



JRC TECHNICAL REPORT

Fighting fraudulent and deceptive practices in the agri-food chain

*Technical Report Implementation
of Article 9(2) of Regulation (EU)
2017/625*

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2023

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JRC131525

EUR 31436 EN

PDF ISBN 978-92-68-00336-7 ISSN 1831-9424 [doi:10.2760/31366](https://doi.org/10.2760/31366) KJ-NA-31-436-EN-N

Luxembourg: Publications Office of the European Union, 2023

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How to cite this report: Winkler, B., Maquet, A., Reeves-Way, E., Siegener, E., Cassidy, T., Valinhas de Oliveira, T., Verluyten, J., Jelic, M., Muznik, A., Fighting fraudulent and deceptive practices in the agri-food chain. Technical Report "Implementation of Article 9(2) of Regulation (EU) 2017/625", Publications Office of the European Union, Luxembourg, 2023, doi:10.2760/31366, JRC131525

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Abstract

This Technical Report presents challenges, opportunities and good practice examples in relation to the implementation of Article 9(2) of Regulation (EU) 2017/625.

Competent authorities of the Member States are required to not only detect violations of the rules governing the agri-food chain but also to identify possible intentional violations of those rules, perpetrated through fraudulent or deceptive practices by operators for the purpose of gaining an undue advantage.

The purpose of this technical report therefore is to promote the uniform interpretation and application of the provisions of Article 9(2) of Regulation (EU) 2017/625.

Acknowledgements

This report has been developed in the context of a project of the Directorate Health and Food Audits and Analysis of the Directorate-General for Health and Food Safety. It was carried out between 2020 and 2022 in cooperation with the Joint Research Centre and the involvement of experts from other Commission services and Member State authorities. The authors would like to thank all the stakeholders for their time and valuable input.

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1 Introduction

Fraudulent and deceptive practices along the agri-food chain cost European Union (EU) businesses billions of euro every year. However, the impact of such practices goes beyond economic losses. Agri-food chain fraud can pose a threat to public health, food quality, and reputation, resulting in a loss of consumer, business and trading partner confidence in the sectors affected and in the official control systems. Such trust deficit can also lead to an economic deficit, not least through less tax revenue and trade. Therefore, it requires effective mechanisms to identify fraudulent and deceptive practices and take appropriate enforcement measures. Competent authorities and control staff need to be aware of fraud risks and seek to distinguish between intentional violations of the agri-food chain rules perpetrated through fraudulent or deceptive practices and other non-compliances. They also need to actively incorporate these aspects into their risk-based controls.

The EU has recognised the importance of tackling fraudulent and deceptive practices in the agri-food chain. In 2017, it legislated for regular risk-based controls, with appropriate frequencies, to identify possible intentional violations of the agri-food chain rules perpetrated through fraudulent or deceptive practices (Article 9(2) of Regulation (EU) 2017/625 of the European Parliament and of the Council).

This technical report aims to help create a common understanding of the different types of fraud that exist and key elements for identifying and tackling fraud when carrying out official controls. It also discusses the challenges faced by Member States and provides examples to help overcome them. Such challenges stem from the very nature of fraud and how it is framed in the national legal context. Fraud is deliberately covert and often requires a specific skill set to detect. If remained uncovered there is a high risk that the fraudulent practices will be repeated. When a fraudulent or deceptive practice is detected, it may have to be prosecuted under criminal law, which is not necessarily within the remit of the competent authorities responsible for official controls to ensure compliance with the rules referred to in Article 1(2) of Regulation (EU) 2017/625 – also known as the EU Official Controls Regulation (OCR).

Competent authorities need to identify possible weaknesses and vulnerabilities of control systems and control areas, just as the fraudsters do, and plan their controls according to a suitable risk assessment. This technical report provides practical help on how to set up a system that achieves the objective of Article 9(2) of Regulation (EU) 2017/625

1.1 Policy context

In 2019, the Council of the European Union adopted conclusions on how to better tackle and deter fraud in the agri-food chain and noted that:

“Fraudulent practices in the agri-food chain (food fraud) often leads to public health risks and/or financial losses to consumers and/or operators. It may also result in loss of confidence in the competent authorities and in the agri-food chain in general. As a consequence, food fraud threatens food safety and the effective functioning of the internal market and has the potential to have significant impacts on public health, consumer protection and legitimate trade. The cost of fraudulent practices for the global food industry has been estimated at around EUR 30 billion every year.”

The Council also recognised that the current legal framework at EU level is, in general, adequate to tackle food fraud and stressed, in particular, the importance of the new requirements in tackling food fraud in the veterinary and food safety field provided by Regulation (EU) 2017/625. Article 9(2) of this Regulation is at the heart of these new tools. It requires that:

“The competent authorities shall perform official controls regularly, with appropriate frequencies determined on a risk basis, to identify possible intentional violations of the rules referred to in Article 1(2), perpetrated through fraudulent or deceptive practices, and taking into account information regarding such violations shared through the mechanisms of administrative assistance provided for in Articles 102 to 108 and any other information pointing to the possibility of such violations.”

1.2 Methodology

In 2020 the Commission carried out a desk-study based on an online questionnaire (Supplement 1). About 63 competent authorities from 21 Member States and Norway answered the questionnaire. The result of this desk study indicated that most Member States had not yet fully implemented risk-based controls to identify fraudulent and deceptive practices across all control areas as required by Article 9(2) of Regulation (EU) 2017/625. In order to facilitate the implementation of the provisions of Article 9(2) the Commission decided

to organise a project to collect information on potential fraud risks identified by Member State authorities and control methods to detect fraudulent and deceptive practices in the agri-food chain.

Between 2020 and 2022 a series of pilot and fact-finding studies of eight Member States were carried out with the aim to identify good practice examples and challenges Member State authorities face with the implementation of fraud related controls. The results of these fact-finding studies form the basis of this report.

The reports of the six fact findings studies are published on the following Commission's website:

Sweden: <https://ec.europa.eu/food/audits-analysis/audit-report/details/4421>

Latvia: <https://ec.europa.eu/food/audits-analysis/audit-report/details/4432>

Poland: <https://ec.europa.eu/food/audits-analysis/audit-report/details/4461>

Germany: <https://ec.europa.eu/food/audits-analysis/audit-report/details/4511>

Portugal: <https://ec.europa.eu/food/audits-analysis/audit-report/details/4561>

Bulgaria: <https://ec.europa.eu/food/audits-analysis/audit-report/details/4560>

The methodology of the fact-finding studies is described in section 4.2 of the fact-finding study reports.

The reports of the two pilot studies (Austria and Ireland) were not published as their purpose was to develop the methodology for the above mentioned fact-finding studies. However, the good practice examples identified in the context of the meetings with the competent authorities were taken into consideration.

In addition, structured interviews were held with experts from four other Member States and several Commission Services (video and telephone conferences) in order to identify potential areas of fraud risk and to identify methods to detect fraudulent practices. The aim of the interviews with Member State experts from the national authorities was also to get an understanding of the national arrangements for fighting fraudulent and deceptive practices in the agri-food chain.

2 Introduction to fraud in the agri-food chain

2.1 The scope of Article 9(2) of Regulation 2017/625

EU legislation does not provide a definition of “fraudulent or deceptive practices” or “fraud¹” in the agri-food chain.

Regulation (EU) 2017/625 refers in several provisions² to ‘fraudulent or deceptive practices’ but does not define these. Article 2(21) of Commission Implementing Regulation (EU) 2019/1715 provides a definition of ‘fraud notification’, for the purpose of cooperation between Member States, exchange of information, in particular within the fraud network, and enforcement action, which gives indication of the key elements to be considered in relation to fraud:

- “A non-compliance notification in IT Rapid Alert System for Food and Feed (iRASFF) concerning
- suspected intentional action by businesses or individuals
- for the purpose of deceiving purchasers and
- gaining undue advantage therefrom,
- in violation of the rules referred to in Article 1(2) of Regulation (EU) 2017/625.”

The definition of ‘fraud notification’ in Article 2(21) of Commission Implementing Regulation (EU) 2019/1715 does not distinguish between ‘fraud’ and ‘deceptive practices’ as it refers to ‘intentional’ action (which is an element of fraud) for the purpose of ‘deceiving purchasers and gaining undue advantage’. However, in other contexts, a distinction may be made between ‘fraud’ and practices that while not been considered ‘fraud’ (because e.g., they lack the intentional element) are misleading or “deceptive” for consumers. In relation to this, most of the provisions³ in Regulation (EU) 2017/625 that refer to ‘fraudulent or deceptive practices’ do not mention an *intentional* element.

By contrast, Article 9(2) of Regulation (EU) 2017/625 refers to the performance of official controls regularly, with appropriate frequencies determined on a risk basis, to identify *possible intentional* violations of the rules referred to in Article 1(2), perpetrated through fraudulent or deceptive practices⁴.

It follows that for the purposes of Article 9(2) of Regulation (EU) 2017/625, one of the key aspects is that the violation perpetrated through fraudulent or deceptive practice is intentional. In the context of the Directorate-General for Health and Food Safety fact-finding study series Member States mentioned that proving “intention” is considered to be a challenge for the competent authorities. However, it should be noted that for the purposes of Article 9(2) of Regulation (EU) 2017/625, the competent authorities are supposed to perform risk-based controls that aim at suspected intentional action. Collecting further evidence that proves the intention of the action can be done by specialised investigators of the most appropriate law enforcement authority in cooperation with the prosecutor.

