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Legal aspects and control purchase— Petr CEJKA

Contract number 2017 96 05 – New Food Investigation Techniques –
Phase II - *Course 2a: E-Commerce of food standard*

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BTSF Legal aspects and control purchase

- New OCR
- Legal basis for Control Purchase
- Making control purchase – CZECH STYLE
- Case study



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Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (Official Controls Regulation)

applies since 14/12/2019

Article 36 - Sampling of animals and goods offered for sale by means of distance communication

http://ec.europa.eu/food/safety/official_controls/legislation_en

https://ec.europa.eu/food/sites/food/files/safety/docs/oc_qa_ocregulation_20170407_en.pdf

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Control Purchase – A 36 OCR

Regulation 2017/625 - Article 36

Sampling of animals and goods offered for sale by means of distance communication

1. In the case of animals and goods offered for sale by means of distance communication, samples ordered from operators by the competent authorities **without identifying themselves** may be used for the purposes of an official control.
2. Competent authorities shall take all steps to ensure that **the operators** from whom the samples are ordered in accordance with paragraph 1:
 - (a) **are informed** that such **samples have been taken** in the context of an official control and, where appropriate, are analysed or tested for the purposes of such official control; and,
 - (b) where the samples referred to in paragraph 1 are analysed or tested, **are entitled to exercise the right to apply for a second expert opinion provided for in Article 35(1).**

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Control Purchase – A 35 OCR

Regulation 625/2017 - Article 35 - *Second expert opinion*

1. The competent authorities shall ensure that **operators, whose animals or goods are subject to sampling, analysis, test or diagnosis in the context of official controls, have the right to a second expert opinion**, at the operator's own expense.

Such right shall entitle the operator to request a documentary review of the sampling, analysis, test or diagnosis by another **recognised and appropriately qualified** expert.

2. Where relevant, appropriate and technically feasible, having regard in particular to the prevalence and distribution of the hazard in the animals or goods, to the perishability of the samples or the goods and to the amount of available substrate, **the competent authorities** shall:

(a) when taking the sample, and if so requested by the operator, ensure that a sufficient quantity is taken to allow for a second expert opinion and for the review referred to in paragraph 3, should this prove necessary; or,

(b) where it is not possible to take a sufficient quantity as referred to in **point (a)**, **inform the operator thereof.**

(...)

3. Member States may decide that, where there is a dispute between the competent authorities and the operators based on the second expert opinion referred to in paragraph 1, operators may request, at their own expenses, the documentary review of the initial analysis, test or diagnosis and, where appropriate, another analysis, test or diagnosis by another official laboratory.

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Control Purchase – national provisions

CZ - Act 255/2012 Coll., on controls

Section 8 letter b) – Inspector is authorized within the framework of the official control to carry out a control purchase, (...).

