e.g. the Control Co-ordination Division and the Division for Microbiological Food Safety, Hygiene and Zoonoses Control). - Three RVFA (Regional Veterinary and Food Administration) are responsible for co-ordination and implementation of controls. They operate through Control and Enforcement Offices within the regions where they are located. The RVFA inspects all food premises as well as some premises in the primary production sector. The Danish Plant Directorate (DPD) inspects the conditions in relation to hygiene on farms except for the use of medicine and risk of introduction of zoonoses. The Directorate of Fisheries (DF) inspects conditions in relation to hygiene on fishing vessels etc.	- DVFA under the Ministry of Food, Agriculture and Fishery (MFAF) o The International Trade Division is responsible for import of live animals and products of animal origin, the transposition of EU legislation on imports into national law and the implementation in the different regions through training and supervision. It supervises 3 RVFA, which are responsible for checking products of animal origin and live animals presented for BIP checks. - Customs Services within the Ministry of Taxation. They are organised in five regional services and, within each region, into a number of divisions. The role of the DVFA head office is to supervise BIP checks and to instruct, liaise with and co-ordinate these services on BIP matters. At BIPs level, there are agreements with customs and regular meetings take place.
Estonia	Control system for food of animal origin: - VFB (Veterinary and Food Board). - The Consumer Protection Board of the Ministry of Economic Affairs is responsible for labelling of foodstuffs and traceability of bovine meat. The VFB prepares its annual inspection and sampling programme. Based on this, inspectors of the 15 CVCs (County Veterinary Centres) draw up their annual inspection and sampling plans. The frequency of inspection is based on risk categorisation of the food establishments. The 15 CVCs are responsible among other tasks, for supervision of activities of Authorised Veterinarians (AVs) at local level.	- Ministry of Agriculture: o Food and Veterinary Department is responsible for transposition of legislation - VFB is the CA for veterinary checks of live animals and products of animal or non-animal origin at BIPs o Trade, Import and Export Department has administrative and supervisory responsibility for all the BIPs. - Customs are organised on a central and regional basis into 4 Regional Customs Centres

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	Control system for general food hygiene: - The VFB of the Ministry of Agriculture has primary responsibility. - The Office of retail, organic farming and food of non-animal origin of the FD (Food Dept.) is the operational body. - Approval of retail and catering establishments is the responsibility of CVCs. The frequency of VFB inspections is based on risk categorization. The minimum frequency of inspection is established in the annual plan. Retail and catering establishments are divided into three risk categories (high, medium and low).	
Finland	Control system for food of animal origin: - MAF (Ministry of Agriculture and Forestry) is responsible for legislation on food of animal origin except at retail level, which is competence of MSAH (Ministry of Social Affair and Health). - Evira (Finnish Food Safety Authority) is the central competent authority for the control of the foodstuff of animal origin. Evira is in charge for registration and approval of large scale slaughterhouses and integrated meat and fish establishments, while all other types of establishments are approved by the municipalities. Evira issues a National Food Control Programme (EVO) which provides guidance for the official control performed by the SPOs (State Provincial Offices) and MAs (Municipal Authorities). Based on this programme each MA produces its own control plan.	Evira (Finnish Food Safety Authority) is the CA, under the guidance of MAF. - MAF is responsible for the transposition and implementation of the EU legislation and strategic planning ("Unit of Animal Health and Welfare" within the "Health and Food Department") - Evira ("Animal Health and Welfare Unit", in the "Department of food and veterinary control") is responsible for the import/transit controls of products of animal origin, live animals, including animal welfare. - Customs, within the Ministry of Finance, have a centralised management structure, and are organised operationally on five

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	Control system for general food hygiene: - MAF: DHF (Dept. of Food and Health) is responsible for the hygiene of the foodstuffs in primary production and food of animal origin prior to retail level. - MSAH is responsible for health protection and general hygiene of foodstuff. - MTI (Ministry of Trade and Industry) ensures the health-related and quality aspects of processed food and protects consumer rights. The provincial governments through the 6 SPOs are responsible for developing regional control, while at local level the municipalities conduct food control via the MFCA (Municipal Food Control Authorities).	regional services who manage the customs office which operates in each region. Veterinarians at local level are either employed or authorised to work as border veterinaries by Evira.
France ***(For full structure of CAs refer to Part Two of this Final Report)***	- Ministry of Agriculture and Fisheries, in particular General Directorate for Food Direction (DGAL) is the competent authority, with primary competence; - Ministry of Economy (DGCCRF) is responsible on controls of food products (e.g. composition, labelling etc.); - Ministry of Health (DGS) is responsible on fields related to public health and food safety. - Agents of regional and departmental directorates (correspondent to the country's administrative division) carry out the operational implementation of controls.	-Ministry of Agriculture and Fisheries, in particular General Directorate for Food Direction (DGAL) – Imports form third countries.
Germany ***(For full structure of CAs refer to Part Two of***	- The 16 Bundesländer are CAs. The competence is therefore regional and the fees setting responsibility is assigned to the designated CA/s of each Bundesländer. - The Federal CA, the Ministry of Food, Agriculture and Consumer Protection, oversees the *Bundesländers*' implementation of law.	

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
this Final Report)	The responsibilities for food safety and for feed safety are clearly separated and lie with different authorities at different administrative levels. Food and veterinary affairs are governed on either two or three administrative levels within the individual *Bundesländer.* - At a land level, the Ministry in charge of food, feed and veterinary affairs is the highest ranking Competent Authority. - At the intermediate land level, five Bundesländer (Bavaria, Baden-Württemberg, Hesse, North-Rhine Westphalia and Saxony) have intermediate food and veterinary authorities responsible for the surveillance and instruction of local authorities and the coordination of tasks. - At a local level, district or municipal authorities (in total there are some 440 local authorities in Germany) are responsible to implement the food and veterinary controls. The responsibility for feed safety often lies with an authority at intermediate level (*Regierungspräsidien*) or at central level.	
Greece	Official Control Systems for Food Hygiene (Regulation 852/2004): According to Joint Ministerial Decision No 088/06, two CCAs are designated for the control of food and feed. - Hellenic Food Authority (EFET) - Ministry for Rural Development and Food Implementation of food control through the regional services of EFET and the autonomous decentralised prefectural services: - the Veterinary Directorates for controls on foods of animal origin, - the Rural Development Directorates on food of plant origin.	- The Ministry of Rural Development and Food (MRDF) o DGVS (Directorate General of Veterinary Services). BIPs are under its direct responsibility and the veterinary staff is employed by the MRDF as official veterinarians. DAH, DVAH co-ordinate on BIPs matters. DVAC (Dep. of Veterinary Audits is responsible for auditing the BIPs) - Customs authorities are part of the Ministry of Economy and Finance.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	CCA for VRCs (Directive 96/23): - Directorate of Veterinary Public Health (DVPH), which resides under the DG for VS within the Ministry of Rural Development and Food (MRDF).	
Hungary	<u>Control system for food of animal origin:</u> - Dept. for Food Chain Safety, Animal and Plant Health in MARD (State Secretary for Agricultural Administration) - CAO (Central Agricultural Office). The CAO-FFSD (Central Agriculture Administration Office, Food and Feed Safety Directorate) has overall responsibility for food and quality controls. Inspection tasks are delegated at regional level to 19 County Directorates for Food Chain Safety and Animal Health (County DFCSAHs). County DFCSAHs prepare annual inspection plans. The inspection frequency is specified in a guide on standard operational procedures (SOP) issued by the CAO-FFSD.	- The Directorate of Animal Health and Animal Protection within the CAO of MARD is responsible for the implementation of import/transit controls in BIPs. - The BIPs are administratively under the responsibility of the County Animal Health and Food Control Department within the relevant county AO - Customs authorities are under the direction and the supervision of the Ministry of Finance (MF), having an autonomic legal personality and countrywide competence.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	Control system for foodstuff and food hygiene: - Dept of Food Chain Safety, Animal and Plant Health in MARD and the CAO-FFSD is the CA. - The Ministry of Health (MH) and the National Public Health and Medical Officers Service (NPHMOS) are responsible for controls on foodstuff intended for particular nutritional uses, and for other activities as indicated in Government decree 302/2005. - The Ministry of Social Affairs and Labour (MSAL) and the Hungarian Authority for Consumer Protection (HACP) are in charge for the controls on quality, labelling and other distribution related activities.	
Ireland	Control system for food of animal origin: - DAFF (Dept. of Agriculture, Fisheries and Food) and DoHC (Dept. of Health and Children) are responsible for food policy and legislation with the support of FSAI (Food Safety Authority of Ireland), which has overall responsibility for the enforcement of food legislation in Ireland. - DAFF, LA (Local Authorities) and HSE (Health Service Executive) have administrative responsibility for granting approvals. The evaluation of establishments supervised by DAFF is carried out by a VI (Veterinary Inspectors) and RSVI (Regional Superintending Veterinary Inspector). The evaluation of establishments supervised by LA is carried out by a VI. On the basis of this evaluation FSAI issues an approval number.	- DAFF (Dept. of Agriculture, Fisheries and Food) is the CA responsible for veterinary import controls of products of animal origin and live animals (except for fish and fisheries, which are responsibility of SFPA) - The control of BIPs is performed under service contract to the FSAI. Co-operation between the different bodies is ensured through a working group on import controls, consisting of staff from FSAI, DAFF, SFPA, customs, VI from LA and representatives of HSE. Co-operation with customs at local level is frequent and informal.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	Control system for foodstuffs and food hygiene (CP 2007): - The DoHC has a Food Unit responsible for most of the issues related to food safety and hygiene. - DAFF, HSE, SFPA and LA have responsibilities for controls in their respective areas of competence. - FSAI co-ordinates official controls by means of SC (Service Contracts) with each CA. CAs have to present the annual control plan to FSAI which has to approve them.	
Italy ***(For full structure of CAs refer to Part Two of this Final Report)***	The CAs designated to carry out official controls within the scope of Article 4 of Regulation 882/2004 are: • Department for Veterinary Public Health, Nutrition and Food Safety (DVPHNFS) within the Ministry of Health; • Local Offices of the DVPHNFS: 36 Border Inspection Posts (BIPs) and 17 Veterinary Offices for Compliance with Community Requirements (UVAC); • Regional Veterinary Services (RVS); • Local Health Units (AUSL) implement the controls at local level. The 19 regions and 2 autonomous provinces have responsibility within their territories for planning, co-ordination, guidance, authorisation, and verifications of controls. Institutional co-operation between the central authorities and the Regions takes place in the permanent forum of the State-Regions Conference. (For the full structure and for a detailed allocation of competencies, refer to part 2 of Report, Fig. 3-1)	- The central government maintains the tasks and responsibilities over import controls and international prophylaxis. - The DVPHNFS is the CA for import/export controls on live animals and food of animal origin, including international relations and the co-ordination of local offices. - Controls on imported animals, food of animal origin, and feedingstuffs are carried out at the 36 BIPs which report directly to the Ministry of Health. (For the full structure and for a detailed allocation of competencies, refer to part 2 of Report, Fig. 3-2)

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Latvia	Official control related to the safety of food of animal origin: - PVD (Food and Veterinary Service) within the Ministry of Agriculture. The official food control is regulated by two laws - Law on Veterinary Medicine and Law in Supervisioning and Handling of Food. The PVD consists of a Central Office, 27 TSU (Territorial Structural Units), border inspection posts and laboratories. Within the PVD, the Food Control Dept. is responsible for the control of meat and milk production areas. Official controls are carried out by FI (food inspectors) and SAV (state authorised veterinarians).	- The Veterinary and Food Department (VFD) is responsible for the transposition of EU legislation, whereas the SBI is responsible for the implementation of the legislation. - The individual BIPs are under the responsibility of the SBI (Sanitary Border Inspection), which is also responsible for the employment and supervision of BIP staff There is a central management structure, with a chain of command from the CCAs to those carrying out relevant tasks at BIP level
Lithuania	Official Control Systems for Food Hygiene (Regulation 852/2004): - State Food and Veterinary Service (SFVS), which accounts directly to the Prime Minister. Within the SFVS there are 11 departments, of which 3 are directly related to food hygiene: Food dept.; Strategic Planning Dept.; Risk and Quality Management Dept. Control activities are carried out by 10 County and 5 City SFVS, which report directly to the central office, while 34 district SFVS report to the County Offices. The National Veterinary Laboratory is subordinated to the SFVS.	- The International Affairs Department within SFVS at central level has the responsibility for coordination and management of import control system. - SFVS at county level is responsible for the execution of import controls - The BIPs are placed under the direct management of the county level of SFVS - Customs within the Ministry of Finance are organised operationally into five territorial offices which are responsible for the customs posts at the individual entry points. Management of the BIPs is implemented by SFVS centrally and supervisory inspections/audits of the BIPs are responsibility of Food and veterinary internal Audit Department of the SFVS.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Luxembourg	Control system for food of animal origin: - MH (Ministry of Health). The ASV (Veterinary Service Administration) is responsible for the controls. The DSP (Public Health Division) of ASV has specific responsibilitiy, including the inspection of butchers' shops. An annual plan of official controls is drawn up by the CA. In addition to routine controls, follow-up inspections are carried out where a suspicion of non-compliance exists. Controls are carried out on a permanent basis in slaughterhouses which have continuous throughput, and during production in smaller slaughterhouses.	- INSA (Health Inspectorate) of Ministry of Health - Customs and Excise - LNS (National Health Laboratory) No regional or local authorities within the country.
	Control system for foodstuff and food hygiene (CP 2007): - MH. DIS (Sanitary Inspection Division), ASV, ADA (Custom and Excise Administration), LNS (National Health Laboratory) and the Police service are all involved in carrying out official controls of foodstuffs. OSQCA (Organisation for the Safety and Quality of the Food Chain) is responsible for co-ordinating the controls carried out by the different services. The distribution of responsibilities is not clearly defined in the current Food Law, which dates from 1953.	
Malta	Official controls related to the safety of food of animal origin: - VAFD (Veterinary Affairs and Fisheries Division) within the Ministry for Rural Affairs and Environment. The VAFD has two General Directorates, one for Administration and Operations and another for Veterinary Regulation and Fisheries Conservation and Control.	- VAFD (Veterinary Affairs and Fisheries Division) within the Ministry for Rural Affairs and Environment. o The Director for Food Health and Veterinary Enforcement under the Director General of Veterinary Regulation and Fisheries Conservation and Control is responsible for supervision of import/transit controls of POAO and live animals and three approved BIPs are directly under his command.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	The CA responsible for registered establishments is the Dept of Public Health (DPH).	- Department of Customs within the Ministry of Finance
Netherlands	Official controls related to food of animal origin: - VWA (Food and Consumer Product Safety Authority), an independent agency in the Ministry of Agriculture, Nature and Food Quality (LNV) and the delivery agency for the Ministry of Health, Welfare and Sports (VWS). It is responsible for the meat and milk sector and it is responsible for the official controls in the meat sector. The 3 main tasks of VWA are: supervision, risk assessment and risk communication. The control of establishments in the meat sector is divided among 5 regional offices. Control system for foodstuff and food hygiene : - VWA - VWS. VWA prepares tri-annual policy programmes which serve as a basis for annual inspection and sampling and risk categorisation. Inspection strategy is divided between small and larger businesses.	- South West Regional Department within the VWA. o Import Division o Management division (responsible for daily planning of staff activities) Centralised management structure, with a chain of command from the CCA to those carrying out relevant tasks. Tasks are not split geographically, according to the location of the BIPs, but rather according to the management of specific tasks in relation to import controls which are allocated to different teams in the Import Division. Customs have also a centralised management structure and are organised operationally into four regional services.
Poland ***(For full structure of CAs refer to Part Two of this Final Report)***	Responsibility for the implementation of official controls, including fee setting, is assigned to the national administration at central level, but the execution of control activities is assigned to the regional and local levels. - State Plant Health and Seed Inspection Service (SPHSIS), represented: o At national level by the Main Inspectorate of Plant Health and	- The BIPs are under the responsibility of the VIPHSIs.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	Seed Inspection ○ In the regions (Voivoideships) by the regional inspectorates (VIPHSI). Each VIPHSI defines the financial needs of their inspectorate. In Poland the CAs designated to carry out official controls (OCs) within the scope of Article 4 of Regulation 882/2004 are: • Veterinary Inspection (IW) • State Sanitary Inspection (PIS); • Agricultural and Food Quality Inspection (IJHARS); • Trade Inspection (IH). The Veterinary and Sanitary Inspections operate through Inspectorates at central (Chief or Main Inspectorate), regional (Voivodship Inspectorates) and local (Poviat Inspectorates) level, corresponding to administrative division of the country.	
Portugal	- DG for Veterinary Issues (DGV) under the Ministry of Agriculture, Rural Affairs and Fisheries (MADRP) - Authority for Food and Economic Security (ASAE) under the Ministry of Economy and Innovation.	- Import controls at BIPs are responsibility of DSVR, under the supervision of central service of DGV (DSSPA, Dir. for Animal Health and Protection and DSHPV) - Customs Authorities of MFAP (DGAIEC, Customs and Excise General Directorate)
Romania	Official controls related to food of animal origin: - NSVFSA (National Sanitary Veterinary and Food Safety Authority is the CCA for implementing food hygiene legislation. There are 2 central directorates that are at the same level but managed by different Vice-Presidents: - The Inspection and Border Inspection Posts (BIP) Coordination General Directorate (IBIPCGD), which has an inspection role, and the Hygiene	- NSVFSA ○ BIPs Coordination Service within Directorate of Import, Export, Transit and Border Inspections Posts is responsible for the implementation of all import/transit related issues including the supervision of BIPs and the employment of BIP staff. ○ Directorate of European Integration, responsible for the transposition of EU legislation Centralised management structure, with a chain of command from the

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	- Veterinary Public Health Directorate (HVPHD), which is responsible for approval of food establishments and zoonosis control. The CA has a vertical structure consisting in 42 CSVFSDs (County Sanitary Veterinary and Food Safety Directorates) and the circuit of veterinarians (CVs). The competences are split between the CHVPHS (County Hygiene and Veterinary Public Health Service) and the CICS (County Inspection and Control Service). The IBIPCGD prepares the annual National Framework Inspection Programme (NFIP). Once approved it is sent to the CSVFSD, which schedules its own inspection programme and submits it back to the IBIPCGD for approval.	central CCA to those carrying out relevant tasks.
Slovakia ***(For full structure of CAs refer to Part Two of this Final Report)***	The CAs responsible for official food controls are as follows: • Ministry of Agriculture (MoA) and Ministry of Health (MH); • Public Health Authority (PHA); • Regional Health Authorities (RHA); • State Veterinary and Food Administration (SVFA); • Regional Veterinary and Food Administrations (RVFA); and, • District Veterinary and Food Administrations (DVFA). The Ministry of Agriculture and the Ministry of Health are jointly assigned the responsibility at the central level; they coordinate and prepare the national plan of controls, and govern and supervise the official controls. Public Health Authority (PHA) and Regional Health Authorities (RHA) are responsible for official food controls regarding special food categories. The SVFA together with the RVFAs and DVFAs carry out official	- Ministry of Agriculture (MoA) o State Veterinary and Food Administration (SVFA), the DVCCTIE (Department for Veterinary Certifications and Controls on Intra-Community Trade, Imports and Exports) manages and co-ordinates the activities of BIPs - Ministry of Finance (MoF) o Customs Authorities

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	controls over the production, handling and placement on the market of specific product categories; the regional and district authorities carry out much of the day to day monitoring and enforcement of the legislation. The RVFAs are responsible for the verification of the performance of the DVFAs and their official veterinarians. The DVFAs are responsible for carrying out the official controls at all stages of the food chain.	
Slovenia	Official controls related to food of animal origin (2006)*: The CAs for drafting the legislation are: - the Ministry of Agriculture, Forestry and Food (responsible for food of animal origin); - the VURS (Veterinary Administration of the Republic of Slovenia) (responsible for food of animal origin (...) and animal welfare); - the Ministry of Health (responsible for food of plant and mixed origin. The CAs for official controls are: - the VURS (for control of production, storage and trade of food of animal origin); - the IRSAFF (Inspectorate of the Rep of Slovenia for Agriculture, Forestry and Food) (for the control of labeling related to quality); - the HIRS (Health Inspectorate of the Rep of Slo) (for control of labelling (...) and control of potable water). The VURS consists of a Main Office (with several sectors), 10 Regional Officies (ROs) and 6 BIP. Within the VURS, the competences are shared among the sectors for Public Health, Animal health and welfare, Internal veterinary inspection and Quality assurance and internal control (QAIC).	- VARS, o BIPs are under the responsibility of the "Border Veterinary Inspection Sector" - Customs Administration of the Republic of Slovenia under the ministry of Finance Centralised management structure, with a chain of command from the central CCA to those carrying out relevant tasks. Customs have also a centralised management structure and are organised operationally in ten regional services, who manage the customs office which operate in each region.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Spain	**Decentralised.** At central level responsible for the organisation and operation of control systems are: - Ministry of Agriculture (MAPA) - Ministry of Health (MISACO). - The 17 ACs (Autonomous Communities) and the two autonomous cities have the principal responsibility for the operation of control systems in Spain for food safety, animal health and animal welfare. These are operated through regional Ministries (Conserjerias) of Agriculture and of Health. Each AC determines the organisation and structure of its services and, therefore, these do not necessarily mirror that of the national Ministries. - The Spanish Food Safety Agency (AESA), established in 2002, has overall responsibility for the coordination of the activities of other state bodies and the ACs. To ensure this, a number of coordination bodies have been set up. At the highest level, the Institutional Committee is responsible for this coordination. At technical level, the Committee is supported by the Technical Consensus Group, within which a permanent group for the application of the hygiene Regulations has been set up. FVO report notes the design of the system of official controls is generally not in line with EU requirements; the controls are not carried out on a risk basis and not all factors laid down in Regulation 882/2004, Article 3.1 have been considered in establishing the frequency. Consequently, recommendations are made to the authorities to take corrective measures on all these points, "to ensure that in all ACs official controls are carried out regularly, on a risk basis and with appropriate frequency, so as to achieve the objectives of Regulation 882/2004 taking account of the factors laid down in Article 3".	- MISACO o Sub-Directorate General for Foreign Health, within the Directorate General for Public health (SGSE) - MAPA o Sub-Directorate General for means of Livestock production (SGMPG) BIPs receive information directly or through the financial areas of SE (Foreign Health) and SA (Animal Health) - Customs Authorities - Port Authorities - AESA

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Sweden	Official controls related to food of animal origin: é The CCA structure consists of : - 6 regions under the responsibility of the National Food Administration's (NFA) Unit in charge of meat. In addition, the Animal Welfare Agency (AWA) has been integrated into the Swedish Board of Agriculture. A Food Act and Food Decree came into force on 01/07/2006, moving a significant increase of the powers of the Municipalities to the central authorities. NFA has developed a risk-based approach for the official controls. The used criteria are: the type of activity, the quantities produced, the categories of consumers and the reliability if the FBO. This lead to a final classification of each establishment on which depends the attribution of hours for supervision (min 1 to max 128 per year). Initial steps have been taken in order to develop an Audit System in accordance with Reg.882/2004, but so far nothing has been put into practice. The Swedish Board of Agriculture (SBA) acts as the Single Authority responsible for these controls, within the meaning of Article 1(4) of Directive 2000/29/EC. A new organisational scheme has been in place since 1 January 2007.	o National Food Administration's (NFA): Food Control Department with the subdivision Group for International Trade is responsible for BIP matters in relation to HC-products. At central level two veterinarians and two administrators are responsible for BIPs. At peripheral level the veterinarians of the BIPs belong to the respective municipalities, which are responsible for the BIP. o Swedish Board of Agriculture (SBA): the Animal Production Department with the subdivision Animal Division Control is responsible for BIP matters in relation to NHC-products and live animals. At central level one veterinarian is responsible for BIPs. The District Veterinarian Department oversees District veterinarians which include those working for the BIPs. At regional level there are 21 County Board Veterinary Divisions who have the general responsibility for the BIPs, but not directly responsible for the supervision of the BIPs under central Authority responsibility. The veterinary inspectors of the BIPs are contracted by the relevant two Authorities.
UK ***(For full structure of CAs refer to Part Two of this Final Report)***	The responsibility for official food and feed controls in England and Wales is assigned centrally, the administration of responsibility is divided between central and local government. The central authorities are the Food Standards Agency (FSA) and the Department for the Environment, Food and Rural Affairs (DEFRA) (and its delivery partners or executive agencies) and equivalent departments in the devolved administrations in Scotland, Wales and Northern Ireland.	The responsibility of developing policies and to draw up guidance and instruction for control staff lies with: o DEFRA: International Animal Health Division o FSA: Imported Food Branch And the respective devolved administrations in Scotland and Northern Ireland. Responsibilities for carrying out inspections of facilities and procedures

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	Local authorities carry out much of the day to day monitoring and enforcement of feed and food law. The Single Authority (CA) is DEFRA, Plant Health Division. The official body carrying out the inspections is the Plant Health and Seeds Inspectorate (PHSI). **From 1 April 2009, the SA will become part of a new government agency which should bring more autonomy over staffing levels, which will be governed by the need to operate within the constraints of full cost recovery from the trade.**	at BIPs lies with the SVS. Import controls at BIPs receiving products for human consumption are the responsibility of the Environmental Health Department of the relevant Local Authority. Import controls at BIPs receiving NHC products and live animals are under the responsibility of the SVS. In Northern Ireland DARD and the Relevant Local Authorities have responsibility for import controls.

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Acronyms

AVEC: Association of Poultry Processors and Poultry Trade in the EU countries

BIP/s: Border Inspection Post/s

CA/s: Competent Authority/ies

CCA/s: Central Competent Authority/ies

CIBC / IMV / IBC: International Butchers' Confederation

CLITRAVI: Liaison Centre for the EU Meat Processing Industry

DG: Directorate General

DG SANCO: DG Health and Consumers

EASVO - European Association of State Veterinary Officers (member of FVE)

ECB: European Central Bank

EDA: European Dairy Association

EU: European Union

EUCOLAIT: European Association of Dairy Trade

EUROPECHE: Association of the National Organisations of Fishery Enterprises in the EU

FBO/s: Feed/Food Business Operator/s

FCEC: Food Chain Evaluation Consortium

FCI: Food Chain Information

FEFAC: European Feed Manufacturers' Federation

FVE: The Federation of Veterinarians of Europe

GHP: Good Hygiene Practices

HACCP: Hazard Analysis Critical Control Points

MNCP: Multiannual National Control Plan

MS: Member State/s

NMS: New Member State/s

OCs: Official Controls

POAO: Products of Animal Origin

SCFCAH: Standing Committee on the Food Chain and Animal Health

SG: Steering Group (for this study)

ToR: Terms of Reference

UECVB: European Livestock and Meat Trading Union

PART ONE: MAIN STUDY AND CONCLUSIONS

Executive Summary

Regulation 882/2004[1] (hereafter referred to as 'The Regulation') sets out requirements for the authorities in EU Member States that have responsibility for monitoring and verifying compliance with, and enforcement of, feed and food law, animal health and animal welfare rules, i.e. the 'Competent Authorities' (CAs) responsible for organising and undertaking 'official controls' (OCs).

According to Article 65 of the Regulation, three years after its entry into force, the Commission should review the experience gained from its application, in particular in terms of scope and the fee-setting mechanism, and whether/how the current fees regime can be improved. The data collected and results of this study, which focused on the implementation of the financing provisions of the Regulation (Articles 26-29), will feed into a Commission Report to the European Parliament and Council for a possible modification of the current legislation.

The objectives of the study are two-fold:

a) to establish a detailed picture and evaluate the present situation as regards the application of the current fees regime, in particular the way in which the system operates in practice; and,

b) to assess the advantages and disadvantages of a range of policy options (regarding the scope of current rules and the fee-setting mechanism).

As such, the final aim is to provide input to the Commission's development of proposals to improve the fees system in future.

The assessment of the current system and future policy options take into account the wider objectives and principles of EU policy in this sector. As such, the study considers the overall objective of the Regulation to ensure a harmonised approach with regard to official controls, the objectives of EU food and feed law[2] to ensure a high level of protection of human life and health and achieve the free movement in the Community of compliant feed and food, and the objectives of the Lisbon Strategy to promote better regulation and support industry competitiveness. Furthermore, the principles of proportionality, subsidiarity (Article 5 of the Treaty) and FBO responsibility (in accordance with current food and feed law) frame the approach of this study.

The study was carried out in the period April-November 2008 through a survey of EU27 CAs, in depth analysis (case studies) in six MS representing a variety of fee regimes (Germany, the UK, Italy, Poland, France and Slovakia), interviews with key experts and stakeholders at EU level[3], and extensive literature and data review (including relevant FVO reports and national legislation).

The study has found that significant progress has been made in the application of the Regulation by MS, and in particular the financing provisions of Articles 26-29, since their entry into force on 1 January 2007. However, the enforcement of these provisions has been slow and gradual, with significant delays in most MS. In some cases, full implementation is still pending subject to the approval of draft national legislation enacting Article 27, despite the fact that the deadline for its

[1] 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.

[2] Regulation (EC) 178/2002 (General Food law) and the Hygiene Package (Regulations (EC) 852/2004, 853/2004 and 854/2004).

[3] Including consultations with the following EU professional organisations: AVEC, CIBC/IMV/IBC, CLITRAVI, EDA, FEFAC, FVE, and the UECBV.

definitive entry into force was 1 January 2008. In these cases the fee system in place is largely based on that laid down in previous, repealed legislation (Directive 85/73).

Despite progress a number of important shortcomings have been identified in the current state of implementation of Articles 26-29, as follows:

Competent Authorities (CAs): There are significant differences in the organisation, structure and staffing (number and profiles of staff) between MS, which have financial implications for the cost of official controls (OCs). Contrary to the Commission's expectations, more than one CA is involved in most cases, which may create lack of transparency and of central/overall responsibility. In MS with decentralised management, the central CA is not always in control and efficient/effective coordination is not always ensured. The study findings confirm issues which are already highlighted in relevant FVO reports. In several MS initiatives are under way to rationalize veterinary services, such as the use of appropriately trained contractual staff for the OCs rather than civil servants.

Activities for which fees are collected: A distinction is made throughout the study between OC activities for which fee collection is 'compulsory' (Article 27.2, activities of Annexes IV and V), and those for which fee collection is optional or 'non-compulsory' (Article 27.1). The study has found that, in the case of **'compulsory**' fees: 9 MS collect such fees only partly; fees for milk production and for residue controls were found to be 'controversial' and often not collected at all; on the other hand, in some MS fees are collected for the same OCs more than once along the production chain (e.g. at slaughter and cutting plant even within the same establishment, contrary to Article 27.7). In the case of '**non-compulsory**' fees: 19 MS collect fees for activities beyond those of Article 27.2, while 6 do not collect any such fees; fees are collected in some MS for OCs on products of non-animal origin.

Fee rates used: Regulation 882/2004 leaves it up to MS to define fee system: either minimum fees as defined in Annex IV (domestic controls) and V (import controls) or fee rates calculated on the basis of the actual costs of OCs ('flat rates'). In practice, a multitude of fee rates apply for the various activities: 18 MS use a mix of the two systems (flat rates and minimum rates); the current situation is quite complex, not transparent and confusing for FBOs; the CAs appear to have interpreted relevant provisions of Article 27 rather 'openly'. Furthermore, 12 MS apply fees below minimum rates, however it is not clear or sufficiently justified whether the conditions of Article 27.6 (controls of reduced frequency and criteria of para 5) are respected in these cases.

Fee calculation: Article 27.4 stipulates that where flat rates are used, fee levels need to be set within the limits of the minimum fees set out in Annexes IV and V, and a maximum set by the actual controls costs; the fee calculation in this case must respect the criteria of Annex VI. In practice: the calculation method used is not always available, or has not always been communicated to the Commission (contrary to requirements of Article 27.12); even when the method is available, it is not always transparent what type of costs are included under the various cost categories and what reference time period is used; in most cases it is not clear whether the actual costs included in the calculation respect the criteria of Annex VI (staff salaries; staff costs including overheads; lab analysis and sampling).

Fee collection & use of revenue: The rationale of the system is to ensure adequate financial resources to provide the necessary staff and other resources (Article 26). In practice: in the majority of MS the collected revenue is incorporated into the General State Budget, either entirely (11 MS) on in part (7 MS); only 9 MS claim to be 'ring fencing' revenues specifically for the CAs performing the controls; 14 MS indicated they do not cover the OC costs through the fees, while a further 6 MS claim this is occurring in some cases (regions, activities). This partial cost coverage may be due to inappropriate fee setting (insufficient fee levels) as well as inappropriate fee collection / use of revenue. The position appears to be better in the case of imports controls, partly because Article 27.8 stipulates that such fees should be paid to the CA in charge.

Enforcement of Article 27: Although the Regulation should be directly enforceable, Article 27 allows some discretion to MS on the actual fee system to use and the activities for which OCs should

be charged beyond those of Article 27.2. The study has found that, in practice, there is significant variation between MS in the enforcement of Articles 26-29. Underlying this, there is a strong perception - in some cases documented by FVO reports - of significant variation in the organisation and effectiveness of OCs, and that – as documented by the study findings - CAs have rather liberally interpreted provisions of Articles 26-29 (this is particularly a problem in some MS with decentralised management and lack of sufficient central control by the CCA).

The study has therefore concluded that, as it currently stands, the system of fees for OCs does not fully fulfil its key objective: to provide sufficient resources for the effective and efficient operation of the OCs. Furthermore, the actual implementation of the system raises issues with regard to its contribution to the functioning of the internal market and the cost-efficiency of the system of OCs.

Contribution to the functioning of the internal market: MS broadly agree with the rationale of Articles 26-29. However, could the heterogeneity in their application in practice cause distortions in competition? The study has investigated various potential distortions that may arise in this context. It has found that in practice:

- **Distortions at EU level**: There is a general concern amongst stakeholders in the various MS that implementation of rules by national authorities put them at disadvantage vis-a-vis other MS. However, it is difficult to substantiate these claims due to lack of clarity and uniformity in MS approaches which makes the comparison of actual fees difficult. Although evidence of unjustified variations in fee levels were found between MS, there is no evidence of significant distortion in competitiveness between MS caused by differing fee levels. Other key factors affecting competitiveness appear to be more significant.
- **Regional distortions** are a concern particularly in some MS with decentralised management e.g. amongst the case study countries (Germany, also Italy and Spain);
- Discrimination against the **meat sector**, which is seen as unfairly bearing the cost of the OCs, from which other sectors along the chain also benefit;
- Discrimination against **smaller or disadvantaged FBOs**, which compound the difficulties they face in the general economic climate; this is particularly evident for those MS that have not adopted special provisions for these businesses in line with Article 27.5.

