



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
Ares(2017)

## **Opinion**

**Title: Fitness Check/ General Food Law**

**Overall opinion: POSITIVE**

### **(A) Context**

A series of food crises prompted the EU to take action in 2002 to restore consumers' trust in food. The General Food Law (GFL) established a legal framework with common definitions and general principles. The GFL also set up the European Food Safety Authority and created tools to prevent and manage food crises.

The GFL underpins a lot of secondary legislation, including 29 legislative acts in the area of food law. These acts, together with the GFL, form the scope of this fitness check. Other ongoing and planned evaluations look at other elements of EU secondary food legislation, including nutrition and food contact materials.

This fitness check finds that the principle based legislation is fit for purpose. It has reportedly been successful in preventing and containing food crises. It has facilitated movement of food within the EU, notably thanks to a traceability system. But the fitness check also identifies shortcomings. These include inconsistencies in secondary legislation, uneven implementation in the Member States, and bottlenecks in the non-harmonised part of the food market.

### **(B) Main considerations**

**The Board acknowledges the complexity of this fitness check and the difficulty of delineating the acts the EU secondary food legislation implementing the GFL. It underlines the importance of complementing the conclusions of this fitness check with the findings of the forthcoming sectoral evaluations of the EU food chain law.**

**The Board gives a positive opinion, but considers that the report should be improved and complemented with respect to the following aspects:**

- (1) The report does not satisfactorily explain how the scope of the fitness check was decided.**
- (2) Conclusions about the effectiveness of the GFL are not sufficiently anchored in evidence or based on clear success criteria.**
- (3) The report does not sufficiently take up issues around how the precautionary principle has been applied at EU and national levels.**
- (4) The report does not sufficiently explore how to reduce regulatory costs and simplify the EU food acquis.**

## **(C) Further considerations and recommendations**

### **(1) Scope**

The report should more clearly lay out what the fitness check focuses on and why, including its depth and timing. The report should explain the reasoning behind including these 29 food safety related acts, so that a reader can understand what questions the fitness check should reasonably be able to address. It should also more clearly place this evaluation into the broader context of the 'cascade approach' of evaluating the food safety acquis. When doing so, it should elaborate on how subsequent evaluations are going to take up issues that the present fitness check does not address, e.g. problems in implementation of secondary legislation.

The report should better justify the timing of this evaluation. In particular, it should explain why this fitness check does not align with a currently ongoing evaluation of EFSA. The report should clarify what the expected added value will be of the ongoing EFSA evaluation on top of what this fitness check provides. It should also clarify to what extent any intermediate findings from this ongoing evaluation may have fed into the present fitness check.

### **(2) Measuring effectiveness and success**

The report should more clearly identify success factors when evaluating the GFL and assessing its effectiveness. The report puts a lot of emphasis on the absence of crises or the speed at which they are resolved as an indicator of success. It should expand on elements that contribute to evaluating proportionality, whether the GFL functions properly and where there might be bottlenecks.

The report supports the conclusion that, overall, the GFL provides a robust framework for an effective food safety acquis and points to issues that require further exploration. It should indicate what criteria it applies to conclude that the definitions and principles set in the GFL remain relevant. It should provide additional elements and possibly figures on the different principles underlying how the GFL functions, covering both risk assessment and risk management. In this respect, international comparisons may offer valuable insights through objective and measurable performance indicators.

### **(3) Application of the precautionary principle**

The report should further expand on the precautionary principle in the area of food safety and analyse how it has been applied across the EU to prevent crises. It should further clarify the distinction between the precautionary principle and "other legitimate factors" foreseen by the GFL in the face of potentially negative effects on public health and in the possible absence of conclusive scientific evidence. The report should expand on how risk management functions at the EU level. In this regard as well, references to international comparisons may provide useful supporting information.

### **(4) REFIT – efficiency and potential for simplification**

The report contains evidence in several places on efficiency and regulatory costs for businesses. As a REFIT initiative, it should draw balanced conclusions from this evidence, particularly for SMEs and microenterprises, It could also strengthen its findings and conclusions on the potential to simplify the food safety acquis. The fitness check should also better indicate what lessons have emerged from the analysis. It could indicate possible future directions for improvements, such as non-harmonised areas of the food safety law, the functioning of EFSA or the coherence and efficiency of authorisation processes across specific sectors.

*Some more technical comments have been transmitted directly to the author DG.*

**(D) RSB scrutiny process**

**The lead DG is advised to ensure that these recommendations are taken into account in the report prior to launching the interservice consultation.**

Full title	REFIT – 'Fitness Check' of Regulation (EC) No 178/2002 (the General Food Law)
Reference number	2015/SANTE/427
Date of RSB meeting	11/10/2017