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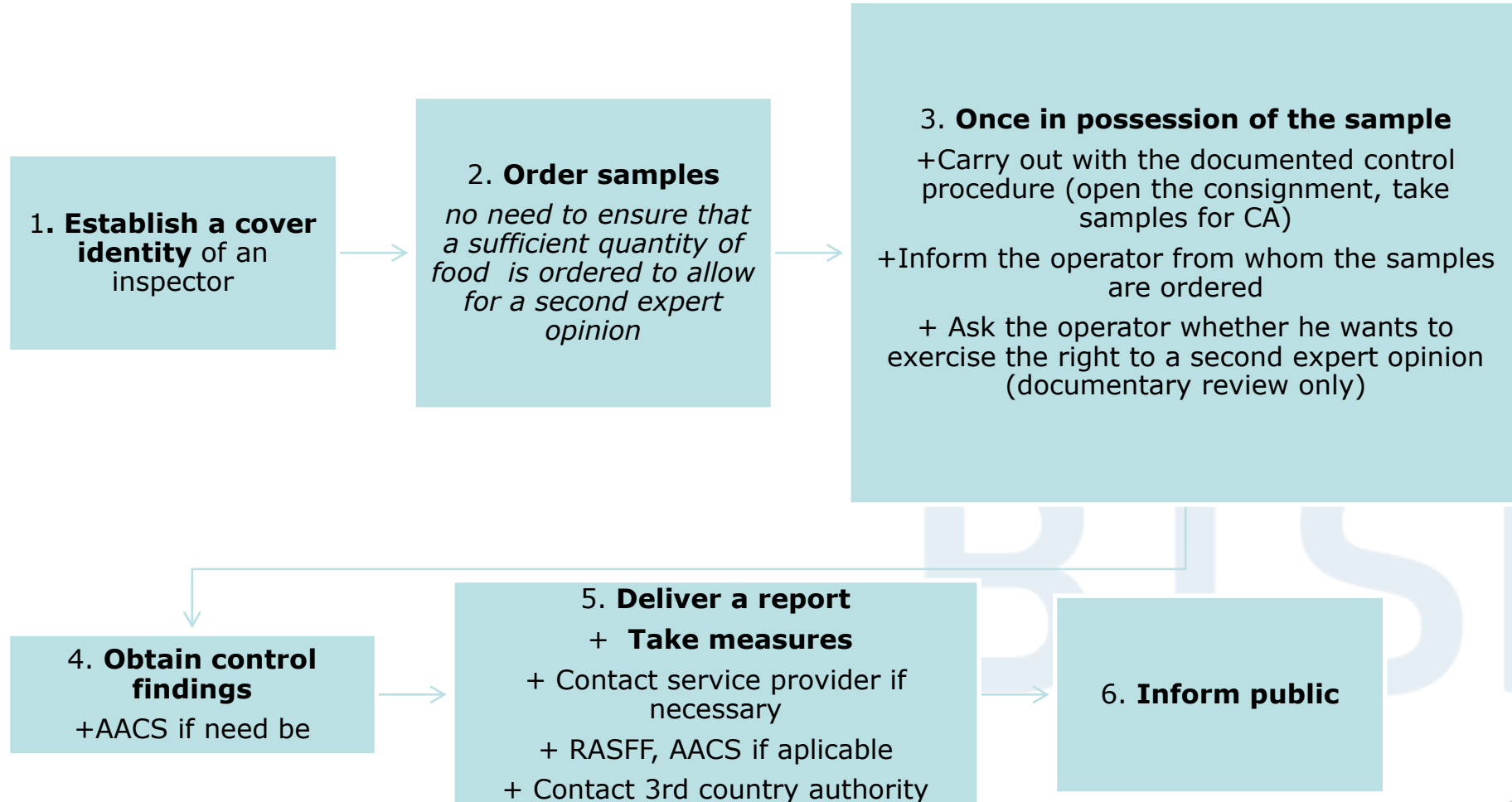
CZ – Decree 231/2016 Coll., on sampling and methods of analysis

Section 4 (1) (e) – Sampling is carried out by control purchase.

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CZ – Act on CAFIA – Operator covers costs for a non-compliant sample ordered by mystery shopping (it includes price of the sample, delivery costs if any, costs for analyses).

BTSF Control purchase – step by step (Article 36 OCR)



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Making control purchase – CZECH STYLE

- 1. Phase** - An inspection team is nominated; Inspector's cover identity is established (e-mail address, a SIM card may be purchased); When needed - P.O.BOX is established
- 2. Phase** - Control purchase is conducted (NOW - standalone computer; CAFIA used to order from internet cafe, over a mobile operator – in order to cover CAFIA's Internet Protocol address = CAFIA online identity)
- 3. Phase** - Product is delivered - Official control starts – notice of the beginning of the control is given (at the premises, by mail) – information that the sample was taken/will be analysed or tested + right to the second expert opinion
- 4. Phase** - if possible, the consignment is opened in the presence of the inspected person; If not, in the presence of the inspection team; Required reports are made
- 5. Phase** - Samples for CA are taken; control samples are sent to the accredited laboratory
- 6. Phase** - Inspected person is informed of the outcome of analysis and report is handed over; if needed, information to the public **or** use of RASFF or AACS

BTSF Making control purchase

Case study - MAXXES (1)



An unhappy consumer contacts the Control authority with a complaint:

The website <http://uspechmuze.cz/> offering food supplements designed for sexual enhancement is not trustworthy...