Cost efficiency issues have been raised with regard to:

- **Staff costs**: Stakeholders argue that Regulation 882/2004 could go further than the general requirement to have "a sufficient number of suitably qualified and experienced staff". In practice, there are wide variations in the number and profile of staff involved in controls, and this has repercussions on salary costs;
- **Administrative costs**: There is lack of transparency on what type of costs are taken into account, the formulation of Annex VI is considered too broad (in particular criterion 2: 'associated costs'), resulting in wide variation between MS and unjustifiably high costs in some cases;
- **Proportionate and risk based controls:** important cost savings could be made in the costs of OCs if the guiding principles of OCs (risk basis, FBO responsibility and 'self-control' systems) were sufficiently taken into account by MS in implementing the provisions of Articles 26-29.

To address the various shortcomings in the current application of the Regulation[4], the study has examined the following key options: moving from the current system towards more harmonisation;

[4] It is noted that addressing some of the current shortcomings identified by this study requires action that extends beyond the financing provisions of Regulation 882/2004, to the wider legislation in the area of food and feed

moving towards more subsidiarity; and, the continuation of the *status quo*. A complementary option, which transcends the above three alternative options, is the extension of the financing obligation to sectors beyond those currently covered by the Regulation.

The key components of the financing system (basis of fee charging; level of fee rates; fee calculation method; fee reductions and penalties; and, list of activities covered by fees), as identified on the basis of the intervention logic of the current legislation (Articles 26-29), were combined to develop a range of scenarios within the above options (**Table 3-1**). The basis of fee charging is compulsory for all MS under the harmonisation option, optional under the subsidiarity option, and a mixed approach under the continuation of current rules.

The scenarios were assessed in terms of advantages and disadvantages, feasibility (whether and under which conditions they would work in practice), and the acceptance that they might have from the various groups of stakeholders. Key criteria for the assessment were the main goals and principles of the Regulation, as well as the wider objectives of Community food and feed law and the Lisbon strategy, in particular: improving the effectiveness and efficiency of the official controls; simplification of the current system; and providing the right incentives for FBOs to encourage compliance and discourage non-compliance. As these criteria may not necessarily point in the same direction, the initial assessment of the scenarios provided here aims to provide a balance between the various objectives and needs of stakeholders.

The assessment has shown that neither harmonisation nor subsidiarity would work in their most extreme expression. Although both scenarios would simplify the current system at the level of central management (particularly if full subsidiarity is pursued), they ultimately carry the risk that they may not lead to sufficient cost-recovery in some MS, and that the level of cost-recovery may vary significantly between MS. This could undermine the overall effectiveness of the official control system at EU level, and/or act as a disincentive to improving its efficiency.

An intermediate solution would clearly provide the most pragmatic way forward. Intermediate scenarios provide different degrees of balance between the flexibility that the majority of MS require, as an incentive *inter alia* to rationalise the system, with the simplification needed at the level of central management (Commission, MS CCAs). The study has found that the rationale for a flexible approach, which underlies the current Regulation, continues to apply today. The majority of MS CAs and stakeholders have indicated that a system that allows MS flexibility to set the fee rates, within a commonly agreed set of rules, continues to be the most favoured option. This approach is considered the most appropriate for the system to be able to adapt to national conditions.

On balance, amongst the various scenarios that can be envisaged at an intermediate level, those leading to more subsidiarity appear to be more attractive than those that lead to more harmonisation. This is because the degree of flexibility given to MS increases, while the degree of complexity of the legislation diminishes.

Moving towards more subsidiarity, if the primary aim of the legislation is to ensure that MS have the funds necessary to cover the costs of official controls whatever the means, scenario 4 (maintain only the general obligation for MS to provide adequate funding, in the line of a modified Article 26) could present an attractive alternative to pursue for the purposes of simplification.

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safety. The discussion of solutions to such shortcomings was therefore limited to its relevance to the costs and the financing of the official controls.

The disadvantage of this scenario would be that it could result in wider variations between MS than those created by the current system. To reduce these variations, conditions could be attached in the form of common principles at EU level for a more harmonised calculation of the fees and/or fee reductions/penalties across the EU (scenario 3).

Although the continuation of the *status quo* would be an alternative intermediate solution, the analysis of current shortcomings under section 2.2 has shown that to *do nothing* is clearly not an acceptable or a pragmatic option. However, if the current mixed approach of the Regulation (which represents the political reality of the evolution of the system since Directive 85/73) was to be maintained, certain improvements could be introduced as follows: at a general level improve the understanding of the Regulation; provide a rationale for setting minimum fee levels and review Annexes IV and V in the light of this rationale; reinforce transparency and accountability criteria; refine and define certain provisions more precisely at technical level; update Articles 26-29 with the progress made since the adoption of the General Food Law and the Hygiene Package.

Whatever the scenario to be pursued at an intermediate level, the study has identified the need for the definition of common principles that can apply for a more harmonised calculation of the fees and/or fee reductions/penalties across the EU. These could be general principles only or they could be more detailed criteria defined at a technical level. General principles would include: transparency in the calculation method of fee setting and for calculating fee reductions/penalties, on the basis of actual costs; and, the obligation for MS to communicate these to the Commission and the public. Detailed technical criteria would include for instance the calculation method to be followed for fee setting and for fee reductions/penalties, cost-recovery targets that should be sought, precise cost categories that should be taken into account, and even maxima/ceilings for each cost element.

The level at which common principles should be set needs to be further explored, as it is crucial in controlling MS flexibility and mitigating the potential disadvantages of subsidiarity. The greater the degree to which EU legislation moves from defining common principles and general guidelines (as is currently the case with Articles 27-29) to more technical criteria, the more difficult it will be for MS to deviate from a common denominator. On the other hand, this increases the complexity of the provisions and the extent of follow up needed at central level (Commission, MS CCAs).

In terms of the calculation of fee reductions and penalties, in particular, the principles could build on the advantages and benefits of self-control systems, as introduced at EU level by the Hygiene Package. Both MS and stakeholders are in principle in favour of providing incentives to FBOs to assume greater responsibility. The study has examined the possibility to follow an integrated approach more consistently linking compliance and non-compliance, and therefore fee reductions and penalties, to the uptake of self-control systems by industry (through a *bonus-malus* system). Such systems have already been developed in few MS (e.g. Belgium), highlighting the advantages of an integrated approach. The study has concluded that, although the development of such systems needs to be encouraged at EU level, their actual design can at present only be pursued at MS level.

Furthermore, the cross-cutting theme of the extension in scope of the Regulation was favourably assessed, in relation in particular to the inclusion of all stages along the food chain. The case of the extension of the system to stages upstream and downstream of the slaughtering and meat cutting operations along the meat production chain was a case in point. The study has concluded that an extension in this form would spread the costs of controls currently pursued only at a particular point in the chain but for the benefit of stages upstream/downstream more equitably along the food chain. Again, this approach is currently being adopted/explored in several MS.

This forward looking element of the project aimed to provide an initial assessment of certain key scenarios. The purpose was not to provide a full feasibility analysis (whether at political or technical

level). Nonetheless, specific recommendations were made to develop these scenarios, or indeed other potential combinations of their components, including through future impact assessments.

1. Introduction to the study

1.1. Background

Regulation 882/2004[5] (hereafter referred to as 'The Regulation') sets out requirements for the authorities in EU Member States that have responsibility for monitoring and verifying compliance with, and enforcement of, feed and food law, and animal health and animal welfare rules, i.e. the 'competent authorities' (CAs) responsible for organising and undertaking 'official controls' (OCs).

According to Article 65 of the Regulation, three years after its entry into force, the Commission should review the experience gained from its application, in particular in terms of scope and the fee-setting mechanism, and whether/how the current regime can be improved. This study, which was launched in April 2008, aims to respond to this requirement. The data collected and results of the study will feed into a Commission Report to the European Parliament and Council (which will also be discussed at the SCFCAH) for a possible modification of the current legislation.

Part One of this Final Report outlines the methodology and overall results, including conclusions and recommendations, of the work carried out by the study team (FCEC - Food Chain Evaluation Consortium, led by Agra CEAS Consulting for this evaluation).

Part Two (provided in a separate volume) describes in detail the system and conclusions of the work in the six case study countries.

The Final Report (Parts One and Two) forms the basis of the Final meeting with the Steering Group for this study, scheduled before end 2008.

[5] EU legal acts quoted in this Report refer, as applicable, to the last amended version. Full references to the acts quoted in this Report are given in **Annex 1.1**.

1.2. Objectives

The objectives of the study are two-fold:

c) to establish a detailed picture and evaluate the present situation as regards the application of the current fees regime in the EU, in particular the way in which the system operates in practice; and,

d) to assess the advantages and disadvantages of a range of policy options (regarding the scope of current rules and the fee-setting mechanism).

As such, the final aim is to provide input to the Commission's development of proposals to improve the system in future.

1.3. Scope

The study covers activities related to the official controls in relation to establishments based in the EU and in relation to goods introduced into the EU, with regards to the product sectors where the current rules apply, in particular the livestock and livestock product sectors.

Although the study focuses on the financing provisions of Regulation 882/2004, as contained in Articles 26-29 of Regulation 882/2004 (and in particular Article 27), a range of other Community legislation is relevant to the study. This legislation is summarised in **Annex 1.1**.

It is noted that reference to 'mandatory' and 'non-mandatory' fees throughout this Report is made with respect to MS obligations and possibilities under **Regulation 882/2004**, **Article 27 para 2 and para 1** respectively, not with respect to whether the fee is charged on a compulsory or other basis.

1.4. Methodology

1.4.1. Overall methodological approach and objectives

The activities undertaken during the study have been based on the following main methodological tools:

- Desk research, including data and documentation analysis;
- Survey of competent authorities at MS level (for the EU27);
- Interviews with European stakeholders/partners (including the Commission);
- Case studies, based *inter alia* on detailed interviews with MS stakeholders/authorities in 6 MS (Germany, UK, Italy, France, Poland, and Slovak Republic);

The study team has undertaken the design and implementation of the survey and interview process, with the following two key criteria in mind:

1. To have an open and transparent dialogue, involving all potentially interested partners and stakeholders at European and MS level. Our commitment to this objective is demonstrated by the fact that the survey has been addressed to all competent authorities in the EU-27, with the process closely monitored by our team. We have also contacted all representatives of the various relevant stakeholders at both EU and MS level.

2. To provide a synthetic and concrete analysis of the results, so as to be able to deliver actionable recommendations to the Commission services, in particular in the context of the Commission's review of Regulation 882/2004.

To this end, the study team has tried to ensure maximum flexibility throughout the survey and interview process. Flexibility was sought both in terms of adjusting the sample of relevant partners/stakeholders, but also in terms of updating the detailed list of questions used during the interviews with new findings and comments. New insights have thus been built into the process as the interviews were progressing.

At the same time, the team has sought to ensure that the Commission's reporting deadlines are adhered to and that a sound and robust basis for the synthesis at EU level is provided. This has involved the establishment of a clearly set out analytical framework and of a tight reporting and synthesis system for the inputs provided by the various phases of the project.

The study was carried out during the period March to October 2008.

1.4.2. Desk research

For the purposes of this study, key relevant literature and material reviewed includes the following:

1. Background legislation and other official documents of relevance. A non-exhaustive list of the main background legislation at EU level is provided in **Annex 1.1**. The purpose of the review has been to understand in detail the subject matter of this study and the way in which the various legal instruments interrelate.

2. The notification letters submitted by the MS to DG SANCO, in complying with Article 12 of Regulation 882/2004. To date, 18 MS have notified the Commission of the measures taken to enforce the financing provisions of the Regulation (**Annex 1.2**).

3. FVO reports carried out in the EU-27, in particular those relating to hygiene controls and import controls. A list of the reviewed FVO reports, indicating where available reference to the issue of fees, is provided in **Annex 1.2**. The purpose of our review has been to obtain a first view of the situation, and – where possible/applicable - to cross-check with the information provided by MS in their answers to the survey questionnaire. These reports, together with the FVO country profiles on the system of official inspections in the

areas covered by Regulation 882/2004[6] and the National Controls Plans[7] where available, also provide useful background material on the structure of the CAs in the MS. This has been useful in the context of identifying the relevant stakeholders both for the EU-27 survey and the case studies, and key issues of relevance to the financing of official controls.

4. Background material available at national level, including national legislation implementing Article 27 of Regulation 882/2004.

5. Material and data provided by industry stakeholders. Such material has included data on fees collected independently by some of the EU professional organisations (including notably the UECBV and CLITRAVI).

Desk research continued throughout the project course as new material and data, in all of the above categories, became available.

1.4.3. Survey of competent authorities (CAs)

The survey of CAs was addressed to all MS of the EU-27, including the case study countries. It was based on a questionnaire, developed in consultation with the Commission services, which covered the various issues of the fees system under Regulation 882/2004, including all sectors of Annexes IV and V of the Regulation (in the meaning of Article 27.2) but also other sectors to which non-compulsory fees may be currently applied by MS (in the meaning of Article 27.1). The questionnaire is attached in **Annex 2**.

The aim has been to collect facts/hard data on the current operation of the system (Section 1 of the questionnaire), and views/suggestions for the future (Section 2 of the questionnaire).

The process of questionnaire completion has been monitored closely by the Consultants via targeted meetings and communication, both with the desk officers responsible for hygiene and official controls in the MS Permanent Representations and directly with the CAs in the EU-27 MS. Requests for further clarification, following questionnaire submission, were also made to a number of MS.

A challenge from the outset has been to identify the relevant CAs in the MS, given the scope and complexity of the sectors to which fees for official controls apply, and the fact that several CAs and/or delegated bodies are often involved in the organisation of official controls (this issue is further discussed in section 2.2.1). As a result, questionnaire completion has necessitated extensive internal consultations within the MS, involving not only the CAs (notably, in most MS, the Ministry of Agriculture and the Ministry of Health), but also the national/local authorities, in some cases even the laboratories and veterinary institutes.

[6] FVO country profiles on food and feed safety, animal health, animal welfare and plant health.

[7] NCPs are to be drawn by MS pursuant to Article 41 of Regulation 882/2004.

The outcome has been a full response to the survey by all EU-27 MS[8]. It is also noted that this has largely been within the anticipated timelines (nearly two thirds of MS responded by the deadline of 27 June). For the case study countries, the survey results were incorporated and followed up in the discussions with MS authorities and stakeholders at national level.

The full analysis of the survey results (both quantitative and qualitative) is submitted as a separate spreadsheet file[9], while some of the results are used in this Report.

1.4.4. Case studies

The study covered the EU as an entity with treatment of all MS of the EU-27. Given the potentially wide scope of this coverage, further in-depth analysis was undertaken in six MS, as follows:

1. Germany
2. Italy,
3. UK,
4. France,
5. Poland
6. Slovakia

The selection of these countries represents a mix of different situations as identified during the Inception Phase of the study, in terms in particular of centralised/decentralised organisation and management of the system for the collection of the fees, and the nature of the system applied (whether minimum rates or flat rates). Two NMS have also been included in this selection.

The case studies were carried out and drafted using a common framework. In practice, any differences in the final presentation are due to the specific character of the administration of the official controls system and the administrative structures in each country. For the same reason, the partner and stakeholders contacted/interviewed in each country may be slightly different, with interviews focussed on the key relevant partners and stakeholders in each case.

The case studies are presented in full in a separate volume (Part Two) of the Final Report. Results and information from this work are incorporated in the analysis that follows in this main part of the Report.

[8] In some cases (4 MS) more than one response were received by the various CAs involved.

[9] A package of the completed questionnaires has been submitted separately to the DG SANCO services.

1.4.5. Interviews with key partners and stakeholders

The partners and stakeholders selected for interview at EU and MS level (for the case study countries) cover the range of sectors of relevance to this study.

1.4.5.1. At EU level

At European level, the interview programme has included, as partners, the Commission services (DG SANCO, other relevant DGs in particular DG Agriculture and DG MARE). In terms of the stakeholders, it has included both EU and national professional organisations.

All of the interviews were carried out face-to-face. In view of the large number of experts/representatives involved in some cases, where applicable, interviews were conducted by grouping together some of the partners/stakeholders. The latter has been particularly the case in terms of the interviews with the European professional associations.

The final list of interviewed professional organisations is presented in **Table 1-1**. Several of these interviews have been conducted with a group of relevant experts or representatives. The aim has been to enlarge the debate process to a larger number of people from the various MS, so as to provide different perspectives for the discussion and our analysis. This approach was also dictated by the fact that several of the professional associations are umbrella organisations representing a wide and often divergent range of views from their national members.

For the same reason, these interviews were conducted using a step by step approach with most of the EU professional associations. This has involved:

1. A preparatory phase with the lead organisation prior to the full interview with its members. The objective has been to focus the discussion during the main interview on identifying key issues for the organisation as a whole, including common points and points where an internal debate may be in evidence;

2. Main interview with the organisation and its members (where appropriate, e.g. UECBV, CLITRAVI, EDA, AVEC).

3. A second interview which took place towards the end of the study period, to confirm the points expressed during the first interview and also to focus the discussion on the options for the future (second 'group' interviews were conducted with the UECBV, CLITRAVI and AVEC).

Table 1-1 European professional organisations interviewed

Organisation	***Full name***
UECBV	European Livestock and Meat Trading Union
CLITRAVI	Liaison Centre for the EU Meat Processing Industry
AVEC	Association of Poultry Processors and Poultry Import/Export Trade
CIBC/IMV/IBC	International Butchers' Confederation
EDA	European Dairy Association
EUCOLAIT (a)	*European Association of Dairy Trade*
EUROPECHE (a)	*Association of the National Organisations of Fishery Enterprises in the European Union*
FEFAC	European Feed Manufacturers' Federation
FVE	Federation of Veterinarians of Europe

(a) This organisation was contacted for an interview, but no interview was conducted due to limited member interest. Member organisations in the case study countries were approached/interviewed in some cases.

The study team has synthesised the information and views collected through this process, and these are incorporated in the analysis of this Report.

In addition, the Consultants were invited by the French Ministry of Agriculture to attend a conference co-organised with the French Presidency on the modernisation of sanitary inspections in slaughterhouses, and in particular the section dealing with the costs of official inspections and the fee system[10]. The conference was attended by relevant CAS and delegated bodies from various MS of the EU-27 and gave the opportunity to liaise and get feedback both a wider base of MS than the case studies alone.

1.4.5.2. At MS level (case studies)

The case studies have involved a detailed investigation of the system applied, the issues raised, and the implications of the different systems. To this end, a second round of detailed interviews was conducted in the case study countries. This interview process, in terms of the stakeholders contacted and the issues addressed, was developed in all of the six case study

[10] Lyon 7-11 July 2008. Conference details can be found at:
http://pfue-inspectionsanitaireenabattoir.lso-intl.com/

countries in close consultation with their permanent representations in Brussels, the central national CAs, and the European professional organisations.

On average, the interview programme in each of the selected MS has covered at least 6-8 interviews for the large case studies (Germany, Italy, the UK) and 4-5 for the small case studies (France, Poland and Slovakia)[11]. Typically the interviews have included the relevant Ministries (Ministry of Agriculture, Ministry of Health), industry representatives (live animals, traders, meat processors, dairy processors, poultry sector, animal feed industry, fish industry), and a national veterinary institute (where applicable and if active in this area). The full list of authorities/stakeholders selected for interview in the case study countries is provided in Annex in Part Two of the Final Report.

The bulk of the interviews were conducted face-to-face. As was the case with the European stakeholders, several of the national interviews were carried out with a group of relevant officials/representatives, and involved extensive preparatory work and meetings. All interviews were conducted in the national language, by appointing native language experts from the Consultants' team in charge of the case study in each country.

The study team has processed the data and information from these interviews in two steps:

- The first step involved the analysis and synthesis of the interview results in a MS report, summarising the key points of the MS position per question. This analysis was incorporated in particular in Part Two of the Final Report.

- The second step was the comparison and cross-referencing of the analysis carried out per MS, with the results of the analysis of the information, data and views collected through the EU interviews and the survey. This analysis is incorporated in particular in this main part of the Report.

[11] Case study definition in accordance with the project contract (FCEC/Agra CEAS offer of January 2008).

2. Description and assessment of the current system of fees

This section presents the intervention logic of EU policy in this area, in particular of the financing provisions of Regulation 882/2204 (Articles 26-29) as set within the context of EU food and feed law and wider EU policy principles and objectives. Based on this, the analysis describes the current enforcement of Articles 26-29 by the MS, assesses the extent to which the various principles and objectives have been achieved, and highlights shortcomings.

The analysis is based on the synthesis of data and information resulting from the stakeholder interviews, the survey and the case studies, as well as from the desk research and analysis of secondary data and sources of information.

2.1. Intervention logic

2.1.1. Principles and objectives of EU policy

The analysis aims to establish the extent to which the financing provisions of Regulation 882/2004 serve the objectives and principles both of this Regulation and the wider objectives within which this is set, in particular those of EU food and feed law and the Lisbon Strategy.

In terms of objectives, the assessment of Articles 26-29 includes consideration of the following:

- Objectives of **Regulation 882/2004**:

  ⇒ to ensure a harmonised approach with regard to official controls;

- Objectives of **EU food and feed law** (Regulation 178/2002 and the Hygiene Package):

  ⇒ to ensure a high level of protection of human life and health and the protection of consumers' interests, including fair practices in food trade, taking account of, where appropriate, the protection of animal health and welfare, plant health and the environment;

  ⇒ to achieve the free movement in the Community of food and feed manufactured or marketed according to the general principles and requirements of EU law;

- Objectives of the **Lisbon Strategy** (*inter alia*):

  ⇒ to promote better regulation and maintain/support competitiveness.

In terms of principles, the analysis takes into account the need for Articles 26-29 to ensure respect of:

- The principle of **proportionality**: as set out in Article 5 of the Treaty, EU Regulation should not go beyond what is necessary in order to achieve the objectives pursued[12];

- The principle of **subsidiarity**: as set out in Article 5 of the Treaty, where objectives cannot be sufficiently achieved by the Member States and would therefore, by reason of their complexity, trans-border character and, with regard to feed and food imports, international character, be better achieved at Community level, the Community may adopt measures[13];

- The principle of **FBO responsibility**: actual Community food and feed law is based on the principle that FBOs at all stages within the business under their control are responsible for ensuring product safety[14].

2.1.2. The requirements for official controls

Regulation 882/2004 sets out requirements for the authorities in EU MS that have responsibility for monitoring and verifying compliance with, and enforcement of, feed and food law (and animal health and animal welfare rules), i.e. the 'competent authorities' (CAs) responsible for organising and undertaking 'official controls' (OCs)[15].

This regulation sets out the general approach that must be taken, and the principles that must be adopted, by the authorities in EU MS. It also provides the legal basis for the European Commission to assess the effectiveness of national official control arrangements.

Most of the provisions applied from 1 January 2006, while others applied from 1 January 2007. However, a 1-year derogation (to 1 January 2008) was given to MS for the entry into force of the financing provisions of Regulation 882/2004 (Articles 26 to 29), which are the subject of this study.

A novelty of the new Regulation has been that CAs can delegate specific tasks to relevant control bodies provided these meet certain conditions (experience, accreditation, staff qualifications, impartiality etc.) and are audited by the CA. This is a very sensitive issue as it raises concern that MS use their right to delegate to avoid accountability (including vis-à-vis the Commission). From the Commission's point of view there should be only one central/single competent authority (or at least only one per type of controls, e.g. veterinary, phytosanitary, aquatic).

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[12] Preamble (48) of Regulation 882/2004; preamble (66) of Regulation 178/2002.

[13] Preamble (48) of Regulation 882/2004.

[14] Preamble (4) of Regulation 882/2004; Article 17.1 of Regulation 178/2002.

[15] According to Article 2(1) of Regulation 882/2004, *"'official control' means any form of control that the Competent Authority or the Community performs for the verification of compliance with feed and food law, animal health and animal welfare rules"*.

2.1.3. The financing of official controls

The provisions of Regulation 882/2004 relating to the financing of official controls are contained in Articles 26-29.

In summary, the main principles pursued in these provisions are the following:

- Member States must ensure that adequate financial resources are made available for official controls (Article 26);
- Inspection fees are imposed on feed and food business operators, common principles must be observed for setting the level of such fees and the methods and data used for the calculation of the fees must be published or otherwise made available to the public (Article 27);
- When official controls reveal non-compliance with feed and food law, the extra costs that result from more intensive controls must be borne by the feed and food business operator concerned (Article 28).

The requirements laid down in Regulation 882/2004 as regards charges for meat hygiene official controls were previously contained in Council Directive 85/73, as last amended by Directive 96/43 (**Annex 1.1**). Regulation 882/2004, which supersedes the Directive, requires that, from 1 January 2007, MS must charge no more than the actual costs of controls and, other than in specified cases, no less than specified minimum charge rates. The Regulation effectively allows MS to retain the charge rates set out in Directive 85/73 until 1 January 2008, though as minima rather than as standard amounts. Some MS have altogether used this opportunity to look at possible options to review their fee system.

Within these boundaries, the Regulation leaves it to MS to determine the level of fees or charges. For certain activities for which fee charging is 'compulsory' (Article 27.2), the minimum levels laid down in Annex IV (controls on domestic production) and Annex V (import controls) must be respected. Beyond this, the Regulation provides MS with some flexibility within which to determine the fee system, provided that specified factors are taken into account. The key requirement is that fees should not be higher than the actual costs of the official controls.

The minimum fee or charge rates in the Directive and in the Regulation (Annexes IV and V) are throughput rates for inspection costs relating to the slaughter per species/type of animal or bird. For controls and inspections connected with cutting operations, the fee is per tonne of meat entering the cutting plant for the purpose of being cut up or boned there.

2.2. System description

This section outlines and comments on the key elements of the operation of the current system (*Task 1: system description*) of the ToR.

It is noted from the outset that in several MS the current system continues to be based on the previous financing legislation (Directive 85/73); in these cases, draft proposals to enforce Regulation 822/2004 are currently undergoing the national legislative making process.

2.2.1. Competent Authorities

As already noted in the methodology section of this Report, a key observation – and challenge - of this study from the outset has been the very different level of structure and organisation of the CAs involved in the system of official controls in the MS. This includes both the administrative structures in place for the collection of fees for the controls, and for the conduct of the controls. Two issues have in particular been identified:

1. The organisational structure of the CAs responsible for the official controls. Depending on the MS and often depending on the product sector, this may include central, regional and district level administrations, as well as external delegated bodies (Agencies, Laboratories etc.). This issue is demonstrated simply by the list of CAs that responded to the survey (**Annex 1**). It is also confirmed by our review of the CAs performing official controls from relevant FVO reports and MNCPs (where available), which is presented in **Annex 3**.

   It is noted that current structures are dictated by the constitutional law and particular administrative traditions of a MS, and are therefore not readily amenable to change.

2. The staff composition (official veterinarians, hygienists and assistants) of the CAs and executive bodies responsible for performing the official controls also varies significantly between MS. In contrast to the overall administrative structures referred to above, the staff composition is subject to change.

   In particular, there is currently a trend in several EU MS to seek to rationalise public services, and as part of this trend, the veterinary services and their staff are being reformed/restructured. In some MS (e.g. NL) the model of employment of the staff performing the official controls is shifting away from the higher-cost direct payroll of the public service towards lower cost/freelance contractual arrangements; such options are currently also being examined in other MS (e.g. France, the UK).

Both issues have financial implications in terms of the actual cost of official controls, and these are of relevance to this study:

- The addition of several layers of competent/executive bodies in the system of official controls would *à priori* be expected to have cost implications and needs to be justified/supported on efficiency/effectiveness grounds.

- Similarly, the use of appropriately trained (in the context of EU rules) staff employed on a contractual basis over the alternative of highly qualified staff employed as official civil servants – without compromising the quality of the controls – could create significant cost savings. This appears to be the main motivation in the case of MS that have adopted or are currently thinking of adopting this approach.

More generally, both these issues have been a challenge for this study, as it is not easy to separate the review and evaluation of the fees system from the overall organisation, structure and therefore cost of the official controls. They also have significant implications when examining the options for the future.

The involvement of several layers of administration (either vertically within the same CA, or horizontally across CAs, or at regional/local level) raises questions of conformity with Regulation 882/2004. The Regulation envisages that one central CA (Article 2.4[16]) would normally be responsible for the overall supervision and operational control of the system of OCs. Furthermore, when the competence to carry out official controls has been delegated to an authority or authorities other than the central CA, efficient and effective coordination should be ensured between the CAs involved including at regional/local level (Article 4.3) and at vertical level (Article 4.5). More stringent provisions, including audits by the CAs, apply when control tasks are delegated to control bodies (Article 5).

Both the desk review (analysis of FVO reports) and the case studies have shown that, in practice, these provisions are not always complied with, and that the CCA does not always have full control or information on the actual operation of the system when a number of CAs or delegated bodies are involved.

It is noted that Regulation 882/2004 requires MS to draw up multi-annual control plans (MNCP) which will provide information on the structure and organisation of the systems of food and feed control, including *inter alia* the designation of CAs at central, regional and local level and delegation of tasks to control bodies (Article 42.2(c) and (f)). However, to date, such plans are not available in all MS, and even where they exist they are not publicly available but can only be provided at the request of the Commission[17]. Consequently, it is difficult on the basis of objective sources to establish how exactly competence for the official controls falling under Regulation 882/2004 is organised at MS level.

From the survey of EU-27 CAs it is clear that in many cases more than one CA is involved[18]. This issue was also highlighted in the case studies (Part Two of the Final Report).

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[16] Article 2.4 reads: *'Competent authority' means the central authority of a Member State competent for the organisation of official controls or any other authority to which that competence has been conferred.*

[17] Despite efforts to consult the MNCPs on this, the Consultants have only seen the MNCP in two of the case study countries. It is not known how many MS have drawn MNCPs, or how many MS have submitted those to the Commission.

[18] Indeed, as is highlighted in the methodology part of this Report, separate responses to the survey were received from more than one CA in the case of four MS. One of these was Germany, for which responses were separately received from 13 out of the 16 Lander. In most of the other MS, although one response was received, there was a significant consultation process between the various CAs and/or bodies involved for the completion of the survey questionnaire.

2.2.2. Activities for which fees are collected

The study has found that in practice fees are currently collected for the official control of the following types of goods, establishments and activities:

a) Fees collected on a 'compulsory' basis (Article 27.2)

The types of goods, establishments and activities, for the official control of which fees are to be collected, is established in section A of Annex IV (concerning domestic production) and Annex V (imports) of Regulation 882/2004. Fee collection for these activities is 'compulsory' within the meaning of Article 27.2.

From the results of the survey, 18 MS (including France, Germany, Italy, Poland and Slovakia) collect fees for all the activities according to Article 27.2; however, the remaining 9 MS (including the UK) collect such fees only partly (*Question 1.4, **Annex 2***). Fees for milk production controls and fees for residue controls are the two types of control activities for which several of these MS do not collect fees, and at least 3 MS do not collect fees for a wider range of activities.

In the case of **milk production** controls, although Regulation 882/2004 states that charges for official controls in dairy plants are compulsory (under Annex IV, section B, Chapter IV). In fact, however, these charges are not made - at least - in the following MS: UK, Germany, Netherlands, Latvia. Two main reasons are given for this:

- It appears that this reflects the fact that there was some debate during the negotiations on Regulation 882/2004 as to whether fees in the dairy sector should be charged on a 'compulsory' basis (within the meaning of Article 27.2) or not (in this case falling under Article 27.1). This point was made in the UK case study, but also by some other MS in the survey. Some MS argued that they should be considered to be compulsory, as they were also mandatory under the previous charging legislation, Directive 96/43/EC (which amends and consolidates Directive 85/73/EEC). Other MS were opposed to the introduction of mandatory fees in this area under the new Regulation. In the event, it was agreed that MS would be required to impose fees on a compulsory basis only when they had previously done so under Directive 96/43/EC, but with the compromise that the minimum rates for milk production controls remained and could be applied by those MS where fees are imposed.

- According to the European Dairy Association (EDA), the minimum fees charged on a compulsory basis (Article 27.2) for controls on specified substances and residues in milk production exceed as much as 20 times the previous fee on these controls[19].

[19] The EDA have already expressed their concerns on this in a letter sent to DG SANCO on 13 February 2007. According to the fee calculation provided by the EDA, for the EU-25 the fee revenue collected according to Directive 85/73 amounted to Euro 2.64 million, while under Regulation 882/2004 it would reach Euro 44.32 million (if applied in full throughout the EU-25).

- The CAs of some MS complain of a lack of clarity on how minimum fees should be collected. This point was made in the Germany and Slovakia case studies, but also by some other MS in the survey. In particular, the CAs in Germany claim that it is unclear who is liable to pay fees for milk production inspections (dairies or farmers) and which time span the quantity of raw milk specified in Annex IV/B/IV refers to. Similarly, the CAs in Slovakia, although they are charging fees for milk production controls, they nonetheless commented that they were unclear whether dairy farmers or milk processing companies should pay these fees and the milk quantity to which this refers (whether total annual production or the volume subjected to controls).

b) 'Non-compulsory' fees (Article 27.1)

According to the survey, 19 MS (including the UK and Poland) collect fees for activities falling under Article 27.1, i.e. for which fee collection is 'not-compulsory' within the meaning of Article 27.2 (*Question 1.3a,* ***Annex 2***). On the other hand, 6 MS (including France, Italy and Slovakia) do not collect fees for activities beyond those that they are obliged to collect under Article 27.2, and 2 MS (Germany, Spain, i.e. with a decentralised management of the system) collect such fees in some regions but not in others.

It would also appear that some MS use significant leeway in interpreting the term 'routine controls' of Article 28 of the Regulation (which provides for additional fees on expenses arising from additional official controls beyond the 'routine controls'). The case of the feed sector is an example here. It would appear that Denmark is the only MS that charges fees for 'routine' controls in the feed sector[20]. This situation is causing concern to the EU feed federation (FEFAC).

c) Fees collected at several points along the production chain (Article 27.7)

Another observation from the survey and the case studies is that, in practice, fee collection can occur more than once along the production chain for what would effectively constitute the same controls. This is contrary to Article 27.7 which specifies that where several OCs are carried out at the same establishment, these should be considered as a single activity and be charged a single fee. Evidence of double charging was found for instance in the meat sector in Italy, where industry stakeholders complained they paid double fees at both slaughter and meat cutting points; and in Portugal and France where the fish industry appears to be paying fees at more than one of the three stages listed in Annex IV/B/V of Regulation 882/2004.

Cross-charging or overcharging may also be occurring for the same controls performed more than once when products are traded across MS. For example, dairy products from another EU MS brought to the NL to be further processed into other products for further export are re-examined on residues. The fact that these products are coming from an approved EU-factory and from a MS applying a residue plan does not appear to be sufficient.

[20] These are in addition to the 'compulsory fee' for the approval of feed establishments provided under section A of Annex IV of the Regulation, which are indeed collected in most MS (and which according to FEFAC do not pose a problem to the EU feed industry).

d) Fees collected for OCs on products of non-animal origin

It is noted that both the survey and the case studies identified cases where fees are collected for products of non-animal origin. For example, in Belgium the current fee system collects a base contribution from all FBOs along the food chain including catering and controls on products of plant origin. The proposed draft law for the full enforcement of Regulation 882/2004 in Italy is also moving to this direction. Fees for some plant health controls also appear to be currently being collected in Bulgaria and Greece.