¹ The Oxford Dictionary provides the following definitions for fraud and deception: “Fraud: the crime of cheating somebody in order to get money or goods illegally” and “Deception: the act of deliberately making somebody believe something that is not true”.

² Articles 1(4)(a), 9(2), 16(2)(e), 65(4), 73(2)(a), 97(1), 98, 102(4)(b), 121(h) and 139(2) of Regulation (EU) 2017/625.

³ Article 1(4)(a) of Regulation (EU) 2017/625 refers to checks that *identify possible fraudulent or deceptive practices* in respect of the marketing standards referred to in Articles 73 to 91 of Regulation (EU) No 1308/2013; Article 97(1) refers to the designation of European Union reference centres for the authenticity and integrity of the agri-food chain to *prevent, detect and combat violations of the rules referred to in Article 1(2) perpetrated through fraudulent or deceptive practices*; Article 98 refers to *methods for detecting violations of the rules referred to in Article 1(2) perpetrated through fraudulent or deceptive practices, to specific analyses designed to identify the segments of the agri-food chain that are potentially subject to violations of the rules referred to in Article 1(2) perpetrated through fraudulent or deceptive practices and to collections or databases of authenticated reference materials, to be used to detect violations of the rules referred to in Article 1(2) of this Regulation perpetrated through fraudulent or deceptive practices*; ; Article 102(4)(b) establishes the obligation of Member States to take measures to facilitate the transmission, from other law enforcement authorities, public prosecutors and judicial authorities, to the competent authorities, of *information on possible non-compliance with the rules referred to in Article 1(2) which is relevant for the application of Title IV of Regulation (EU) 2017/625 in administrative and which may constitute a possible violation of the rules referred to in Article 1(2) perpetrated through fraudulent or deceptive practices*; 139(2) refer to “*violations of the rules referred to in Article 1(2), perpetrated through fraudulent or deceptive practices*”.

⁴ Similarly, Article 16(2)(e) of Regulation (EU) 2017/625 provides that when adopting delegated acts and implementing acts provided for in Section II of Chapter II of Title II of that Regulation, concerning additional requirements for official controls and other official activities in certain areas, the Commission is to take into account, among others, information on *possible intentional* violations perpetrated through fraudulent or deceptive practices.

Fraudulent and deceptive practices can happen at any stage of production, processing and trade and the purchaser that is the victim of the fraudulent and deceptive practices can be an operator or the final consumer.

A non-compliance with EU provisions may be the result of mismanagement by act or omission leading to an irregularity including errors and failings due to negligence or unawareness. By contrast, an intentional violation perpetrated through a fraudulent or deceptive practice⁵ is a deliberate or intentional non-compliance (as opposed to carelessness, accident or error). There is no incentive or reason for the business to change as long as the nature of the non-compliance is not revealed.

Although, competent authorities need to consider their national legislative and judicial framework when designing a control system for the purpose of Article 9(2), this does not imply that solely cases falling under the national penal code should be considered in the context of Article 9(2). Member States have to ensure that all provisions of the Regulation (EU) 2017/625 are effectively implemented and that the rules referred to in Article 1(2) are enforced. This also applies to non-compliances related to fraud regardless whether fraud is pursued under administrative or criminal law.

In particular, the intention of the operator to act in a non-compliant way is difficult to prove. Article 9(2) does not require to confirm the suspicion of fraudulent practices. However, the competent authority has to take appropriate actions to ensure that investigations are carried out and enforcement measures are taken, as appropriate. This can be achieved by handing the case over to the law enforcement authorities or by investigations performed by skilled inspectors of the competent authorities.

When intent cannot be proven, an incident will be treated as a non-compliance rather than fraud, in particular, as regards enforcement measures and penalties. In this case, a practice that is misleading or “deceptive” for consumers, while lacking an intentional element, may be characterised/established. However, the fraud suspicion may remain which should be considered in the context of the risk-based planning of Article 9(2) controls. In order to ensure that a suspicion of fraudulent practices is followed-up, re-enforced checks should be carried out in such cases as part of risk-based controls.

Fraud by its nature includes criminal behaviour and may be linked to other type of crimes involving food, feed, animals and plants (e.g. illegal fishing, smuggling, theft, money laundering, tax evasion, counterfeiting) so there is much to weigh up before deciding on a course of action.

Competent authorities should take a decision, within the framework of their legislative and administrative arrangements, on:

- product categories/business activities/type of operators covered by the planning and performance of Article 9(2) controls;
- procedures for the follow-up of a suspicion;
- hand-over of cases to law enforcement authorities and prosecutor’s office, including the documentation, information and evidence required for further investigations and to build a legal case;
- procedures for the reception of intelligence or information via whistle blowing channels.

Steps to set up a control system to tackle fraud in the agri-food chain are presented in the chapters below.

2.2 Approaching fraud in the agri-food chain

Fraud affects businesses and consumers. The consequences are mainly of a financial nature, in particular when the fraud is related to quality. However, fraud also constitutes risks to human, animal or plant health, animal welfare and the environment. Furthermore, the political risk that comes with fraud should not be underestimated as fraud cases have the potential to undermine consumer trust in official controls, governments and the industry.

⁵ For the purpose of readability of this document wherever the term ‘fraud’ is used it refers to an intentional violation of the rules referred to in Article 1(2) of Regulation (EU) 2017/625 perpetrated through fraudulent or deceptive practices as per Article 9(2) of Regulation (EU) 2017/625.

Food safety, food fraud, food defence⁶ and food quality are interlinked.

Article 9(2) of the Regulation (EU) 2017/625 applies beyond fraud in relation to food as it covers all control areas as referred to in Article 1(2) of the same regulation, and thus fraud in relation to other categories of products, for example plants for planting, live animals health and feed.

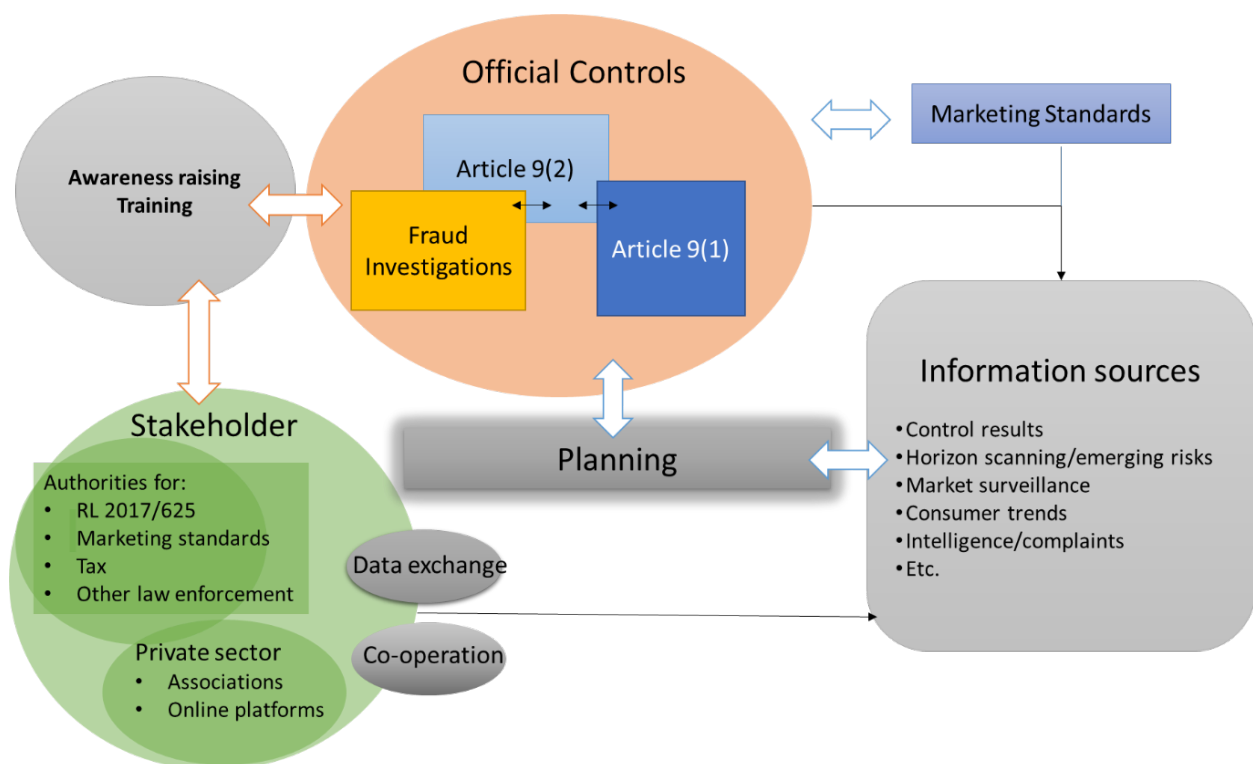
This technical report will take a broad view on fraud. The fraud categories considered in this document are listed on Annex 1.

Fraudsters are innovative and opportunistic by nature. They are adept at identifying the weaknesses in supply chains and official control systems alike. Therefore, competent authorities should address the fight against fraud systematically, including:

- the involvement of all relevant competent authorities, across all control areas, in the planning process;
- cooperation within and between competent authorities, law enforcement authorities, investigation units and stakeholders;
- raising awareness among control staff and industry.

