Safety and Transparency

Action Plan for Consumer Protection in the Feed Chain

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1. 1. Duty of feed producers to obtain authorisation

Companies that produce, treat or market fats or fatty acids for feed from fats, oils or fatty acids will be subject to a duty to obtain authorisation. This means that every company will have to be inspected on-site by the competent authority prior to commencing operation.

This authorisation will only be granted if:
- the company management is proved to have the necessary technical competence;
- the company proves that the possibility of undesired substances entering the fats and fatty acids that are intended for the production of feed is excluded to the extent that the maximum limits for undesired substances, in particular for dioxin, that are laid down in the Animal Feed Ordinance are complied with;
- fats and fatty acids for feed are only manufactured and treated in facilities that are used solely to manufacture food or feed.

To meet the above requirements, the following will, in particular, be required:
- the fats and fatty acids for feed will have to be tested regularly to ascertain the levels of undesired substances;
- the results of these analyses will have to be documented, reported to the competent authorities without delay and preserved for at least two years;
- retained samples of each batch marketed will have to be taken and preserved for at least a year and the quantities of the respective batches documented.

This duty to obtain authorisation will also support the risk-orientated controls carried out by the authorities. In view of the fact that we have a European internal market, we will also advocate introducing a pan-European duty for such companies to obtain authorisation.
2. Separation of production flows

Fats and fatty acids for feed must not be manufactured in facilities that also produce substances for the technical industry.

We will ensure that this is the case at national level ahead of a pan-European regulation on the authorisation of companies that manufacture or market fats and fatty acids for feed. To this end it is envisaged that:

- fats and fatty acids for feed should be stored separately from substances that are not food or feed;
- fats and fatty acids for feed should only be permitted to be manufactured and treated in facilities that are used solely to manufacture food or feed, and that are separated from facilities used to manufacture substances other than food or feed;
- institutions in which fats and fatty acids for feed are stored should not be permitted to be connected (e.g. via pipes or ducts) with storage facilities for substances that are not food or feed, thus preventing an exchange of storage material. The same should apply in respect of all transportation.

We will also advocate that binding standards on separating the manufacture of substances intended for the food or feed sectors from substances intended for other uses should be introduced throughout Europe.
3. Expansion of legal requirements in respect of feed controls

Under Community law, it is the duty of feed operators to ensure that the feed they manufacture and market complies with the legal regulations. It is consequently the feed operators who are primarily responsible for ensuring that the feed they produce and market, and as a result the food originating from animals fed with this feed, is safe. It is the task of the competent supervisory authorities to monitor and check whether the feed operators comply with the legal requirements.

Systematic tests constitute an important contribution to further improving food safety.

The Federal Ministry of Food, Agriculture and Consumer Protection (BMELV) will reinforce companies’ internal controls with legal requirements and provide that, in respect of feed, companies must carry out an input test for dioxin, dioxin-like PCBs and other undesired substances that are hazardous to health, such as persistent chlorinated hydrocarbon compounds and certain natural toxins. Feed classified as low-risk (for example freshly harvested grain) is to be exempted from the duty to conduct input tests. The results of the tests will have to be be submitted to the competent supervisory authorities.
4. **Duty of private laboratories to report**

Under current Community law, food and feed operators who have manufactured, treated or marketed unsafe food or feed, or who have grounds for assuming so, have a duty to report this to the competent authorities.

This duty to report only covers food and feed operators. This does not go far enough.

We believe that it is necessary to expand the circle of those subject to a duty to report to include those in laboratories responsible for conducting analyses of feed or food. This would incorporate into the circle of those subject to a duty to report a group of persons who would not involved in the manufacture, treatment or marketing of the investigated feed and who would consequently not be pursuing any personal economic interests.

We will therefore introduce this expanded duty to report at national level and anchor it in the Food and Feed Code.
5. A binding positive list of feedstuffs

A positive list provides an exhaustive list of the feed materials that are permitted to be processed into compound feedstuffs. It is only possible to introduce a compulsory list such as this at EU level.

We advocate creating a positive list of feed materials at European level. The aim of a positive list must be to improve safety and transparency on the feed market. It must therefore be transparent, exhaustive, and binding.

At European level, there is currently only a non-exhaustive and non-binding catalogue of important feed materials.