Fees are collected in several MS (including the UK, Denmark, Hungary, NL, Poland, and Sweden) on import controls on products of plant origin (these can include food and non-food items). This appears to be taking place within Directive 2002/89/EC21 (import controls for plant health). This Directive, which came into full effect on 1 January 2005, required that all consignments of regulated material be subject to a documentary, identity and plant health check prior to customs clearance. The directive also introduced phytosanitary fees to cover the costs associated with performing these checks. Minimum fees are contained in Annex VIII of the Directive and several of the above mentioned MS are following these fees.

2.2.3. Fee rates used

Regulation 882/2004 leaves it up to MS to define the actual fee system they will use, provided that the two main boundaries set by the Regulation (minimum fees of Annexes IV and V, and a maximum set by the actual controls costs) are respected.

In practice, the study has found that a multitude of scenarios arise out of these possibilities. The resulting picture is quite complex and can be confusing, or at least lack transparency for FBOs, with a multitude of fee rates applied for the various activities. It appears that the original intention of the legislator was that only one of the two systems would be used, or at the most, a combination of the minimum rates for all activities listed in Annex IV and V and flat rates for the other activities. From our interviews in the case study countries and the responses to the survey it can be concluded that CAs have interpreted the relevant provisions of Article 27 in various ways and rather 'openly'; this is often attributed, by both the CAs and stakeholders, to a perceived vagueness or confusion in the formulation of the provisions in the Regulation.

In particular, the following possibilities currently exist:

[21] Council Directive 2002/89/EC of 28 November 2002 amending Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community. Directive 2002/89 and Annexes amend Directive 2000/29/EC.

i. Flat rates or minimum rates

According to Article 27.4(b) fees collected for the purposes of official controls may be fixed at a **'flat-rate'** or, where applicable, at the amounts fixed in section B of Annex IV and V (**'minimum rates'**).

The survey of EU-27 CAs has demonstrated that 18 out of the 27 MS (including Germany, Italy and the UK amongst the case study countries) in practice use a mix of flat rates and minimum rates (*Question 1.6a, **Annex 2***). A further 6 MS (including Poland and Slovakia) use minimum rates for the activities outlined in Annexes IV and V (and do not collect fees for any other activities); on the other hand, only 3 MS (including France) use flat rates throughout all activities for which fees are collected (within the meaning of either paragraph 1 or paragraph 2 of Article 27).

In the majority of cases where a mix of the two systems is used, the combination of flat rates and minimum rates were for different activities but could also be for the same categories of activities within Annex IV and V.

ii. Reduction below minimum rates

In a number of cases the fee applied is below the minimum rates of Annexes IV and V. In particular, 12 MS may apply fees below the minimum rates, at least in some cases (*Question 1.8a, **Annex 2***).

A provision for a reduced fee is made under certain conditions in Article 27.6 ("*controls carried out with a reduced frequency or to take account of the criteria referred to in paragraph 5"*). In practice the lower fees are not necessarily always applied in accordance with this provision. In most cases, MS were not able to provide a clear and complete justification for the fee reduction or the method applied for the calculation of the reduction as required by Article 27.6(c). This clearly contravenes Article 27.3 which stipulates that fees *"shall not be lower than the minimum rates"* specified in section B of Annexes IV and V. In some cases (e.g. France, Italy), lower fees appear to apply simply because they are based on previous legislation (notably Directive 85/73/EC). However, it is noted that the transitional period during which such fees could continue to be charged expired on 1 January 2008[22].

iii. Flat rates on throughout or time basis

Where flat rates are used, the rates can be expressed on a throughput basis, as is currently the case for the minimum rates specified in Articles 26-29 (i.e. on an animal or tonnage basis), or they may be on a time basis i.e. for the actual time during which the OCs are performed multiplied by the fee of the staff performing the OCs. In the latter case, the rates are frequently expressed in complex calculations involving different fee rates (e.g. depending on whether official veterinarians or auxiliaries are involved) and the particular time of the

[22] Both France and Italy are currently discussing legislation with a view to *inter alia* adjust all rates to comply with at least the minimum rates indicated in Annexes IV and V.

inspections (e.g. different rates for normal business hours and non-business hours, holidays, overtime etc.). In several MS, a flat minimum rate topped up by a time based fee is used.

2.2.4. Determination of the fee

Article 27.4 stipulates that, where flat rates apply, these may be fixed *"on the basis of the costs borne by the CAs over a given period of time"* (paragraph 4(b)) and that they *"shall not be higher than the costs borne by the responsible CAs in relation to the items listed in Annex VI"* (paragraph 4(a)).

Again, both the survey results and the case studies have demonstrated that the provisions of Article 27.4 are not being fully respected. In particular the following problems have been identified:

- The calculation method used for the determination of the flat rate is not always available, or at least has not always been communicated to either the Commission or the Consultants (although Article 27.12 requires MS to make the calculation method public and to communicate it to the Commission). From our review of the notification letters submitted by MS to the Commission pursuant to this Article, MS have not always made this explicit to the Commission (**Annex 1.2**);

- In several of those cases, where the calculation method has been made available, it is not transparent what exactly the various cost categories of the calculation have included and/or by which CA they have been incurred, and which time period these costs refer to;

- In the case of the 3 'criteria' or cost categories that should be included in the calculation according to Annex VI (1. staff salaries; 2. staff costs including overheads; 3. laboratory analysis and sampling), it is not sufficiently transparent whether the actual costs used by MS strictly reflect the costs directly associated with the carrying out of official controls. It is noted that this has emerged as the most controversial point of the fee calculation. The lack of precision from MS CAs on these costs is often attributed to the perceived vagueness in the formulation of criteria in Annex VI, which results in MS considering it their right to add costs that are not necessarily justified in that they are directly linked to the official controls.

Finally, as already discussed under section 2.2.3, in most cases of fee reduction neither the justification nor the calculation applied has been clearly communicated by MS.

2.2.5. Fee collection method and use of fee revenue

The rationale for the whole system of the charging and collection of fees is to cover the costs of the official controls, thereby ensuring that "*adequate financial resources are available to provide the necessary staff and other resources*" (Article 26).

In practice, in the majority of MS the revenue from the collected fees is incorporated into the State's general budget, either in its entirety (11 MS, including France and Slovakia), or in part

(7 MS, including Germany, Italy, Poland and the UK). Where this occurs, especially where the entire amount of the fees collected is incorporated into the general budget, there is for the most part no guarantee how this is to be used subsequently. Only 9 MS claim to be i.e. 'ringfencing' revenues specifically for the CAs performing the controls (*Question 1.10*, ***Annex 2***).

Most likely related to this, 14 MS (including Italy, Slovakia and the UK) have clearly indicated that they do not cover the costs occasioned by the official controls through these fees (*Question 1.9a*, ***Annex 2***). Only 7 MS (including Poland) claim costs are being covered, while a further 6 MS (including France and Germany) claim this is possibly occurring in some cases (some activities; some regions) but not in others. An overview of the extent to which MS manage to cover the costs of the official controls through the collected fees is provided below in **Table 2-1**.

Table 2-1 Share of the costs of official controls covered by fee revenue

Country/Year	Sector (a)	2005	2006	2007
BELGIUM		41,99%	45,86%	38,74%
BULGARIA		n.a.	25%	29,3%
CZECH REPUBLIC		36%	33%	28%
		52%	49%	46%
ESTONIA		31%	28%	20%
FINLAND	Feed control	104%	n.a.	54%
	State Food control (meat inspection)	98%	99%	92%
	Municipal food control	20%	20%	20%
	Veterinary Border Control	97%	97%	97%
HUNGARY		60%	60%	60%
IRELAND	Meat	48,5%	37,7%	42,0%
	Milk	90,0%	90,0%	90,0%
	Animal feed	82,0%	80,0%	76,0%
	Imports of POAO	n.a.	n.a.	27,0%
ITALY (b)		~50%	~50%	~50%
LUXEMBOURG		70%	65%	65%
MALTA		36,5%	36,9%	39,4%
NETHERLANDS		75%	86%	81%
ROMANIA		n.a.	60%	50%
SLOVAKIA		52,2%	55,3%	51,6%
UK		43%	41%	43%

(a) all sectors covered, unless explicitly specified

(b) approximate estimate provided by the CAs; detailed data not available

Source: survey of the EU-27 CAs

Table 2-1 for the most part covers all controls conducted under Regulation 882/2004, the situation appears to be better in the case of import controls, for which Article 27.8 stipulates that these fees should be paid to the CA in charge of import controls. However, even in this case, the information collected from the survey suggests that Article 27.8 may not always necessarily be complied with particularly in those 11 MS where the fee revenue is incorporated into the general budget[23].

While the manner of fee collection and use is one key reason why the costs of the official controls are in most cases and in most MS only partially covered, another key reason is that the level of fees is often insufficient to cover the costs. This would suggest that fees have been inappropriately determined in the first place, and then inappropriately collected and used.

These results suggest that for the EU as a whole, in part due to ambiguities within the text, the rationale and desired interpretation of Regulation 882/2004 has not been sufficiently clearly understood and that as a consequence the objective in terms of the establishment of a more uniform system of fee collection has largely not been achieved to date.

Neither the survey, nor the case studies, established any cases where a direct or indirect refund of the fee was made, unless in cases where this was collected in error (Article 27.9). There is therefore no evidence to suggest that this may be occurring.

2.3. Evaluation of the current situation

This section responds to the questions raised in *Task 2* of the ToR (evaluation of the current situation), notably to:

- Indicate the main strengths and weaknesses from the operation of the current system; and,
- Identify key problems and shortcomings that need addressing in the future (*Task 3*).

Within the wider context of the EU intervention logic in this area (section 2.1), the current situation is evaluated in particular in terms of the system's contribution to the achievement of the following two objectives:

i. A functioning internal market;

ii. Improving and maintaining efficient and effective Official Controls (OCs) in the Community.

Before addressing these issues, an overview is provided of the current state of enforcement of Regulation 882/2004, summarising the key points from the previous section.

[23] In the case of France and Slovakia, which were case study countries, fees were used for these controls and covered their cost.

2.3.1. Enforcement of Article 27 of Regulation 882/2004

A priori, the provisions of a Regulation should be directly enforceable in MS. However, Article 27 of Regulation 882/2004 generally follows the subsidiarity principle in that MS can decide whether to use the specified minimum rates or to charge for official control activities according to the actual cost of undertaking them[24]. This effectively allows some discretion to MS to opt for one of the two fee systems, and in the case of the flat rate system to set the level of fees according to the costs of OCs actually incurred. There are further provisions allowing MS to reduce fees below minimum rates under certain conditions.

The analysis of section 2.2 has demonstrated clearly that there is a significant degree of variation in the enforcement of the financing provisions of Regulation 822/2004.

Underlying this, there is a perception – documented in some cases by hard evidence (e.g. FVO reports) - of significant variation in the organisation and effectiveness of the OCs both between and within MS. It has not been within the scope of this study to address the issue of the performance of the OCs as such. However, this variability has important implications in terms of the actual costs of the controls and in terms of the national approaches that are followed to recover the costs incurred through the fees[25].

Clearly many of the origins of these variations reside in the differing evolution of administrative structures and of the system of official controls in each MS.

Beyond this, however, there is a strong and generalised perception that CAs have rather liberally interpreted the provisions of Articles 26-29, in ways that diverge from the intention of the legislator, and that this was made possible *inter alia* because of shortcomings in both the underlying principles and the formulation of Regulation 882/2004.

Furthermore, the study has found that, in MS with decentralised management of the system, the relatively 'liberal' interpretation of the Regulation by the CAs has compounded the issues stemming from the devolution of powers, to create a situation of limited central control over the regional/district authorities in terms of fee determination, collection and use. This was commonly observed in MS such as Germany, Italy and Spain.

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[24] This is not the case with respect to Article 28 on charges where additional costs are incurred following non-compliance. Here the actual cost of further work by the CAs must be charged, although this Article is also interpreted differently in the different MS.

[25] Insufficient training, staff resources, facilities and equipment are often noted in FVO reports on official controls for which fees are normally collected under Regulation 882/2004, such as those in connection with controls on imports of products of animal origin at BIPs, controls on animal feed, residue controls and food hygiene inspections and controls (**Annex 1.2**). These shortcomings are in most cases due to insufficient financial resources. Our review of relevant FVO reports has identified several such cases, even in more recent missions (2008). More recent examples of FVO reports noting insufficient resources include: Romania (2008-7748), Greece (2008-7724 and 2008-7695), Portugal (2008-7745 and 2008-7696), and Bulgaria (2008-7747). Earlier examples (from 2006, 2007) include a large number of MS.

This in turn gives rise to various concerns relating to the functioning of the internal market and the effectiveness and efficiency of the system to deliver the level of OCs required by Regulation 882/2004, the Hygiene Package and other relevant legislation (as listed in **Annex 1.1**). These issues are discussed in the following sections.

2.3.2. Contribution to the functioning of the internal market

In terms of achieving internal market objectives, MS generally welcome EU legislation with respect to fees for official controls and they broadly agree with the rationale of Regulation 882/2004.

While there is consensus on the rationale, the key question that arises here is whether the heterogeneity in the application in practice of the financing provisions of Regulation 882/2004 results in situations of unfair competition within the internal market. This encompasses any potential distortions in competition that can occur between MS, within MS, between sectors of the food industry, according to the scale of establishments, as well as distortions at the level of imports.

These issues of distortion of competition at all these levels have been raised during the study as follows.

2.3.2.1. Distortions between MS

The issue of potential distortion at EU level was raised particularly by the EU meat industry. Stakeholders in the sector are generally concerned that the way in which the system of fees or charges for OCs are set out in Regulation 882/2004 can cause distortions in competition between MS. In almost all of the countries visited, stakeholders are concerned that the implementation of Regulation 882/2004 by the national authorities can put them at a disadvantage compared to other MS competitors.

In most cases, however, the industry was unable to substantiate these comments because of the lack of precise information on how rates are set and what they include in the different MS, and the consequent difficulty in comparing data.

It is noted that the professional organisation representing the meat industry at EU level (UECBV) attempted recently to make a comparison of the various fee rates charged for OCs at slaughter and meat cutting points. Although detailed data were collected for a number of MS, the UECBV came to the conclusion that it is virtually impossible to compare across the EU because fee rates are expressed in so many different ways.

The results of the survey and of the case studies have confirmed the lack of clarity, transparency and uniformity in the approach of the various fee systems, which make the direct comparison of actual fee levels across the EU (and between sectors) difficult.

As already highlighted above (section 2.2.3), current fee rates in the various MS may be minimum rates and/or flat rate; flat rates calculated using different calculation methods; or rates expressed on a throughput or time basis (the latter including many additional factors

influencing the final level of the fee). Furthermore, there are differences in the range of control activities covered by the various fee rates (e.g. these may include laboratory and sampling costs for residue controls in some MS but not in others). For the purpose of making a comparison it is therefore not clear whether the comparison is being made for the provision of the same services. Finally, the whole production chain (from farm to slaughter to meat processing and retail/catering) differs in many ways between MS, making it difficult to isolate differences in competitiveness caused by the fee system or the level of fees as such.

Across the EU fee rates currently vary within a considerable range. For example, fee rates paid for the control on the slaughter of adult bovine animals can vary from Euro 2.3/head in some autonomous communities in Spain, to Euro 8.2/head in Denmark and between Euro 10-20/head in Sweden (against a minimum fee of Euro 5/head in Annex IV). Similar variations in scale can be seen on the fees charged for controls on the slaughter of pigs and sheep. Even within MS the scale of the variation can be significant. For example, in Germany within Bavaria fee rates for the slaughter inspection of adult bovine animals ranges from Euro 9.4/head to 12.9/head depending on the district.

In summary, the following key factors may be included in the calculation affecting the final level of the fee:

- Whether the rate is set per head-tonnes or on a time basis (time of staff performing the official controls);
- The specific activities and services covered by the fees;
- Whether residue controls are included in the calculation;
- Whether other type of controls (e.g. BSE tests) are included in the calculation;
- The range of other costs included in the calculation of flat rates (criteria 2 and 3 of Annex VI);
- The number of official veterinarians/auxiliaries on the slaughter-line, and whether the speed of the slaughter-line is taken into account;
- Whether the size of the establishments is taken into account;
- Whether only veterinarians are employed for the OCs or also auxiliaries;
- Whether the staff performing the OCs are civil servants or under contract;
- Whether transport time is taken into account in the time calculation;
- Whether special provisions for increased staff fee rates apply after normal business hours, public holidays etc.;
- The tasks carried out by FBOs' own staff (such as in the case of the poultry sector);
- The level of salaries/cost of living in MS and of associated (social security) costs in the case of flat rates (criterion 1 of Annex VI of Regulation 882/2004);
- Whether MS aim for full cost-recovery;

- Whether any reductions are made for FBOs under Article 27.5 and 27.6 (risk-based reduced frequency controls and/or the interests of small transitional and geographically remote businesses);
- Whether only the meat sector is charged for the official controls.

Moreover, several external factors will affect the overall cost of the official controls (and thus the final level of the fee):

- Efficiency factors: the efficiency with which the official control services are organised and official controls carried out in the MS;

- Technological developments: for example, new technological advances that change the way in which official controls are performed[26];

- Market/trade volumes and the structure of the industry in the MS: in the case of import controls the costs of the inspection will depend to some extent on the volume of trade entering the BIP; in the case of domestic controls, the size of slaughterhouses / meat cutting plants and the speed of the line will affect the time needed to perform the necessary official controls.

As a result, it is not always easy to attribute variations in fees between and within MS to specific factors. For example, in the case of one meat company operating in both Sweden and Finland, in both MS it appears that the conditions and size of operations are the same, but in Finland the fees paid (pro-rata) are only 60% of what is paid in Sweden.

On the other hand, beyond the widely held perception of the potential for distortion, the study has not identified any concrete cases or examples of distortion in competition between MS. Some MS (e.g. France and the UK) have commented that, taking the potential significance of other factors into account, the current differences in fees alone are not considered to be sufficient to induce a distortion in competition between MS or to be decisive determinants of the competiveness of the meat industry in one MS compared to another. This is because all the other factors influencing the costs of meat production are far more important than potential differences in fees.

For example, a distortion would be caused if the impact of different fee regimes and fee levels between MS leads to a greater movement of livestock in order to reduce slaughter costs. However, the cost of transportation would have to be lower than the difference in fee to justify this and this will tend to limit intra-EU movements (whether between or within MS).

Differences in fees are nonetheless acknowledged as one of the factors that can affect competitiveness, especially when other factors (such as production costs, transport costs, costs relating to animal health and welfare, market conditions etc.) exist at the same time, and

[26] For example, inspection by camera appears to be developed in the poultry industry replacing previous, more costly, physical inspections.

therefore the compounded impact can put the meat industry in a MS at a competitive advantage or disadvantage. For example, the pig and sheep sectors across the EU have suffered significantly in recent years from rising production costs, animal health problems and adverse market conditions. These problems have been particularly acute in some MS and regions, and differences in fee levels could bring the sector in these markets closer to the point of collapse.

It is important also to consider fee levels in relation to the unit value of products. Differences in the level of fees can be a more important factor in those livestock sectors where the unit value of products is relatively low. For example, a small difference in fee in relation to beef might not be significant, but the same difference in monetary terms in relation to pigs would be significant and in relation to sheep could be very significant.

Finally, it is noted that, while the industry recognised that there are likely to be legitimate reasons for differences in the fees charged such as the cost of living differences between MS, the common concern shared by all is that they should not pay more for the OCs than is the case in other MS.

2.3.2.2. Distortions within MS (between regions)

The issue of potential distortion in competition between regions within MS was of particular concern to those MS that have devolved power from central to regional and even district level. This included such MS as Germany, Italy and Spain (but not the UK at present). A common perception in these MS is that the financing provisions of Regulation 882/2004, as they currently stand, allow MS sufficient room for a relatively open interpretation which results in widely divergent fee systems and fee levels.

Here too, it has been difficult to substantiate this perception with concrete examples of distortions, although it has been less difficult than in the case of the alleged distortions of competition between MS. Again, as explained in the previous section, it is noted that differences in fees are considered to be a relatively insignificant factor of competitiveness when compared to the actual costs of production, but can compound the impact of these key competiveness factors.

The most documented examples on regional distortions at present can be found in **Germany** where a number of court cases have been filed since the beginning of the system (Directive 85/73) regarding various issues of implementation (and more recently in relation to Regulation 882/2004). These cases, which are all driven by industry complaints, point to the relatively liberal approach taken at Lander and district level in defining their own systems: to determine the activities for which fees are charged, the fee calculation method and the various cost components taken into account for the calculation of the flat rates. This situation results in highly divergent levels of fees for the different activities across Germany. According to the German industry, the outcome is significant confusion and lack of transparency in the system, and a loss of competiveness for FBOs located in regions/districts which pay what are seen as unreasonably high fees defined on the basis of relatively high costs of official controls.

The inclusion in the calculation of administrative costs as well as of some other costs listed under the 3 criteria of Annex VI of the Regulation (e.g. laboratory and testing costs), has been a particularly controversial issue. These costs are defined largely at the discretion of the regional/local authorities, and can vary significantly between regions/districts as they are only broadly defined in the Regulation.

Another controversial provision is the reference to "minimum rates" which is interpreted by some CAs strictly as an absolute minimum that should not be undercut under any circumstances, notwithstanding the provisions of Article 27.6 that allow a reduction in the rates. In MS where this occurs, meat establishments and slaughterhouses complain that they suffer a competitive disadvantage vis-a-vis their competitors in other regions paying fees below the minimum rates.

In **Italy**, stakeholders expressed serious concerns that the heterogeneous application of minimum fees among Italian regions and provinces leads to distortion of competition among FBOs at regional and local level. Although current drafts for a new law attempt to reduce these discrepancies, there is scepticism regarding the likelihood of implementation.

Similar concerns relating to regional variations were expressed in **Spain**, the key issue being that there are regions which require payment of the minimum fees, regions which require reduced fees, and regions which do not require any fees to be paid at all.

The **UK** does not have any such issues at present as the devolved administrations within the country implement Regulation 882/2004 in the same way. However, distortions may become apparent in future if different systems are implemented in different parts of the UK (the UK system is currently under review the intention being to move to fuller cost recovery from 1 April 2009).

2.3.2.3. Distortions between sectors

The following elements of potential distortions between the various sectors covered by Regulation 882/2004 were identified by the study:

- The meat sector appears to be at a disadvantage vis-à-vis other sectors of the food industry. Although Regulation 882/2004 covers the entire food and feed industry, the fee system as designed at present particularly targets the primary processing stages of the meat sector. The detailing of activities for which fees should be charged as a minimum in Annexes IV and V is focused on these stages of the meat industry, in particular the red meat industry. The meat sector considers this unfair:
    - Their main argument is that the performance of hygiene controls at slaughter or meat cutting point is done for the purposes of food safety along the entire meat value chain, which means downstream chain participants benefit from the controls without contributing to cover their costs. It is therefore argued that the total costs of official controls incurred by establishments along the meat production chain should be distributed among the actors involved, and this could be done *inter alia* according to the degree of actual risk to food safety;

- Furthermore, it is argued that with the evolution of the food value chain, hygiene risks have shifted from slaughterhouses/meat cutting plants to the downstream stages of the production chain (processing, catering, etc.), and consequently the entire rationale of the current official controls needs to be redesigned (this issue is dealt with under section 2.3.3). Both industry stakeholders but also CAs and state veterinary officers considered that the meat sector is, on the basis of risk to food safety, unfairly targeted by the current OC system. The processing sectors (for example, manufacturers of meat products) and the catering sector (where a growing percentage of the final preparation and consumption of meat or meat-based products actually occurs) were highlighted as areas where risk to the consumer can be considered to be at least as high as those generated at the point of slaughter.

- In terms of potential distortions between the poultry sector and red meat sectors, the main point of difference is the ability of the poultry sector to use its own - appropriately trained - staff to assist official inspectors appointed by the government. This possibility currently exists for the poultry sector under Regulation 854/2004[27]. Although only used at present by a relatively limited number of MS (e.g. the Netherlands and the UK,) other MS are currently considering similar approaches as this input can reduce costs and the fee payable.

- Potential distortions between red meat sectors were also identified in more marginal cases, where MS/regional/local differences between fee rates can lead the currently sensitive pig sector and the particularly fragile sheep sector to become more adversely affected than the beef sector. Such issues were for example highlighted in the UK and French case studies.

- The milk sector is also considered to be unfairly targeted by Regulation 882/2004. The most significant observation here is that the milk industry was largely unaware of its inclusion in Annex IV of the Regulation up to its publication in 2004, as well as of the basis on which fee rates were established in Chapter IV, section B of this Annex ("minimum rates for fees or charges applicable in milk production"). Although it is assumed that the milk sector was simply included in the Regulation because it was included in the repealed Directive 85/73, the industry does not appear to have been consulted, and the fee rates are considered to represent a very significant and unjustified increase from the rates provided in this Directive[28]. As a result, there continues to be great confusion and divergent approaches amongst MS in the application of Article 27 in the milk sector. As indicated in section 0, the study established that for these reasons, fees are not collected in this sector in a number of MS (UK, Germany, Netherlands, Latvia), and

[27] Under Article 5(6)(a): "Member States may allow slaughterhouse staff to assist with official controls by carrying out certain specific tasks, under the supervision of the official veterinarian, in relation to the production of meat from poultry and lagomorphs".

[28] Annex B of Directive 85/73, as amended by Directive 96/23, provides for a fee of ECU 0.02 per 1000 litres of raw milk, while Annex IV of Regulation 882/2004 provides for a minimum fee of EUR 1 per 30 tonnes and EUR 0.5 per tonne thereafter. Although the Regulation does not specify the unit of milk production to which this fee applies, if the fee quoted in the Directive is compared to the fee quoted in the Regulation on the same basis, it would come to an approximate equivalent of EUR 0.6 per 30 tonnes of raw milk, i.e. the fee quoted in the Regulation represents a very large increase from the original level.

there are extensive complaints from the industry in the MS where fees are collected (e.g. Slovakia).

2.3.2.4. Distortions according to scale

In anticipation of potentially adverse impacts on small scale, traditional and geographically isolated meat establishments, Regulation 882/2004 provided for reductions below the minimum rates (Article 27.6) for business with a *'low throughput'* or *'traditional methods used for production, processing or distribution'* or *'businesses located in regions subject to particular geographical constraints'* (Article 27.5 (b), (c) and (d) respectively).

The study has found that:

- First, the general economic context within which this sector operates needs to be noted. The structure of the slaughtering and meat cutting industry has undergone significant rationalisation in the last decade, continuing past trends whereby production is increasingly concentrated in a smaller number of larger scale, more technologically advanced establishments. This trend has been driven by a number of factors, including technological progress, market developments (e.g. the need of the sector to respond to the increasingly powerful buyers of the retail and catering sector), as well as the need to comply with increasingly stringent legislation and the rising costs of compliance. Both the industry stakeholders and the CAs have consistently indicated that the fees paid for OCs, although not a sufficient factor on their own, are nonetheless an additional factor in the costs of the operation of smaller scale and traditional establishments, thus affecting final business performance.

- Second, smaller slaughterhouses are generally more disproportionately hit by the current fee system, including even cases where the special provisions of Articles 27.5 and 27.6 have been used by MS. Small scale slaughterhouses and cutting plants generally complain that the costs of fees for OCs are too high for the limited number of animals they slaughter, or for the small volume of throughput. This is generally felt more in MS where flat rates based on actual inspection costs or time based charges apply, and/or where no reductions below the minimum rates apply for this type of businesses. For example, the charging system in place in the UK prior to 2001 was based solely on time costs and inspection times; as these were increasing rapidly, the system quickly posed a particular problem for smaller plants, many of which became uneconomic.

- Only a number of MS have adopted the provisions of Article 27.5. Such MS include the UK, Belgium and France. For example in the UK, there appear to be no distortions under the current system because operators have the choice of using charges based on throughput or according to actual cost. In France and Belgium special provisions are made for smaller FBOs or according to scale (volume of throughput).

- Some MS have not used this possibility, either due to a strict interpretation of the 'minimum rate' provisions (whereby they have not accepted these should be undercut, e.g. in the case of Germany) or because it was considered it would complicate the fee

system to have differential fees (e.g. in the case of Slovakia under the new law enforcing the provisions of Regulation 882/2004). In the case of Germany, the industry pointed to the extensive closures of small slaughterhouses in recent years, which are, at least partly, blamed on the disproportionately high fees these slaughterhouses pay under the current system. Representatives of small and medium sized slaughterhouses (e.g. from Bavaria) stressed that, in setting the fees, authorities should take into account *inter alia* the type of business concerned, as stipulated by Article 27(5), which it is argued is not happening at present;

- The situation is changing, however, as several MS are currently in the process of discussing new legislation to fully enforce Regulation 882/2004. It is not clear whether this will leave small-scale, traditional and remote businesses better or worse off. For example, in the UK, the proposed time-based charging regime is expected to lead to some distortions against this type of businesses as a result of the scale and degree of slaughterhouse mechanisation, but a proposed subsidy system may correct for this, depending on how it will be implemented[29]. In France, where the current system of fees has achieved what is considered a sensitive balance between larger and smaller operators, the current debate on reforming both the official inspections system and the fee charging scheme has raised concerns for smaller businesses that the change may lead to higher fees.

- The main advantage of the current EU system, where Member States can, in effect, charge anywhere from 0% to 100% of the full cost of controls, is seen by some MS (both at the level of industry stakeholders and at the level of CAs) as allowing the possibility for lower costs to be charged for these more 'fragile' plants.

2.3.2.5. Distortions at the level of imports

Some concerns were raised at the potential distortion at the level of imports under the current system, as BIPs can charge different rates across Europe depending on whether they follow the minimum rates of Annex IV or flat rates (based on actual costs).

Currently 7 MS charge flat rates and 3-5 other MS charge a combination of flat and minimum rates on imports (i.e. flat rates on some products and minimum rates on others) (*Question 1.6b*, ***Annex 2***). Flat rates can be higher than the minimum rates, but in some cases were also found to be lower (e.g. France, Hungary, Spain for live animals, Ireland in some cases for high volume fish consignments).

[29] If implemented as the proposals currently stand, the future system will involve a 12% increase in charges to FBOs (including 3% for inflation) while maintaining support for small and geographically isolated FBOs. It appears that the UK government intends to direct subsidy towards some smaller operators as part of a policy to retain small, geographically isolated abattoirs because they contribute to other policy goals such as reductions in carbon footprint, disease control and support for rural economies. The industry would not object to this policy if it is targeted to micro-businesses (which, account for between 1% and 2% of total UK throughput) such as remote abattoirs in, for example, the Highlands and Islands of Scotland, but would not support the policy if it is targeted to small/medium sized establishments located anywhere in the country.

Again, in practice, whether this potential distortion will actually occur will depend on a range of other factors, notably the transport costs involved and logistical considerations.

No documented evidence of such distortions was found, but both the industry and the CAs have expressed concern this may well be occurring, especially in closely situated BIPs.

2.3.3. Contribution to maintaining the efficiency and effectiveness of OCs

Throughout this study, widespread concern has been expressed by stakeholders at all levels (authorities, industry) that the activities listed in Annex IV (and to a lesser extent the import control listed in Annex V) do not cover the same range, level and standard of controls throughout the EU. This raises questions of efficiency and effectiveness in the system of official controls *per se*, which are beyond the scope of this study. However, of relevance to this study is the extent to which the financing of OCs contributes to alleviating or to intensifying this lack of homogeneity and the potential deficiencies in the EU system of official controls.

Articles 26-29 of Regulation 882/2004 lay down the principle and the means for the financing of official controls with a view to ensuring that MS have sufficient financial resources to carry out the controls.

A priori, the principle of guaranteeing sufficient funds for the financing of the official controls in all MS of the EU-27 (Article 26) should contribute to alleviating any lack of homogeneity in carrying out the controls, or - at the very least - guarantee that a certain homogenous (minimum) level of controls is applied throughout the EU. This principle is widely endorsed by all stakeholders.

Beyond the principle as such, the question arises of whether the means that Articles 27-29 put at the disposal of MS contribute to this objective. This refers in particular to the extent to which the compulsory application of a fee to finance these controls (Article 27) can guarantee that MS have adequate funds to carry out the controls, at least at a certain (minimum) uniform level throughout the EU. This point is widely contested by stakeholders in all MS.

In particular, the study has found that two key questions are raised: first, in terms of the adequacy of financial resources available to MS to carry out the controls; and, second, in terms of whether the controls are currently carried out in the most cost-efficient manner. The second question touches on issues of the organisation and the principles of the official controls which are beyond the scope of the study, they are therefore included here only to the extent they are relevant to the discussion.

2.3.3.1. Adequacy of the financial resources

As indicated in section 2.2.5, the survey results suggest that the rationale for the system of fee collection (to ensure adequate financial resources in the meaning of Article 26) is largely not fulfilled at present for the EU as a whole.

In the majority of MS the revenue from the collected fees is incorporated into the State's general budget, either in its entirety (11 MS, including France and Slovakia), or in part (7 MS, including Germany, Italy, Poland and the UK). Where this occurs, especially where the entire amount of the fees collected is incorporated into the general budget, there is for the most part no guarantee how this is to be used subsequently. Only 9 MS claim to be 'ringfencing' revenues specifically for the CAs performing the controls (*Question 1.10*, ***Annex 2***).

Most likely related to this, 14 MS (including Italy, Slovakia and the UK) have clearly indicated that they do not cover the costs occasioned by the official controls through these fees (*Question 1.9a*, ***Annex 2***). Only 7 MS (including Poland) claim costs are being covered, while a further 6 MS (including France and Germany) claim this is possibly occurring in some cases (some activities; some regions) but not in others. An overview of the extent to which MS manage to cover the costs of the official controls through the collected fees is provided in **Table 2-1**. As illustrated, the costs of the official controls are in most cases and in most MS only partially covered by the collected fees. This is due both to the manner of fee collection and channelling (via the State Budget), but also because the level of fees is often inadequate to cover the costs.

Although the partial coverage of the costs of official controls by the collected fees does not necessarily imply that the financial resources put at the disposal of the system of official controls are not sufficient, it would be difficult to establish that they are.

The reason is that there is lack of transparency at MS level in trying to determine both the total costs of the official controls, and the actual standard of controls that this represents. Furthermore, it is difficult to compare between MS, because both the costs and the actual control activities encompass different elements in the various MS (as discussed in section 2.3.2).

This is reflected in the manner of calculation of the flat fee, in the MS/cases where flat rates apply, where in most cases little information is available beyond the generalised statement of the application of the 3 criteria of Annex VI of Regulation 882/2004. In practice, it appears that the 3 criteria are applied rather liberally, encompassing a whole range of cost factors, which are not necessarily the same in all MS, and do not necessarily relate to the actual costs of the official controls. The study has established that there are cases where the fees seem to be charged at a higher level than what would be justified by the controls undertaken, while in others the fees are not adequate to cover the costs.