Also, the facilitation and enabling of fraud by anybody (e.g. by disreputable laboratories and logistics companies) needs to be taken into account.

The graph below provides an overview of the key elements of arrangements for fighting fraud in the agri-food chain:



⁶ Food defence programmes protect food from intentional contamination through the use of biological, chemical, physical or radioactive agents

2.3 Article 9(2) – A proactive, structured and targeted approach

The performance of risk-based controls requires a proactive, innovative (“Think outside the box”) and targeted approach, which is designed to achieve the objectives of Article 9(2) of the Regulation (EU) 2017/625. This includes:

- identification of fraud risks (link to national strategy, horizon scanning, signals from various sources);
- a documented planning process based on a risk assessment;
- a planning process that specifically targets the fraud risks identified (also to be taken into account: political support for certain areas/initiatives; resource availability; prioritising all types of threats of fraud or mainly food safety ones).

3 Key elements of control arrangements for the implementation of Article 9(2) of Regulation (EU) 2017/625

3.1 Cooperation

The complexity in identifying fraud requires close cooperation of all stakeholders, including

- within and between the authorities of the Member States;
- between Member State authorities;
- between Member States and the Commission and
- with the private sector (e.g. sector associations, multinational companies);
- cooperation at pan-European and international level (e.g. Europol, Interpol, Organisation for Economic Co-operation and Development - OECD)

The responsibilities for fraud related control activities and the communication lines should be clarified.

A central theme for cooperation is the gathering and sharing of information and intelligence as well as experience, but may also include joint control efforts in order to make best use of skills and powers.

The sectoral view does not always allow a complete assessment of the situation. The interface between control systems in many cases presents a weakness that good cooperation can help to overcome. While data, if assessed with a sectoral view, may look non-suspicious, the involvement of experts from different authorities and/or control areas may reveal patterns in the data that can hint at fraudulent behaviour and can help to identify high-risk operators (e.g. complex business structures with various activities and locations).

Data and information provided by the industry may add value as the private sectors can contribute with risk signals and data to the planning of Article 9(2) official controls. Cooperation may also be needed in order to support control arrangements (e.g. parcel services and online platforms may have means to facilitate anonymous purchases of the authorities).

Furthermore, the use of mechanisms for the exchange of information between competent authorities on suspicions of fraudulent practices and criminal investigations (fraud part of iRASFF, Secure Information Exchange Network Application - SIENA, etc.) is crucial.

The competent authorities need to bear in mind that effectiveness of information sharing depends on the quality of the information, the security/confidentiality of the data systems and the capability of the technological system to perform as intended. Also the timeliness of the communication is important to allow swift reactions, especially in cases of a potential health risk or fast expiring goods.

Examples:

National (or sub-national) cross-authority working group(s) can provide a forum to exchange information and experience and help defining cooperation in more detail.

Memoranda of understanding between authorities are useful to define the need for cooperation, to agree on joint actions, to share tasks and to agree on exchange of data and information. It also facilitates the establishment of communication lines with the aim to make the exchange of information more effective, secure and faster.

Memoranda of understanding between authorities and the industry (supported by procedures) can help to exchange fraud risk signals and to react to new fraud threats faster and more efficiently. However, authorities need to check whether, and to what extent, the exchange of data and information under EU and national legislation is possible (e.g. data protection rules).

Simulation exercises allow to verify the effectiveness of arrangements for communication and cooperation.

3.2 Risk-based planning

3.2.1 Understanding fraud

Detecting fraud requires good knowledge about the sector, the fraud risks and the way fraudsters operate. Fraud is driven by opportunity and motivation, which are the main factors to consider. Countermeasures put in

place by the industry and the competent authorities work as a strong “guardian” and reduce the level of opportunity:

- **Motivation:** factors that lead to unethical behaviours (incentive). In many cases, this is a temptation related to a financial gain or financial pressure, but non-financial aspects including political and social factors should not be excluded.
- **Opportunity:** set of circumstances that allows the fraudster to commit fraud and that reduce the chances that the fraudulent or deceptive practices have negative consequences for the fraudster that outweigh the potential benefits of the behaviour.
- **Countermeasures:** fraud prevention measures (own control systems, fraud vulnerability assessments, etc.) put in place by the producers and control arrangements of the competent authorities. Strong countermeasures reduce the fraud opportunity while weak measures have the opposite effect.

Annex 2 provides some examples of factors contributing to fraud in the agri-food chain.

Vulnerability to fraud is an equation that combines these three elements:



3.2.2 Key considerations

A fraud risk assessment should be tailored to the control areas for which the competent authority is responsible. In other words, a one-size-fits-all solution across all sectors does not exist. Fraud follows opportunity and attacks weaknesses. The best approach to risk-based planning will differ between authorities, control areas and Member States, but the risk-based planning should be based on a vulnerability assessment.

A vulnerability assessment is an in-depth analysis of the circumstances that make a control system vulnerable. The first step should be that relevant information (signals) are collected and analysed. The next steps within the planning process include the assessment of the likelihood of a deliberate non-compliance and of the associated risks (probability and severity of an adverse effect). Annexes 3 and 4 provide information on the key steps for and elements of a vulnerability assessment.

A good fraud risk assessment helps competent authorities to understand how to identify potential fraudsters finding a way around existing countermeasures.

The competent authorities may want to apply more sophisticated models, as described in literature, but a vulnerability assessment can be achieved through:

- Brainstorming by (cross-sectoral) expert groups;
- Delphi method (multiple rounds of questions to the target group of experts);
- Study/research project;
- Structured process based on data analytics including the evaluation of control data in view of non-compliances with regard to potential fraud;
- A combination of these approaches.

For consideration:

For Member States with devolved competences, in particular Member States with a large number of competent authorities with limited resources, it could be a challenge to carry out full-scale vulnerability assessments across all sectors. However, this can be overcome by developing a strategy at national level or by adapting existing vulnerability assessment to the local needs.

The starting point for any vulnerability assessment is to look at the sector in question from a fraudster’s perspective and ask some key questions (see also Annex 5):

- What are the potential threats (e.g. use of illegal substances, dilution, substitution, mislabelling) for the sectors in question?

- What are the weaknesses that facilitate fraudulent or deceptive practices and, in particular, are there weaknesses in the control system that allow fraud to happen (versus the capabilities of the fraudster)?
- What are the opportunities (e.g. cheap sources of ingredients) for committing a fraudulent or deceptive practice?

The planning of Article 9(2) official controls should consider the most relevant target objects including time, types of operators, type of activities, business environment, product groups, incidents and trends (see also Annex 6):

- Could fraud occur outside normal working hours?
- Should seasonal aspects be considered?
- Are operators known to be involved in criminal activities in the past?
- Could operators be involved in illegal activities where regional or cultural differences provide opportunities?
- Are certain activities and commercial structures more vulnerable to fraud or deception?
- Is the business environment and organisation of the sector more vulnerable to fraud?
- Have product groups been identified as more vulnerable to fraud or deception?
- Are there emerging risks that increase the fraud vulnerability?

3.2.3 Data and information: sources and use

In order to perform a vulnerability assessment, the competent authorities need good knowledge of the industry, consumer behaviour and the market situation. The more information is available in a structured way, the better the basis for the assessment.

Also the availability of databases and the capabilities of using the databases effectively for the purpose of Article 9(2) controls is important.

Article 9(1) controls data

Official controls data (Article 9(1) of the Regulation (EU) 2017/625) can be useful in order to identify unusual patterns or anomalies.

Examples:

Number of on-farm slaughter animals goes beyond what can be consumed by the farmer/farm-gate sale, which hints that meat from on-farm slaughter is traded commercially.

Outliers in farm animal databases can indicate suspicious activities (e.g. too many animals born vs number of females).

In particular where data show suspicious patterns, anomalies (deviations from the norm) or where the data analysis show sudden changes (increase of production of a certain type of commodity) this may raise a suspicion of fraudulent practices.

Example:

A company has successfully entered the market with a new product and suddenly increases the production. Is this plausible taking into consideration the current production capacities?

Control data on fraud

The results of Article 9(2) controls should be critically reviewed and used for future control programmes with the aim to improve the control approach and methodology. The assessment may result in the intensification, continuation or reduction of certain controls or in a change of the control methodology.

Member States may also consider to establish a risk register based on the results of Article 9(2) (and Article 9(1)) controls in which operators and their subsidiary companies are listed which were involved in any investigation related to fraudulent or deceptive practices.

Examples:

Samples are taken and tested for food authenticity, but the samples of consecutive years are compliant or at least do not indicate any fraud suspicion; the competent authority may consider reducing the number of samples or stop the control activity entirely.

Where the non-compliance rate is high and there is ground to suspect fraud, Article 9(2) controls should be intensified.

Article 9(2) controls identify fraud cases, but the evidence is not sufficient to launch criminal proceedings: the competent authority may improve the methodology in order to support criminal investigations, as appropriate.

Also the results of investigations should be used for planning Article 9(2) controls and each case should be analysed in order to determine whether it was an isolated case or whether there is a likelihood that similar fraud may occur more frequently.