In respect of a positive list, it must be ensured that:
- only feed materials tested by independent experts are included;
- the designations laid down for labelling the respective feed materials are binding;
- the manufacturing methods and the raw materials and aids used for manufacture are clearly described; and
- it is only permitted to use feed materials that are on the positive list.

Germany already has a positive list.

The Executive Committee of the German Agricultural Industry has created a recognised positive list of feed materials over the last ten years; Austria also participates in this system.

The feed sector has, within the quality assurance system, committed itself to using this positive list. This entails using only feed materials that are on the list, and ensuring that these materials are correctly labelled. In addition to this, manufacturers must provide their customers with so-called “safety data sheets” containing specific information on the manufacturing process, on possible risks, and on internal controls.
6. Duty to cover the risk of liability

Regulation (EC) No. 183/2005 on Feed Hygiene stipulates that feed operators are liable for infringements of the pertinent legal regulations on feed safety, and that they must, with the exception of primary-production agricultural holdings, have a financial guarantee, insofar as this is stipulated by Community legislation. The Commission has not, however, made use of this regulatory option thus far.

There is urgent need for action at EU level in this area.

Irrespective of future EU legislation, it is, however, important at this juncture to ensure that every German feed operator has a company or product liability insurance or other financial guarantee that pays out when required to.

Third-party liability insurances are compulsory in some particularly high-risk sectors. As demonstrated once again by recent events, the operation of feed companies belongs in this category. This is particularly the case if feed that does not comply with the legal regulations is added, albeit in small amounts, to other feed, leading to very large quantities of non-marketable feed being manufactured and marketed. This then affects a large number of customers, in particular farmers, who are not permitted to use this feed or to market food originating from animals fed with this feed. This may result in these customers incurring considerable economic damage.

It must therefore be made compulsory for producers to take out a corresponding employer and product liability insurance or equivalent cover against the risk of liability.
7. **Revision of the system of penalties**

The system of penalties in the Food and Feed Code (Lebensmittel- und Futtermittelgesetzbuch – LFGB, sections 58 - 62), including the classification of infringements as either a criminal or an administrative offence, has remained predominantly unchanged since it replaced its precursor, the Act on Foods and Commodities (Lebensmittel- und Bedarfsgegenständegesetz – LMBG). In some cases, the scale of penalties has been adapted (for example the administrative fine for negligently placing rotten meat on the market was raised from 20,000 to 50,000 Euros in 2009).

Since the Act on Foods and Commodities was enacted in 1974, there have been significant changes in the food and feed industries.

- The economic flows have become more complex, with supply chains becoming increasingly interconnected due, among other factors, to the development of the EU and to globalisation. The result: products, which may be composed of different input products, which may in turn consist of a mixture of different components, may be delivered to a large number of customers.
- If the products do not comply with legal requirements, this can affect a large number of customers (individual components to feed manufacturers, feed to farmers). The result: The customer’s products, manufactured using the products supplied, are not permitted to be marketed (e.g. due to companies being closed), thereby potentially causing considerable and far-reaching economic damage.
- The advanced division of labour in the feed industry produces a comparably diffuse effect; this may mean that individual products in the feed industry quickly affect a large number of consumers in several countries.

In view of these consequences, the system of penalties of the Food and Feed Code is to be examined to see whether it is still appropriate, both overall and in respect of comparable areas of legislation.

These problems will be discussed in an initial step with legal experts from politics, consumer bodies, industry, science and administration.
8. Expansion of dioxin monitoring – establishment of an early-warning system

In Germany, records are made of data on dioxin levels in foods, feed and the environment. In future, this data is to be brought together and evaluated in a joint data pool at the Federal Office of Consumer Protection and Food Safety (Bundesamt für Verbraucherschutz und Lebensmittelsicherheit – BVL). An early-warning system for dioxins is to be set up, based on a corresponding agreement with the federal states. This will enable problems to be recognised at an earlier stage and measures to counter the problems instigated more quickly. It is also intended to include the results from the industry's internal controls in the joint data pool.

- **Feed** is tested for dioxins in the feed sector using a risk-orientated approach, in accordance with the Outline Plan for Control Activities. The results are evaluated by the Federal Office of Consumer Protection and Food Safety and published annually on the BMELV’s home page. Since 2004, a dioxin status survey has also been carried out each year; in this survey, representative feed samples are tested for dioxins, furans and PCBs. With the results from this survey, it is possible to follow the development of the situation in the feed sector.