In terms of comparing across the EU, an important determinant factor in assessing the adequacy of funds, is the actual cost of living in the various MS. The available data suggests that there is wide variation across the EU-27. According to Eurostat, labour costs vary by a factor of one to twenty in the EU27[30] (2006 data, based on full time employment in industry and services). Comparative price levels by Eurostat show that in 2007 prices paid by consumers in the NMS remain typically at less than 80% of the average price levels in the

[30] This was the difference in terms of average hourly labour costs in Bulgaria and Romania (the lowest in the EU) compared to the EU27 average.

EU-27[31]. Statistics on the costs of living suggest that this can vary by up to 20 percentage points across key cities of the EU-15[32].

It is therefore not surprising that in the MS/cases where the minimum rates apply, in some cases the level of fees is not sufficient to cover the costs of the controls while in others it is considered excessive, the final outcome being highly dependent on the cost of living in the various MS.

2.3.3.2. Cost-efficiency issues

A number of cost-efficiency issues have been identified during this study, and these relate both to the current organisation and principles of the official controls and their implementation in practice. As already indicated, some of these issues extend beyond the scope of the study; they are therefore only discussed here to the extent they are relevant in the context of this study.

a) Staff costs

The most important element of the costs of official controls is staff costs. In relation to this, the following factors account for significant differences between MS:

i. The number of official staff employed to carry out the controls;

ii. The profile of the staff used in the official controls; and,

iii. The wide variation in salary and costs of living levels, as discussed above.

Regulation 882/2004 refers only to the general requirement to have "*a sufficient number of suitably qualified and experienced staff*" (preamble 11 and various Articles of the Regulation). In practice, there is wide variation between MS in the numbers and profiles of staff employed to carry out official controls, and this appears to reflect long-standing institutional and organisational issues rather than real need. Here too, there is a certain lack of transparency: no up to date data are currently available (example from the FVE) that would allow a comparison between MS[33].

[31] Eurostat: comparative price levels of final consumption by private households including indirect taxes (EU-27=100), 2007 data.

[32] Source: Mercer's 2008 Quality of Living survey.

[33] If formal data was available it would allow, for example, a comparison of official veterinarian and auxiliary numbers between MS and in relation to the human population, or in relation to production and trade volumes. Such a comparison is not always straightforward, because the national and local structures of both the administration and the food sector need to be taken into account. Despite such shortcomings, the comparison would still be valuable in that it would enable some preliminary observations to be made, which would highlight whether there is a need for the review of the current structures.

In the case of products of animal origin, the profiles and tasks of the staff involved in the official controls are laid down in Regulation 854/2004[34]. The Regulation provides for the tasks to be undertaken by the official veterinarian per type of activity, and the tasks that can be carried out by official auxiliaries under certain conditions; in the case of the poultry industry, own staff can be involved in these inspections. Within these general parameters MS are given the freedom to implement the staff structure that best fits their needs.

The study has found that the current organisation of the veterinary services staff in the MS generally lacks motivational character and does not provide any incentives to cut back on these costs. In particular:

- The balance in the use of official veterinarians versus auxiliaries for the official controls, appropriately trained in both cases, is currently generally considered to be unsatisfactory in most MS.

- The employment and remuneration conditions of the staff are in many cases questioned for raising costs.

  The UK industry criticises the absolute requirement to use government employees as the official veterinarians for the inspections, which it argued imposes high costs on the inspection function. The case studies established that such criticisms are shared by the meat industry in Germany, Italy, France and Poland, as well as more generally across the EU (UECBV).

  There are further criticisms on the way salaries and working conditions are negotiated between the CAs and these employees, reportedly leading to higher costs (e.g. Poland, Germany[35], Denmark[36]).

- The fees paid by the industry do not appear to be based on the actual level of services provided, at least in the red meat sector. This therefore acts as a disincentive to rationalise costs.

  According to the UECBV, the fixing of the minimum fees paid by slaughterhouses (Annex IV) on a per head basis, in combination with minimum inspection times and

[34] According to preamble 9 of Regulation 854/2004: "*official veterinarians to carry out audits and inspections of slaughterhouses, game handling establishments and certain cutting plants. Member States should have discretion to decide which are the most appropriate staff for audits and inspections of other types of establishments*"

[35] In Germany, the level of fees is negotiated between the district or municipal authorities and the German Civil Servants' Union (*DBB Beamtenbund und Tarifunion*). The meat industry criticised the negotiation process which, to their view, hinders an efficient deployment of the existing veterinary personnel.

[36] In Denmark, the exact number of official inspectors to be used per number of animals is stipulated within the Law. The setting of this number is reported by industry to be largely union driven. The industry claims that it does not realistically take into consideration key factors of the production process, such as the speed of the line.

maximum inspection targets as has been introduced by several MS (e.g. Denmark), leads to disproportionately high veterinarian fees and does not reflect actual costs[37].

At cutting plant level, it is argued that the existing fees based on meat volume do not appear to relate directly to the costs involved. Official controllers only need to be present in cutting plants for a limited time (as little as twice/week for a few minutes, which is the frequency appropriate to achieving the objectives of Regulation 854/2004), but cutting plants have to pay on a throughput basis for the whole production volume (Euro 2 per tonne in the case of red meat).

Consequently, the industry stakeholders see the need for a relaxation of the rules, to allow *inter alia* the involvement of appropriately trained staff on contract, rather than higher cost government officials, to provide these services. They argue that effectively opening the competition between service providers would lead to a more cost-efficient system, which would be reflected in lower fees.

In a number of MS reforms of this kind have already started (e.g. Netherlands), or a debate is currently under way (e.g. the UK, France), targeting these issues. In the Netherlands, since January 2008, a new system is in place that uses contracted experts for the inspections. These are appropriately trained in accordance with the requirements of the Hygiene Package and are not civil servants. The new system is believed to have opened up competition, and to have created the right incentives to improve efficiency.

b) Administrative costs

This is the second most important cost element, reportedly accounting in some cases for as much as 25-30% of the total costs (e.g. some German Lander) [38].

In any case, there is a lack of transparency on the magnitude and the composition of the administrative costs. This causes widespread confusion as well as concern amongst industry stakeholders that the CAs are in fact charging for costs which do not relate to the actual official controls, which in its turn creates mistrust regarding the efficiency and effectiveness of the current system of official controls.

These issues are particularly prominent in Germany, where the relative share of administrative costs that are taken into account when fees are calculated appears to vary significantly between and within individual *Bundesländer*. This results in significant variation in final fee levels and, due also to the lack of transparency on how fees are actually calculated, creates doubts with regards to the cost-efficiency of the system. Despite numerous court cases on this

[37] Fees on a per head basis were introduced by Directive 85/73 and Decision 88/408. This denomination was maintained in Regulation 882/2004.

[38] According to information provided by the German industry. Again, limited data are available on this element of the costs. Where data is available, the relative share of administrative costs tends to be very modest, suggesting that data only become available in the good cases.

and other related issues on the fee calculation in Germany, to date this issue remains largely unresolved.

Although most prominent in Germany, similar concerns were expressed by industry representatives of other MS (e.g. Italy, Poland, Sweden, Denmark).

The main criticism in all cases is actually directed at Annex VI of Regulation 882/2004, which defines the three types of costs on the basis of which fee calculation should take place. In particular, the point is made that Annex VI is formulated too broadly, thus leaving too much room to MS authorities for an open interpretation. As a result, it is largely left to the discretion of MS to define and incorporate the various cost criteria in their fee calculation and, in particular administrative costs, which are not defined as such in Annex VI but appear to be covered by the general term '*associated costs*' (point 2 of Annex VI). As it stands, the critics argue the system does not provide any incentive for authorities to rationalise on the various costs, particularly the administrative costs, and it is the industry that has to pay for this.

c) The guiding principles of official controls

According to Article 3.1 of Regulation 882/2004, official controls should be carried out regularly, **on a risk basis and with appropriate frequency**, taking account of the following four factors:

(a) Identified risks;

(b) FBOs' past record as regards compliance with the rules;

(c) The reliability of 'self-control' systems (own FBO checks already carried out); and,

(d) Any information indicating non-compliance.

In practice, the study has found that currently these four factors are not sufficiently taken into account in the way MS plan and implement their systems of official controls.

Currently, the implementation of the provisions of Article 3.1 is very inconsistent across the EU-27. The discretion given to MS to implement the rules according to their needs and priorities results in various approaches and modes of operation of the official controls. Whilst this guarantees flexibility for MS to adapt the provisions to their own national and local conditions, there is scepticism on the part of the industry that MS are in fact avoiding much-needed reforms of the traditional organisation and implementation of official controls that would improve cost-efficiency as well as the overall effectiveness of the controls. This, in turn, has repercussions in the way fees are charged under Regulation 882/2004.

In particular, the following points have been made during the case studies:

The **UK** meat industry considers the above factors are not currently sufficiently taken into account. They argue there is a need for greater consideration of risk, in particular the risk to human health, for which the meat industry considers itself disproportionately targeted vis-à-vis sectors downstream the chain (in particular the retail and catering sectors); greater use of

risk assessments should therefore be made to correct this imbalance and provide a further incentive for good performance, which would result in lower costs. Also, at the moment, there is little incentive in the system to promote the efficiency of the inspections at FBO level. It is argued this would help keep inspection costs down. Although Article 28 of Regulation 882/2004 can be used to target FBOs with inefficient inspection structures and create an incentive to improve them, there are doubts as to how effectively these powers are currently used across the EU.

In **Germany**, the meat industry strongly criticises the current basis of the frequency of controls for failing to take sufficient account of the risk parameters involved and the actual risk exposure. The industry believes that, in practice, meat hygiene controls could be conducted by less veterinary personnel than currently employed, by adjusting control frequency to an establishment's actual risk profile; in many cases, the opposite appears to be taking place currently[39]. There have been some efforts on the part of the industry to correct the problem, for example through the use of risk assessment models that assess the risk of individual establishments and appropriately adjust the frequency of the controls (e.g. poultry industry; "*Güthersloher Modell*" in the meat products industry). These models have been developed by the industry and approved by the CAs,. however, these initiatives are relatively limited at present, having been implemented on a pilot basis in only few *Bundesländer*[40].

In **Italy**, all of the different sectors acknowledged that the meat sector is, on the basis of the actual risk to safety, unfairly targeted by the system[41]. New draft legislation enforcing Regulation 882/2004 that is currently under discussion appears to address, at least in part, some of these issues: it spreads some of the fee charging across the various sectors, and it introduces fee reduction for efficient large-scale establishments in the red meat sector on the basis of the reduced unit time required for the inspections due to the high level of efficiency in the way the sector operates (speed of the chain).

Across the EU, the meat industry as represented by the UECBV, highlights what it considers to be the current failure of the implementation of Regulation 882/2004 to move in the direction of proportionate and risk-based controls, and more self regulation and FBO involvement, according to the aims and principles of the General Food Directive (Regulation 178/2002) and the Hygiene Package (in particular Regulation 854/2004). It is noted that the financing provisions of Regulation 882/2004 still refer to outdated legislation and make no reference to the Hygiene Package. The EU meat industry argues that, as it stands and as

[39] There are cases where control frequency is adjusted to the number of establishments in place, rather than actual risk. For example, if a veterinary works in a district where e.g. there are two meat establishments, control frequency will increase accordingly and be different than in a district where a veterinary e.g. has ten or more establishments to control.

[40] For example, the "*Güthersloher Modell*" model is applied mainly in North-Rhine Westphalia only.

[41] The meat industry in Italy is further penalised by the fact that fees are charged twice, at slaughter and meat cutting points even where these activities are carried out in the same establishment. The current draft law enforcing Regulation 882/2004 complicates this issue further, as it appears to extend fee charging also to meat processing establishments.

currently implemented, the system of fees lacks incentives to promote improvements at both administrative and business level that would result in cost-efficiency gains. Such improvements would include the adjustment of controls on a risk-basis along the food chain, also taking into account the new tools available such as traceability and food chain information, and incentivising the adoption of HACCP and self-control systems by the industry.

This position is increasingly endorsed by a growing number of stakeholders. In a recent seminar on the modernisation of inspections in slaughterhouses organised by the French Presidency, there was wide consensus across the EU amongst industry stakeholders and representatives of the CAs, that due account needs to be taken of technological progress and the increasing uptake of self-control systems (notably GHP and HACCP) following the introduction of the General Food Law and the Hygiene Package[42].

[42] See for example, Seminar on the "Modernisation of sanitary inspection in slaughterhouses", organised by the French Presidency, Lyon, 7-11 July 2008.

3. Options for the future

3.1. The development and assessment of the various options

3.1.1. Range of options and scenarios

The analysis of the current situation has outlined various shortcomings arising from the enforcement of Articles 26-29 of Regulation 882/2004. In doing so, it has also highlighted the main challenges going forward in this sector, as imposed by both internal and external factors affecting the outlook for the future.

External factors would include technological progress and its implications for the way official controls are performed, globalisation issues and the need to support and maintain the competitiveness of EU industry in international trade, and the ongoing enlargement of the EU leading to increased variation in administrative structures between MS.

At the same time, the orientation and principles of EU legislation are continuously evolving to respond to these challenges. In particular, the 2002 General Food Law and the 2004 Hygiene Package have introduced a new integrated approach to feed and food safety which aims to ensure a high level of food safety, animal health, and welfare and plant health within the EU through coherent farm-to-table measures, while ensuring the effective functioning of the internal market.

The study has investigated how the identified shortcomings relating to the current fee system and to the future challenges lying ahead could be addressed via a series of options for improvement of the financing provisions of the Regulation (*Task 3*).

A priori, the options to consider for the future would range from full harmonisation to full subsidiarity (**Table 3-1**). Full harmonisation would involve a completely harmonised system across the EU27 with all MS paying the same fees for the same activities. Full subsidiarity would mean repealing Articles 26-29 of the Regulation, thus allowing MS to develop their own systems for the financing of official controls.

A range of other possible scenarios can be identified between these two extremes. Indeed, as they currently stand, Articles 26-29 combine subsidiarity (by giving MS the freedom to decide whether to use the minimum rates of Annexes IV and V or to calculate flat rates based on costs, and the fact that MS can decide which sectors to include *inter alia* via Article 27.1) with a certain degree of harmonisation (in that MS can adopt the same minimum rates and should comply with certain common rules and criteria). Maintaining the status quo *(do nothing*) is indeed one of the options for the future considered by the study.

In order to illustrate the various options and scenarios, the key components of the system are presented in **Table 3-1** and set against certain key scenarios. It is noted that the presented scenarios consist of various possible combinations of the individual components of the financing system, as identified by the study.

Table 3-1 Range of options, scenarios and components

R 882/2004 (a)	Components	**Harmonisation *(b)***			***Status quo*: current system**	**Subsidiarity *(b)***		
		Full	**Scenario 1**	**Scenario 2**	**Mix**	**Scenario 3**	**Scenario 4**	**Full**
Art 26, Art 27.2 Art 27.1	Fees compulsory or optional	Compulsory	Compulsory	Compulsory	Combination	Optional (Article 26)	Optional (Article 26)	Repeal Articles 26-29
Art 27.3	Fee level	Common fee levels (define fee levels)	Common fee levels (define fee levels)		Common fee levels for compulsory fees only		Repeal Articles 27-29	
Art 27.4 Annex VI	Fee calculation	Common method/model	Common method/model	Common principles	Common principles	Common principles		
Art 27.5 to 27.7	Fee reductions	Common level of reductions	Common principles	Common principles	Common principles	Common principles		
Art 27.3, Annex IV and V	List of activities	Common activities (define list of activities)	Common activities	Common activities	Common list only for compulsory fees			
		Potential to extend to other sectors / along the food chain						
Art 27.8	Fee collection				CA defined for import controls			
Art 28, Art 29	Penalty system	Common penalties	Common principles	Common principles	Common principles	Common principles		
Art 28.12	MS reporting to Commission	Compulsory full MS reporting (regular report on operation of system and amount of collected fees)	Compulsory full MS reporting (regular report on operation of system and amount of collected fees)	As currently (MS obliged to publish calculation method)	MS obliged to publish fee calculation method, including for fee reductions	As currently (MS obliged to publish calculation method)	MS obliged to communicate the costs of OCs and how costs are covered	

(a) Reference in the current provisions of Regulation 882/2004 to the various components of the fee system

(b) 'Common' refers to the application of the same rules across all EU27 MS

In particular, a number of scenarios were assessed within the following options[43]:

1. Moving from the current system **towards more harmonisation** across the EU;
2. Moving from the current system **towards more subsidiarity**, or leaving more responsibility to MS;
3. The **extension of the system to cover other sectors** along the food chain;
4. **Maintaining the status quo (mixed system)**, but introducing certain improvements.

The first three options were defined *à priori* in the ToR and were developed further in the course of the study. Each option covers a range of scenarios, depending on the degree of harmonisation, subsidiarity and sector coverage envisaged. It is noted that Option 3 relates more to the scope of the system than the mechanism to be used and therefore transcends the various harmonisation/subsidiarity scenarios of (**Table 3-1**).

The fourth option, which was developed during the study, is based on the current combined approach and principles of Regulation 882/2004. It explores the type of changes that need to be made, if the status quo is maintained, for a more effective and efficient implementation of the Regulation.

The two extreme scenarios of full harmonisation and full subsidiarity represent polarised solutions which are not feasible to pursue, at least not at present. In particular, both options would require closer economic integration and greater harmonisation of the system of official controls in the EU-27 than is the case currently. Due to the significant differences in economic conditions and the costs of living between MS which affect the actual cost of the official controls (as discussed in chapter 2), applying a fully harmonised system is likely to result in overcharging in certain MS (particularly some of the NMS) and undercharging in others. On the other hand, due to the significant differences between MS in the current implementation of EU hygiene legislation as well as in the uptake of self control systems, full subsidiarity (repealing Articles 26-29) could risk undermining the standard of the controls carried out in parts of the EU, thus potentially threatening the operation of the entire EU official controls system and the progress achieved so far.

Both the survey and the case studies have demonstrated the need to maintain a balance between the two extremes. In the survey the majority of MS CAs indicated that subsidiarity or a mixed system (both of which allow a certain flexibility for MS to set the rates, within a commonly agreed set of rules) were the most favoured options (*Question 2.1*, **Annex 2**). All MS, including those that opted for harmonisation, indicated the need to maintain flexibility to adapt the system to national conditions.

[43] The ToR referred to three specific options: harmonisation; subsidiarity; and, extension to other sectors. Following consultations with DG SANCO, these were re-formulated to the structure followed in this Report.

The need to maintain flexibility, as well as promote simplification, is also central to the operation of the enlarged Union of 27 MS.

The various scenarios combine a number of different basic components which are discussed in more detail in the following section.

3.1.2. Key components

Based on the intervention logic of the financing system for official controls laid down in the current legislation (Articles 26-29 of Regulation 882/2004), a number of key components were identified, from which the various initial options were developed into the scenarios examined by this study. These components are depicted in **Table 3-1** as follows:

- **The basis of fee charging**: fees can be charged on a compulsory or on an optional basis, or (as in the current system) as a combination of the two (i.e. for certain activities fees would be charged on a compulsory basis while for others they would be charged on a compulsory basis);

- **The level of fee rates**: fee rates can be totally harmonised (same fees throughout the EU-27), or can be flexible but based on a calculation method, or (as in the current system) can be a combination of the two (i.e. for those activities for which fees are charged on a compulsory basis minimum fees are laid down; where costs are beyond these levels and for other activities for which fees are charged on an optional basis, fees can be charged up to a total cost-recovery basis);

- **The fee calculation method**: this can be a standard method/model throughout the EU-27, or can be flexible but based on certain key principles. A key principle in particular would be that the fee is aiming at cost recovery as in the current legislation (i.e. fees cannot be lower than the minimum, and cannot be higher than costs). The degree of cost recovery (partial or full) to be achieved/allowed would need to be established. Also, the question of whether the method needs to be defined by sector, by activity or for the entire food chain would need to be addressed;

- **Fee reductions and penalties**: these can be standard applying throughout the EU-27, or can be flexible but based on certain key principles. These principles could be those set out in the current legislation (Articles 27.5/6 and Article 28 respectively) or could expand on these;

- **List of activities covered by fees**: the list can be finite and harmonised, or can be flexible but based on certain key principles, or totally flexible. Also, the list can remain as per the status quo, or revised (expanded/condensed).

In terms of the **principles** that can apply for a more harmonised calculation of the fees and/or fee reductions/penalties across the EU, the level at which these should be set needs to be further discussed. This refers in particular to whether these should be general principles only or whether they should be more detailed criteria defined at a technical level:

- General principles would include: transparency in the calculation method of fee setting and for calculating fee reductions/penalties, on the basis of actual costs; and, the obligation for MS to communicate these to the Commission and the public.

- Detailed technical criteria would include for instance the calculation method to be followed for fee setting and for fee reductions/penalties, cost-recovery targets that should be sought, precise cost categories that should be taken into account, and even maxima/ceilings for each cost element.

General principles are essentially already foreseen in Article 27 (although, as shown in section 2.3, these are not always respected by MS). Some broad criteria are also defined in Annex VI. More detailed criteria would take the principles to a more precise technical level which could help to ensure that MS have less room to deviate from the general principles. At the same time, these details are more difficult to define and make acceptable at EU level.

The principles and criteria are discussed further under the presentation of the various options below.

The level at which common principles will be established will be key in controlling MS flexibility and mitigating the potential disadvantages of subsidiarity. The greater the extent to which a move is made from defining more common principles and general guidelines (as is currently the case with Articles 27-29 of Regulation 882/2004) to defining technical criteria, the more difficult it will be for MS to deviate from a common denominator. On the other hand, this increases the complexity of the provisions and the extent of follow up needed at central level (Commission, MS CCAs).

In terms of the calculation of **fee reductions and penalties**, in particular, the principles could be those established by the provisions of Articles 27.5/6 and Article 28 respectively. However, the study has demonstrated that these principles are currently not fully adhered to by the majority of MS. In practice, as is evidenced by the description of the current system, the provisions of Articles 27.5/6 and 28 are enforced to varying degrees and with considerable differences between MS. Moreover, the meat industry in particular appears to be penalised by the lack of a clear link to the advantages and benefits of self-control systems, as introduced at EU level by the Hygiene Package.

To address these concerns, the study has examined the possibility of expanding on the current provisions, by introducing:

a. A common approach across the EU;

b. An integrated approach linking more consistently compliance and non-compliance, therefore fee reductions and penalties, to the uptake of self-control systems.

Thus in all scenarios of **Table 3-1** where principles for the calculation of fee reductions/penalties would apply, these would expand on the current provisions of Articles 27.5/6 and Article 28 by linking compliance/non compliance to the uptake of self-control systems by industry through an integrated *bonus-malus* system.

Both MS and stakeholders are in principle in favour of providing incentives to FBOs to assume greater responsibility. The extent to which this can be encouraged will depend on the degree to which an approach on how to reward compliance can be developed (Articles 27.5/6) and, conversely, how to penalise non-compliance (Article 28). This could be through an integrated *bonus-malus* system. Such systems have already been developed at MS level in a few MS (e.g. Belgium) and these highlight the advantages of an integrated approach.

3.1.3. Assessment criteria

The assessment of the various scenarios was based on the analysis of the views and data collected from stakeholders (both at administrative and business/industry level). All of the methodological tools used in this study (survey, interviews and case studies) have included suggestions for overcoming the various shortcomings of the present system. The final formulation of the various scenarios and their analysis emerged as a result of this work.

Each scenario is assessed in terms of its advantages and disadvantages, feasibility (whether and under which conditions it would work in practice), and the acceptance that it might be expected to have from the various groups of stakeholders.

In the context of the main goals and principles of Regulation 882/2004, as well as the wider objectives of Community food and feed law and the Lisbon strategy (section 2.1.1), three key criteria are applied throughout the assessment, as follows:

a) Improving the **effectiveness and efficiency of the official controls**;

b) Moving to a **simplification** of the current system;

c) Providing the **right incentives for FBOs**, in particular in terms of the provisions of Article 27.6 and Article 28 of Regulation 882/2004, thus encouraging compliance and penalising non-compliance respectively.

It is noted that the above criteria may not necessarily point to the same direction, indeed they can point to different directions. For example, the objective of pursuing simplification may not be compatible with the increasing complexity required to ensure a harmonised approach across the EU. The initial assessment of the scenarios provided here aims to provide a balance between the various objectives and needs of stakeholders.

Furthermore, as already indicated, some of the issues raised by the study extend beyond its scope as such. For example, overcoming certain cost-efficiency issues requires action not only at the level of the financing provisions of Regulation 882/2004 but also of the Hygiene Package[44]. Addressing these issues is therefore only discussed here to the extent it is relevant in the context of the costs and the financing of the official controls.

[44] For example, the requirement of Regulation 854/2004 to use official veterinarians to carry out audits and inspections of slaughterhouses, game handling establishments and certain cutting plants is generally considered as a key obstacle to pursuing cost efficiencies in the control process. At the same time, Regulation 882/2004

This forward looking element of the project aims to provide an initial assessment of certain key identified scenarios. The purpose is not to provide a full feasibility analysis (whether at political or technical level). Nonetheless, specific recommendations are made to develop these scenarios, or indeed other potential combinations of their constituting components, including through future impact assessments.

3.2. Towards more harmonisation

As indicated in **Table 3-1**, moving from the status quo towards more harmonisation could involve a range of scenarios depending on the degree of harmonisation sought. A constant feature of all scenarios under this option is that fee charging would be **compulsory** for all MS. This effectively sets targets for the recovery of the costs of official controls through fee collection, moreover in the form of targets which are common across the EU. It would no longer be at the discretion of MS to define the activities for which fees are to be charged as is currently foreseen by Article 27.1. This would aim to a more harmonised approach for the financing of official controls across the EU-27 (as an intermediate objective for the achievement of more harmonised controls across the EU, as discussed in section 2.1).

3.2.1. Full harmonisation

The most extreme version of this option, full harmonisation, would be described as follows:

1. All MS pay the same fees at the same level (fixed rates) for the same activities. It is noted that:

    i. The fees could be set at the level of the minimum rates currently established by Annexes IV and V, or at a different level. In any case, the fee level would be established on the basis of a common calculation method defined at EU level, aiming at a certain level of cost recovery (to be determined at EU level);

    ii. The list of activities could be as currently established by Annexes IV and V, or could be different (expanded/condensed).

    iii. Fee rates could be subject to regular review (e.g. every two years as provided by current Regulation) inter alia to adjust rates in line with inflation.

2. Penalties and reductions (for complying and non-complying firms, in the spirit of Article 27.6 and Article 28 respectively) are the same (fixed rates) for all MS.

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refers only to the general requirement to have "a sufficient number of suitably qualified and experienced staff". As the scope of this study only concentrates on Articles 26-29 of Regulation 882/2004, the options discussed here do not address possible changes to the relevant provisions of the Hygiene Package.

This option was generally the least favoured, with only 7 of the 27 MS CAs indicating their preference for a common system (*Question 2.1*, ***Annex 2***). All the MS that opted for full harmonisation are new MS, and in most cases these have faced considerable difficulty in introducing Regulation 882/2004 in the first place. Also, all of the 7 MS in favour of this option commented that there should nonetheless be some flexibility within the rules. At the level of the industry, full harmonisation was largely considered to be unrealistic.

Other than some potential advantages under certain conditions, such as possibly allowing for a simplification of the system at least at the level of central management (Commission, MS Central Competent Authority) and greater transparency as the same rates would apply throughout the EU27, full harmonisation is thus overall seen as having many disadvantages (**Table 3-2**).

A key problem is establishing the level at which fees should be set. This level would depend on the extent of cost recovery sought. However, there are currently no objective measures by which to establish the optimal level of fees at EU level for each activity. While such measures could be broadly based on the current criteria of Annex VI, there is currently a lack of the essential parameters that would enable us to provide an objective calculation of an optimal minimum fee at EU level. Such parameters would include for example, the optimal amount of time needed for the inspections for each activity and per type of business. In theory this should be the same figure for all MS; in practice it may differ depending on administrative, inspection staff and industry structures in each MS. In addition, there are certain parameters that cannot be defined as a common figure across the EU, notably staff costs and administrative costs.

The current differences in living costs and salary levels amongst MS, and their impact on the costs of staff employed to carry out the official controls and on administrative costs, mean that some MS would be net losers while others could be net gainers under this system (net losses and gains in this case refer to the potential revenue from the fees compared to the real costs of the controls for the administration). In any case, this appears to be the reality today, with the current level of minimum rates deemed to be too low or inadequate to cover the real costs of OCs for some MS while it is too high for others.

Although fees would be set at the same level throughout the EU, full harmonisation does not create a level playing field for the industry either, because it is the relative value of the fee (compared to production costs and producer prices) that is important and not the absolute level of the fee.

Consequently, trying to find a common basis for the EU-27 could simply result in fees being set in relation to the lowest common denominator, which is below the current rates of Regulation 882/2004. This is evidenced by the fact that several MS, particularly many of the new NMS, had considerable difficulty in introducing and enforcing the minimum rates currently foreseen by the Regulation. During the survey and case studies, several MS openly criticised the minimum rates of the Regulation for being too high and not taking into account their national economic reality. This situation has often forced MS to apply exceptions and derogations which, as seen in section 2.2, have not always been transparently applied.

It would therefore appear that pursuing a policy of full harmonisation of fee rates entails certain non-negligible risks. If the rates are set too high the risk is that they would not provide incentives for efficiency gains to be made in those sectors and MS where this is considered appropriate. If set too low, there is considerable risk that this may undermine the level and standard of controls actually carried out.

A full list of the advantages and disadvantages of this option, as put forward by the various MS, is provided in **Annex 2.1 (***Question 2.2***)**.

3.2.1. Intermediate scenarios

To introduce some flexibility into this option, fees and/or penalties/reductions could be calculated at MS level, rather than fixed for all MS. However, to maintain a certain level of harmonisation, the calculation methods to be used would adhere to certain common principles.

Thus, in scenario 1, fee reductions and penalties are established at MS level by applying a calculation method that follows common principles, but fees are fixed at the same level for all MS. In scenario 2, both the fees and the fee reductions/penalties are established at MS level by applying calculation methods that follow common principles. These principles are described in section 3.1.2. To ensure appropriate follow up of MS transposition of the rules and principles, MS would be obliged to communicate the calculation methods to the Commission.

In terms of the principles that can apply to promote a more consistent approach for the calculation of fee reductions/penalties (as discussed in section 3.1.2), pursuing the development of a common *bonus-malus* system on a totally harmonised basis across the EU is not considered to be practically implementable at present. This is due to the significant differences between MS in terms of industry structures and the organisation of official controls, which would not allow a one-fits-all approach. It would be difficult in practice to develop a common *bonus-malus* system for the EU-27 that would fit all national conditions and structures (both at the level of the industry and at the level of the competent authorities).

While therefore the need remains to reinforce the link between fee reductions/penalties (Articles 27.5/6 and Article 28, respectively) and the increasing uptake of self-control systems by industry (in line with the Hygiene Package), the development of a common system across the EU27 does not appear to be possible. Instead it appears MS need rather to be encouraged by the legislation to develop their own systems moving in the direction of an integrated *bonus-malus* approach for an effective and consistent implementation of Articles 27.5/6 and Article 28.

Table 3-2 Moving towards more harmonisation: overall assessment

HARMONISATION scenarios
Description
Full harmonisation: 1. All MS pay the same fees (fixed rates) for the same activities; 2. Penalties and reductions (for complying and non-complying firms, Article 27.6 and Article 28 respectively) are the same (fixed rates) for all MS. Introducing some flexibility: Scenario 1: Fee reductions/penalties established at MS level on the basis of common principles. Scenario 2: Fees and fee reductions/penalties established at MS level on the basis of common principles.
Advantages/benefits
• Full harmonisation could result in potential simplification in monitoring MS compliance with the rules, at least at central level (Commission, MS CCAs). This advantage diminishes as we move to scenario 1 and 2; • Transparency for all stakeholders, as both fees and activities would be fixed in EU law; • Potential to reduce distortions in competition amongst MS/regions - however questionable whether fees alone are an important factor affecting competitiveness within the EU27 (see section 2.3.2); • Harmonisation of fee levels for border controls, thereby addressing concerns for potential distortions at this level (see section 2.3.2.5); • Distortions currently caused by different MS approaches on fee charging for 'non-compulsory' (Article 17.1) activities, could be reduced/eliminated; • Greater harmonisation of official controls if description per activity defined in detail on a common basis, e.g. concerning the ante and post mortem inspections, to guarantee the same level and standard of controls throughout the EU.
Disadvantages/drawbacks
• In terms of domestic controls, in view of the differences in cost of living and salary costs, full harmonisation is not creating a level-playing field in the EU27. On the contrary, it can alleviate differences if some MS are unable to cover their costs on this basis, or if the rate of cost-recovery that is achieved through these fees varies greatly between MS; • Considered difficult, if not impossible, in practice to find a common denominator between MS in terms of the level of fees for domestic controls, and developing a common *bonus-malus* system; • Concern that finding a common basis for all EU27 may result in the lowest common denominator, thereby jeopardising the overall progress achieved so far in the effectiveness and efficiency of the official controls at EU level; • Would not provide incentives for efficiency gains to be made where needed / considered necessary; • To ensure uniform application, this should be a rigid system: it may pose interpretation problems, and actually result again in different approaches, if the provisions are not explicit;

HARMONISATION scenarios
• Scenario 2 is more complex, hence more difficult and cumbersome to implement and control at central level (Commission, MS CCAs).
Stakeholder position
In its fuller version, largely considered unworkable in practice, therefore acceptability by stakeholders, both industry and MS CAs, very low. Need to maintain some flexibility (scenarios 1 and 2).
Conclusion
Although rejected in its fuller version, this option becomes increasingly more acceptable if some flexibility is introduced in the rules (scenarios 1 and 2). It is noted that this increases the complexity of application and monitoring at central level. But, if the objective of the legislation is to ensure a minimum level of cost-recovery, then scenarios 1 or 2 would appear most appropriate. If the harmonisation approach is to be pursued further, some elements need further consideration, as follows: • The need to provide a transparent basis for the setting of fees, whether these are to be fixed for all MS (scenario 1) or calculated at MS level based on common principles (scenario 2); • The need for a more precise definition and common approach for the list and description of activities for which fees would be charged (all scenarios); • The need to adjust and incentivize the system based on actual risk levels and FBO performance (‘*bonus-malus’* system), although defined at MS rather than at EU level (scenarios 1 and 2).