Example:

A whistleblower informs the police that a meat processing plant uses substances illegally for its meat products. Investigations find that the operators used sulphite in minced meat. Article 9(2) controls should be used to find out whether this is a common fraudulent practice in the production of similar products, e.g. by using sulphite test paper during Article 9(1) controls at operators selected for this purpose on a risk-basis.

Control campaigns and monitoring

Although one-off control campaigns cannot be considered sufficient to implement the provisions of Article 9(2) of the Regulation (EU) 2017/625, they are an effective way of indicating whether a certain fraud risk exists, which is essential information to feed into the planning process in order to take a decision whether the campaign results warrant controls on a regular basis.

In general, fraud is not regionally or nationally restricted and therefore addressing cross-border aspect of fraud requires close cooperation at all levels. EU coordinated actions and coordinated programmes provide an opportunity for Member State authorities to contribute to the fight against fraud in the agri-food chain at European, pan-European and international level and to gain experience from their participation. The European Commission plays an important role in this, but depends on the active engagement of the Member States in these actions and programmes. Member States should in addition also set up their own priority programmes and monitoring projects.

The European anti-fraud office (OLAF) works with customs authorities and market surveillance authorities within the EU and customs authorities from across the world, through individual investigations or joint customs operation. OLAF also participates in targeted operations led by Europol and Interpol, like Opson (which targets international trade in counterfeit or sub-standard food and beverages, as well as food fraud and adulteration) or Silver Axe (which targets the illegal trade of plant protection products).

In the context of coordinated control plans, Directorate-General for Health and Food Safety works closely together with the Knowledge Centre for Food Fraud and Quality (KC-FFQ) established within the Joint Research Centre as well as with OLAF.

Information and data from the industry

In general, medium-sized and larger enterprises have good market knowledge and may pick up fraud signals before the information is available to the authorities. Agreeing with the industry (e.g. producer and trade associations) on exchange of information on a regular basis may be beneficial for improving the vulnerability assessment. However, competent authorities should use informal information from individual enterprises with care and critically review its reliability.

Notifications, complaints and intelligence

Although it is a challenge to deal with complaints, they may be a useful source of information to feed into the planning process. In particular, where the follow-up of individual complaints confirmed fraudulent practices, which have the potential to go beyond an isolated case.

Example:

A complaint reveals that one operator used illegal substances. If the investigations reveal the supplier of the substance also delivered to other operators, this may indicate a wider spread issue.

Notifications of potential fraudulent or deceptive practices including other competent authorities or other Member States should be analysed. Competent authorities may consider these notifications for their own planning process.

Example:

Where one Member State finds that several establishments are involved in fraudulent or deceptive practices there would be grounds to suspect that similar cases occur in other Member States as well.

Not all information is easily accessible. In particular, law enforcement authorities and special investigation units gather information from covert human intelligence sources, law enforcement partners and undercover investigations. Although the details of the intelligence sources and information may not be shared, intelligence can be used to identify widespread issues and may hint at fraud risks that can be addressed through Article 9(2) controls. It should be noted that sensitive data should only be used in close cooperation and agreement with all involved enforcement authorities to avoid that investigations are undermined.

However, there are open sources that should be used in order to pick-up fraud signals:

Publicly available information

- social media
- advertisements
- statistics
- etc.

Example:

Advertising car boot sales or sales of agri-food products online without proper identification may indicate fraudulent or deceptive practices.

Horizon scanning and emerging risk assessment

Horizon scanning is a method used for the early detection and assessment of new developments and trends using a range of available data sources in order to be prepared for future threats.

The following information should be considered:

- Natural disasters, extreme weather events and climate change (e.g. impact on harvests and international trade)
- Alerts and disease outbreaks (European Union Notification System for Plant Health Interceptions - EUROPHYT, iRASFF, Organic Farming Information System - OFIS, International Food Safety Authorities Network - INFOSAN, World Organisation for Animal Health - OIE, EU Animal Diseases Information System - ADIS, Trade Control and Expert System - TRACES, etc.)
- Emerging risks resulting from a newly identified hazard (e.g. European Food Safety Authority (EFSA) opinions, diseases and epidemics)
- Fraud specific information (iRASFF-FF, JRC Food Fraud Monthly Reports, OECD Network on Illegal Trade of Pesticides- ONIP)
- Research and scientific papers (e.g. new food processing technology)
- Trade data and updates on trade agreements (Statistical office of the European Union - Eurostat, United Nations Commodity Trade Statistics Database - UN Comtrade)
- Trends in consumer behaviour (studies, news)
- Information on the geopolitical situation in the world

Examples:

A plant pest outbreak may trigger the use of unauthorised pesticides.

Crop failure in one country may put pressure on domestic producers to find ingredients for their products on the market or may lead to price increases.

Other signals

The competent authorities should define their information needs and make use of official controls in order to collect additional data or to pick up signals systematically.

Example:

The price range of farm inputs (e.g. pesticides) or ingredients may be useful to know, as very low prices may indicate fraud or illegal trade or higher prices may increase the pressure on the operators and the fraud vulnerability increases. Such information may be collected anonymised and not operator specific for data protection purposes.

Also analysing own-control data from a fraud perspective should be considered.

Example:

The competent authorities should have oversight of the results of own controls of operators in order to allow the identification of falsified results. If the results of the own controls of one operator are all acceptable, while the experience from the majority of other operators is different, this may indicate that the own-control results are potentially falsified.

3.3 Performance of Article 9(2) official controls

Article 9(2) official controls can be implemented by using a wide range of different methods and techniques or by combining them (see also Annexes 7 and 8).

In some cases, Article 9(1) and Article 9(2) official controls can be combined. In some cases a control method may even be suitable to implement Article 9(1) and Article 9(2) official controls at the same time. However, this should be demonstrated in a documented manner.

Examples:

In the context of Article 9(1), a competent authority has incorporated a quick qualitative screening method to detect the illegal use of sulphite on meat and/or in meat preparations at certain type of operators that have been identified in the context of the Article 9(2) vulnerability and risk assessment. In this example, some Article 9(1) controls are complemented with fraud related control aspects.

The competent authority establishes a control programme for plant protection products. It includes sampling and testing of products to verify that their composition complies with the authorisation. If demonstrated by a vulnerability and risk assessment one and the same type of control arrangement can be suitable and used for the purpose of Article 68 of Regulation (EC) No 1107/2009 and Article 9(2) controls.

A control body applies at organic farms a sampling and testing procedure that allows to establish whether finding of pesticides are the result of spray drift or illegal use of the pesticide.

However, in many cases, official controls planned and performed for the purpose of Article 9(1) will not be sufficient and additional control measures are required, including:

Targeted controls or audits of operators, activities, products or locations/geographical areas that have been identified as vulnerable to fraud. These controls usually solely focus on the relevant fraud aspects identified through the vulnerability assessment.

Control campaigns, if organised on a regular basis, can be a cost efficient but also an effective way of implementing Article 9(2) official controls. The frequency of these campaigns should be defined in the risk-based planning (e.g. twice a year, every second year):

- Road controls.
- Sampling campaigns.
- Comprehensive traceability of a selected number of products and their ingredients throughout the entire production and trade chain.

The methods and techniques used in the implementation of official controls in accordance with Article 9(2) of the Regulation (EU) 2017/625 may also provide a good vehicle to promote controls in general to a very high standard, which usually is more time consuming and costly (e.g. comprehensive traceability of supplies and verification of invoices by means of cross-checks, comprehensive mass-balance), where this is not already part of official controls carried out in accordance with Article 9(1) of the Regulation (EU) 2017/625.

The work of dedicated investigation teams and enforcement authorities, which operate mainly in a reactive mode, can contribute to Article 9(2) official controls by using intelligence collected to establish a proactive approach and perform targeted controls or audits on a regular basis.

Example:

Dedicated investigation units of the competent authorities or of other enforcement authorities establish, based on experience and intelligence, a control programme for targeted controls or audits on high-risk products or operators on a regular basis.

The increasing importance of e-commerce provides new opportunities for marketing products and animals (e.g. puppies) online, but also for trading illicit products (e.g. falsified documents) on web-based platforms and the dark web. The latter is the hidden collective of internet sites only accessible by a specialised web browser. This makes it difficult for competent authorities without a specific law enforcement background and technical expertise to monitor these marketplaces. Although easily accessible, it is also a challenge to monitor web-based trade and not all competent authorities have automated screening tools. However, based on the vulnerability and related risk-assessment, the screening of social media platforms and the most relevant online market places is indispensable.

Examples:

Online platforms have an interest to minimise the risk of offering illicit products on their websites. Public-private partnerships can be used in order to identify vulnerable products and to target vendors of illicit products.

In some cases, it is essential to physically obtain the product in order to check the label or to perform authenticity tests. This can only be done through “mystery shopping” which is an anonymised test purchase (Article 36 of the Regulation (EU) 2017/625).

3.4 Follow-up of fraud suspicion and investigations

3.4.1 Exchange of information between Member States

European Commission developed and manages an IT system – the Administrative Assistance and Cooperation System (AAC) – which enables Member States and the Commission sharing information on suspicion of non-compliances and potential intentional violations of the EU agri-food chain legislation in a secure manner. In 2021, AAC has been integrated into the Rapid Alert System for Food and Feed (iRASFF). The competent authorities in the Member States concerned shall provide each other with administrative assistance in accordance with Articles 104 to 107 of the Regulation (EU) 2017/625. This shall facilitate cross-border investigations and can help to collect information and evidence required to conclude on the case. The quality and timeliness of the information exchange is crucial.