Inspector checked information on webpage:

Information on the website **non-compliant** with both Reg. 1169/2011

and Reg. 1924/2006 (**medicinal claims** and **non-authorised health claims**)

Maxxes is especially recommended to men whose **erectile dysfunction**

is due to high stress levels, or mental and physical exhaustion.

Inspectors decided to carry out a control purchase

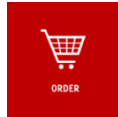
BTSF Case study - MAXXES (2)



An inspection team nominated
inspector's hidden identity established
(name, e-mail address, mobile with special SIM card)



Product ordered



Product delivered to the P.O.BOX and paid cash in the Post office



The consignment opened in the presence of the inspection team.



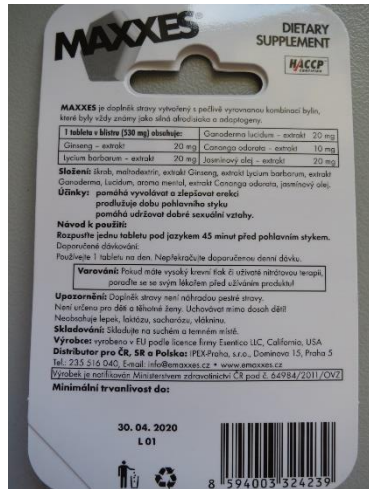
BTSF Case study - MAXXES (3)

The consignment contained 10 one-blister packagings
(each tablet 530 mg) of food supplement
MAXXES



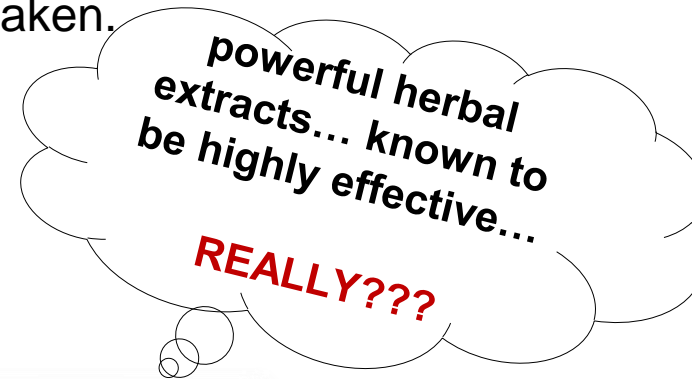
BTSF Case study - MAXXES (4)

- The required reports were made and photos were taken.
- List of ingredients checked...



INGREDIENTS:

- Star Anise extract > 25 mg
- Ginseng extract > 20 mg
- Cinnamon extract > 20 mg
- Reishi extract > 20 mg
- Goji berries extract > 20 mg



Product sent for laboratory analysis

BTSF Case study - MAXXES (5)



FBO informed about non compliances on website and about control purchase



Laboratory analysis revealed the undeclared presence of unauthorized substance sildenafil – 48,4 mg per 1 tablet in one lot and 30,5 mg in another lot
(*Sildenafil*, medicine sold e.g. under the brand name *Viagra*, used to treat dysfunction)



The FBO informed about the results of the laboratory analysis by
and asked to make physical inspection possible



BTSF Case study - MAXXES (6)



Physical inspection in the premises of the FBO
Measures to take: withdrawal from the market
Traceability: Distribution of the product to
Bosnia and Herzegovina, Croatia, Poland and Slovakia.



Product notified to RASFF (Alert Notification 2017.1029)



CAFIA press release informing about this case



CAFIA inspectorate in Prague launched administrative proceedings (fine



BTSF Case study - MAXXES (7)

On the website <http://uspechmuze.cz/> still placed warning



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Summary



- General food law applies also to e-FBOs
- Controls of information made available by means of distance communication are possible in all MSs
- New OCR (Reg. 2017/625) introduces control purchase – applies from 14/12/2019
- Administrative Assistance and Cooperation – crucial for effective official controls of distance selling

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Thank you

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