3.3. Towards more subsidiarity

Moving from the status quo towards more subsidiarity could involve a range of scenarios depending on the degree of subsidiarity sought (**Table 3-1**). A constant feature of all scenarios under this option is that fee charging would be **optional** for all MS. This effectively means that there would no longer be any obligation for MS to charge fees, as is currently foreseen by Article 27.2. MS would be given full discretion not to collect any fees at all, or only to collect fees for any activities that they judge appropriate and necessary. Therefore, MS would be free to choose the level of cost recovery that best suits their needs and interests.

3.3.1. Full subsidiarity

If taken to its most complete expression the scenario of full subsidiarity would involve a total repeal of Articles 26-29. MS would be left entirely free to design the financing of the official controls.

This scenario was the least favoured by MS CAs. In particular there is concern that, by eliminating the possibility for MS to charge fees so as to ensure adequate funding, there is significant risk that the standard of the official controls could be undermined. Giving full discretion to MS would - given the current variation in the level of economic, administrative

and business development between the 27 MS - risk disintegrating the EU official controls system. This could potentially jeopardise the ultimate objectives of the system to guarantee food safety and the protection of public health as well as the free circulation of goods within the internal market.

The hypothesis made in this case is that MS would not be able to raise adequate funds through alternative means, notably general taxation. However, this possibility is currently provided by Article 26. As demonstrated by **Table 2-1**, some MS partially cover the costs of official controls through the public budget.

On the other hand, the meat industry has expressed more radical views on this point. The industry is in favour of a total review of the financing system for such controls, with a view to having this covered entirely from the public budget. The main argument has been that this is a public service of benefit to the final consumer, and that therefore the taxpayer should cover this cost though the public budget. It is argued that consumers are already paying for this through the higher prices of meat, as the extra cost of the fees is passed on by FBOs; this creates lack of transparency and may inflate prices unnecessarily as the cost may be passed more than once along the supply chain.

As noted from the outset this scenario has not been pursued further because - as it currently stands across the EU27 - neither the EU system of official controls nor the EU meat industry can be considered ready to adopt such a radical approach. A key reason is that the various MS are currently at very different levels of enforcement of official controls both at administrative and at industry level. Furthermore, for a totally publicly funded system of official controls to work, FBO responsibility and self regulation would need to have reached an adequate minimum level of compliance to EU rules across the EU27; this is far from being the situation today[45]. With the promotion and further encouragement of FBO responsibility, it is conceivable that scenarios of full subsidiarity, including a totally publicly funded system of official controls, could be examined longer term.

A less radical version of full subsidiarity could be scenario 4, whereby only the obligation for MS to ensure the availability of adequate funds for official controls (Article 26) is maintained. In this case, no explicit reference as to how these funds are to be raised would be made (currently, Article 26 is explicit on this[46]). This would provide a simplification of the current system in terms of Commission and CCA monitoring of the system as such, and could work if it could be sufficiently guaranteed that MS would provide the means necessary for these controls. In order to achieve this, MS could be obliged to report to the Commission the funds available for the official controls and the extent to which the funds available cover the costs of these controls (this obligation does not currently exist).

[45] As evidenced, *inter alia*, by the country FVO reports on the implementation of official controls within the EU and border controls on EU imports.

[46] Last part of Article 26 reads: *"including through general taxation or by establishing fees or charges"*.

3.3.2. Intermediate scenarios

Subsidiarity could be made less radical if some common rules and criteria are introduced into the system. A number of possibilities exist for combining the various components of **Table 3-1**, of which scenario 3 in particular has been assessed. This can be described as follows:

1. MS design the fee system that suits them best. This includes the definition of the activities for which fees are to be charged, and the fee-setting and calculation method.

One additional element 'controls' the flexibility given to MS under subsidiarity:

2. The condition that certain commonly defined principles are respected for the calculation of the fees and fee reductions/penalties (as discussed in section 3.1.2). To ensure appropriate follow up of MS transposition of the rules and principles, MS should communicate the calculation methods to the Commission.

Once this condition is attached to the subsidiarity option, it becomes increasingly attractive for a number of MS. In total, 16 out of the 27 MS CAs favoured some form of flexibility to be provided to MS to set the fees, within a commonly agreed framework of rules, and 7 of the 27 MS CAs indicated their explicit preference for a subsidiarity system of this form). At the level of the industry too, scenario 3 was largely considered to be more realistic than the more harmonised scenarios 1 and 2.

Key advantages or benefits of this option include the flexibility given to MS to adapt the fee system to a country's economic reality and administrative/industry structures (**Table 3-3**). As this system would provide a more customised fit to national/regional/local conditions, this ultimately can ensure better coverage of costs at MS level, compared to a situation where fees would be fixed at EU level (under the harmonisation scenarios).

Similarly, this option could ultimately provide more incentives for cost-efficiency gains. By allowing MS the discretion to fix the level of fees on the basis of actual costs, the possibility opens for authorities and stakeholders at national level to promote a common agenda for cost rationalisation through a more efficient and effective organisation of the official controls system.

Key disadvantages or drawbacks of this option include the potential for distortions in competition at the various levels investigated by the study, which may be caused by the variability in fees across the EU if, as would appear to be likely, MS end up adopting very different approaches. As discussed in section 2.3.2, this variability already exists under the current system. Although generally currently considered to be a relatively minor factor in affecting competitiveness between MS, the variability is higher in MS where flat rates rather than minimum rates apply, especially where these are determined on a decentralised basis (e.g. Germany, Italy).

The extent to which such disadvantages may occur will depend on MS' uptake of the discretion given to them to determine for which activities fees are to be collected and the level of the fees, on the basis of actual costs, as well as the power of the business community in the individual MS to force changes and to ensure the transparency of the system.

As discussed in section 3.1.2, this will depend *inter alia* on the level at which commonly defined principles are set across the EU. It can therefore be anticipated that as we move towards more subsidiarity, where not only common minimum rates no longer apply but also no common principles are used, variability in fees and the potential for distortions within the EU would tend to increase.

A full list of the advantages and disadvantages of this option, as put forward by the various MS, is provided in **Annex 2.1** (*Question 2.2*).

Table 3-3 Moving towards more subsidiarity: overall assessment

SUBSIDIARITY scenarios
Description
Full subsidiarity: Repeal Articles 26-29 Scenario 4: MS only obliged to ensure the availability of adequate funds for OCs (repeal Articles 27-29) Controlling MS flexibility: Scenario 3: 1. MS design the fee system that suits them best (incl. list of activities, fee setting & calculation); 2. The condition is that certain commonly defined principles are respected; the level at which these should be set (whether general principles or technical criteria) needs to be defined.
Advantages/benefits
• Full subsidiarity/scenario 4 could result in potential simplification in monitoring MS compliance with the rules, at least at central level (Commission, MS CCAs). This advantage diminishes as we move to scenario 3; • Flexibility to adapt to country specific economic conditions and administrative/industry structures; • Greater flexibility to adapt to changing situations at MS/EU level; • Greater potential to cover real costs; potential to engage CAs and FBOs in common agenda to push reforms to promote greater cost-efficiency and effectiveness of OCs; • If a more common agenda can be achieved across the EU, potential for greater transparency.
Disadvantages/drawbacks
• Can increase variability in fees between MS, particularly as we move to full subsidiarity, or if the common principles of scenario 3 are not applied or are not effectively enforced; • This would stimulate various distortions in competition, and distortions would be higher the more the system fails to implement effectively the common principles of scenario 3; • It would also risk increasing the variability in the effectiveness and efficiency of the controls at MS levels, thus undermining the performance of the system also at EU level; • Scenario 3 is more complex, hence more difficult and cumbersome to implement and control at central level (Commission, MS CCAs); • Can lack transparency in situations where the system fails to motivate the CAs and the business

SUBSIDIARITY scenarios
community to pursue common objectives.
Stakeholder position
More acceptable by MS at both CA and industry level than the harmonisation scenarios, particularly if common principles are set (scenario 3) to control MS discretion. At the same time, considered higher risk, as highly dependent on acceptance and effective enforcement by MS of these principles.
Conclusion
Although rejected in its fuller version, this option becomes increasingly more acceptable if some control is introduced in the rules. MS are currently found to be at excessively divergent stages of economic and industry development for full subsidiarity to work, especially on an unconditional basis. Potential failure of this option would lead to more serious distortions of competition at EU level, and would risk undermining the effectiveness and efficiency of the official controls system. The inclusion of common principles (scenario 3) could ensure that this option would work better, but this also increases the difficulty of reaching agreement on common conditions set at EU level. It also increases the complexity of application and monitoring at central level. For the purposes therefore of simplification, if the primary aim of the legislation is to ensure that MS have the funds necessary to cover the costs of official controls, whatever the means, scenario 4 could present an attractive alternative to pursue.

3.4. Extension to other sectors

This option examines the potential to extend to sectors, other than those listed in Section A of Annexes IV and V of Regulation 882/2004, the obligation to contribute to the financing of official controls, within the meaning of Article 27.2.

Such sectors could include stages upstream/downstream the feed and food chain (e.g. farmers and processors/retailers/caterers, respectively), and/or other product sectors (e.g. plant health controls). This option was formulated in an open way, to allow MS CAs and stakeholders more freedom to respond with their views. Hence, no list of potential sectors or scenarios was developed *a priori* on this option.

In total, 16 out of the 27 MS CAs favoured some form of extension of the financing obligation to other FBOs/activities *(Question 2.3**, Annex 2.1**)*.

In terms of product sectors, the sporadic evidence and arguments provided by MS, both during the survey and the case studies, did not allow the development and analysis of a consistent scenario under this option (**Questions 2.4 and 2.5, Annex 2.1**). No particular product sector consistently came up as eligible to be included in an extended system.

The most consistent scenario put forward by both MS and industry was the extension of the financing obligation across the food chain. For example, the extension to cover stages upstream and downstream of the slaughtering and meat cutting operations. The analysis below therefore focuses on this scenario. Ultimately, some of the conclusions drawn here could be of relevance for an extension of this approach to game and fish/aquaculture products.

At the level of the industry, the meat sector would favour extending to stages upstream and downstream of the slaughter and meat cutting operations the obligation to contribute to financing the costs of these controls. As discussed in section 2.3.2.3, this element of the chain is generally considered to be unfairly and disproportionately bearing the costs of official controls that are of benefit to the entire food chain. Spreading the costs along the chain would therefore represent a more equitable option (**Table 3-4**).

Such a system, covering the entire food chain, has already been developed in Belgium and is currently being proposed in Italy. Several other MS, including for example France and Spain, have expressed their positive reaction to such a model. Both the CAs and the professional organisations contacted in the various MS (e.g. France, Italy, and at the level of the EU meat industry the UECBV and CLITRAVI) were keen to introduce such an extension of the fee regime to cover other sectors along the food supply chain.

It is generally acknowledged[47] that an extended system would be more consistent with the integrated approach on food safety and the responsibility of FBOs, or the 'farm to table' approach, which the General Food Law (Directive 178/2002) and the Hygiene Package are seeking to promote. By involving all stakeholders, operators would have an interest in ensuring that the entire control system is solid and functions well. This would be further encouraged when combined with a model that adjusts fees to the level of risk and individual FBO responsibility (such as a *bonus-malus* system as discussed in section 3.1.2).

Furthermore, it is argued that such models should be regulated at EU level, because leaving the option to MS could lead to a distortion of competition between those MS in which fee charging is extensively spread along the food chain and those MS which collect fees at only a few points of the chain. This could result in situations where the fees paid, for example by the slaughter sector, in the MS that spread the costs are significantly lower than in the MS that do not. It could also put sectors/activities covered in some MS but not in others at a competitive disadvantage[48].

The justification for this approach is that it better addresses the food safety risks that the EU food industry is actually facing today. In particular, it is argued that the risks related to food safety and human health have evolved with the development of the food supply chain, and the slaughterhouses and meat cutting plants should no longer alone bear the cost of controls nor

[47] See, for example, the conclusions of EU Seminar on the "Modernisation of Inspections in Slaughterhouses". Organised by the French Presidency of the EU, 11 July 2008, Lyon France.

[48] In Italy, for example, a number of sectors not currently paying fees but included in the new draft law have opposed the draft on the grounds that they are disadvantaged *vis á vis* their competitors in other MS that are not charged fees, and have requested that the relevant provisions of the draft law are deleted from the current text.

should they be the only focal points of the controls. Advances in traceability and HACCP systems could be used as a tool to provide the official controls system with relevant information ('*food chain information*'[49]) to assist a better targeting of risks within an integrated food chain safety approach, as advocated by the Hygiene Package.

There is some debate as to which activities should potentially be covered by an extended scheme, in particular how far upstream of downstream along the feed/food chain such a model would extend to. Although this might extend to downstream elements of the chain including distribution, it is generally considered more difficult to extend it as far as the catering segment as this would make it significantly more complex to administer. Generally, the more extensive the system is the fairer it would be in principle, but at the same time, the more cumbersome and costly it will be to administer in practice.

The stakeholders consulted at both industry and at CA level agree that, ultimately, the key criterion for developing an extended system should be the level of potential risk to public health. The controls would in all cases need to be proportionate and risk based. On this basis, both the frequency and focus of the controls and hence their costs would be adjusted to the critical control points along the entire supply chain. Business operators along the various stages of the supply chain would then contribute according to the costs incurred, possibly in addition to a base contribution that all FBOs would pay. These principles are at the basis of the Belgian system as it currently stands.

It is noted that, in designing the system, it is important to avoid a situation where FBOs are eventually contributing at several points during the food supply chain for the same controls. As discussed in section 2.2.2, this situation already arises in the meat sector in Italy and there are concerns that the new draft Law may exacerbate, rather than correct, this problem.

The position of those sectors not currently paying fees also needs to be carefully considered in designing such a system. As the experience of countries that have already introduced this approach demonstrates (e.g. Belgium, Italy), there is likely to be strong opposition from these sectors, therefore fee levels and incentives to adhere would need to be appropriately established. Linking fees and incentives to the level of risk and FBO responsibility is crucial in this respect.

In conclusion, the main advantages of an extended system would be that the costs of the controls would be more widely and fairly distributed along the feed/food chain, while the

[49] Food Chain Information (FCI) is an important component of the 'farm to table' approach to food safety. As well as contributing to food safety it can also be used to improve both animal health and welfare. The purpose of FCI is to inform FBOs about decisions relating to acceptance of animals for human consumption and any abnormal conditions found during processing. It is also used to inform the official veterinarians about inspection and testing requirements. To this end, FCI reports must be sent within brief delays in advance of the animals arriving for slaughter. These provisions are laid down in Section III of Annex II of Regulation 853/2004 and in Section II (Chapter II) of Annex I of Regulation 854/2004. The FCI provisions were immediately applicable in the poultry sector, but several MS are using transitional provisions to implement FCI in other sectors by the end of 2009 (Regulation 2076/2005).

involvement of all FBOs along the supply chain would provide an incentive to take on responsibilities and promote transparency.

These advantages would need to be balanced with the need to contain the increased costs that will be required to administer an extended system. In larger MS with decentralised management the feasibility of such an approach is likely to be lower and the costs involved higher. It is noted that the opposition likely to be encountered by sectors not currently obliged to pay fees also has to be taken into account.

The regulation of an extended system at EU level is likely to be highly cumbersome and complex. For this reason, and given the current variations in MS industry structures and levels of development of the food chain, it would be best for the system to be designed at MS level, with only general principles and guidelines laid down at EU level.

A full list of the advantages and disadvantages of this Option, as put forward by the various MS, is provided in **Annex 2.1** *(Question 2.3)*.

Table 3-4 Extension to other sectors: overall assessment

EXTENSION TO OTHER SECTORS: key scenarios
Description
Extend to sectors, other than those listed in Section A of Annexes IV and V of Regulation 882/2004, the obligation to contribute to the financing of official controls, within the meaning of Article 27.2. The key scenario examined here is the extension of the financing obligation to stages upstream and downstream of the slaughter and meat cutting operations. Ultimately, some of the conclusions drawn here could be of relevance for an extension of this approach to game and fish/aquaculture products.
Advantages/benefits
• Spreads the costs over the extended food chain, hence more equitable than current system (more FBOs along the food chain pay, cost per FBO is reduced); • Consistent with the integrated food safety chain approach ('farm to table') advocated by the General Food Law and the Hygiene Package; • Allows better targeting of risk, provided it is based on appropriate risk assessment and full use of the new tools available (Food Chain Information, including via traceability and HACCP systems); • Can encourage FBO responsibility, provided that the fee calculation is adjusted to the level of risk and responsibility; • Promotes transparency, as more FBOs participate in the system; • These advantages are reinforced the more extensive (upstream/downstream) the chain coverage becomes.
Disadvantages/drawbacks
• More cumbersome and costly to administer; • Cost and complexity increase the more extensive (upstream/downstream) the chain coverage

EXTENSION TO OTHER SECTORS: key scenarios
becomes.
Stakeholder position
The thinking in many MS is increasingly moving to this direction. The current system in Belgium was quoted as an example by several MS (both by CAs and by industry stakeholders) throughout the study, while Italy is currently proposing such an approach. The meat industry is favourable. While non-currently paying sectors would be initially opposed, there is evidence that if the right incentives and fee adjustment based on risk and FBO responsibility are attached to the system, they will eventually adhere.
Conclusion
The strong advantages and relatively high acceptability of an extended system (upstream/downstream the meat production chain) make this worth further consideration. This is also consistent with the general principles and objectives of the current integrated approach to food safety (‘*farm to table’*). The system would work best if fees payable by FBOs at each stage of the chain are adjusted to real risks and FBO responsibility; these adjustments are now made possible with the advances in the availability of Food Chain Information, *inter alia* via traceability and HACCP systems. Although the cost and complexity disadvantages can be mitigated if the system is not too extensive upstream or downstream the chain, this decreases the solidarity and participatory approach of the system. These two considerations have to be balanced for the design of the optimal approach. Given the current variations in MS industry structures and levels of development of the food chain, it would be best for the system to be designed at MS level, with only general principles and guidelines laid down at EU level.

3.5. Status-quo (mixed system)

3.5.1. *Do nothing* option

Amongst the options for the future, the study has also examined the continuation of the current system (status quo). The current financing system for official controls represents the political reality of the evolution of a system first established by Directive 85/73. As discussed in the first part of this study, the intervention logic and rationale of this system continue to apply today. In practice, however, significant shortcomings with the application of the current system were identified by the study. These lead to a large variation in the extent and method of application of the rules by MS, and affect the ability of the Commission to monitor the situation and ensure that a harmonised approach is applied across the EU.

Given these shortcomings, the continuation of the system as it currently stands (*do nothing*) is clearly not an acceptable or a pragmatic option.

3.5.1. Status quo with improvements

Essentially, the financing provisions of Regulation 882/2004, as it currently stands, represent a mixed system. Article 27 generally follows the subsidiarity principle in that MS can decide whether to use the specified minimum rates of Annexes IV and V, or to charge for official control activities according to the actual cost of undertaking them based on the criteria of Annex VI.

During the study it became evident that, at the time of the adoption of Regulation 882/2004, several MS supported this flexible approach (possibility to opt for the common minimum rates or for flat rates) for political reasons, i.e. because it was considered too difficult to reach agreement on acceptable fee rates amongst the 15 MS (it was EU15 at the time).

This study has found that a similar debate exists in the EU27 today. Since the adoption of the Regulation in April 2004, this debate has been further enriched by the new dimensions brought about by the accession of 12 NMS to the EU and by the significant changes that have occurred in the EU food industry from the implementation of the '*farm to table*' approach to food safety. The findings of the present study add further arguments to this debate.

The fundamental approach and principles of Regulation 882/2004 would therefore appear to remain valid today. On the one hand, flexibility needs to be provided to MS to guarantee the best adaptation of the system to national/local conditions. On the other hand, certain common parameters need to be defined at EU level to guarantee maximum homogeneity in application throughout the EU. The appropriate balance between flexibility and homogeneity will guarantee maximum efficiency and effectiveness of the official controls system.

The study has examined a range of improvements that can be introduced if the current approach of a mixed or flexible system was to be maintained. These improvements were developed in the course of the study. They relate to various components of the system and, as such, would be also applicable in the case of the other scenarios presented in **Table 3-1**. These are as follows:

1. At a general level improve the understanding of Regulation 882/2004.

The problems encountered by the CAs and stakeholders in the interpretation of the financing provisions of Regulation 882/2004 were often attributed to the complexity in the formulation and interrelation of the various provisions. For example, failure to understand in practice how to link the first four paragraphs of Article 27 is a problem that was commonly mentioned.

These problems appear to create two shortcomings:

- Considerable deviation from the subsidiarity principle as pursued in the Regulation. It appears that the original intention of the legislator was that either of the two systems would be used, not both in combination as is occurring in practice (i.e. minimum rates for some products/activities and rates defined at MS level for others).

This study has found that a combined approach could only be justified for a distinct group of official controls, such as common fee rates for import controls and fee rates defined at MS level for domestic controls (as further discussed under point 2 below).

- Considerable scope for variations in interpretation between MS and regions. The variations in the application of Articles 26-29 were discussed at length in section 2.2. Although attributed to many factors, incorrect understanding or interpretation of the Regulation was often identified to be a key factor. For example, the fact that minimum rates are interpreted by some MS as a floor that cannot be undercut under any conditions (e.g. Germany), while for other MS they can be maximum ceilings, can create a very different application of the rules between MS.

Although a more in-depth legal analysis would be required to establish what type of improvements can be made to the text, the fact remains that as it currently stands there is significant scope for open or erroneous interpretation. This is demonstrated by the extent and complexity of court cases related to Article 27 in the case of Germany.

Beyond improvements to the text as such, it would be recommended that DG SANCO provide **a guidance document** targeted to the CAs on how to implement the financing provisions of the Regulation. Such guidance documents are provided in other cases, for example, in the case of the microbiological sampling and testing of foodstuffs under Regulation 882/2004 or on import requirements under Regulation 852/2004.

2. Provide a rationale for the setting of common (minimum) fee levels and review the rates of Annexes IV and V in the light of this rationale.

The study has indentified a lack of rationale for the setting of minimum fees and for the fee levels currently indicated in Annexes IV and V[50].

A number of shortcomings have been identified as a result, suggesting that a review is necessary to provide more explicitly the rationale for the setting of these fees. If common fees are to be used, their levels should be revised in the light of this rationale. MS, particularly the NMS that joined the EU after the adoption of Regulation 882/2004, as well as stakeholders, need to understand the rationale for the setting of minimum fee rates in Regulation 882/2004.

It appears that it was not the original intention of the legislator to fix minimum rates in the first place[51]. In the deliberations that followed, particularly at Council level, it was decided

[50] There is no justification in the Regulation at present on how the rates of Annexes IV and V were fixed at the indicated levels. The rates previously applying under Directive 85/73 were used as a basis from which the rates of Annexes IV and V of Regulation 882/2004 were fixed. It is not clear and there is no documented evidence on whether and what criteria were used for this adjustment. In some cases, e.g. domestic controls in the dairy sector, the study has found that the EU dairy industry faced unjustified rises multiple times above previously applying levels, with repercussions on the dairy business in many cases (e.g. Netherlands).

[51] Commission proposal for Regulation 882/2004: COM(2003)52 of 5/2/2003.

that minimum rates should be introduced. This decision was based on the rationale that EU-wide uniform fees should apply as a minimum in order to prevent distortion of competition between MS.

This rationale appears to be more relevant in the case of veterinary checks on imports (Annex V) than in the case of domestic controls (Annex IV). The principle that the EU is a single bloc is applied vis-à-vis third country suppliers via a unique EU border line designating BIPs as the only entry points for third country imports into the Community. Promoting a harmonised level of controls is the key to the success of this approach. Ensuring that fees are collected at the same level throughout all entry points to the EU would therefore be consistent with this objective. This is demonstrated by the fact that the minimum fee rates of Annex V are respected by the majority of MS today[52].

In terms of the domestic controls, the study has found that – given the extent of the variation in costs of living and salary levels amongst the EU-27 – the rationale for common minimum fee rates for these controls appears to be rather weak. Furthermore, even though there is significant deviation from the minimum rates of Annex IV, there is no clear evidence of a distortion to competition at present. This appears to suggest that if common minimum rates for these fees were replaced by a subsidiarity approach by which MS are allowed to set these fees within commonly defined parameters (as discussed under points 3 and 4 below), the system would be more effective and more efficient.

As indicated in section 2.2, the current application of the financing provisions of Regulation 882/2004 has resulted in significant variation from the minimum rates in most cases. The majority of these cases concern fee rates applying to domestic controls under Annex IV. Of the 20 MS that apply minimum rates, at least 5 MS apply these in combination with flat rates, and in at least 10 MS the actual rates charged are below the minimum rates because the MS apply also fee reductions on the basis of Articles 27.5 and 27.6 (although, in many cases, full conformity to these paragraphs is also questionable).

The fact that MS are, in practice, finding it necessary to deviate from the minimum rates, to apply either higher rates or lower rates on the basis of real costs and/or taking into consideration other factors such as those of Articles 27.5 and 27.6, calls into question the rationale for the setting of minimum rates for domestic controls. Moreover, as will be discussed further below under point 5, it would appear appropriate to enlarge the scope of these controls over a larger part of the food chain. In this case, the rationale of setting minimum rates would be further called into question.

Consequently, there appear to be good reasons for fees on domestic controls to be defined on a MS basis, while fees on import controls could be defined on a common basis. If common fee rates are to be pursued on border controls, then the level at which these should be set should be reviewed. This could be done on the basis of actual costs and in finding a common denominator across the EU.

[52] With few exceptions, e.g. France charges lower rates defined on the basis of lower costs.

3. Improve transparency and accountability (to reinforce the provisions currently provided by Regulation 882/2004).

The principles of transparency and accountability are important for the smooth operation of the system, under all options. This could be ensured through: the definition of a transparent method for setting the fees, and for calculating fee reductions/penalties; the obligation for MS to communicate these to the Commission and stakeholders; and, some guarantee that the fee revenue goes back into the system.

Although certain such criteria currently exist in Articles 26-29 of Regulation 882/2004, the study has found that they are largely not respected by MS.

a) Transparency of fee setting

As discussed in section 2.2, fee setting is currently not transparent. The use of more refined criteria to establish the rates - as suggested under point 4 below - should partly address this problem.

The lack of transparency drives many stakeholders to suspect that the rates charged are higher than the real costs of the controls. This is particularly evident in the case of significant year-on-year rises in the level of fees, which are not otherwise justified by normal inflationary pressures (e.g. Sweden and Denmark on slaughterhouse fees).

To address this issue, some stakeholders suggest the use of maximum rates as ceilings for the amounts that MS may charge under the flat rate calculation. The danger of this approach is that it may be used to 'freeze' fee rates at the higher level, so it would only work in combination with a minimum fee level, to give effectively a range within which MS can set fees. Also, as discussed under the harmonisation option, fixing common fee rates would deviate from the principle of creating a level-playing field in the EU given the variation in economic and cost of living levels across the EU27.

b) Obligation of MS to communicate to the Commission / stakeholders

The lack of transparency in fee setting is made worse by the fact that MS are largely not reporting back to the Commission or to stakeholders the precise method and criteria they have used in the calculation.

Regulation 882/2004 needs to reinforce the obligation to communicate this information. Article 27.12 requests that MS make this information public. Article 27.6. refers to the obligation to communicate the conditions for fee rate reductions only to the Commission, while Article 28 does not make any provisions on this at all. As already noted elsewhere in this Report, to date only 18 MS have sent notification letters to the Commission. Furthermore, there are few cases where this information is communicated to stakeholders. The study has found that MS simply publish the transposition of the Regulation into national legislation, without providing further explanation to stakeholders and without any consultation (with the notable exception of a few MS).

At political level, stakeholders in the MS may be able to exert more pressure on their national governments for accountability. However, this would be considerably reinforced if it was specifically laid down in the Regulation.

Another measure to improve accountability would be to systematically introduce a section on fees and financing, or the implementation of Articles 26-29, under the FVO missions that are conducted on the basis of Regulation 882/2004[53].

c) Guarantee that fee revenues go back to finance the system

Although this is essentially the main rationale for the financing provisions of Regulation 882/2004, the study has found that, apart from the general lack of transparency on the channelling of these revenues, the use of these finances to refund the official controls system appears to be very diversified amongst the EU27 (2.2.5).

It would therefore appear appropriate, subject to the ability of EU institutions to enforce such rules within the general Community subsidiarity principles on public finances, to ensure greater transparency and accountability by MS on this issue.

4. Refine and define certain provisions more precisely at technical level.

As already discussed, to ensure a harmonised approach to the implementation of the financing provisions of Regulation 882/2004, in addition to the general principles of point 3 above, some common criteria could also be more clearly defined at a technical level. As we move towards fuller harmonisation such criteria would include for instance a common calculation method, common cost-recovery targets, precise cost categories that should be taken into account, and even maximum ceilings for each cost element.

In practice, to define the appropriate level of these criteria, it is important to strike the balance between harmonisation and subsidiarity: i.e. maximising flexibility while minimising the potential for deviation from the principles of the Regulation. Taking this sensitive balance into consideration, it would be difficult to introduce certain criteria. For example, it would be difficult to agree on a common calculation method or cost-recovery targets given that current methods and targets vary considerably between MS. Therefore, the criteria below (under point a) are presented in a stepwise approach as we move towards fuller harmonisation:

a) Criteria of Annex VI

To improve the coherence in the calculation of the fees by MS, there is a need for a more precise definition of the three categories of costs listed in Annex VI.

[53] This refers to FVO missions conducted in the wider context of Regulation 882/2004 and not specifically on Articles 26-29. Some of the relevant FVO reports (food hygiene, official controls on POAO, and import controls) cover more explicitly the subject of financing (**Annex 1.2**).

A first step would be to:

- Clarify the individual cost elements under the general heading "salaries for the staff involved in the official controls" (**criterion 1**). This will need to address current differences in the approach taken by MS with regards to the inclusion of social security and welfare costs. It will also need to specify whether the costs refer to the staff carrying out the controls or staff working in the overall system of official controls (including in this case adjacent services and administration), and whether this relates to the costs of time spent on the controls or total staff time.

- The scope of the various costs under **criterion 2**, in particular of 'associated costs', will need to be more strictly defined. The study has demonstrated the significant divergence between MS and within MS with regards to the inclusion of this type of costs.

- Provide an explicit list of laboratory analysis and sampling costs that can be included under **criterion 3**. This would need in particular to address current discrepancies between MS in terns of the inclusion of the costs of residues sampling/testing and BSE sampling/testing under this criterion.

- The time period over which all of the above costs are incurred needs to be defined.

In a further step to effectively harmonise the system across the EU, these criteria could be tied together in a **single calculation formula**, to be laid down in Annex VI. The availability of a formula would allow the Commission and stakeholders to check the validity of the MS CA calculation against an objective and standardised measure.

Such a formula could, for example, calculate the charge per hour of the staff employed to carry out the controls, as follows:

$$\textit{charge per hour} = \frac{\textit{(FTE/year x SC) AC (\%) x LC (\%)}}{h}$$

where:

FTE (full time equivalent)	= calculated on the basis of the total number of staff and number of working hours
SC	= staff costs (criterion 1)
AC	= administrative costs (criterion 2)
LC	= laboratory costs (criterion 3)

Further harmonisation could be pursued by establishing maximum ceilings, or a range, within which these costs will need to move in relation to the total costs. For example, administrative costs may be fixed at a maximum (e.g. 10%) or a range (e.g. 5-10%), as a ratio of total costs.

The definition of these limits requires more detailed technical analysis. For example, in establishing the ratios, due consideration needs to be paid to the relative importance of these costs in each MS as affected by the cost of living differences[54]. There are also arguments against the use of upper limits, because they may risk 'locking in' current inefficiencies of the system. For example, MS may interpret such limits as a guideline, thereby neglecting reforms that could improve the ratio of each type of costs. In conclusion, at present it would be difficult and risky to do this at an EU level, but could be done on a MS basis.

Many stakeholders and some MS have expressed the view that, in order to provide greater incentives for inspection efficiency, Regulation 882/2004 could be more explicit on the number and profile of staff that is required to perform the official controls. In particular, it is suggested that the actual number of official veterinarians and auxiliaries per number of animals inspected should be specified in EU law[55].

As already discussed in section 2.3.3.2, this would be difficult to achieve at present at EU level for the EU27. It may also reduce the flexibility to incorporate in the legislation the provisions on reduced frequency and incentives for FBO responsibility. However, it can and should be explicitly defined at MS level for each MS.

On the other hand, the profile and contractual conditions of the staff employed to carry out the official controls could – at least in part - be addressed at EU level. In particular, this issue calls for a review of the requirements of Regulation 854/2004 that only official veterinarians[55] can carry out audits and inspections of slaughterhouses, game handling establishments and certain cutting plants[56]. This requirement is considered to impose high costs. If this requirement was to be relaxed, it could lead to more cost-efficient controls. However, such issues fall outside the scope of the current analysis.

Finally, stakeholders in particular argue that incentives to achieve greater cost efficiencies at CA level could be achieved via some form of cost-sharing of at least part of these costs. The most eligible cost item in this respect would be costs which FBOs have no power to control, in particular administrative costs and some aspects of staff costs. In the first instance,

[54] While staff costs greatly vary between MS, and administrative costs may also be expected to vary significantly, the costs of laboratory analysis are expected to be more harmonised across the EU. This will affect the relative weight of each type of costs in the total costs for each MS, e.g. in Bulgaria where staff costs are some of the lowest in the EU, the ratio of staff costs will be lower and of laboratory costs higher than in the UK or Germany where staff costs are relatively far more important.

[55] Regulation 854/2004 of the Hygiene Package provides a broad definition of the terms 'official veterinarian' and 'official auxiliary' (Article 2.f/g and Article 2.h, respectively).

[56] Member States have discretion to decide which are the most appropriate staff for audits and inspections of other types of establishments.

administrative costs could be shared 50:50 between the government and stakeholders. Such a scheme would work better under a *bonus-malus* system encompassing the extended food chain (as discussed under point 5 below). Again, the principle of the scheme only should be laid down in EU law, with actual implementation details (e.g. establishing the actual amount of these costs and the relative weight in the total cost calculation) left to MS.

b) Criteria of Article 27.5 (small, traditional and geographically remote FBOs)

Regulation 882/2004 envisages special treatment for business operating under difficult conditions, such as small, traditional and geographically remote FBOs. Again, as discussed in section 2.3.2.4, the application of these provisions has been variable amongst the EU27. Overall, as it currently stands, the application of the Regulation has worked to the detriment of this type of businesses.

It may be appropriate therefore to ensure that the turnover of a business is taken into account in the fee calculation, for example in the form of a reduction according to scale. The exact level or scale of turnover below which reductions can apply can be established at MS level, in accordance with the need to maintain some flexibility as judged most suitable to national/local conditions.

5. Update Articles 26-29 of Regulation 882/2004 with the progress made since the adoption of the General Food Law and the Hygiene Package.

Regulation 882/2004 was adopted at the same time as the General Food Law and the Hygiene Package. It is therefore normal that 5 years after the adoption of this legislation the progress achieved by its parallel implementation will need to be taken into account.