3.4.2 Investigations

Investigations are mainly reactive in order to respond to any suspicion of non-compliance or fraud (Article 137 of the Regulation (EU) 2017/625). Investigations into fraud require the use of specific techniques for gathering evidence and should only be carried out by sufficiently skilled staff of the competent authorities, the police or other enforcement authorities. This may include the observation of suspects, confiscation of computers and wire/email tapping.

Special investigation units of the competent authorities and of other enforcement authorities in several Member States have proven that investigations by highly trained staff plays a crucial role in fighting fraud. These specialised Units have highly skilled staff and over time gained experience and deep knowledge of the motives and methods applied by fraudsters. It would be of the utmost importance that competent authorities use this knowledge to feed into the planning process of Article 9(2) official controls. As regards the competent authorities, they should establish a close relationship to the investigation units of other authorities in order to know when and how to report a suspicion of fraud to these units.

Member States also need to ensure that mechanisms are in place to facilitate the transmission of information on possible non-compliance with the rules referred to in Article 1(2) of the OCR from other law enforcement authorities, public prosecutors and judicial authorities, to the competent authorities.

As regards the follow-up of cases, in particular where the competent authorities hand the case over to other enforcement authorities, it is crucial for the competent authorities to follow-up on the outcome of investigations, prosecution and judicial review in order to:

- Understand how the prosecutors and courts assessed the case and whether the information collected by the competent authorities was suitable and sufficient.
- Feed that knowledge and any other relevant information back into the planning process and raise awareness based on the lessons learnt.

Example:

Potential fraud cases are handed over by the competent authorities to other law enforcement authorities (e.g. police) together with a form for reporting back the outcome of the investigations.

3.5 Training and skills

Fraud investigations require different skills than routine inspections. Not only is the approach different, in many cases additional powers are required. Inspectors should not be encouraged to perform fraud investigations, unless they have received appropriate training and instructions.

For consideration:

An inspector of the competent authorities without specific training in fraud investigations may not be in a position to decide on the best way to approach a complex case or on what evidence is required by the prosecutor. An official control that is carelessly performed may warn the operator and may undermine investigations by specialised law enforcement authorities (e.g. police and tax authorities).

It is not required to train all competent authorities' inspectors on the performance of fraud investigations. However, all official control staff should have a basic understanding of fraudulent or deceptive practices and clear instructions on the steps to be taken when a suspicion of fraud arises. Official control staff should have a good level of awareness in order to collect fraud signals during regular controls and to distinguish between a non-compliance in general, intentional violations perpetrated through fraudulent or deceptive practices and deceptive practices that lack an intentional element and should be trained, as appropriate, on specific Article 9(2) controls arrangements and methods.

3.6 Marketing Standard Controls vs Food Safety Controls

EU marketing standards shall ensure that the market is supplied with agricultural products of certain standard and quality. Regulation (EU) 1308/2013 of the European Parliament and of the Council establishes a common organisation of the markets for agricultural products and Regulation (EU) 1306/2013 of the European Parliament and of the Council requires that Member States perform checks to ensure compliance with these rules. Some of the food products covered by this legislation are highly vulnerable to fraud and need particular attention in the context of risk-based planning of controls.

While in some Member States the food safety authorities perform these checks, in others the responsibility is with other authorities. In the latter case, close cooperation between the food safety and marketing standard control authorities is needed in order to ensure that fraudulent practices are detected and followed-up and that information are exchanged, as appropriate.

Pursuant to Article 1(4)(a) of Regulation (EU) 2017/625, the latter Regulation becomes applicable where checks pursuant to Article 89 of Regulation (EU) No 1306/2013 identify possible fraudulent or deceptive practices in respect of the marketing standards referred to in Articles 73 to 91 of Regulation (EU) No 1308/2013⁷. The provisions of Regulation (EU) 2017/625 applicable to marketing standards include the provisions on administrative assistance and cooperation (Articles 102 to 108) and the provisions on enforcement action (Articles 137 and 138). Further, the provisions of Implementing Regulation (EU) 2019/1715 on exchange of fraud notifications in the fraud network in iRASFF apply.

⁷ A reasonable suspicion of fraud/deceptive practice based on facts must be established (a fraud notification in iRASFF is a possible case). Mere hypotheses are not sufficient, yet the suspicion does not need to be confirmed.

3.7 Awareness raising

Raising awareness of fraud risks can help prevent fraudulent and deceptive practices, as operators will better understand the vulnerabilities and risks they are facing. This is in particular relevant for smaller and medium size companies who have not yet considered fraud risks. They will also better understand that they may not only be subject to fraud but may, under certain circumstances, become involved in fraudulent practices, e.g. when buying products that are at a price below market value, from sources that are not reliable and do not allow to trace back the product.

References

- Barrere, V., Everstine, K., Théolier, J., Godefroy, S, *Food fraud vulnerability assessment: Towards a global consensus on procedures to manage and mitigate food fraud*, Trends in Food Science & Technology, 100(June 2020):131-137.
- Galanakis, C, *Food Authentication and Traceability*, Academic Press, 2020.
- Hellberg, R., Everstine, K., Sklare, S., *Food Fraud - A Global Threat with Public Health and Economic Consequences*, Academic Press, 2020.
- Manning, L., MeiSoon J., *Food fraud vulnerability assessment: Reliable data sources and effective assessment approaches*, Trends in Food Science & Technology, 91 (September 2019): 159-168.
- Pustjens, A., Weesepeol, Y., van Ruth, S., *Food Fraud and Authenticity: Emerging Issues and Future Trends*, Woodhead Publishing Series in Food Science, Technology and Nutrition, 2016: 3-20.
- Rezazade, F., Summers, J., OngLai Teik, D., *A holistic approach to food fraud vulnerability assessment*, Food Control, 131 (January 2022).
- Robson, K., Dean, M., Haughey, S., Elliott, C., *A comprehensive review of food fraud terminologies and food fraud mitigation guides*, Food Control, 120 (February 2021).
- Ryan, J.; *Food Fraud*, Academic Press, 2015.
- Silvis, I., van Ruth, S., van der Fels-Klerx, H., Luning, P., *Assessment of food fraud vulnerability in the spices chain: An explorative study*, Food Control, 81 (November 2017): 80-87.
- Spink, J., Ortega, D., Chen Chen, Felicia Wu, *Food fraud prevention shifts the food risk focus to vulnerability*, Trends in Food Science & Technology, 62 (April 2017): 215-220.
- Ulberth, F., *Tools to combat food fraud – A gap analysis*, Food Chemistry, 330 (15 November 2020).
- van Ruth, S., Huisman, W., Pieternel, A., Luning, *Food fraud vulnerability and its key factors*, Trends in Food Science & Technology, 67 (September 2017): 70-75.
- van Ruth, S., Luning, P., Silvis, J., Yang, Y., Huisman, W., *Differences in fraud vulnerability in various food supply chains and their tiers*, Food Control, 84 (February 2018): 375-381.

Annexes

Annex 1 Fraud categories⁸

For the purpose of this technical report the following fraud categories should be considered by the competent authorities:

- Adulteration and product tampering:

Addition of a foreign or inferior quality substance or element; by replacing a more valuable substance or element with less valuable or inert ingredients, so that they no longer match the implicit or explicit claims associated with the agri-food product.

 - Substitution:
 - Dilution:
 - Removal:
 - Unapproved/undeclared enhancement and concealment
 - Unapproved/undeclared treatment, process or product

- Counterfeit

Intellectual Property Right (IPR) infringement, including any aspects of the genuine agri-food product or packaging being replicated, for instance the process of copying the brand name, packaging concept or processing method for economic gain.

- Document Forgery

The process of creating, adapting, altering, misrepresenting or imitating documents such as certificates, passports, analytical test reports, declarations of compliance and other identification, administrative documents.

- Grey market activities

Production, theft, and diversion involving unauthorised sales channels for agri-food products (traceability issues).

- Misdescription/mislabelling/misbranding

Placing of explicit false claims or distorting the information on the label/packaging).

 - Expiry/production date
 - Nutrition/health claims
 - Geographical claims (excluding PGO, PDI, TSG)
 - Quality terms
 - Quantity (weight and volume)

⁸ The categories used in this annex are based on discussions with Member States' experts at the meetings of the EU Food Fraud Network.