- The data on **food** is recorded by the federal states in the course of coordinated monitoring programmes, risk-orientated controls and routine controls. The data from the coordinated monitoring programmes is collected and evaluated by the Federal Office of Consumer Protection and Food Safety. The federal states are currently not subject to a duty to report the remaining data (~50 % of the results). In future, a **duty to report** is to be introduced in order to ensure that all the data on foodstuffs recorded by official food monitoring authorities is regularly submitted to the Federal Office of Consumer Protection and Food Safety.

- The Federal Environment Agency (Umweltbundesamt), which is subordinate to the Federal Ministry for the Environment, has been compiling data on dioxin in its DIOXIN database for 15 years: it records data on contamination in the environment (e.g. soil, air, biota, waste) and in food and feed, and on human exposure. The data is administered and evaluated by the Federal Environment Agency and the Federal Office of Consumer Protection and Food Safety and published on the www-pop-dioxindb.de portal.
• Results from the industry’s **internal controls** are in future to be included in the joint data pool as well.

• The **intervals at which the data is evaluated** are to be reduced. In order to make the test results on dioxins in food and feed more up-to-date and transparent, the Federal Office of Consumer Protection and Food Safety is in future to evaluate the data submitted to the Federal Office every three months in the form of quarterly reports. This will enable conspicuous congeneric patterns, which indicate that material may be contaminated, to be recognised earlier. To this end a **congeneric pattern data base** of contamination results and the ubiquitous background contamination of environment, feed and food samples is to be set up at the Federal Office of Consumer Protection and Food Safety.
9. Improvement of the quality of food and feed controls and inspection

Quality management in feed and food controls and inspection must be improved significantly. The organisation and implementation of official controls must, in a transparent quality assurance process, be subjected to an independent evaluation by a cross-state auditing team which also includes representatives from the Federal Government.

The demands placed on the official feed and food supervision system have increased greatly in recent years. Global trade with ever greater product diversity, modern production processes and complex internal control systems in the feed and food industry require control standards and strategies that are adapted to these new conditions (“Controls on equal footing”). The conventional structures, with quality management systems located mainly at district level, and with the ministry of the respective federal state having the sole competence for technical supervision, are no longer adequate. Internal auditing within an authority is not sufficient for the authority to evaluate and improve its own work processes in accordance with the principles of “Good Control Practice”. The standards that are to be audited should also not be restricted to the organisation and implementation of official feed and food controls and inspection, but should instead also include the basic and advanced training of control personnel.

The Federal Government and the federal states must reach an agreement that a meaningful percentage (20%) of the audits required under Community law should be carried out by cross-state auditing teams which include representatives from the Federal Government. The specific structure can be decided upon in a Federal Government-Federal State Working Group, which would include participants from the Federal Office of Consumer Protection and Food Safety.

The necessary requirements could alternatively also be laid down in the General Administrative Regulation on Controls and Inspection” (Allgemeinen Verwaltungsvorschrift Rahmen-Überwachung“ (AVV-Rüb)).
10. Transparency for consumers

We will also draw consequences from the current dioxin-related events for the forthcoming amendment of the Consumer Information Act (Verbraucherinformationsgesetzes - VIG). We want the competent authorities to be required, without delay and without room for discretion, to publish the results they have from official food controls and inspection on all infringements that have occurred due to maximum limits being exceeded. Consumers must know what foods are contaminated with prohibited harmful substances. If clear and unequivocal legal requirements are not complied with, the consumers’ interest in receiving information has definite priority over the interests of the entrepreneurs concerned.

We will also ensure that other test results can be published more quickly and with less red tape. The experts agree: anyone wishing to improve consumer information must also reduce the lengthy hearing procedure. In cases of crisis, rapid information is of benefit not only to consumers but also and particularly to reputable farmers and entrepreneurs who have complied with existing regulations and limit values.

Further details will be presented in the Draft Act on the Future Development of the Consumer Information Act.

An internet platform under "www.lebensmittelwarnung.de" is being set up by the federal states to improve communication if an official warning is issued about unsafe food.