The General Food Law and the Hygiene Package place the primary legal responsibility for ensuring feed and food safety to feed and food business operators (FBOs). This principle is incorporated into Regulation 882/2004, which *inter alia* calls for the "*frequency of official controls to be regular and proportionate to the risk, taking into account the results of the checks carried out by FBOs under HACCP based control programmes or quality assurance programmes, where such programmes are designed to meet requirements of feed and food law, animal health and animal welfare rules*" (preamble 13).

The study has identified the need for an update, both in form and in principle, of the financing provisions of Regulation 882/2004 to the changing circumstances brought about by this legislation. In particular the following recommendations can be made:

a) Improve/update reference to the Hygiene Package

To improve the consistency of Regulation 882/2004 with this approach, precise reference to the Hygiene Package should be made in Articles 26-29.

As the text currently stands, Article 27.6 refers to the possibility to reduce fees below the minimum rates where official controls are carried out with a reduced frequency "in view of

own check and tracing systems". There is no further reference to EU legislation in this respect.

At the same time, Annexes IV and V refer to preceding legislation which is now partly repealed or replaced by the Hygiene Package (e.g. Directive 89/662, see Annex 1.1).

b) Reinforce incentives (and disincentives) to improve FBO responsibility

As already discussed in length elsewhere in this Report, the need to adjust official controls to the actual risks stems in particular from two trends:

- The growing introduction of self-control (GHP and HACCP) and traceability systems in the meat and dairy industry (and all sectors for which fees are collected on a compulsory basis), whereby there is less need for actual inspections on the product and more need for verification of compliance. Hence, there appears to be a need to tie incentives/disincentives more closely to risk reduction where such systems have been introduced and operate effectively.

- The changing structure and operation of the food industry and food consumption, whereby risk occurrence and the dangers to public health are increasingly spread along the food chain rather than concentrated in a few points of the chain only. Hence, there appears to be a need to actively engage, by providing incentives/disincentives, the extended chain of FBOs involved from 'farm to table' (as discussed under **point c** below).

There is wide consensus amongst the industry and MS that the revision of the financing provisions of the Regulation presents a unique opportunity to provide an incentive to reinforce the uptake of self-control by the industry, which would be consistent with the principles and objectives of the General Food Law and the Hygiene Package.

This opportunity remains largely untapped at present. The study has found that there is currently substantial variation and lack of consistency in the application of the provisions of Article 27.6 by MS. This creates a situation whereby the industry is not facing a level playing field in Europe, while respect of the principle of self-regulation is undermined. Similarly, although Article 28 can be used to target FBOs with inefficient control systems and create an incentive to improve them, there are doubts as to how effectively these powers are currently used across the EU.

Consequently, fee reductions need to be further encouraged and non-compliance further discouraged. At the same time, the calculation of the reduction could be further refined and made more transparent, in line with the recommendations under points 3 and 4 above.

The study has identified the potential to effectively implement this on a *'bonus-malus'* basis. This would expand on the provisions currently made by Article 27.6 (for the *'bonus'*, i.e. rate reduction), and Article 28 (for the *'malus'*, i.e. charge non-compliance costs). Tying together, through a single system, the reward for compliance with the penalty for non-compliance, would provide a more coherent and transparent system of incentives/disincentives than the current provisions of the Regulation.

It is noted that some MS, in consultation with the industry, are already moving in this direction. There may be a need to ensure that a harmonised approach is followed on this across the EU. Indeed, as such models are currently at an early stage of development, there is an opportunity to do this based on the principles and objectives of EU law. Although it would be extremely difficult – if not impossible - at present to develop a common *bonus-malus* system across the EU27, it would be appropriate to guarantee that any national *bonus-malus* systems designed by MS are based on common principles as laid down in EU legislation. In particular, the reductions and penalties envisaged under MS *bonus-malus* systems should be based on the general principles of Articles 27.6 and Article 28 of Regulation 882/2004.

Such criteria should include specific reference in Articles 26-29 to:

- The requirement to reduce fee rates for FBOs with established HACCP systems; conversely, penalties for FBOs with non-established HACCP systems;

- The requirement to reduce fee rates for FBOs with a record of compliance to EU hygiene requirements over a given number of years; conversely, penalties for FBOs with a record of non-compliance over a given number of years.

The use of additional criteria, such as private assurance schemes developed in consultation with the CAs of MS, or quality assurance systems based on international standards (e.g. EN 29000) may also be considered.

The actual modalities of these criteria (e.g. rates and progression over time of reductions/penalties; number of years over which to measure compliance and non-compliance etc.) could be left to MS to define. At the same time, it will be important to ensure that the needs of small, traditional and geographically remote business are taken into account (as discussed above under point 4.b), so that they are not discriminated against.

Transparency and accountability of the application of these rules by MS would need to be ensured along the lines discussed under point 3 above.

c) Enlarge scope to the wider food chain

As already noted, the meat industry in particular feel disadvantaged vis-à-vis other food sectors, especially the processing and catering sectors where the risk to human health can also be relatively high. This can be done by extending the financing obligation to stages upstream and downstream of the slaughter and meat cutting operations, according to the modalities of Option 3, i.e. encourage extension of the system but leave it up to MS to define (**Table 3-4**).

4. Conclusions and recommendations

Significant progress has been made in the application of Regulation 882/2004 by MS, and in particular the financing provisions of Articles 26-29, since their entry into force on 1 January 2007. However, the enforcement of these provisions has been slow and gradual, with important delays in most MS. In some cases, full implementation is still pending subject to the approval of draft national legislation enacting Article 27, despite the fact that the deadline for its definitive entry into force was 1 January 2008. In these cases the fee system in place is largely based on that laid down in previous, repealed legislation (Directive 85/73).

In conclusion therefore, despite progress, currently the application of the financing provisions of the Regulation can be considered incomplete at EU level.

Apart from the delays in transposition, a number of shortcomings have been identified in the application in practice of the current system for the financing of official controls, as laid down in the Regulation. As outlined in detail in section 2, such shortcomings include:

- In some MS, despite enacting legislation being in place, fees are not collected or are only partially collected (e.g. collected below the minimum fee rates or not collected in all sectors where the collection of a fee is compulsory).

- There is significant variation between MS in the interpretation of the various provisions of Article 27. Overall, there are extensive complaints, both from industry and from MS authorities, that there is excessive scope for wide and open interpretation of the rules due to the ambiguous formulation of Article 27 and Annexes and the lack of a clear understanding of these provisions. The following issues have been identified as providing scope for misinterpretation:

    - Reference in Regulation 882/2004 to outdated legislation, e.g. in Annex IV to the old Directives on official controls preceding the Hygiene Package regulations. This has led to confusion in the implementation of the provisions both for the authorities and for business operators;

    - The general formulation of the three criteria of Annex VI. In particular, the problem appears here to be the lack of definitions for some of the terms used. For example, the term 'associated costs' (criterion 2) is believed to lead to the inclusion of administrative costs which may not be directly justified by the official controls in place. This has led to a lack of uniformity in approach, and is considered to be a key factor explaining the wide variation in fee rates between MS or even within MS.

    - The complex structure of Article 27, in particular the interrelation and formulation of its various paragraphs, make the various provisions difficult to comprehend. This has led to a situation where in some MS a combination of minimum rates and flat rates apply, which was not the original intention of the legislation (the intention being that either one or the other should apply).

  - The lack of a rationale for the minimum rates of Annex IV and V. The study has identified the need for a clear and transparent basis for the setting of these fees, particularly in the case of domestic controls. As it currently stands, the minimum fee rates are not fully respected and there are many complaints from industry that these are too high or unfairly set.

- Where flat rates (rather than the minimum rates of Annex IV and V) are used, there is generally a lack of transparency on the calculation method that has been followed. This can be seen both from the notification letters sent by MS to DG SANCO pursuant to Article 27.12 of the Regulation, and from the results of our survey. Very few countries describe their calculation methods, and even in these cases there is no clarity on the various elements covered by the 'administrative costs' which are always taken into account in the calculation.

- There is significant variation in the channelling and use of the revenues raised from the fees. Although the use of these revenues to finance the official controls system is the main rationale for the financing provisions of Regulation 882/2004, as it stands the Regulation does not make any reference to the obligation of MS to ensure this is taking place. The study has found that there is generally a lack of transparency on the channelling of these revenues, and the information collected through the survey demonstrates that the extent to which these funds are used to refund the official controls system appears to be very variable amongst the EU27.

In addition, the study has identified some overarching challenges which go beyond the scope of the study and of Regulation 882/2004 as such. These issues are nonetheless discussed in this Report, as it is not easy to separate the review and evaluation of the fee system from the overall organisation and structure of official controls. They also have significant implications when examining the options for the future:

- The fact that there appear to be widespread variations in the level, frequency and standard of the official controls performed in the MS of the EU-27. Although not dealt with directly by this study, this point is relevant, because *à priori* the cost of controls (and the associated fee for cost-recovery) should in practice relate to the quantity and quality of the services provided. The need to address this point has therefore emerged in our interviews with industry in particular. From a review of FVO Reports on official controls carried out in MS under the Hygiene Package, it is evident that the level and standard of the controls remains highly variable between MS (some less extensive issues of variability appear to exist also with import controls performed at BIPs).

  At the same time, there are on-going discussions concerning the improvement of the inspection services, e.g. in slaughterhouses, to take into account technological progress and the increasing uptake of self-control systems (notably GHP and HACCP) following the introduction of the General Food Law and the Hygiene Package.

- The significant variation in the structure and organisation of the CAs in the MS, and of the staff (veterinarians, hygienists) performing these controls. This point also has financial implications of relevance to this study.

It is noted that the addition of several layers of competent/executive bodies is usually dictated by constitutional law and the administrative traditions of a MS, and is therefore difficult to change as such. On the other hand, there is currently a trend in the EU to rationalise public services, and this includes consideration of alternative employment models for the staff responsible for the official controls.

- A number of external factors can be added to these challenges, such as technological progress, market trends and the structure of the industry, which can affect the efficiency with which official controls are organised and performed.

These issues call into question the principles and objectives of the Regulation to ensure a harmonised approach across the EU with regard to official controls. The study has found that the current organisation of the fees system in the MS creates some distortions in competition (particularly discriminating against the meat industry and smaller businesses) as well as having implications for the efficiency and effectiveness of the controls. This can potentially undermine the ultimate objectives of the system to guarantee food safety and the protection of public health as well as the free circulation of goods within the internal market.

The identified shortcomings can be broadly attributed to:

- **Problems within the EU legislation**. This refers to the various issues identified in the formulation of Articles 26-29 of Regulation 882/2004 as such (including broad definitions in Annex VI, confusion in the structure and interception of the various paragraphs of Article 27 & Annexes IV and V, and concerns on the level of minimum fees and the fact they are expressed on a tonnage basis). It also includes issues identified in the wider context of Regulation 882/2004 (such as broad reference to official staff requirements) and its relation to other legislation (particularly the Hygiene Package). It is worth noting that, even in the case of the minimum rates of Annexes IV and V, stakeholders as well as most CAs were unclear on how this particular level of fees was set in the legislation in the first place;

- **Problems in MS interpretation**. These appear to arise largely as a consequence of the discretion given to MS to implement the rules, within a broadly defined set of criteria, and the relatively limited accountability of authorities at MS level. Although Regulation 882/2004 implicitly refers to a central authority as having the ultimate responsibility for effective and efficient coordination even in cases where competence is conferred to authorities at a more decentralised level (Article 4.3), the study has found that in practice this is not always guaranteed and that a large number of authorities may be involved with little coordination between them. This, in turn, has implications for the accountability of the central competent authorities of the MS to the EU institutions.

To address the various shortcomings in the current application of the Regulation[57], the study has examined various scenarios within the following key options: moving from the current system towards more harmonisation, moving towards more subsidiarity; and, the continuation of the *status quo*. A complementary option, which in fact transcends the above three alternative options, is the extension of the financing obligation to sectors beyond those currently covered by the Regulation.

The scenarios were developed by combining key components, which were identified on the basis of the intervention logic of the system as laid down in the current legislation (Articles 26-29). These are: the basis of fee charging; level of fee rates; fee calculation method; fee reductions and penalties; and, list of activities covered by fees (**Table 3-1**). A constant feature of all scenarios under each option is the basis of fee charging: compulsory for all MS under the harmonisation option, optional under the subsidiarity option, and a mixed approach under the continuation of current rules.

The scenarios were assessed in terms of advantages and disadvantages, feasibility (whether and under which conditions they would work in practice), and the acceptance that they might have from the various groups of stakeholders.

The key criteria applied for the assessment were defined in the context of the main goals and principles of Regulation 882/2004, as well as the wider objectives of Community food and feed law and the Lisbon strategy, as follows: improving the effectiveness and efficiency of the official controls; simplification of the current system; and providing the right incentives for FBOs to encourage compliance and discourage non-compliance.

It is noted that these criteria may not necessarily point in the same direction. For example, pursuing simplification may not be compatible with the increasing complexity required to ensure a harmonised approach towards cost-recovery across the EU. It would be important therefore to define the overall objective of the policy approach to be followed at EU level. The initial assessment of the scenarios provided here aims to provide a balance between the various objectives and needs of stakeholders.

The assessment has shown that neither harmonisation nor subsidiarity would work in their most extreme expression. Determining a uniform level of fees across the EU-27, under the fuller harmonisation scenarios, may be unworkable in practice, because the large variation between MS in the actual cost of the controls would make it difficult to find a common denominator in terms of fee levels. Leaving full discretion to MS to develop their own system for the financing of official controls under full subsidiarity, given the current divergence in economic and industry development between MS, may not provide the resources to maintain (or improve) the current standard of controls. Although both scenarios would simplify the current system at the level of central management (particularly if full subsidiarity is pursued),

[57] It is noted that addressing some of the current shortcomings identified by this study requires action that extends beyond the financing provisions of Regulation 882/2004, to the wider legislation in the area of food and feed safety. The discussion of solutions to such shortcomings was therefore limited to its relevance to the costs and the financing of the official controls.

they ultimately carry the risk that they may not lead to sufficient cost-recovery in some MS, and that the level of cost-recovery may vary significantly between MS. This could undermine the overall effectiveness of the official control system at EU level, and/or act as a disincentive to improving its efficiency.

An intermediate solution would clearly provide the most pragmatic way forward. Intermediate scenarios provide different degrees of balance between the flexibility that the majority of MS require, as an incentive *inter alia* to rationalise the system, with the simplification needed at the level of central management (Commission, MS CCAs). The study has found that the rationale for a flexible approach, which underlies the current Regulation, continues to apply today. The majority of MS CAs and stakeholders have indicated that a system that allows MS flexibility to set the fee rates, within a commonly agreed set of rules, continues to be the most favoured option. This approach is considered the most appropriate for the system to be able to adapt to national conditions.

On balance, amongst the various scenarios that can be envisaged at an intermediate level, those leading to more subsidiarity appear to be more attractive than those that lead to more harmonisation. This is because the degree of flexibility given to MS increases, while the degree of complexity of the legislation diminishes.

Moving towards more subsidiarity, if the primary aim of the legislation is to ensure that MS have the funds necessary to cover the costs of official controls whatever the means, scenario 4 (maintain only the general obligation for MS to provide adequate funding, in the line of a modified Article 26) could present an attractive alternative to pursue for the purposes of simplification.

The disadvantage of such a system would be that it could result in wider variations between MS than those created by the current system. To reduce these variations, conditions could be attached in the form of common principles at EU level for a more harmonised calculation of the fees and/or fee reductions/penalties across the EU (scenario 3).

Although the continuation of the *status quo* would be an alternative intermediate solution, the analysis of current shortcomings under section 2.2 has shown that to *do nothing* is clearly not an acceptable or a pragmatic option. However, the current situation represents the political reality of the evolution of the system since Directive 85/73. Thus, if the current mixed approach of the Regulation was to be maintained, certain improvements could be introduced as follows: at a general level improve the understanding of Regulation 882/2004; provide a rationale for the setting of minimum fee levels and review the rates of Annexes IV and V in the light of this rationale; improve transparency and accountability criteria (to reinforce the provisions currently provided by Regulation 882/2004); refine and define certain provisions more precisely at technical level; update Articles 26-29 of Regulation 882/2004 with the progress made since the adoption of the General Food Law and the Hygiene Package.

Whatever the scenario to be pursued at an intermediate level, the study has identified the need for the definition of common principles that can apply for a more harmonised calculation of the fees and/or fee reductions/penalties across the EU. These could be general principles only or they could be more detailed criteria defined at a technical level. General principles would

include: transparency in the calculation method of fee setting and for calculating fee reductions/penalties, on the basis of actual costs; and, the obligation for MS to communicate these to the Commission and the public. Detailed technical criteria would include for instance the calculation method to be followed for fee setting and for fee reductions/penalties, cost-recovery targets that should be sought, precise cost categories that should be taken into account, and even maxima/ceilings for each cost element.

The level at which common principles should be set needs to be further explored, as it is crucial in controlling MS flexibility and mitigating the potential disadvantages of subsidiarity. The greater the degree to which EU legislation moves from defining common principles and general guidelines (as is currently the case with Articles 27-29 of Regulation 882/2004) to more technical criteria, the more difficult it will be for MS to deviate from a common denominator. On the other hand, this increases the complexity of the provisions and the extent of follow up needed at central level (Commission, MS CCAs).

In terms of the calculation of fee reductions and penalties, in particular, the principles could build on the advantages and benefits of self-control systems, as introduced at EU level by the Hygiene Package. The study has examined the possibility to expand on existing provisions of the Regulation, by following an integrated approach more consistently linking compliance and non-compliance, and therefore fee reductions and penalties, to the uptake of self-control systems by industry (through a *bonus-malus* system). Both MS and stakeholders are in principle in favour of providing incentives to FBOs to assume greater responsibility. The extent to which this can be encouraged will depend on the degree to which an approach on how to reward compliance can be developed (Articles 27.5/6) and, conversely, how to penalise non-compliance (Article 28). This could be through an integrated *bonus-malus* system. Such systems have already been developed at MS level in a few MS (e.g. Belgium) and these highlight the advantages of an integrated approach. The study has concluded that, although the development of such systems needs to be encouraged at EU level, their actual design can at present only be pursued at MS level.

In addition to the above, the cross-cutting theme of the extension in scope of the Regulation was favourably assessed, in relation in particular to the inclusion of all stages along the food chain. The case of the extension of the system to stages upstream and downstream of the slaughtering and meat cutting operations along the meat production chain was a case in point. The study has concluded that an extension in this form would spread the costs of controls currently pursued only at a particular point in the chain but for the benefit of stages upstream/downstream more equitably along the food chain. Again, this approach is currently being adopted/explored in several MS.

This forward looking element of the project aimed to provide an initial assessment of certain key scenarios. The purpose was not to provide a full feasibility analysis (whether at political or technical level). Nonetheless, specific recommendations were made to develop these scenarios, or indeed other potential combinations of their components, including through future impact assessments.

Annex 1

1.1 List of relevant background legislation

Note: EU legal acts quoted in this Report refer, as applicable, to the last amended version.

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

Hygiene Package:

- Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs
- Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin
- Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption

Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene. In particular Article 10 "Approval of feed business establishments".

Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

Commission Regulation (EC) No 2076/2005 of 5 December 2005 laying down transitional arrangements for the implementation of Regulations (EC) No 853/2004, (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004.

Previous legislation:

Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultrymeat

As amended by:

Council Directive 96/43/EC of 26 June 1996 amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC

Internal market (Annex IV, Regulation 882/2004)

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 (Annex listing checks is now replaced by Annexes to Regulation 853/2004)

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

Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing

Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC

Imports (Annex V, Regulation 882/2004):

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

Council Directive 91/496/EEC 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

Not mentioned in Regulation 882/2004 but related:

Regulation (EC) NO 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC :

Official controls of MRLs

Article 26

Official controls

1. Without prejudice to Directive 96/23/EC (1), Member States shall carry out official controls on pesticide residues in order to enforce compliance with this Regulation, in accordance with the relevant provisions of Community law relating to official controls for food and feed.

2. Such controls on pesticide residues shall, in particular, consist of sampling and subsequent analysis of the samples and identification of the pesticides present and their respective residue levels. Such controls shall also be carried out at the point of supply to the consumer.

Council Directive 2002/89/EC of 28 November 2002 amending Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community:

Article 13d

1. Member States shall ensure the collection of fees (Phytosanitary fee) to cover the costs occasioned by the

documentary checks, identity checks and plant health checks provided for in Article 13a(1), which are carried out pursuant to Article 13. The level of the fee shall reflect:

(a) the salaries, including social security, of the inspectors involved in the above checks;

(b) the office, other facilities, tools and equipment for these inspectors;

(c) the sampling for visual inspection or for laboratory testing;

(d) laboratory testing;

(e) the administrative activities (including operational overheads) required for carrying out the checks concerned effectively, which may include the expenditure required for pre- and in-service training of inspectors.

2. Member States may either set the level of the Phytosanitary fee on the basis of a detailed cost calculation carried out in accordance with paragraph 1, or apply the standard fee as specified in Annex VIIIa.

Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community

1.2 List of reviewed FVO reports and MS notification letters to DG SANCO

Note: Refers to the latest relevant FVO Reports, and notification letters, as available up to 15 October 2008.

		FVO Reports available**	-		***Fees mentioned in Report: Y=yes N=no***							**Notification letters**
		OCs FH	***fees***	**ICs BIPs**	***fees***	**ICs PH**	***fees***	**PRCs**	***fees***	**Other**	***fees***	*Availability*
1	Austria	8176/2006*	*N*									Y
2	Belgium	7196/2007	*N*	8121/2006*	*N*	7426/2007	*Y*					N
3	Bulgaria	7950/2008* 7197/2007	*N* *N*	7571/2007	*Y*							Y
4	Cyprus	8173/2006*	*N*	8057/2006	*Y*							N
5	Czech Republic	8177/2006* 7838/2008	*N* *N*	7746/2008 7727/2005	*N* *Y*							Y
6	Denmark	8153/2006*	*N*			7378/2007	*Y*			8004/2006 (fish) 7349/2007 (ICT LAs)	*Y* *N*	Y
7	Estonia	8194/2006*	*N*	8058/2006	*Y*							Y
8	Finland	8170/2006*	*N*	7582/2007	*Y*			8108/2006	*N*			Y
9	**France**	**7223/2007**	***N***	**7185/2007***	***N***			**8113/2006**	***N***			**Y**
		8179/2006*	***N***	**8055/2006**	***Y***							
10	**Germany**	**7430/2007*** **8183/2006***	***Y*** ***N***	**7917/2007**	***Y***							**Y**
11	Greece	7201/2007	*Y*	7242/2007	*Y*			7218/2007	*N*	7695/2008 (VRCs) 7724/2008 (feed OCs)	*Y* *N*	Y
12	Hungary	8209/2006*	*N*	7235/2007	*Y*	7419/2007	*Y*			8012/2006 (VRCs)	*N*	Y
13	Ireland	8166/2006*	*Y*									Y
14	**Italy**	**7193/2007**	***N***	**7275/2007**	***Y***	**8119/2006**	***N***	**7194/2007**	***N***			**N**
15	Latvia	8206/2006*	*N*	7280/2007	*Y*							Y
16	Lithuania	7190/2007	*N*	7277/2007	*Y*					8007/2006 (VRCs)	*N*	Y
17	Luxembourg	8189/2006* 7662/2005	*N* *Y*	8133/2006*	*N*			8099/2006	*N*			Y
18	Malta	7588/2007*	*N*	7283/2007	*Y*							N
19	Netherlands	8146/2006* 8059/2006	*N* *Y*	7583/2007	*Y*	8258/2006	*Y*					N
20	**Poland**	**7442/2007** **7728/2005**	***N*** ***Y***	**8063/2006**	***N***	**7376/2007** **8132/2006**	***Y*** ***N***					**Y**

		FVO Reports available**	-		***Fees mentioned in Report: Y=yes N=no***							**Notification letters**
		OCs FH	***fees***	**ICs BIPs**	***fees***	**ICs PH**	***fees***	**PRCs**	***fees***	**Other**	***fees***	*Availability*
21	Portugal	8172/2006* 7443/2007*	*N* *N*	8097/2006	*Y* *N*			7222/2007	*N*	7696/2008 (VRCs)	*N*	N
22	Romania	7383/2007*	*N*	7748/2008 7301//2007	*N* *Y*							N
23	**Slovakia**	**8192/2006***	***N***									**Y**
24	Slovenia	8195/2006*	*N*	7289/2007	*Y*							Y
25	Spain	8205/2006* 7448/2007*	*Y* *Y*	8062/2006	*Y*	8128/2006	*N*	7179/2007	*N*			N
26	Sweden	8186/2006* 7449/2007*	*Y* *Y*	8330/2006	*Y*	7433/2007	*Y*	8115/2006	*N*			N
27	**UK**	**7192/2007** **8323/2006*** **8190/2006***	***N*** ***N*** ***N***	**8098/2006**	***N***	**7429/2007**	***Y***					**Y**

FVO Reports:

OCs FH: Official Control Systems in place for Food Hygiene (within the meaning of Regulation (EC) 852/2004) Traceability and Labelling
Reports marked with*: Official Controls on the Safety of Food of Animal Origin (meat , milk and their products)
ICs BIPs: Import/Transit Controls and Border Inspection Posts
Reports marked with*: Imports Controls on Food and Feed of non-Animal Origin
ICs PH: Import Inspections for Plant Health
PRCs: Controls of Pesticide Residues
VRCs: Veterinary Residues Controls
ICT Las: Intra-community trade live animals
CP: Country Profile

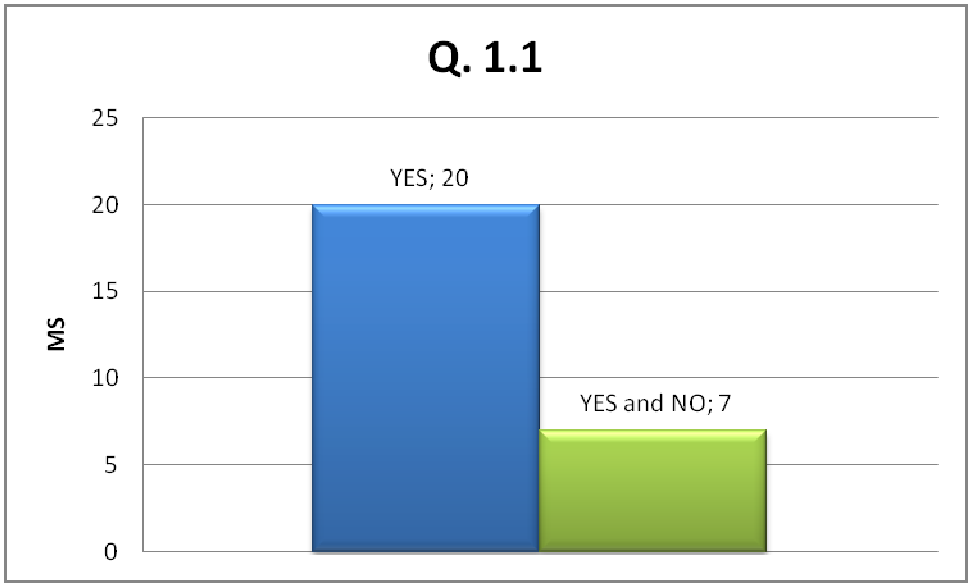
** Only latest Report is mentioned under each category

Bold: case study countries

Annex 2

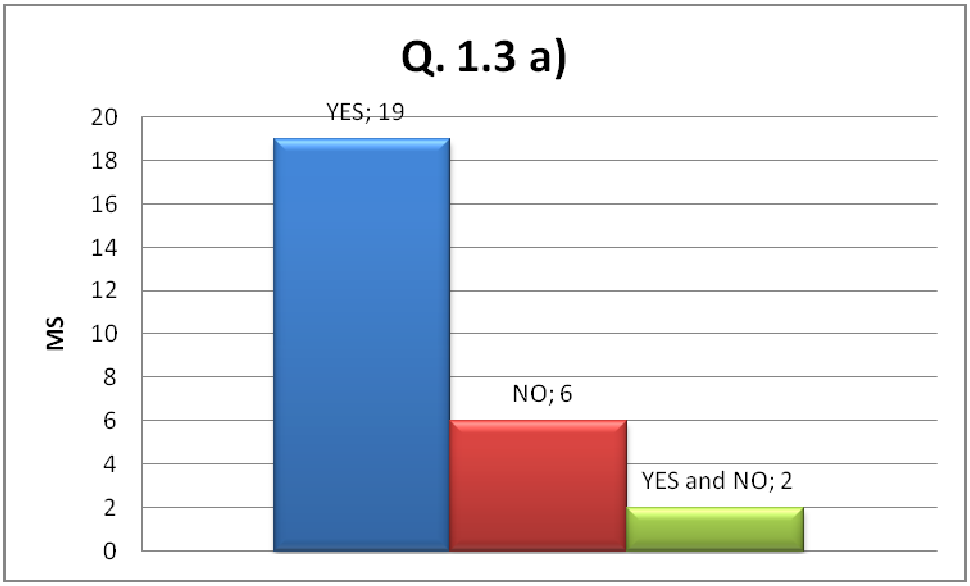
2.1: SURVEY of EU-27 CAs: results

1.1 Are fees or charges collected for covering the costs incurred through official controls in the areas covered by Regulation 882/2004?



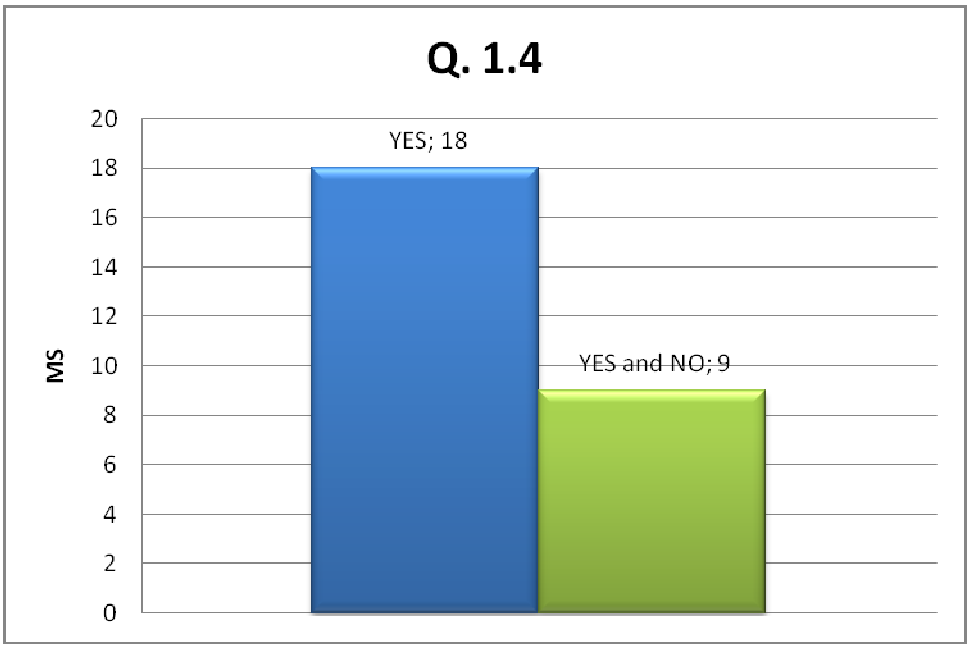
NB. YES & NO means there are cases of official controls for which fees are not collected.

1.3 a) Are fees collected to cover the costs occasioned by official controls (within the meaning of Art.27 (1) of Reg.882/2004)? (PLEASE INDICATE NON-COMPULSORY FEES ONLY)



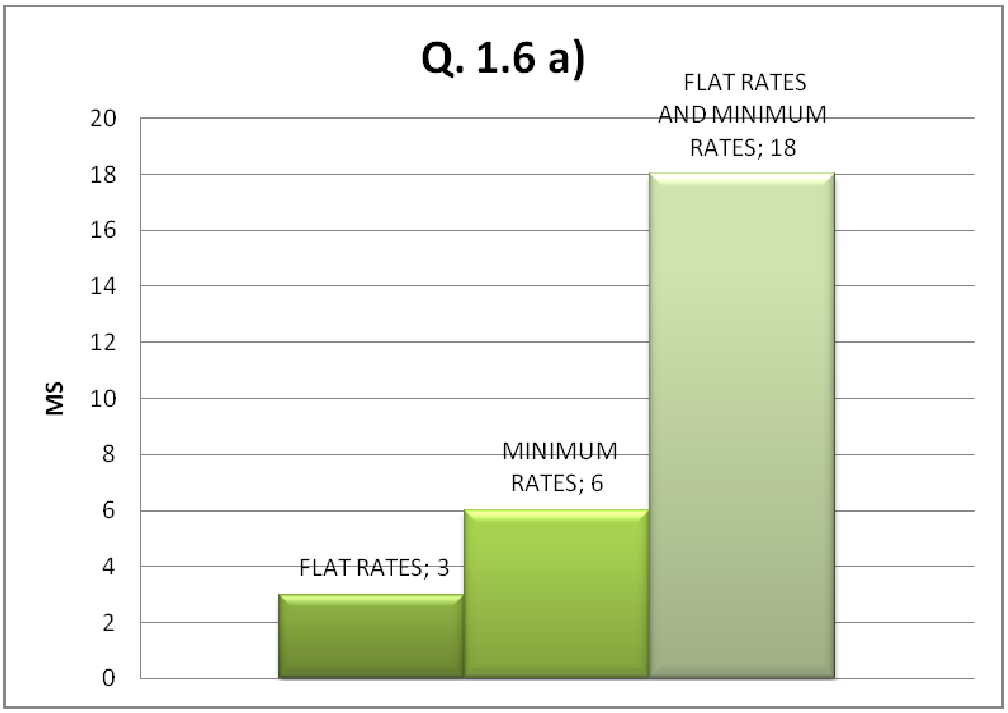
NB. YES & NO means there are only some regions within the MS for which such fees are collected.