Annex 2 Factors contributing to fraud in the agri-food chain

Factors related to “motivation” (Incentives)

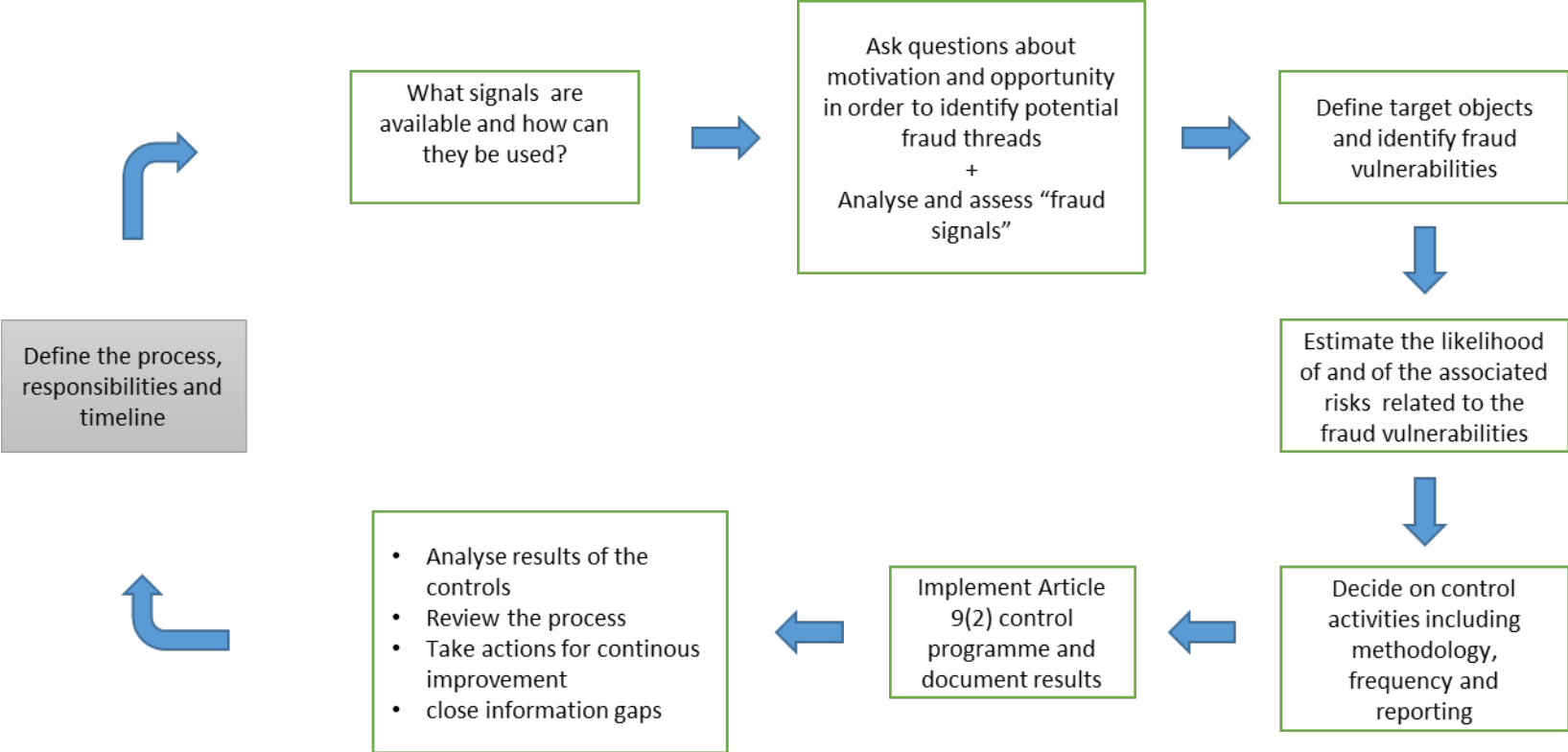
Direct financial benefit	<ul style="list-style-type: none"> • Low value products trade in big quantities (low value - high volume) • High value products • Tax evasion • Avoidance of costs
Pressure	<ul style="list-style-type: none"> • Competition • Shortage of supplies • Demand higher than regular production • Lack of access to new technology • Lack of access to markets • Restrictions and administrative hurdles (e.g. business expansion lengthy process due to administrative procedures)
Socio-economic and personal aspects	<ul style="list-style-type: none"> • Reputation of the business owner • Financial or economic crisis put pressure on private personal situation of company owners.

Factors related to “opportunity”

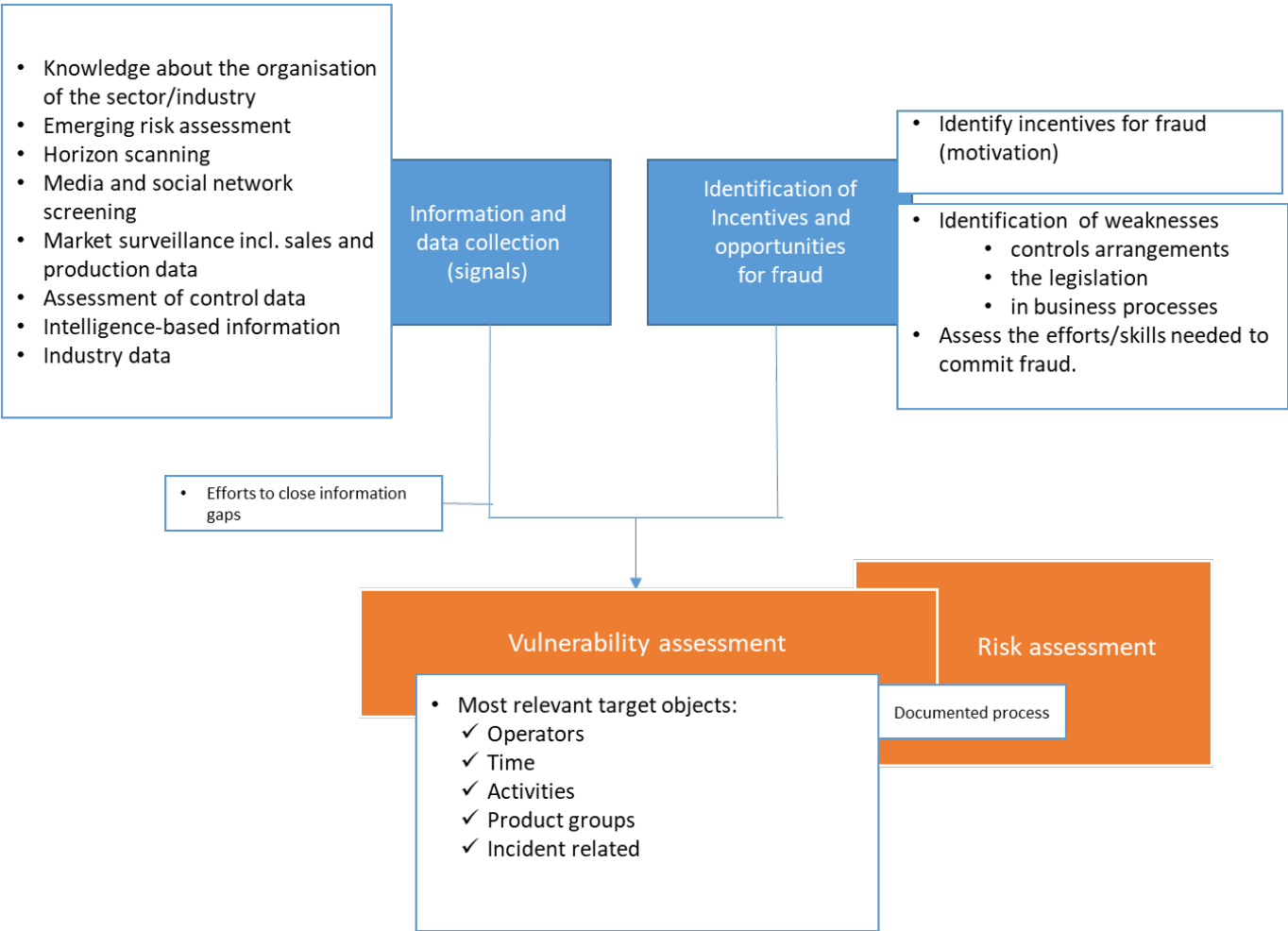
Ability to detect fraudulent or deceptive practices	<p>Does the industry have fraud prevention systems in place for the identified threat(s)?</p> <p>Do the official control systems deal with the threat(s)?</p> <p>How complex is the fraudulent or deceptive practice and are specific skills needed to identify it?</p>
Business culture	<p><u>Example:</u> High level of repeated non-compliance may indicate that certain groups or types of operators are not reliable and may not pay attention to fraud threats (from suppliers) or commit fraud themselves (“rotten apples”).</p>
Complexity of official control systems	<p><u>Example:</u> Subnational authorities are the competent authority and each is keeping its own register(s) of operators. This may make cross-checks and traceability time consuming and fraudsters may use this in their favour. This could be an operator who is kept in the register of a competent authority as “inactive” but trades illegal products in the jurisdiction of another competent authority.</p>
Weaknesses as regards the control arrangements and legal framework	<p>What control measures are missing and could be incorporated into the control arrangements?</p> <p>Is access to appropriate laboratory capacities ensured?</p> <p>Does the competent authority have the powers to perform all the required controls?</p> <p>Are the penalties included in the applicable national legislation sufficiently deterrent?</p> <p>Are there overlaps or missing interfaces between competent authorities (e.g. food safety controls/controls in relation to Regulation (EU) No 1169/2011 and marketing standard controls)?</p> <p>Are the arrangements of the competent authorities and national</p>

	legislation flexible enough to react to new requirements (e.g. verification of own-control results, controls outside normal working hours)?
Complexity of the sector and supply chains	<p>Fraudsters may use non-transparent, complex and fast moving supply chains.</p> <p>Complex business structures may also be used: e.g. same owner with multiple companies trading (on paper) from one to the other leading to complex paper trails of goods, in particular if re-grouping and/or changing of batch numbers occur.</p> <p>A similar approach can be applied with multiple production/storage sites of the same company.</p>

