



April 2015

PFP position on REFIT Fitness Check Regulation (EC) No 178/2002

The EU Primary Food Processors (PFP) welcome the opportunity to be consulted on the evaluation of the General Food Law Regulation (EC) No 178/2002 (hereinafter “GFL Regulation”) in the context of the European Commission's Regulatory Fitness and Performance programme (REFIT). PFP sectors have taken food and feed safety very seriously even before the adoption of the GFL Regulation. PFP companies are indeed committed to delivering safe food and feed on the market and to consumers and have thus implemented comprehensive monitoring and auto-control systems, which are adapted whenever necessary.

As the purpose of this exercise is to assess the effectiveness and efficiency of the GFL Regulation, its relevance in delivering EU-added value, its coherence with EU wider policy priorities (synergies/trade-offs) as well as to focus on simplification and the reduction of regulatory costs and burdens, PFP would like to raise the following points:

I. **PFP welcomes the harmonization that the GFL Regulation has brought across EU Member States**

This has enhanced predictability and ease of implementation and has reduced the overall burden on companies selling products in various Member States to adapt to the individual countries' legislative requirements. The GFL Regulation narrowed the gaps in quality standards between Member States, and set a standardised quality benchmark for incoming, new Member States. It formalised a requirement for traceability in the food and feed chain, and increased awareness of food and feed safety obligations in general by food and feed business operators. Examples include the following:

- Regulation (EC) No 396/2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin has led to the implementation of similar maximum residue limits (MRLs) across all Member States instead of having each Member State set up their own limits.
- Regulation (EU) No 1169/2011 on the provision of food information to consumers, which just entered into force, also brings about food product labelling uniformity.

II. **PFP points out the following areas that pose problems and calls for improvements to ensure even greater efficiency:**



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- a) **The lack of consistent interpretation and enforcement of EU legislation across Member States makes compliance difficult, especially for food/feed business operators with factories in different Member States.** There are for example completely different interpretations on what is a “safe” level, including zero tolerance in a number of Member States. Other areas of discrepancy concern hygiene and food/feed safety within food/feed premises.

Examples include the following:

- The approach taken by some Member States regarding official controls is stricter than other Member States’: the frequency and depth of controls vary between Member States and some methods of detection used in some Member States are more sensitive than those used in other Member States.
- Member States have differing interpretations of article 19 (food recalls) and 20 (feed recalls) of the GFL Regulation on responsibilities of food/feed business operators.

- b) **There are discrepancies between the general aim and principles of the GFL Regulation and the secondary legislation, where the secondary legislation does not always reflect the overall intention of the GFL Regulation. This is for instance the case of legislation on pesticides, GMOs, and certain contaminants.**

Examples include the following:

- Regarding aflatoxins in foods, in addition to the thresholds set in European Regulation (EC) No 1881/2006 (and amending legislation), some limits vary among Member States. Moreover, some Member States have limits for certain types of aflatoxins that are not regulated at EU level. For instance, some Member States have set additional limits at national level for aflatoxin B1 and/or the sum of total aflatoxins for all foodstuffs (for which no specific limits are established at EU level). These limits vary from 1 µg/kg in Austria to 5 µg/kg in Spain for aflatoxin B1 and 4 µg/kg in Denmark and Germany to 10 µg/kg in Spain for total aflatoxin.
- Regarding the integrated approach for food and feed (preamble 12 of the GFL): When laying down methods of sampling and analysis for the official control of feed Regulation 619/2011, which had been prompted by several Low Level Presence (LLP) GM incidents in 2009 both in food and feed and where Member States took an incoherent approach on recall, withdrawals or national enforcement, the objectives of the GFL regulation were not met. While Commissioner Borg confirmed that there was no technical difference between food and feed at the level of agricultural raw materials, the Commission decided to limit the scope of a so-called technical solution to feed. The provision is largely unworkable for incoming raw materials because final use is not known at import, and it is neither practical nor cost effective to segregate a feed stream and a food stream of raw materials according to LLP/no LLP status. It is a good example that sound principles as set out in the GFL regulation, when applied in secondary legislation, can be put aside for other motives, in practice not leading to a better functioning of the internal market and an integrated approach to food and feed safety.



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c) The existence of national pieces of legislation, which are stricter than EU law or that of other Member States, adds challenges to food and feed business operators.

Examples include the following:

- The inconsistent treatment of processing aids among Member States (e.g., with requirements in France or in Spain being stricter than the EU requirements), with country-specific evaluation, authorization and use requirements.
- The implementation of meat legislation at national level, resulting in a lack of harmonization. As most countries foresee numerous exceptions to the rules for their meat-based products, thereby protecting their national or regional products, it is more confusing for exporting companies to comply with different sets of rules in the different EU markets.
- Moreover, barriers to internal trade should be eliminated by reviewing the application of the Mutual Recognition Principle in MS. For instance, under the UK Bread and Flour Regulations 1998 (FLR) industry is required to add certain nutrients (i.e. iron, calcium, thiamin and niacin) to all British milled wheat flour (except whole meal flour). Although the FLR foresees the application of the Mutual Recognition Principle by exempting flour lawfully produced in another MS and brought into the UK from a MS in which it was lawfully sold, it does not allow using domestic unfortified flour for food products intended for other MS. By contrast food products manufactured with fortified flour under the FLR may contain the respective 2/4 nutrients in non-significant amounts and if they are marketed outside the UK it could be questionable whether their fortification is complying with Regulation 1925/2006/EC.

d) The sudden extension of the scope of pieces of legislation undertaken either by the European Commission or by individual Member States, without fully contemplating the initial intentions of the original documents can lead to overly strict rules being set up with no possibility for proper implementation and/or enforcement.

Examples include the following:

- The decision of Member States to suddenly apply the pesticides MRLs to substances that are not used as pesticides and that do not result from use of plant protection products, such as quaternary ammonium compounds used as biocides, without addressing whether the substances in question could correctly be deemed pesticide residues, and thus whether Regulation (EC) No 396/2005 should be applied at all.
- The varying set of pesticides authorization rules implemented at Member State level.

The **Primary Food Processors of the EU (PFP)** consists of six trade associations:

European Starch Industry Association (Starch Europe)
European Committee of Sugar Manufacturers (CEFS)
European Cocoa Association (ECA)
European Flour Milling Association (European Flour Millers)



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European Vegetable Protein Federation (EUVEPRO)
European Oil and Proteinmeal Industry (FEDIOL)

PFP represents the European primary food processing industries. It provides the link between agricultural raw materials and final products (secondary processors in the food, feed and non-food sectors). PFP members process approximately **220 million tons of raw materials** (cereals, sugar beet, rapeseeds, soybeans, sunflower seeds, cocoa beans, crude vegetable oil, starch potatoes...) **employing over 120 000 people** in the European Union.