1.4 Are fees or charges collected according to Art.27 (2) of Reg.882/2004 (COMPULSORY COLLECTION OF A FEE)?



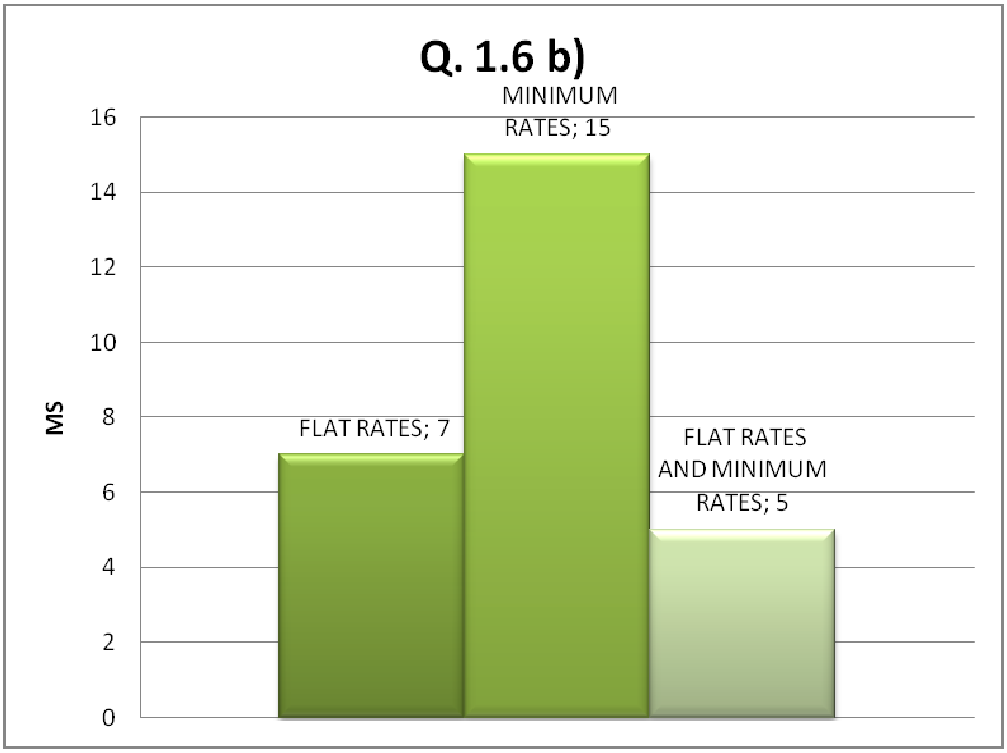
NB. YES & NO means there are some activities of Annex IV and V for which fees are not collected.

1.6 a) Which system is being applied for setting fees/charges (system defined according to paragraph 4b of Art.27 of Reg. 882/2004?



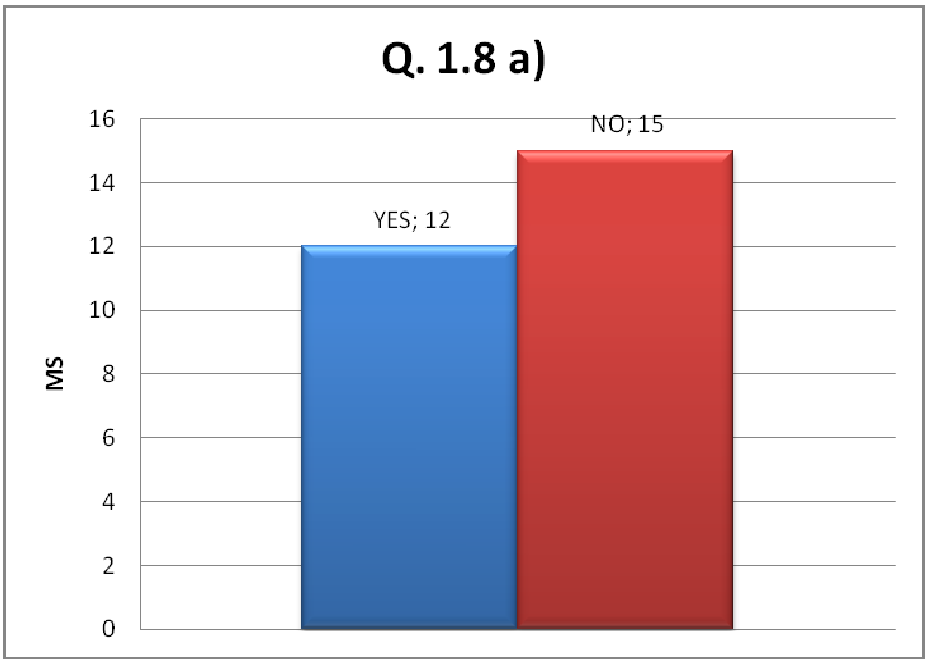
NB. Combination of flat rates and minimum rates can be for same or for different categories of activities

1.6 b) Imports: which system is being applied for setting fees/charges (system defined according to paragraph 4b of Art.27 of Reg. 882/2004?



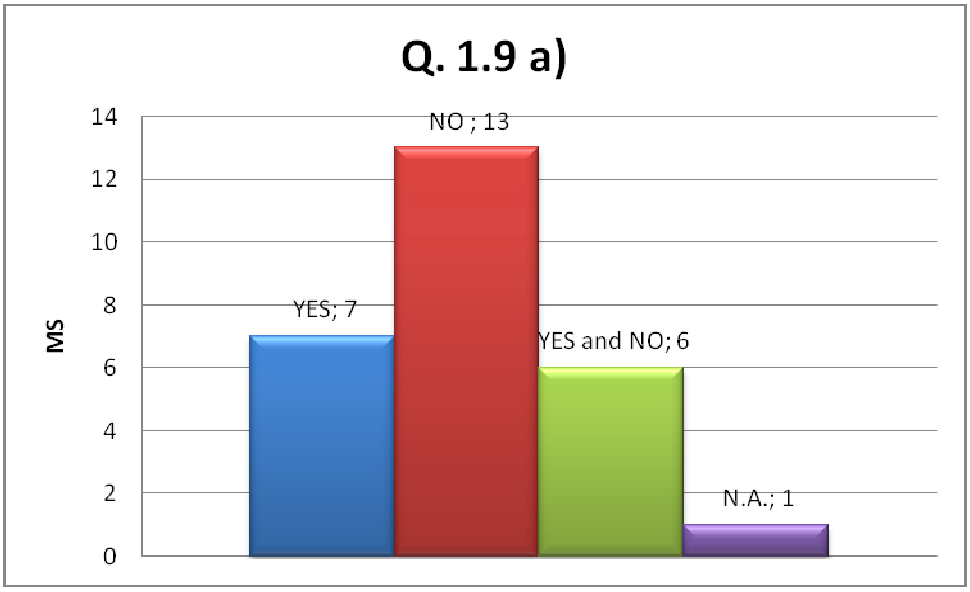
NB. Combination of flat rates and minimum rates can be for same or for different categories of activities

1.8 a) Are there cases where a fee below the minimum rate is being applied (according to Art.27 (6))?



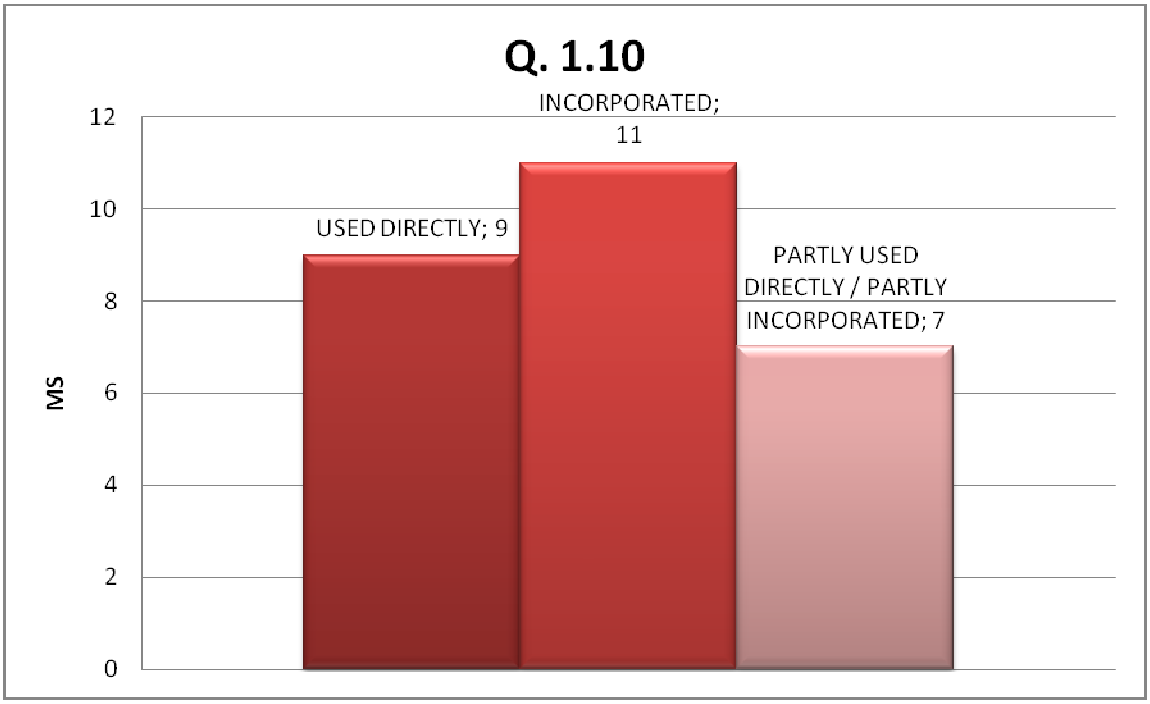
NB. In practice, the lower fee is not applied always necessarily in accordance with Art. 27(6)

1.9 a) Are the actual costs borne by the CA covered entirely by the fees/charges collected?

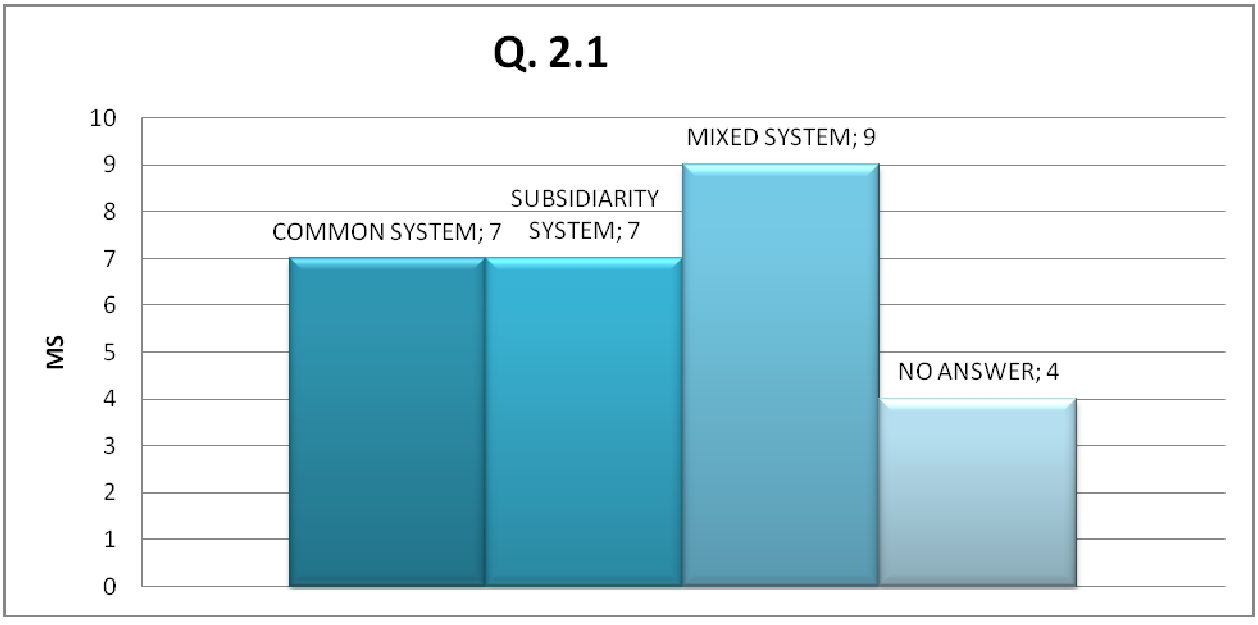


NB. YES & NO means costs are covered for some activities but not for others.

1.10 How is the revenue from the fees or charges collected pursuant to Art.27 of reg 882/2004 used in the country?

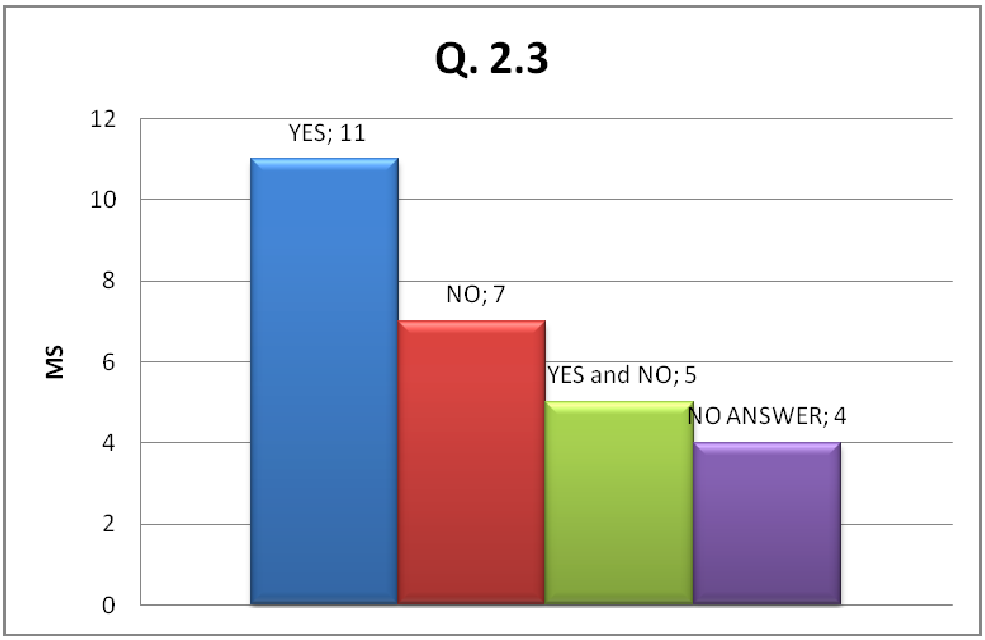


2.1 Would your services be in favour of common system/subsidiarity system?



NB. Definition of subsidiarity system and mixed system, as it appears to be understood by MS, is very close. Both allow for a certain flexibility to MS to set the rates, within a commonly agreed set of rules. On the other hand, some MS that have opted for a common system, have highlighted nonetheless the importance of keeping some flexibility.

2.3 Would your services be in favour of extending to other sectors (than the ones specified in Reg. 882/2204) the obligation to contribute to the financing of official control activities?



NB. YES & NO may reflect difference in opinion between the CAs that responded to the survey, (e.g. CzR, Germany); or an undecided position at present (e.g. France); or under certain conditions (e.g. Ireland, Spain)

SECTION 2 – OPTIONS FOR THE FUTURE

Question 2.2 – What would your services consider as the advantages/benefits, or disadvantages/drawback of either system?

"COMMON SYSTEM"

ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
COMPETITION ISSUES	
1. Reduction of distortions - Equality of production costs induced by administration to all industries in Europe, not introducing factors that could interfere with free competition; - Competitive conditions of operators retained; - Avoid discrepancies in final product price due to fees; - Avoid distortion of competition between MS; - The competition among MS (on the basis of fees alone) is eliminated; - Cost of controls burdens products in the same way across the EU.	1. Unequal basis for competition - Taking into account the different economic and financial conditions of MS, these charges can be considered as barriers for food business operators in some MS; - Unequal competition conditions. Reinforces gap between direct support levels between MS due to CAP (for NMS), thus creating unequal basis for competition;
LEVEL OF FEES	
1. Uniformity/Less variability - Equal amount of fees charged among all MS (common fees for all MS); - All import controls costs harmonized throughout EU for imports; - Harmonised fees, identical rates for all MS; - For the same type of controls carried out uniformly in all the MSs there should apply the same/harmonized fee levels; - Less variability within MS; - Equalization of these charges in MS; - Uniform costs for operators in all MS; - All operators are charged equally (Equal treatment);	1. Lack of consideration of national economic conditions (costs) - The national peculiarities of MS are not taken into account; - Different costs of OCs among MS due to differences in salary, materials, analysis etc. - Ignores specific economic conditions of MS; - Different economic state between MS; - The specific geographic location of Bulgaria means higher expenses for the border veterinary inspection control; - Different costs for the same activity in different MS; - Variable working conditions; - Variable national life costs; - Less flexibility to react to the business reality of the different MS

ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
2. Clear definition of criteria - Same criteria/approach in all MS for application of fees; - Having the guarantee of harmonised OCs based on key pre-defined points (e.g. ante and post mortem inspection) - Clear principles of calculation of the taxes; - Uniformity of criteria	- Costs are different in MS, therefore these might result in insufficient revenues or excessive costs for the stakeholders; - Same import controls do not mean same costs; - Imports: larger BIPs that handle larger throughputs can have certain economies of scale that allow them to operate more cost-efficiently. 2. Risk of insufficient coverage of actual expenses - Payment does not correspond to actual costs of controls; - Some activities and their expenses may not be covered; - Possibly not full coverage of the cost of controls in some MS; - Fee revenue would not necessarily cover the actual costs. 3. Difference in financial burden for governments - The costs paid by the governments in MS would be different; - Higher share of the state budget for financing the controls 4. Differences on the financial burden for business operators - Businesses with low throughput may pay higher fees in order to cover the cost of inspection; - Eventually, the same level of fees throughout the EU would not be adequate for all plants (depends on plant size/amount of goods to be controlled); - For the very large establishments, the amount of fees could become disproportionate to the actual cost of inspection 5. Difference in the levels of controls - Differences in the cost of controls that exist between MS could affect the level of control that would be applied

ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
IMPLEMENTATION	
1. Simplification - Simpler application; - Makes easier the activity of the competent authority; - Can be applied faster if rates included in the Regulation; - No need to do extensive economic evaluation; - Simplification of fee collection; - Simplification for stakeholders; 2. Enforcement - CAs are obliged to apply Community law 3. Acceptance from the business operators - More acceptable from the business operators;	1. Problems of interpretation - Interpretation problems with the Regulations which are not always explicit 2. Limited coverage - May not cover all control activities in all MS 3. Lack of flexibility - Inflexible; - Rigidity of the system and greater burden on some MS - Reduces potential for flexible decisions to be taken by MS; - The system is not dynamic and does not allow the correction of payments according to changes in the costs of controls; - Not many possibilities for exemptions

Note: each bullet point corresponds to the comment made by a single MS. Comments have been grouped together by main subject and key type of advantage/disadvantage.

Question 2.2 – What would your services consider as the advantages/benefits, or disadvantages/drawback of either system?

"SUBSIDIARITY SYSTEM"

ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
COMPETITION ISSUES	
	1. <u>Distortion of competition</u>: - Potential distortion of competition between MS. Official control priorities may be different between MS; - Fee differences could be used for commercial competition; - The competition among MS might deepen; - Distortion of the internal market, if some MS compete on fees; - Distortion of the Common Market; - If absence of harmonised fee regulation in the EU, industry will be indirectly supported by MS not collecting fees, to the disadvantage of collecting MS; - Different rates, thus, possible differences in veterinary costs for the operators and, therefore, unequal competition; - Can be used for competition between MS, if fees are reduced or abolished to attract industries of other MS; - This system could create differences between MS that would be harmful to the single market and relevant discussions on equivalence with third countries; - Discrepancies in the final price of the product due to the fees

ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
LEVEL OF FEES	
1. Adaptation to country's economic situation - Better evaluation of national realities; - Takes into consideration regional and national characteristics; - Fees adapted to variable national living costs; - Each MS has the possibility to choose the best solution, given its economic level; - This system can be adapted more easily to the different situations in the MS's reality; - Each MS, knowing their economic and financial status, can establish the fees to cover the expenses generated by official controls that can be accessible to food business operators; - Based on certain criteria the fees may be adapted to the local production conditions; - Fee will be closer to the actual costs of control; - Fees proportionate to special conditions of sector and the control costs in each MS; - More accurate and adapted assessment of costs of the costs of official controls in each MS and consequent level of fees; - Fees more justified/cost-based; - Flexibility for MS to adapt costs to the fees and vice versa. **2.** Adaptation to sector's specific situation - Milk: MS know their own industry and what level of fee is acceptable; - Milk: MS can adjust fees to meet actual costs; - Meat: systems are different in each MS so important to have flexibility to fix fees for particular activities **3.** Coverage of costs - All costs can be covered by the fees/charges, if cost data exist and	1. Variability among MS - Differences between MS; - Variability among MS and business operators; - Fees not harmonised 2. Different criteria - Non uniform criteria within the EU 3. Difference in financial burden for governments - To cover the difference between actual revenues from controls and the running and maintenance costs, budget resources are required; these needs may be very different for the various MS 4. Differences on the financial burden for business operators - Different conditions for operators in the different MS; - Non-harmonised fees put operators in different MS in an unequal position; - Complication for stakeholders to determine their expenses due to the different fees in different MS; - Non equivalent costs and conditions for producers in the different MS

ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
are transparent; - Adaptation for each MS based on actual needs: the calculation will be closer to actual expenses - Modulation (fee adjustment) based on rational and objective criteria (conformity with self-control and traceability, production capacity, production methods etc.)	
IMPLEMENTATION	
1. <u>More transparency</u> - FBOs would be involved in negotiations to establish the fees, therefore system favours consensus/ transparency; - Allows the inclusion of a fee modulation system taking into account industry actions e.g. staff participation in the controls; - Introduces more responsibility at all levels (CAs, FBOs); - System's management more accurate because adapted to national conditions **2.** <u>Flexibility</u> - Freedom to set fee rates by the individual MS; - Flexibility of national rules; - In case of a national crisis, a MS will have more autonomy to react promptly and more efficiently on the financial level; - Allows easier adaptability to changing situations/scenarios; - Possibility to correct the amount of fees without affecting the principle of equality, to maintain them on an adequate level without increasing state subsidies	1. <u>Difficulties in application</u> - Difficulties in negotiations with the industry in case of non-harmonised EU legislation; - This system could be subject to political pressure and require a lengthier process; - Difficulties in fee setting (justification) and in application 2. <u>Higher administrative costs</u> - Indirect administration costs can hike fee levels above reasonable levels; - Fee may not be fully covering extra costs of control that are basically linked to running and technical maintenance costs

<u>Note</u>: each bullet point corresponds to the comment made by a single MS. Comments have been grouped together by main subject and key type of advantage/disadvantage.

Question 2.4 – What would your services consider as the advantages/benefits, or disadvantages/drawback of extending the obligation to other sectors?

MS	*Q 2.3*	ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
BELGIUM	*Yes*	• Phytosanitary sector has already been placed under the Agency control, and therefore, it shall contribute • Each sector concerned to some extent with the food chain safety must at the very least be recorded and in the majority of the cases it shall contribute to the controls of this sector/channel	
BULGARIA	*Yes*	• Cover the activities that are the object of controls • Encourage business operators to implement the legislative requirements	• Additional financial burden for business operators • Additional administrative regulations
CZECH REP.	*Yes/no*	• To create adequate conditions for farmed game and wild game processing	• Increased administrative - bureaucratic burden for business operators
ESTONIA	*Yes*	• Common approach throughout the food chain (including feed production) • Unification of the system for financing of the controls in MS	• Additional financial burden on producers, processors and distributors
FRANCE	*Yes/no*	• Spreads the cost over the whole of the industry - Dir 178/2002 talks about responsibility at all levels of the chain; each level has to be effectively responsible - even a small fee would make FBOs conscious of their responsibility. • Makes the fees system a motor for the industry as well as for the control bodies.	• An extended system on this basis would be hard to implement
GREECE	*No*	• Part of the cost of official controls is shared with all food-feed sectors; • Would provide sufficient financial resources to cover the costs of OCs.	• Fees for OCs overcharge the consumer; • Opposition of business operators; • Additional administrations cost for fee collection; • The economic situation is already difficult for the industry in general and particularly the food industry.

MS	*Q 2.3*	ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
IRELAND	*Yes/no*		• Fees can only be applied to areas which are subject to direct supervision and controls
ITALY	*Yes*	• Division of costs to all productive activities subjected to controls.	
LATVIA	*Yes*	• Could be extended to cover some sectors, other than food, not currently covered by Regulation 882/2004.	
LITHUANIA	*Yes*	• Unified system for all sectors	
LUXEMBOURG	*No*	• More responsibility for the industry • Increased authority for the controller • Incentive to supplementary hygienic efforts to reduce the control frequency	• Additional productions costs in charge of the consumer • Financial disadvantage for controlled business establishments
MALTA	*Yes*	• More revenues for the CAs provided that the revenues are utilised for training and official controls.	• Lower profits for those subjected to official controls might generate higher costs for end products and, therefore, consumers might also be affected
PORTUGAL	*Yes*	• Under Reg 852/2004, all operators must be controlled. Today only a few are being taxed to cover all the OC costs. It doesn't cover all costs, and it is unfair for the few sectors which must pay the controls done to all.	• Administrative implementation.
ROMANIA	*Yes*	• Harmonising MS legislation for the non animal and animal sector, in accordance with food definition provided by Art. 2 of Regulation 178/2002	
SLOVENIA	*Yes*	• Harmonised fees for all feed business operators (approved/registered) and harmonised fees for imported feed	• Problem is the great diversity of FBO activities • Difficulties in harmonisation: fees should be related also to production (quantity) • As regards imports, the place of fee collection should be laid down, as to whether the fee shall be collected on entry or on release into circulation

MS	*Q 2.3*	ADVANTAGES/BENEFITS	DISADVANTAGES/DRAWBACKS
SPAIN	*Yes/no*	• Covering the costs of official controls; • Better financing system, better service	• Difficulties for collection of fees; • Adverse social reactions • Negative impact on the society; • Excessive fiscal pressure on the paying sectors

Note: Only the MS that provided answers to Q2.4 are included in this Table. Second column indicates their answer to Q2.3.

Question 2.5 – Which sectors would your services consider as the most appropriate for inclusion in an extended scope of Regulation 882/2004 and why?

MS	MS	SECTOR/S	REASON/S
BELGIUM	Yes	Belgium already cover a very large selection of operators, on the basis of data provided by the TVA Administration.	
BULGARIA	Yes	• Animal welfare; • Control on imports of honey and bee products for human consumption; • Control on imports of milk and milk products; • Control on imports of feedingstuffs of plant origin; • Control on residues and environmental contaminants; • Control on imports of eggs and egg products for human consumption; • Control on production establishments; • Control of storage	• There all entail expenses for the competent authority
		• Feed sector	• Attribution of the costs arising by the feed control activities to the feed business operators; • Approximation of the approach in all MS; • Encouragement of FBOs to implement the legislative requirements adequately and efficiently
CZECH REP.	Yes/no	• Slaughter of farmed game	• This sector is currently not charged although it used to be charged in the past. Slaughter of other species including wild game is charged.
DENMARK	Yes	• Production, storage and transport of non animal foods	• There is no obvious reason for letting the producers of meat and milk pay for controls, while for producers of other food products it is free

MS	MS	SECTOR/S	REASON/S
ESTONIA	Yes	• Processing and distribution of feed	• Common approach throughout the feed chain (incl. feed production)
		• Processing and distribution of food of non-animal origin	• Common approach throughout the food chain
GREECE	No	• Animal herd free status certification (for zoonoses, e.g. Salmonella, Brucella, TSEs, etc)	• For sampling cost: staff salaries, movements, sampling materials, etc • For testing cost: staff salaries, sample dispatching, testing material, etc. • For animal keepers: free of charge supply
ITALY	Yes	• Vegetable foods	• Division of costs to all productive activities subjected to controls
LATVIA	Yes	• Possibly some non-food border controls currently not covered by Regulation 882/2004: controls laid down in Reg. 339/93 and Decision 93/583 (quality control on medicines intended for humans and animals, toys, fruits and vegetables, etc.).	• These are also creating a big financial burden that should be paid for.
LITHUANIA	Yes	• Only sectors currently paying on a 'non-compulsory' basis.	
LUXEMBOURG	No	• Perhaps egg-products	• For public health reasons
PORTUGAL	Yes	• Some actions on animal health, animal feed control, farm licensing; Survey of OCs; Audits. • In conclusion all sectors under Regulation 852/2004, which CAs must control, or at least, all sectors and establishments under Regulation 853/2004, which CAs must approve/control.	• To support partially the rising costs of animal health as well as OC surveys and audits.

MS	MS	SECTOR/S	REASON/S
ROMANIA	Yes	• All the sectors provided in Art. 2 of Regulation 178/2002	
SLOVENIA	Yes	• Animal feed	• See 2.4
SPAIN	Yes/no	• Retail, catering, prepared and distributed food; • food of non-animal origin	• These sectors account for an important share of the official controls • Fees are insufficient to cover these activities at present.

<u>Note:</u> Only the MS that provided answers to Q2.5 are included in this Table. Second column indicates their answer to Q2.3.

Question 2.6 – Do you have any further recommendations for the improvement of the system of fees or charges for official controls?

	Recommendations
1.	In favour of certain autonomy for each MS to set the fee amount charged to the food sector. It appears important to avoid the significant distortion of competition through a certain harmonisation of the collected fees/charges. Minimum amounts fixed by the EU authorities, comparable procedures on controls and financing of each MS and the publication of these national data appear to be necessary to obtain that goal/objective.
2.	Introduce minimum amount of fees, according to the control activities, to be laid down in the European legislation.
3.	Explicit fee rate for the control of feed business operators needs to be introduced in EU legislation.
4.	Regulation 882/2004 does not stipulate how to cope with minimum rates in countries outside the Eurozone. This causes some problems in implementation. Need to include provisions similar to Art 7 of Directive 85/73/EEC or stipulate that rates of ECB should be used.
5.	To define what is meant with adult bovine animal, missing such a definition which complicates the collection of fees.
6.	Introduce maximum limits or cancel all fees or charges for official controls. Costs for official controls should be borne by individual MS (on a case by case basis).
7.	In order to establish the fees, the economic status of each individual MS must be taken into account.
8.	The European Commission must establish minimum and maximum limits for fees (e.g. adult bovine slaughtering - between 1-5 euro).
9.	Collect fees for transit of all products.
1(	Fees charged under Art. 27 of Regulation 882/2004 should be incorporated in the TRACES system; as a first step, at least the fees required under Annex V of Reg. 882/2004.
1]	Further harmonization needed.

	Recommendations
12	More precise definition needed of the fee calculation for the fees charged under Art 29 (and Art 28) of Reg 882/2004.
13	Provide guidelines regarding the interpretation of Art.27 and 28 incl. Annexes, inter alia: what type of costs may be taken into account when setting the fees (overhead costs, and if so, to what extent? Accommodation costs?). This would contribute to the creation of a more level-playing field.
14	Taking into account the general principle that fees or charges should not be higher than the costs borne by CAs, it is the MS responsibility to fix the amounts of the fees or charges and the activities for which fees or charges should be collected. Especially for activities of official controls in relation to community establishments.
15	Whatever system of fees or charges would be designed for official controls at EU level, it is without effect at a national level, because of the administrative structure of the economic and food safety control authorities.
16	Common fees for all MS to avoid any discrepancies in the final price of the product due to fees, calculated by taking into consideration the specific economic situation of some MS.
17	Establish the list of activities for which fees are collected in Annex IV of Regulation 882/2004 on the basis of the same criteria across sectors. These criteria could eventually be as proposed in Rec. #3.
18	In favour of actual system, with common minimum fees, with possibility to raise fees to adjust to the real costs of OCs in some very particular conditions equal for all MS. Effectively a combination of common and subsidiarity systems.
19	Enlarge the scope of Regulation 882/2004 to cover all sectors and establishments, adopting the actual criteria of the new EU food hygiene legislation (Regulations 178/2002, 852/2004 and 853/2004). This would result in raised revenue for MS, as a greater number of operators will pay, consequently diminishing fee levels for each one. Eventually, perhaps the fee could be charged to the operator, not the activities.

Note: each bullet point corresponds to the recommendation made by a single MS.

2.2: SURVEY of EU-27 CAs: questionnaire

A study on the collection of fees or charges for official controls pursuant to Article 27 of Regulation (EC) No 882/2004

SURVEY of EU-27

INTRODUCTION

This survey takes place in the framework of an ongoing study by the European Commission, Directorate-General for Health & Consumers (DG SANCO), on fees or charges collected by the Member States (MS) to cover the costs occasioned by official controls under Article 27 of Regulation 882/2004[58] (hereafter referred to as 'the Regulation').

According to Article 65 of the Regulation, three years after its entry into force, the Commission needs to review the experience gained from its application, in particular in terms of scope and the fee-setting mechanism, and whether/how the current regime can be improved. The objective of this survey is to collect your views on these issues.

This questionnaire is addressed to the Competent Authority (CA) of each MS, defined as the central authority of a MS that is competent for the organisation of official controls or any other authority to which that competence has been conferred (Article 2.4 of the Regulation).

DG SANCO has recently circulated a letter to the MS, in response to questions raised by the German government, concerning the interpretation of Articles 26-29 of the Regulation. This letter clarifies questions that may arise in the context of the transition from the previous fee system, under Directive 85/73/EEC[59], to the new rules of Regulation 882/2004 which apply with effect from 1 January 2008. According to the Commission's interpretation, the official control activities for which ***compulsory fees*** are charged within the meaning of Article 27.2 of Regulation 882/2004 under the new hygiene package (Regulations 852/2004, 853/2004 and

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58 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 issues.

59 Council Directive 85/73/EEC of 29 January 1985 on the financing of health inspections and controls of fresh meat and poultry meat.

854/2004) [60] remain the same as those mentioned in Articles 1, 2 and 3 of Directive 85/73 EEC. The full letter is attached in **Appendix 1**.

ALL QUESTIONS IN SECTION 1 NEED TO BE COMPLETED.

THE QUESTIONNAIRE CAN BE COMPLETED IN ENGLISH, FRENCH, SPANISH OR GERMAN.

60 Hygiene Package: Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs; Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin; Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption.

Please return the completed questionnaires by e-mail to Agra CEAS Consulting (DG SANCO's external Contractor for this project),

to the attention of:

Maria.Christodoulou@ceasc.com

DEADLINE: 27 June 2008

For any questions on this survey or questionnaire please contact the survey manager:

Dr Maria Christodoulou
Agra CEAS Consulting
20-22 rue du Commerce
1000 Brussels, Belgium

tel: +32 2 736 00 88
fax: +32 2 732 13 61

IDENTIFICATION DATA

- **Member State:**

- **Competent Authority (CA) completing the questionnaire:**

- **Contact person (s):**

- **Position held:**

- **Phone number (s):**

- **E-mail:**

SECTION 1. CURRENT SYSTEM

1.1 Are fees or charges collected for covering the costs incurred through official controls in the areas covered by Regulation 882/2004?

(please tick the appropriate box)

Yes ☐ **No** ☐

*If the answer is '**No**', please justify your answer, by referring to:*

a) The reasons why:

---

b) Whether any other system is in place for ensuring the coverage of the costs of official controls:

1.2. Since when have the fees/charges pursuant to Article 27 of Regulation 882/2004 been collected?

(please tick the appropriate box)

Prior to 1.1.2007 ☐

Since 1.1.2007 ☐

Since 1.1.2008 ☐

Other date ☐

1.3. a) Are fees collected to cover the costs occasioned by official controls (within the meaning of Article 27 (1) of Regulation 882/2004)? PLEASE INDICATE <u>NON-COMPULSORY</u> FEES ONLY (compulsory fees are dealt with in Question 1.4).