Annex 3 Key steps and elements of a vulnerability assessment



Annex 4 Key elements of a vulnerability assessment



Annex 5 Key questions to be considered for the vulnerability assessment

Information and data

<p>Organisation of the sector/industry and sector specific information</p>	<p>Is unethical behaviour known or likely? (e.g. from notifications including information shared through the Administrative Assistance and Cooperation Network for Food Fraud (AAC-FF).</p> <p>Are operators certified to private schemes and apply fraud prevention measures?</p> <p>Are supply chains complex?</p> <p>Are supply chains transparent and are the stakeholders involved known?</p> <p>Is the level of competition high?</p> <p>Is the sector involved in activities related to products, which are in demand due to traditional, ethnical or cultural differences?</p>
<p>Emerging risk assessment, horizon scanning, market surveillance</p>	<p>Have emerging risks been identified?</p> <p>Does horizon scanning provide indications that emerging risks may occur in the near future?</p> <p>Does horizon scanning indicate fraud in certain countries because of new developments?</p> <p>Does horizon scanning provide information on new technology or trends that can trigger or facilitate fraud?</p>
<p>Media screening</p>	<p>Is there a set of “key words” used by fraudsters that sell products online?</p> <p>Is there a social media platform that certain operators/groups of operators prefer to sell illegal/counterfeit products?</p> <p>Is there professional media (e.g. farmers’ journal, agriculture machinery magazine) where anonymous advertisements can be published?</p> <p>Do media platforms keep a record of complaints on repeated offenders (not respecting rules of selling)?</p>
<p>Official controls data and intelligence based information</p>	<p>Do official controls data show anomalies or patterns hinting at fraudulent or deceptive practices?</p> <p>Can intelligence based information and experience gained from fraud cases be used for the planning of Article 9(2) official controls?</p>
<p>Data collected by the private sector</p>	<p>Are useful information and data collected by the private sector (e.g. trade and producer associations) available and can they be used by the authorities?</p>

Identification of drivers of fraud

Incentives	<p>Are there incentives to misuse the tax system (tax evasion)</p> <p>Do subsidies and access to public funds trigger fraudulent behaviour?</p> <p>Are there products that could be sold with a high profit – sale of high quantities with a low margin or sales of premium products with a high margin?</p> <p>Can a fraudster commit fraud to avoid investment costs?</p>
Opportunities/weaknesses	<p>Does identifying the fraudulent or deceptive practice require certain skills or techniques? Do the control systems already cover these issues?</p> <p>Are there weaknesses/gaps in the official control arrangements or are there control methods not performed or to a low level due to resource restrictions? Could these control methods contribute to fighting fraud?</p> <p>Are there weaknesses/gaps in EU and/or national legislation that could facilitate fraud?</p> <p>Are the interfaces between control arrangements of different authorities strong or is there an additional need for cooperation and joint efforts? Is there a cross-reference of different databases?</p> <p>Does the industry have reliable fraud prevention systems in place and do the authorities have an oversight or take them into account when planning Article 9(2) official controls?</p> <p>Is there a good level of awareness amongst operators regarding fraud risks? Is there a need for information campaigns?</p>

Vulnerability assessment

Use of information	<p>Has/Have a strategy/procedures been developed for the vulnerability assessment?</p> <p>Who should be involved?</p> <p>How should the data/information be used best?</p> <p>Is there a need to elaborate tools for the vulnerability assessment (IT tools)?</p>
Performance	<p>Have the key aspects of the vulnerability assessment been considered?</p> <p>Are the process and the results documented?</p>

Annex 6 Target objects⁹

Target object	○ To be considered (examples)
Time	<ul style="list-style-type: none"> • Seasonal production (and higher demand) • Seasonal shortage of supply • Special occasions (Easter, Christmas) • Risk that fraud is committed outside normal working hours (e.g. night shift, weekends).
Operators/activities	<ul style="list-style-type: none"> • Paper traders and brokers with a high turnover of consignments • E-commerce traders without a physical production or sales facility • Wholesalers with a history of traceability non-compliances • Operators being part of a complex business structure (subsidiary companies in multiple countries). • Operators that have been involved in tax evasion, money laundering or other types of fraud/crime). • Processing of composite products • Parallel production in organic farming
Business environment	<ul style="list-style-type: none"> • Involvement of intermediaries • Complex supply chains • High competition • Supply chain shortage
Products/product groups (examples of vulnerable products)	<ul style="list-style-type: none"> • Honey/maple syrup • Olive oil • Eggs • Spices • Frozen high quality meat (addition of lean meat from other species to the trim) • Fish species and fresh tuna (colouring, histamine) • Fruit juices (dilution and food improvement agents) • Coffee/tea • Maize/corn fed chicken (use of unauthorised quantities of feed additives). • Chicken meat (water content) • Mixed minced meat (composition, additives) • Quality labelled products • Alcoholic and non-alcoholic beverages • Special diets (e.g. free-from-products) • Milk powder • Food waste • Animal by-products (e.g. Category 1 rendering plants and Category 3 processing plants on the same or adjacent sites) • Food contact materials (bamboo/wood) • Parallel trade on plant protection products • Plant protection products likely to be smuggled/illegal imports • Plants for planting traded with plant passports • Puppy dogs (illegal trade)
Incidents	<ul style="list-style-type: none"> • The pandemic increased the risk of deceptive/fraudulent health claims regarding Covid-19: products sold via the internet were being advertised as having a positive effect on the immune system or as

⁹ This list of target objects is the result of examples collected from literature, meetings with Member States' experts and fact-finding studies of Member States carried out by the Commission between 2020 and 2022.

	<p>protection against infection by coronavirus.</p> <ul style="list-style-type: none"> • Wildfires in important honey-producing regions causing a significant drop in honey production • Sudden increase/decrease in demand/prices/availability of certain (raw) material as a result of e.g. <ul style="list-style-type: none"> ○ pest outbreak, ○ trade restrictions, ○ war, ○ severe weather conditions or natural disasters, ○ withdrawal of certain active substances / products from the market (e.g. certain effective pesticides, biocides).
Facilitators	<p>Facilitators support fraudulent practices knowingly/carelessly/unintentionally</p> <ul style="list-style-type: none"> • Operators selling authorised substance for illicit use • Verification of laboratory results of own controls can help to identify operators that do not inform the competent authority about non-compliant results and sell products unfit for purpose or falsify certificates.

Annex 7 Control methods and techniques to be considered for Article 9(2) official controls¹⁰

Collecting signals for the planning process	<ul style="list-style-type: none"> • Sudden increase of production or sales • Data for comparable groups of operators/activities (own control system results, price level of ingredients, complexity of the operation) • Reports of non-compliances including information shared in accordance with Articles 102 to 108 of Regulation (EU) 2017/625 • Other
Extended sampling and testing programmes for non-authorized/illegal substances	<ul style="list-style-type: none"> • Plant protection products and residues • Food and feed additives • Food supplements and unauthorised substances • Products with nutritional and/or health claims • Unapproved/illegal veterinary drugs • Use of novel ingredients/foods
Using samples from “vulnerable” products taken for other purposes	<ul style="list-style-type: none"> • Honey taken for residue testing could also be analysed for exogenous sugars. • Table eggs - traceability checks to be used to verify labelling
Targeted actions	<ul style="list-style-type: none"> • Intensified cross-checks of commercial documents and comprehensive traceability of supplies back to the suppliers in order to ensure the integrity of the food chain. • Comprehensive mass-balance to verify that the operator can account for all quantities of raw materials, waste, work-in-progress and finished products.

¹⁰ The control methods and techniques have been selected based on literature reviews, discussions with Member States' experts and fact-finding studies carried out by the Commission between 2020 and 2022. A non-exhaustive indicative list of items that can be subject to Article 9(2) official controls is presented in column 2.

Annex 8 Examples of intentional violations perpetrated through fraudulent or deceptive practices¹¹

Food and food safety and food contact material

Fraudulent/deceptive practices	Comment	Control measure
Illegal production of meat products	Products distributed to local restaurants	Traceability
	Meat from home slaughter entering commercial production and trade chain	Analysis of data for plausibility and traceability
	Car boot sale of illegally produced traditional meat products	Media screening and targeted controls
Illicit production methods and use of illegal food additives	Mechanically separation of pre-packed dairy products and re-use of dairy products	Use of intelligence and experience from cases in order to perform targeted controls
	Non-declared irradiation of foodstuffs	Testing of irradiation signals (e.g. Thermoluminescence (TL) instruments)
	Tuna - addition of dyes, nitrites or nitrates and carbon monoxide treatment	Traceability of ingredients Targeted controls (carbon monoxide treatment equipment) Laboratory testing
	Use of illegal colorants e.g. Sudan red	Traceability of ingredients Laboratory testing
	Addition of melamine to Soy drinks	Laboratory testing
	Glazing of fish ("ice coating") – additional layer of frozen water on fish filets without appearing on the label	Gravimetric procedures
Use of ingredients unfit for consumption and mislabelling	Re-labelling - 'use by' date	microbiological analyses, total volatile basic nitrogen
Substitution, dilution and mislabelling	Undeclared or wrongly declared species: <ul style="list-style-type: none"> Meat logs (cold stores) – e.g. horse meat Kebabs Fish offered at restaurants (complete species substitution) Cow milk instead of sheep or buffalo milk 	Traceability (fish suppliers, auction halls) DNA testing, monoclonal antibody-based ELISA techniques, Mass Spectrometry of proteins (Matrix Assisted Laser Desorption Ionization-Time-of-Flight Mass

¹¹ A non-exhaustive indicative list of examples of fraudulent activities and control measures that have been selected based on literature reviews, discussions with Member States' experts and fact-finding studies carried out by the Commission between 2020 and 2022.

