Animal feed: hygiene requirements and traceability of feed

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The Commission presents a report on existing legal provisions and practices in the Member States and at Community level relating to liability in the food and feed sectors and on feasible systems for financial guarantees in the feed sector at Community level in accordance with Article 8 of Regulation (EC) No 183 /2005.

The principle that feed business operators are liable for any infringements of the relevant legislation on feed safety and for the direct consequences of the withdrawal from the market, treatment and/or destruction of any feed, animals and food produced is laid down in Regulation (EC) No 183/2005. However, there is no provision in the Regulation with regard to financial guarantees in the feed sector. The purpose of the report is to set the scene for an effective system of financial guarantees for feed business operators.

Firstly, the report examines the existing legal provisions, systems and practices relating to liability and to financial guaranteesin the feed and other sectors. Secondly, it proposes a feasible and practicable system of financial guarantees at Community level. The report analyses various options for financial guarantees.

Food and feed business operators at all stages of production, processing and distribution within the business under their control must ensure that food or feed products satisfy the requirements of food law which are relevant to their activities and must verify that such requirements are met. Although liability rules concerning food law in general must be adopted at national level, feed business operators are liable under Community legislation for any infringements of the relevant legislation on feed safety. However, they are not required to submit proof of a financial guarantee to ensure that they can pay the costs in case of liability. Except for expenses arising from additional official controls, Community legislationdoes not specifically govern liability in the food sector, instead requiring the Member States to lay down measures themselves. With regard to the feed sector, there are Community-specific grounds for liability in the field of feed hygiene, but the practicability of this depends on national legislation, which determines the legal relationships and obligations that constitute liability as well as the facts, circumstances and conditions under which such relationships and obligations arise. The national systemssurveyed are characterised by certain differences as regards liability. Moreover, withdrawals ordered by the competent authorities generally depend on the legislation of the Member State, risk assessment and administrative discretion.

Consequently this means that the financial risk of a feed business operator related to liability claims for possible feed withdrawals and disposal may differ by country.

Financial guarantees in the feed sector – such as in the form of insurance, bank guarantees, savings, pooling and funds – **are in principle a technically feasible option**. However, the degree to which it would in practice be possible for feed business operators to obtain cover depends on the designof any system of financial guarantees. There is a risk that a system of financial guarantees, not appropriately designed and not taking into account criteria for insurability, could lead to a situation where cover could be almost unobtainable on the private market or only for prohibitively high premiums. **Limits of coverage** and **trigger of financial guarantees** should be clearly established.

Although product liability insurance exists in some Member States, little practical experience exists especially with **recall insurance in the feed sector**. At present there is no accurate knowledge on where the premium level would be set on such insurance, for example when it would cover events of large-scale

feed withdrawal and disposal. The deductible would be set to a considerably high level. Some schemes are nevertheless either already operational or under preparation in the compound feed sector. Most insurersare at present very reluctant to enter this market, although some seem to be willing to take this risk under very strict underwriting conditions. The main question therefore is not whether such insurance cover for feed withdrawals and disposal is available (it is in some countries), but how, when and under what conditions would major European insurers be willing to enter this market.

The insurance sector is opposed to a compulsory system of financial guarantees in the feed sector - in general, introduction of any compulsory insurance would be strongly opposed by the insurance sector due to obvious problems related to such solutions. The national insurance associations cautioned against any developments in product recall insurance for the feed sector. Moreover, they doubt that such a system would enable feed business operators to fulfil the requirements as regards financial guarantees or meet the policy objectives of transferring withdrawal and disposal costs from the public to the private sector. Nevertheless, product liability insurances already exist in some Member States and their structure and scope is not far from the coverage sought here.

A large number of representatives of feed business operators are also opposed to a system of financial guarantees and, if such a system were to be set up, they would prefer it to be voluntary. One advantage of a **voluntary system** is the possibility of concluding contracts according to the specific needs and conditions of individual operators, without pushing out of business operators that are not willing or able to participate. The main disadvantages of this option are that the premium would be likely to be high, and if not mandatory, there might be a low percentage of covered operators, even more so due to the high level of the premium. If that were the case, liable operators affected by an incident but not covered by financial guarantees would have to find the means to afford the withdrawal and disposal costs. If they could not afford them or did not pay, this would ultimately compromise the objective of avoiding the spending of public funds for feed safety incidents. Therefore it is unlikely that such a system would reduce the financial burden on public authorities in large-scale crises, and the pressure on governments to support affected businesses would remain.

Some competent authoritiessupport a system of financial guarantees, but are divided over whether such a system should be compulsory or not.

The measures laid down in the Regulation on feed hygiene, such as provisions for the sourcing of feed, traceability, hygiene, HACCP principles and registration, together with other food safety legislation, are important steps taken to reduce the risks and prevent the occurrence of accidents. The full implementation of all those measures by feed business operators should help to reduce the likelihood of major feed and food incidents similar to those witnessed in recent years. The new official controls framework, which is currently being implemented by the competent authorities for verifying business operators' compliance with the law, could become another efficient tool for strengthening feed and food safety.

The Commission states that, due to the complexity of the issue, it proposes to launch a broad public debate about the different options within two years of the publication of this report, followed by further analysis of the costs of financial guarantees and the assessment of the possible outcome of such measure.