(please tick the appropriate box)

Yes ☐ **No** ☐

b) For which sectors/activities are such fees collected? Which CA is responsible for setting and collecting such fees/charges, and at which level?

Sector/activity	**Title of the Authority responsible for:**		
	Level	**FEE SETTING**	**FEE COLLECTION**
A:	Central		
----------	Regional		
----------	Local		
B:	Central		
----------	Regional		
----------	Local		
C:	Central		
----------	Regional		
----------	Local		
D:	Central		
----------	Regional		
----------	Local		
E:	Central		
----------	Regional		
----------	Local		

Sector/activity	**Title of the Authority responsible for:**		
	Level	**FEE SETTING**	**FEE COLLECTION**
F:	Central		
----------	Regional		
----------	Local		
etc ([1]):	Central		
----------	Regional		
----------	Local		

([1]) *If A to F is not sufficient, please add more lines as appropriate*

*If the answer is '**No**', please justify your answer, by referring to:*

c) The reasons why:

---

d) Whether any other system is in place for ensuring the coverage of the costs of official controls:

1.4. Are fees or charges collected according to Article 27 (2) of Regulation 882/2004 (COMPULSORY COLLECTION OF A FEE)?

(please tick the appropriate box)

Yes ☐ **No** ☐

*If the answer is '**No**', please justify your answer, by referring to:*

a) The reasons why:

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b) Whether any other system is in place for ensuring the coverage of the costs of official controls:

1.5. Which CA is responsible for setting and collecting the fees/charges according to Article 27 (2) of Regulation 882/2004, and at which level?

Level	*Title of the Authority responsible for:*	
	FEE SETTING	**FEE COLLECTION**
Central	----------	----------
Regional	----------	----------
Local	----------	----------

1.6. a) Which system is being applied for setting fees/charges (systems defined according to paragraph 4b of Article 27 of Regulation 882/2004)?

(please tick the appropriate box/es)

- **Flat-rates (calculated on the basis of the costs borne by the CA)** ☐

- **Minimum rates (Annex IV & V, section B of Regulation 882/2004)** ☐

b) Please specify the system of fees/charges applied by activity:

(please tick the appropriate box)

Activity	**Flat-rate**	**Minimum rate**
▪ Slaughter inspections (Annex IV, Section B, Chapter I)		
▪ Cutting plants control (Annex IV, Section B, Chapter II)		
▪ Game processing houses (Annex IV, Section B, Chapter III)		
▪ Milk production (Annex IV, Section B, Chapter IV)		
▪ Fishery products and aquaculture products (Annex IV, Section B, Chapter V)		
▪ Imported meat (Annex V, Section B, Chapter I)		
▪ Imported fishery products (Annex V, Section B, Chapter I I)		
▪ Meat products, poultry meat, wild game meat, rabbit meat, farmed game meat, by-products and feed of animal origin (Annex V, Section B, Chapter III)		
▪ Transit through the community of goods and live animals (Annex V, Section B, Chapter IV)		
▪ Imported live animals (Annex V, Section B, Chapter V)		
▪ Directive 96/23 (official controls on residues)		
▪ Other activities (*please specify*): ----------		

1.7. Please specify the criteria (Annex VI of Regulation 882/2004) and the method that is being applied to calculate the fees/charges:

a) Criteria:

---

b) Method:

1.8. a) Are there cases where a fee below the minimum rate is being applied (according to Article 27(6) of Regulation 882/2004)?

(please tick the appropriate box)

Yes ☐ **No** ☐

b) Where such cases exist, please specify:

Food or Feed or activity concerned	Criteria applied for the reduction	Method applied for the reduction

1.9. a) Are the actual costs borne by the CA covered entirely by the fees/charges collected?

(please tick the appropriate box)

Yes ☐ **No** ☐

b) If 'No', please indicate which percentage of the actual costs has been covered by the fees collected, for each year over the past three years:

2005: % ----------

2006: % ----------

2007: % ----------

1.10. How is the revenue from the fees or charges collected pursuant to Article 27 of Regulation 882/2004 used in your country?

(please tick the appropriate box)

- **It is directly used by the CA for funding the controls covered by Reg. 882/2004.** ☐
- **It is incorporated into the State's General Budget and only a percentage is used to cover the costs of the controls carried out.** ☐

SECTION 2. OPTIONS FOR THE FUTURE

2.1. Would your services be in favour of:

▪ **A common fee or charge system based on minimum rates for a common list of control activities carried out in Community establishments and at the time of import (*"common system"*)?**	
▪ **A system that leaves up to the MS the responsibility to fix the amounts of the fees or charges and the activities for which fees or charges should be collected (*"subsidiarity system"*)?**	

2.2. What would your services consider as the advantages/benefits, or disadvantages/drawbacks of either system?

"*Common system*":

Advantages / Benefits	**Disadvantages / Drawbacks**
▪ ----------	▪ ----------
----------	▪ ----------
----------	▪ ----------
----------	▪ ----------
----------	----------

"*Subsidiarity system*":

Advantages / Benefits	**Disadvantages / Drawbacks**
▪ ----------	▪ ----------
----------	▪ ----------
----------	▪ ----------
----------	▪ ----------
----------	----------

2.3. Would your services be in favour of extending to other sectors (than the ones specified in Regulation 882/2004) the obligation to contribute to the financing of official control activities?

(please tick the appropriate box)

Yes ☐ **No** ☐

2.4. What would your services consider as the advantages/benefits, or disadvantages/drawbacks of extending the obligation to other sectors?

Advantages / Benefits	**Disadvantages / Drawbacks**
▪ ----------	▪ ----------
----------	▪ ----------
----------	▪ ----------
----------	▪ ----------
----------	----------

2.5. Which sectors would your services consider as the most appropriate for inclusion in an extended scope of Regulation 882/2004 and why?

Sector/s:	**Reason/s:**
▪ ----------	---------- ----------
----------	---------- ----------
----------	---------- ----------

2.6. Do you have any further recommendations for the improvement of the system of fees or charges for official controls?

(*please type your recommendations*)

Recommendation N° 1

Recommendation N° 2

Recommendation N° 3

Thank you very much for your precious collaboration!

Annex 3

Competent authorities responsible for the various Official Controls (OCs) covered by the scope of this study

Notes: The information provided in the following Table is based on the latest FVO Reports and Country Profiles available.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Austria	- Ministry of Health and Women (BMGF); - Austrian Agency for Health and Food Safety (AGES). At Land level, the Provincial Governor (LH), with competencies shared between: - the Food Inspectorates (controls on milk processing establishments and retail sector); - the Provincial Vet Services ('Magistrat') (controls in meat establishments and milk production holdings).	- BMGFJ o Department IV/B/5, responsible for supervising BIPs and coordinating activities - Customs Authorities of Ministry of Finances (BMF)
Belgium	- FPS (Federal Public Service for Health, Food Chain Safety and the Environment) ; - AFSCA (Federal Agency for the Safety of the Food Chain)	- AFSCA (Federal Agency for the Safety of the Food Chain). - Customs and Excise Administration of the Federal Public Service for finance (Central Customs Service) - 11 Provincial Control Units (PCU) carry out the official controls, including import controls - FPS is indirectly involved since it is responsible for the policy, standards and requirements for all products occurring in the food and feed chain. o The Directorate-General for Animals, Plants and Foodstuffs is involved in food safety and feed policy making and legislation ; o The Department of Control Policy (DG Control Policy) develops the Import control program (i.e. risk analysis); o The Department of Control (DG Control) elaborates the import control plan for the points of entry.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Bulgaria	- Ministry of Health (overall control of food establishments, OCs of food of non-animal origin); - Ministry of Agriculture & Forestry (OCs for food of animal origin at retail and catering sector)	- Border Veterinary Control Directorate (BVCD) of the National Veterinary Service (NVS) within Ministry of Agriculture and Forestry. Plus Border Veterinary Inspection Controls of regional veterinary offices, and BIPs. Co-operation between veterinary services and Customs in place.
Cyprus	- Ministry of Agriculture, Natural Resources and Environment (MANRE). o The Veterinary Public Health Division (VPHD), within the Veterinary Services (VS) is responsible for the processing and production level. - Ministry of Health o The Health Services (HS) are responsible for the retail level. At a regional level VPHD consists of 5 district veterinary offices (DVOs). Some DVOs have the rural veterinary offices.	- MANRE o Animal Health and Welfare Division (AHWD), within the Veterinary Services (VS). - At a local level, there are 5 District Veterinary Offices (DVO) The BIPs function under direct instructions from the Imports and Animal Trade Control Section (IATCS) within the AHWD.
Czech Republic	- Ministry of Health (MH), - Ministry of Agriculture (MA) and its supervisory body the Czech Agriculture and Food Inspection Authority (CAFIA). The Czech Rep. has a clearly defined structure of CAs responsible for food hygiene, with adequate vertical and horizontal communication.	- Ministry of Agriculture o Export and import Division within the State Veterinary Administration of the Czech Republic (SVA-CR). It is responsible for coordination and management of the import/transit control system and BIPs, as well as for execution of import/transit controls. It also has the responsibility for supervisory inspections/audits of the BIPs. - Customs within the Ministry of Finance are organised operationally into eight Regional Directorates and 54 operational offices, who carry out Custom's clearance and check at entry points. The Municipal Veterinary Administration (MVA) for the city of Prague has direct responsibility for the BIP Praha-Ruzyne.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Denmark	- DVFA (Danish Veterinary and Food Administration) under the Ministry of Food, Agriculture and Fishery (MFAF) is responsible for policy co-ordination. Within DVFA there are several divisions responsible for food hygiene (e.g. the Control Co-ordination Division and the Division for Microbiological Food Safety, Hygiene and Zoonoses Control). - Three RVFA (Regional Veterinary and Food Administration) are responsible for co-ordination and implementation of controls. They operate through Control and Enforcement Offices within the regions where they are located. The RVFA inspects all food premises as well as some premises in the primary production sector. The Danish Plant Directorate (DPD) inspects the conditions in relation to hygiene on farms except for the use of medicine and risk of introduction of zoonoses. The Directorate of Fisheries (DF) inspects conditions in relation to hygiene on fishing vessels etc.	- DVFA under the Ministry of Food, Agriculture and Fishery (MFAF) o The International Trade Division is responsible for import of live animals and products of animal origin, the transposition of EU legislation on imports into national law and the implementation in the different regions through training and supervision. It supervises 3 RVFA, which are responsible for checking products of animal origin and live animals presented for BIP checks. - Customs Services within the Ministry of Taxation. They are organised in five regional services and, within each region, into a number of divisions. The role of the DVFA head office is to supervise BIP checks and to instruct, liaise with and co-ordinate these services on BIP matters. At BIPs level, there are agreements with customs and regular meetings take place.
Estonia	Control system for food of animal origin: - VFB (Veterinary and Food Board). - The Consumer Protection Board of the Ministry of Economic Affairs is responsible for labelling of foodstuffs and traceability of bovine meat. The VFB prepares its annual inspection and sampling programme. Based on this, inspectors of the 15 CVCs (County Veterinary Centres) draw up their annual inspection and sampling plans. The frequency of inspection is based on risk categorisation of the food establishments. The 15 CVCs are responsible among other tasks, for supervision of activities of Authorised Veterinarians (AVs) at local level.	- Ministry of Agriculture: o Food and Veterinary Department is responsible for transposition of legislation - VFB is the CA for veterinary checks of live animals and products of animal or non-animal origin at BIPs o Trade, Import and Export Department has administrative and supervisory responsibility for all the BIPs. - Customs are organised on a central and regional basis into 4 Regional Customs Centres

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	Control system for general food hygiene: - The VFB of the Ministry of Agriculture has primary responsibility. - The Office of retail, organic farming and food of non-animal origin of the FD (Food Dept.) is the operational body. - Approval of retail and catering establishments is the responsibility of CVCs. The frequency of VFB inspections is based on risk categorization. The minimum frequency of inspection is established in the annual plan. Retail and catering establishments are divided into three risk categories (high, medium and low).	
Finland	Control system for food of animal origin: - MAF (Ministry of Agriculture and Forestry) is responsible for legislation on food of animal origin except at retail level, which is competence of MSAH (Ministry of Social Affair and Health). - Evira (Finnish Food Safety Authority) is the central competent authority for the control of the foodstuff of animal origin. Evira is in charge for registration and approval of large scale slaughterhouses and integrated meat and fish establishments, while all other types of establishments are approved by the municipalities. Evira issues a National Food Control Programme (EVO) which provides guidance for the official control performed by the SPOs (State Provincial Offices) and MAs (Municipal Authorities). Based on this programme each MA produces its own control plan.	Evira (Finnish Food Safety Authority) is the CA, under the guidance of MAF. - MAF is responsible for the transposition and implementation of the EU legislation and strategic planning ("Unit of Animal Health and Welfare" within the "Health and Food Department") - Evira ("Animal Health and Welfare Unit", in the "Department of food and veterinary control") is responsible for the import/transit controls of products of animal origin, live animals, including animal welfare. - Customs, within the Ministry of Finance, have a centralised management structure, and are organised operationally on five

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	Control system for general food hygiene: - MAF: DHF (Dept. of Food and Health) is responsible for the hygiene of the foodstuffs in primary production and food of animal origin prior to retail level. - MSAH is responsible for health protection and general hygiene of foodstuff. - MTI (Ministry of Trade and Industry) ensures the health-related and quality aspects of processed food and protects consumer rights. The provincial governments through the 6 SPOs are responsible for developing regional control, while at local level the municipalities conduct food control via the MFCA (Municipal Food Control Authorities).	regional services who manage the customs office which operates in each region. Veterinarians at local level are either employed or authorised to work as border veterinaries by Evira.
France ***(For full structure of CAs refer to Part Two of this Final Report)***	- Ministry of Agriculture and Fisheries, in particular General Directorate for Food Direction (DGAL) is the competent authority, with primary competence; - Ministry of Economy (DGCCRF) is responsible on controls of food products (e.g. composition, labelling etc.); - Ministry of Health (DGS) is responsible on fields related to public health and food safety. - Agents of regional and departmental directorates (correspondent to the country's administrative division) carry out the operational implementation of controls.	-Ministry of Agriculture and Fisheries, in particular General Directorate for Food Direction (DGAL) – Imports form third countries.
Germany ***(For full structure of CAs refer to Part Two of***	- The 16 Bundesländer are CAs. The competence is therefore regional and the fees setting responsibility is assigned to the designated CA/s of each Bundesländer. - The Federal CA, the Ministry of Food, Agriculture and Consumer Protection, oversees the *Bundesländers*' implementation of law.	

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
this Final Report)	The responsibilities for food safety and for feed safety are clearly separated and lie with different authorities at different administrative levels. Food and veterinary affairs are governed on either two or three administrative levels within the individual *Bundesländer.* - At a land level, the Ministry in charge of food, feed and veterinary affairs is the highest ranking Competent Authority. - At the intermediate land level, five Bundesländer (Bavaria, Baden-Württemberg, Hesse, North-Rhine Westphalia and Saxony) have intermediate food and veterinary authorities responsible for the surveillance and instruction of local authorities and the coordination of tasks. - At a local level, district or municipal authorities (in total there are some 440 local authorities in Germany) are responsible to implement the food and veterinary controls. The responsibility for feed safety often lies with an authority at intermediate level (*Regierungspräsidien*) or at central level.	
Greece	Official Control Systems for Food Hygiene (Regulation 852/2004): According to Joint Ministerial Decision No 088/06, two CCAs are designated for the control of food and feed. - Hellenic Food Authority (EFET) - Ministry for Rural Development and Food Implementation of food control through the regional services of EFET and the autonomous decentralised prefectural services: - the Veterinary Directorates for controls on foods of animal origin, - the Rural Development Directorates on food of plant origin.	- The Ministry of Rural Development and Food (MRDF) o DGVS (Directorate General of Veterinary Services). BIPs are under its direct responsibility and the veterinary staff is employed by the MRDF as official veterinarians. DAH, DVAH co-ordinate on BIPs matters. DVAC (Dep. of Veterinary Audits is responsible for auditing the BIPs) - Customs authorities are part of the Ministry of Economy and Finance.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	CCA for VRCs (Directive 96/23): - Directorate of Veterinary Public Health (DVPH), which resides under the DG for VS within the Ministry of Rural Development and Food (MRDF).	
Hungary	<u>Control system for food of animal origin:</u> - Dept. for Food Chain Safety, Animal and Plant Health in MARD (State Secretary for Agricultural Administration) - CAO (Central Agricultural Office). The CAO-FFSD (Central Agriculture Administration Office, Food and Feed Safety Directorate) has overall responsibility for food and quality controls. Inspection tasks are delegated at regional level to 19 County Directorates for Food Chain Safety and Animal Health (County DFCSAHs). County DFCSAHs prepare annual inspection plans. The inspection frequency is specified in a guide on standard operational procedures (SOP) issued by the CAO-FFSD.	- The Directorate of Animal Health and Animal Protection within the CAO of MARD is responsible for the implementation of import/transit controls in BIPs. - The BIPs are administratively under the responsibility of the County Animal Health and Food Control Department within the relevant county AO - Customs authorities are under the direction and the supervision of the Ministry of Finance (MF), having an autonomic legal personality and countrywide competence.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	Control system for foodstuff and food hygiene: - Dept of Food Chain Safety, Animal and Plant Health in MARD and the CAO-FFSD is the CA. - The Ministry of Health (MH) and the National Public Health and Medical Officers Service (NPHMOS) are responsible for controls on foodstuff intended for particular nutritional uses, and for other activities as indicated in Government decree 302/2005. - The Ministry of Social Affairs and Labour (MSAL) and the Hungarian Authority for Consumer Protection (HACP) are in charge for the controls on quality, labelling and other distribution related activities.	
Ireland	Control system for food of animal origin: - DAFF (Dept. of Agriculture, Fisheries and Food) and DoHC (Dept. of Health and Children) are responsible for food policy and legislation with the support of FSAI (Food Safety Authority of Ireland), which has overall responsibility for the enforcement of food legislation in Ireland. - DAFF, LA (Local Authorities) and HSE (Health Service Executive) have administrative responsibility for granting approvals. The evaluation of establishments supervised by DAFF is carried out by a VI (Veterinary Inspectors) and RSVI (Regional Superintending Veterinary Inspector). The evaluation of establishments supervised by LA is carried out by a VI. On the basis of this evaluation FSAI issues an approval number.	- DAFF (Dept. of Agriculture, Fisheries and Food) is the CA responsible for veterinary import controls of products of animal origin and live animals (except for fish and fisheries, which are responsibility of SFPA) - The control of BIPs is performed under service contract to the FSAI. Co-operation between the different bodies is ensured through a working group on import controls, consisting of staff from FSAI, DAFF, SFPA, customs, VI from LA and representatives of HSE. Co-operation with customs at local level is frequent and informal.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	Control system for foodstuffs and food hygiene (CP 2007): - The DoHC has a Food Unit responsible for most of the issues related to food safety and hygiene. - DAFF, HSE, SFPA and LA have responsibilities for controls in their respective areas of competence. - FSAI co-ordinates official controls by means of SC (Service Contracts) with each CA. CAs have to present the annual control plan to FSAI which has to approve them.	
Italy ***(For full structure of CAs refer to Part Two of this Final Report)***	The CAs designated to carry out official controls within the scope of Article 4 of Regulation 882/2004 are: • Department for Veterinary Public Health, Nutrition and Food Safety (DVPHNFS) within the Ministry of Health; • Local Offices of the DVPHNFS: 36 Border Inspection Posts (BIPs) and 17 Veterinary Offices for Compliance with Community Requirements (UVAC); • Regional Veterinary Services (RVS); • Local Health Units (AUSL) implement the controls at local level. The 19 regions and 2 autonomous provinces have responsibility within their territories for planning, co-ordination, guidance, authorisation, and verifications of controls. Institutional co-operation between the central authorities and the Regions takes place in the permanent forum of the State-Regions Conference. (For the full structure and for a detailed allocation of competencies, refer to part 2 of Report, Fig. 3-1)	- The central government maintains the tasks and responsibilities over import controls and international prophylaxis. - The DVPHNFS is the CA for import/export controls on live animals and food of animal origin, including international relations and the co-ordination of local offices. - Controls on imported animals, food of animal origin, and feedingstuffs are carried out at the 36 BIPs which report directly to the Ministry of Health. (For the full structure and for a detailed allocation of competencies, refer to part 2 of Report, Fig. 3-2)

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Latvia	Official control related to the safety of food of animal origin: - PVD (Food and Veterinary Service) within the Ministry of Agriculture. The official food control is regulated by two laws - Law on Veterinary Medicine and Law in Supervisioning and Handling of Food. The PVD consists of a Central Office, 27 TSU (Territorial Structural Units), border inspection posts and laboratories. Within the PVD, the Food Control Dept. is responsible for the control of meat and milk production areas. Official controls are carried out by FI (food inspectors) and SAV (state authorised veterinarians).	- The Veterinary and Food Department (VFD) is responsible for the transposition of EU legislation, whereas the SBI is responsible for the implementation of the legislation. - The individual BIPs are under the responsibility of the SBI (Sanitary Border Inspection), which is also responsible for the employment and supervision of BIP staff There is a central management structure, with a chain of command from the CCAs to those carrying out relevant tasks at BIP level
Lithuania	Official Control Systems for Food Hygiene (Regulation 852/2004): - State Food and Veterinary Service (SFVS), which accounts directly to the Prime Minister. Within the SFVS there are 11 departments, of which 3 are directly related to food hygiene: Food dept.; Strategic Planning Dept.; Risk and Quality Management Dept. Control activities are carried out by 10 County and 5 City SFVS, which report directly to the central office, while 34 district SFVS report to the County Offices. The National Veterinary Laboratory is subordinated to the SFVS.	- The International Affairs Department within SFVS at central level has the responsibility for coordination and management of import control system. - SFVS at county level is responsible for the execution of import controls - The BIPs are placed under the direct management of the county level of SFVS - Customs within the Ministry of Finance are organised operationally into five territorial offices which are responsible for the customs posts at the individual entry points. Management of the BIPs is implemented by SFVS centrally and supervisory inspections/audits of the BIPs are responsibility of Food and veterinary internal Audit Department of the SFVS.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Luxembourg	Control system for food of animal origin: - MH (Ministry of Health). The ASV (Veterinary Service Administration) is responsible for the controls. The DSP (Public Health Division) of ASV has specific responsibilitiy, including the inspection of butchers' shops. An annual plan of official controls is drawn up by the CA. In addition to routine controls, follow-up inspections are carried out where a suspicion of non-compliance exists. Controls are carried out on a permanent basis in slaughterhouses which have continuous throughput, and during production in smaller slaughterhouses.	- INSA (Health Inspectorate) of Ministry of Health - Customs and Excise - LNS (National Health Laboratory) No regional or local authorities within the country.
	Control system for foodstuff and food hygiene (CP 2007): - MH. DIS (Sanitary Inspection Division), ASV, ADA (Custom and Excise Administration), LNS (National Health Laboratory) and the Police service are all involved in carrying out official controls of foodstuffs. OSQCA (Organisation for the Safety and Quality of the Food Chain) is responsible for co-ordinating the controls carried out by the different services. The distribution of responsibilities is not clearly defined in the current Food Law, which dates from 1953.	
Malta	Official controls related to the safety of food of animal origin: - VAFD (Veterinary Affairs and Fisheries Division) within the Ministry for Rural Affairs and Environment. The VAFD has two General Directorates, one for Administration and Operations and another for Veterinary Regulation and Fisheries Conservation and Control.	- VAFD (Veterinary Affairs and Fisheries Division) within the Ministry for Rural Affairs and Environment. o The Director for Food Health and Veterinary Enforcement under the Director General of Veterinary Regulation and Fisheries Conservation and Control is responsible for supervision of import/transit controls of POAO and live animals and three approved BIPs are directly under his command.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	The CA responsible for registered establishments is the Dept of Public Health (DPH).	- Department of Customs within the Ministry of Finance
Netherlands	Official controls related to food of animal origin: - VWA (Food and Consumer Product Safety Authority), an independent agency in the Ministry of Agriculture, Nature and Food Quality (LNV) and the delivery agency for the Ministry of Health, Welfare and Sports (VWS). It is responsible for the meat and milk sector and it is responsible for the official controls in the meat sector. The 3 main tasks of VWA are: supervision, risk assessment and risk communication. The control of establishments in the meat sector is divided among 5 regional offices. Control system for foodstuff and food hygiene : - VWA - VWS. VWA prepares tri-annual policy programmes which serve as a basis for annual inspection and sampling and risk categorisation. Inspection strategy is divided between small and larger businesses.	- South West Regional Department within the VWA. o Import Division o Management division (responsible for daily planning of staff activities) Centralised management structure, with a chain of command from the CCA to those carrying out relevant tasks. Tasks are not split geographically, according to the location of the BIPs, but rather according to the management of specific tasks in relation to import controls which are allocated to different teams in the Import Division. Customs have also a centralised management structure and are organised operationally into four regional services.
Poland ***(For full structure of CAs refer to Part Two of this Final Report)***	Responsibility for the implementation of official controls, including fee setting, is assigned to the national administration at central level, but the execution of control activities is assigned to the regional and local levels. - State Plant Health and Seed Inspection Service (SPHSIS), represented: o At national level by the Main Inspectorate of Plant Health and	- The BIPs are under the responsibility of the VIPHSIs.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	Seed Inspection ○ In the regions (Voivoideships) by the regional inspectorates (VIPHSI). Each VIPHSI defines the financial needs of their inspectorate. In Poland the CAs designated to carry out official controls (OCs) within the scope of Article 4 of Regulation 882/2004 are: • Veterinary Inspection (IW) • State Sanitary Inspection (PIS); • Agricultural and Food Quality Inspection (IJHARS); • Trade Inspection (IH). The Veterinary and Sanitary Inspections operate through Inspectorates at central (Chief or Main Inspectorate), regional (Voivodship Inspectorates) and local (Poviat Inspectorates) level, corresponding to administrative division of the country.	
Portugal	- DG for Veterinary Issues (DGV) under the Ministry of Agriculture, Rural Affairs and Fisheries (MADRP) - Authority for Food and Economic Security (ASAE) under the Ministry of Economy and Innovation.	- Import controls at BIPs are responsibility of DSVR, under the supervision of central service of DGV (DSSPA, Dir. for Animal Health and Protection and DSHPV) - Customs Authorities of MFAP (DGAIEC, Customs and Excise General Directorate)
Romania	Official controls related to food of animal origin: - NSVFSA (National Sanitary Veterinary and Food Safety Authority is the CCA for implementing food hygiene legislation. There are 2 central directorates that are at the same level but managed by different Vice-Presidents: - The Inspection and Border Inspection Posts (BIP) Coordination General Directorate (IBIPCGD), which has an inspection role, and the Hygiene	- NSVFSA ○ BIPs Coordination Service within Directorate of Import, Export, Transit and Border Inspections Posts is responsible for the implementation of all import/transit related issues including the supervision of BIPs and the employment of BIP staff. ○ Directorate of European Integration, responsible for the transposition of EU legislation Centralised management structure, with a chain of command from the

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	- Veterinary Public Health Directorate (HVPHD), which is responsible for approval of food establishments and zoonosis control. The CA has a vertical structure consisting in 42 CSVFSDs (County Sanitary Veterinary and Food Safety Directorates) and the circuit of veterinarians (CVs). The competences are split between the CHVPHS (County Hygiene and Veterinary Public Health Service) and the CICS (County Inspection and Control Service). The IBIPCGD prepares the annual National Framework Inspection Programme (NFIP). Once approved it is sent to the CSVFSD, which schedules its own inspection programme and submits it back to the IBIPCGD for approval.	central CCA to those carrying out relevant tasks.
Slovakia ***(For full structure of CAs refer to Part Two of this Final Report)***	The CAs responsible for official food controls are as follows: • Ministry of Agriculture (MoA) and Ministry of Health (MH); • Public Health Authority (PHA); • Regional Health Authorities (RHA); • State Veterinary and Food Administration (SVFA); • Regional Veterinary and Food Administrations (RVFA); and, • District Veterinary and Food Administrations (DVFA). The Ministry of Agriculture and the Ministry of Health are jointly assigned the responsibility at the central level; they coordinate and prepare the national plan of controls, and govern and supervise the official controls. Public Health Authority (PHA) and Regional Health Authorities (RHA) are responsible for official food controls regarding special food categories. The SVFA together with the RVFAs and DVFAs carry out official	- Ministry of Agriculture (MoA) o State Veterinary and Food Administration (SVFA), the DVCCTIE (Department for Veterinary Certifications and Controls on Intra-Community Trade, Imports and Exports) manages and co-ordinates the activities of BIPs - Ministry of Finance (MoF) o Customs Authorities

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	controls over the production, handling and placement on the market of specific product categories; the regional and district authorities carry out much of the day to day monitoring and enforcement of the legislation. The RVFAs are responsible for the verification of the performance of the DVFAs and their official veterinarians. The DVFAs are responsible for carrying out the official controls at all stages of the food chain.	
Slovenia	Official controls related to food of animal origin (2006)*: The CAs for drafting the legislation are: - the Ministry of Agriculture, Forestry and Food (responsible for food of animal origin); - the VURS (Veterinary Administration of the Republic of Slovenia) (responsible for food of animal origin (...) and animal welfare); - the Ministry of Health (responsible for food of plant and mixed origin. The CAs for official controls are: - the VURS (for control of production, storage and trade of food of animal origin); - the IRSAFF (Inspectorate of the Rep of Slovenia for Agriculture, Forestry and Food) (for the control of labeling related to quality); - the HIRS (Health Inspectorate of the Rep of Slo) (for control of labelling (...) and control of potable water). The VURS consists of a Main Office (with several sectors), 10 Regional Officies (ROs) and 6 BIP. Within the VURS, the competences are shared among the sectors for Public Health, Animal health and welfare, Internal veterinary inspection and Quality assurance and internal control (QAIC).	- VARS, o BIPs are under the responsibility of the "Border Veterinary Inspection Sector" - Customs Administration of the Republic of Slovenia under the ministry of Finance Centralised management structure, with a chain of command from the central CCA to those carrying out relevant tasks. Customs have also a centralised management structure and are organised operationally in ten regional services, who manage the customs office which operate in each region.

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Spain	**Decentralised.** At central level responsible for the organisation and operation of control systems are: - Ministry of Agriculture (MAPA) - Ministry of Health (MISACO). - The 17 ACs (Autonomous Communities) and the two autonomous cities have the principal responsibility for the operation of control systems in Spain for food safety, animal health and animal welfare. These are operated through regional Ministries (Conserjerias) of Agriculture and of Health. Each AC determines the organisation and structure of its services and, therefore, these do not necessarily mirror that of the national Ministries. - The Spanish Food Safety Agency (AESA), established in 2002, has overall responsibility for the coordination of the activities of other state bodies and the ACs. To ensure this, a number of coordination bodies have been set up. At the highest level, the Institutional Committee is responsible for this coordination. At technical level, the Committee is supported by the Technical Consensus Group, within which a permanent group for the application of the hygiene Regulations has been set up. FVO report notes the design of the system of official controls is generally not in line with EU requirements; the controls are not carried out on a risk basis and not all factors laid down in Regulation 882/2004, Article 3.1 have been considered in establishing the frequency. Consequently, recommendations are made to the authorities to take corrective measures on all these points, "to ensure that in all ACs official controls are carried out regularly, on a risk basis and with appropriate frequency, so as to achieve the objectives of Regulation 882/2004 taking account of the factors laid down in Article 3".	- MISACO o Sub-Directorate General for Foreign Health, within the Directorate General for Public health (SGSE) - MAPA o Sub-Directorate General for means of Livestock production (SGMPG) BIPs receive information directly or through the financial areas of SE (Foreign Health) and SA (Animal Health) - Customs Authorities - Port Authorities - AESA

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
Sweden	Official controls related to food of animal origin: é The CCA structure consists of : - 6 regions under the responsibility of the National Food Administration's (NFA) Unit in charge of meat. In addition, the Animal Welfare Agency (AWA) has been integrated into the Swedish Board of Agriculture. A Food Act and Food Decree came into force on 01/07/2006, moving a significant increase of the powers of the Municipalities to the central authorities. NFA has developed a risk-based approach for the official controls. The used criteria are: the type of activity, the quantities produced, the categories of consumers and the reliability if the FBO. This lead to a final classification of each establishment on which depends the attribution of hours for supervision (min 1 to max 128 per year). Initial steps have been taken in order to develop an Audit System in accordance with Reg.882/2004, but so far nothing has been put into practice. The Swedish Board of Agriculture (SBA) acts as the Single Authority responsible for these controls, within the meaning of Article 1(4) of Directive 2000/29/EC. A new organisational scheme has been in place since 1 January 2007.	o National Food Administration's (NFA): Food Control Department with the subdivision Group for International Trade is responsible for BIP matters in relation to HC-products. At central level two veterinarians and two administrators are responsible for BIPs. At peripheral level the veterinarians of the BIPs belong to the respective municipalities, which are responsible for the BIP. o Swedish Board of Agriculture (SBA): the Animal Production Department with the subdivision Animal Division Control is responsible for BIP matters in relation to NHC-products and live animals. At central level one veterinarian is responsible for BIPs. The District Veterinarian Department oversees District veterinarians which include those working for the BIPs. At regional level there are 21 County Board Veterinary Divisions who have the general responsibility for the BIPs, but not directly responsible for the supervision of the BIPs under central Authority responsibility. The veterinary inspectors of the BIPs are contracted by the relevant two Authorities.
UK ***(For full structure of CAs refer to Part Two of this Final Report)***	The responsibility for official food and feed controls in England and Wales is assigned centrally, the administration of responsibility is divided between central and local government. The central authorities are the Food Standards Agency (FSA) and the Department for the Environment, Food and Rural Affairs (DEFRA) (and its delivery partners or executive agencies) and equivalent departments in the devolved administrations in Scotland, Wales and Northern Ireland.	The responsibility of developing policies and to draw up guidance and instruction for control staff lies with: o DEFRA: International Animal Health Division o FSA: Imported Food Branch And the respective devolved administrations in Scotland and Northern Ireland. Responsibilities for carrying out inspections of facilities and procedures

	CAs responsible for official controls (Reg.882/2004)	
	Food hygiene controls POAO	**Import controls**
	Local authorities carry out much of the day to day monitoring and enforcement of feed and food law. The Single Authority (CA) is DEFRA, Plant Health Division. The official body carrying out the inspections is the Plant Health and Seeds Inspectorate (PHSI). **From 1 April 2009, the SA will become part of a new government agency which should bring more autonomy over staffing levels, which will be governed by the need to operate within the constraints of full cost recovery from the trade.**	at BIPs lies with the SVS. Import controls at BIPs receiving products for human consumption are the responsibility of the Environmental Health Department of the relevant Local Authority. Import controls at BIPs receiving NHC products and live animals are under the responsibility of the SVS. In Northern Ireland DARD and the Relevant Local Authorities have responsibility for import controls.