		Spectrometry - MALDI-TOF MS, Liquid Chromatography coupled to tandem Mass Spectrometry LC-MS/MS)
	<p>High value ingredients with lower quantities than indicated on the label:</p> <ul style="list-style-type: none"> • Mixed pork-beef minced meat with significantly higher quantities of pork meat • Processed game pate without game meat • Olive oil blended with cheaper plant based or mineral oils • Quinoa flour replaced by maize or soy flour • Gluten-free products replace with ingredients containing gluten 	Qualitative and quantitative laboratory testing
	Coffee - Substitution of Robusta beans for Arabica beans	Visual inspection, traceability, 16-O-methylcafestol, Nuclear Magnetic Resonance (NMR)
	Lower grade products that are labelled as olive oil, argan oil)	Sensory analysis, multiple technologies, traceability
	Spices – Oregano mixed with other plant material (olive tree leaves)	Physical and analytical methods, sensory analysis
	Addition of plant proteins and other fillers (melamine, urea) to milk powder	Near-Infrared (NIR) technology
	Addition of sugar and sugar syrups to honey	Proton-NMR profiling, Elemental Analysis/Liquid Chromatography -Isotope Ratio Mass Spectrometry (EA/LC-IRMS)
	Addition of water to fruit juices and milk products	Isotope Ratio Mass Spectrometry - IRMS, NMR, Gas Chromatography (GC) technique coupled with statistical methods.
Counterfeits	Soft-drinks, sweets, alcoholic beverages of trademarks	Cooperation with industry (labels, closures)
Illegal products and falsified documents	Melamine in bamboo food contact material	Targeted screening for illegal additives, pro-processing aids, traceability, verification of declarations of compliance

Feed and feed safety

Fraudulent/deceptive practices	Comment	Control measure
Unauthorised substances	Addition of additives in illicit quantities for chicken feed (maize fed chicken/yellow chicken meat)	Testing for Canthaxanthin and Zeaxanthin
	Non-authorised medicated feed	Laboratory testing
Substitution, dilution	Replacement of high quality with low quality feed (addition of enhancers, contaminated feedingstuffs)	Laboratory testing
Illegal use	Non-authorised feed derived from the food chain (ungraded fats and oils)	Traceability, various types of tests for fats and oils

Animal health

Fraudulent/deceptive practices	Comment	Control measure
Tampering – animal identification	Animal eradication programmes and farmer compensation may set negative incentives	Plausibility checks
Deliberate introduction of animal diseases		DNA testing in order to identify the strain and origin of pathogen Forensic checks of ear tags
Illegal trade with puppy dogs	Falsified vaccine passports	Traceability Laboratory testing Road controls Targeted controls at border control posts

Animal by-products and derived products

Fraudulent/deceptive practices	Comment	Control measure
Diversion of Category 1, 2 and 3 material into the food chain	Paper traders and operators processing different categories of animal by-products to be considered for Article 9(2) official controls	Traceability Mass balance checks Targeted road controls

Animal welfare

Fraudulent/deceptive practices	Comment	Control measure
Illegal trade with puppy dogs and	Falsified documents	Traceability

cats		
Non-authorised long-distance transports of animals	Falsified journey logs, rest periods not respected No equipment for supplying feed and/or water to animals	TRACES monitoring Road controls
Illegal transport of downer cows to slaughterhouses	May occur with the knowledge of the official veterinarian	Targeted controls
Transport by illegal means	Transport on non-approved vessels Vehicles not able to maintain the cool chain	Targeted controls at border control posts

Pesticides use and plant protection products

Fraudulent/deceptive practices	Comment	Control measure
Trade with illicit products	Counterfeit, non-authorised and illegally imported or EU produced products	Traceability, formulation analysis, targeted residue controls, targeted controls at border control posts
Illicit use of pesticides	Use of non-authorised substances Unauthorised use of legal products	Formulation analysis, targeted residue controls

Quality labelling

Fraudulent/deceptive practices	Comment	Control measure
Mislabelling	Applying the organic quality label to conventional products and products which do not comply with Protected Designation of Origin (PDO), Protected Geographical Indication (PGI), and Traditional Specialties Guaranteed (TSG) specifications Addition of non-organic ingredients	Traceability of products and their ingredients throughout the entire supply chain. Verification of commercial documents across competent authorities and control bodies.
Applying processes that are not in line with organic standards	Sales of produce during conversion period as organic Use of non-authorised substances (e.g. industrial fertiliser, pesticides) Application of non-authorised processes Higher stocking densities of animals than allowed	Increased level of unannounced/targeted controls; Appropriate sampling designs allowing to distinguish between spray drift and use of pesticides. Increased number of full traceability exercises from farm to fork. Building capacity for fertiliser testing.

Plant Health

Fraudulent/deceptive practices	Comment	Control measure
Illegal import of high value plants (e.g. bonsai)	Importing plants without the proper phytosanitary certificate	Traceability
Tampering with plant passports	Falsified plant passports for transport plants to protected zones	Increased level of unannounced controls, Traceability
Imports of seeds from non-equivalent countries or declared as feed		Use of Eurostat data to verify the Combined Nomenclature (CN) Codes imported and launch controls
Tampering of recording systems or kilns for heat treatment of wood packaging material	High energy costs may be a motivator for saving energy by apply measures that are not efficient (placing of the sensor at the warmest spot instead of the coldest spot)	Target controls at the time of treatment

Supplement

Supplement 1 Questions contained in the online questionnaire use for the 2020 desk study¹²

Member State [name]

Administrative Level [central, regional, sub-regional]

Legal aspects

Please provide the text of fraud definition applicable to food fraud as used by the Competent Authority. Please provide a legal reference [free text].

Responsibilities of the competent authority

Please complete the survey for the control areas for which your authority has responsibility for the coordination, planning and performance of Article 9(2) related controls:

Coordination

Competence for legislation and policy

Competence for planning and performing controls

Control areas:

1. Food and Food Safety
2. Genetically Modified Organisms
3. Feed and Feed Safety
4. Animal Health
5. Animal By-Products
6. Animal Welfare
7. Plant Pests
8. Plant Protection Products and use of Pesticides
9. Organic Production
10. Geographical Indications (PDO/PGI/TSG)
11. Import controls

Article 9(2) related controls – control areas (Article 1(2) of Regulation (EU) 2017/625)

If arrangements are not (yet) in place, what is the timeline? [free text]

Please provide additional information on the specialised Units (organisation, responsibilities, etc.), if relevant. [free text]

Please provide additional information on the enforcement authorities (e.g. do they have specialised food fraud experts?) [free text]

Where inspectors of the Competent Authority perform investigations, please describe the process including when the case will be handed over to the prosecutor. [free text]

Planning of food fraud related controls in relation to Article 9(2)

Please provide a short description of the risk criteria applied for the planning of Article 9(2) controls, per control area [free text]:

Risk criteria applied by the Competent Authority

¹² The EuSurvey website (<https://ec.europa.eu/eusurvey/home/welcome>) was used.

Documented Procedures in relation to Article 9(2)

Regarding planning: Please indicate to what extent the planning of Article 9(2) related controls is coordinated across the 11 sectors mentioned above [free text].

Regarding the performance of food fraud related controls: What types of documented procedures are in place and what aspects are covered? [free text]

Performance of food fraud related controls in relation to Article 9(2)

[free text]

Cooperation and Coordination in relation to Article 9(2)

Please indicate if specific arrangements have been put in place in order to facilitate the exchange of information on food fraud cases between Competent Authorities? [free text]

Formalised communication lines (memorandum of understanding) [Yes/No/in preparation]

Committees/working groups/other [Yes/No/in preparation]

Please provide a short description (e.g. authorities involved) [free text].

Please indicate if specific arrangements have been put in place in order to facilitate the transmission of information on suspicion of fraud between the competent authority and police, public prosecutors and judicial authorities? [Yes/No/in preparation]

Other food fraud related activities

Please provide a short description (e.g. authorities involved) [free text].

Please provide additional information on the specialised Units (organisation, responsibilities, etc.), if relevant. [free text]

Please provide additional information on the enforcement authorities (e.g. do they have specialised food fraud experts?) [free text]

Where inspectors of the Competent Authority perform investigations, please indicate the process including when the case will be handed over to the prosecutor. [free text]

E-commerce:

Have specific measures been put in place in order to deal with fraudulent activities in relation to e-commerce? [free text]

Please provide a short description of the measures taken in order to detect fraud in the area of e-commerce [free text].

Goods entering the Union - Suspicion of non-compliance and intensified official controls (Article 65)

Please provide information on the arrangements put in place in order to implement Article 65 (e.g. procedures, guidelines) [free text].

Additional information

Is there any other relevant information that you consider important in the context of this survey? [free text]

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