



**Srbija: Bezbednost hrane - novi Zakon o službenim kontrolama ili nastavak sage o troškovima postupaka službenih kontrola**

**Serbia: Food Safety - A New Law on Official Controls or Continuation of the Saga on the Costs of Official Control Procedures**

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# FOOD SAFETY

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Authors: Ivan Milošević, Partner, Janez Vončina, Partner

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Zdrava društva počivaju na principu vladavine prava. Ovaj princip, između ostalog, znači da se ovlašćenja vladinih službenika zasnivaju na zakonu i da su ista ograničena zakonom. U slučaju troškova u postupcima službenih kontrola hrane iz uvoza za čije sprovođenje je nadležno Ministarstvo zdravlja, propisi određuju da troškove plaća onaj kome odluka kojom se okončava postupak nije na korist.

Državna administracija smatra da uvoznik uvek plaća troškove, bez obzira na to što rezultati analiza uzoraka potvrđuju da je hrana koja se uvozi u skladu sa zahtevima iz primenjivih propisa. Ovaj stav državne administracije se zasniva na argumentaciji da se postupci službenih kontrola koji se sprovode u cilju zaštite javnog interesa pokreću na zahtev stranke - uvoznika, a koji stav se teško može braniti. Saga o troškovima traje godinama i svi su izgledi da ni novi Zakon o službenim kontrolama neće razrešiti ovo pitanje

Sound societies are based on respect of the rule of law. Among other things, this principle means that the powers of government officials must be grounded in law and limited by law. In the case of costs incurred in official control procedures for imported food, for which the Ministry of Health is competent, the regulations provide that the costs are borne by the party for whom the decision rendered in the procedure is unfavourable.

The state administration takes the position that the importer always bears the costs, regardless the fact that laboratory analyses confirm that the imported food complies with the applicable regulations. This position is based on the argument that official control procedures carried out in the public interest are initiated at the request of the party — the importer, a view that is difficult to defend. The saga concerning costs has lasted for years, and all indications suggest that even the new Law on Official Controls will not resolve this issue.

Za čitaoce koje nisu mogli iz uvodnog dela da zaključče o čemu se radi:

Pre nego uvoznici uvezu hranu, Ministarstvo zdravlja na mestima carinjenja sprovodi postupak službene kontrole <sup>1</sup> . Službene kontrole u smislu novog Zakona o službenim kontrolama ("Sl. glasnik RS", br. 109/2025) jesu aktivnosti koje sprovodi Ministarstvo poljoprivrede, šumarstva i vodoprivrede odnosno Ministarstvo zdravlja ili ovlašćeno telo radi provere usaglašenosti subjekata sa ovim zakonom i zahtevima propisanim u oblastima na koje se ovaj zakon primenjuje, kao i provere da li životinje ili roba ispunjavaju te zahteve, uključujući i zahteve za izdavanje službenog sertifikata, odnosno službene potvrde.

Novim Zakonom o službenim kontrolama propisano je da se odredbe ovog zakona primenjuju na službene kontrole koje se sprovode radi provere usaglašenosti sa propisima kojima se uređuje oblast hrane i bezbednosti hrane u bilo kom delu proizvodnje, prerade i stavljanja na tržište, uključujući uvoz, izvoz, primarnu proizvodnju, doradu, obradu, pripremu, skladištenje, transport, prodaju ili snabdevanje potrošača životinjama i robom.

For readers who could not infer from the introduction what this is about:

Before importers bring food into the country, the Ministry of Health conducts an official control procedure at the place of customs clearance <sup>2</sup> . Under the new Law on Official Controls ("Official Gazette of RS", no. 109/2025) "official controls" are activities carried out by the Ministry of Agriculture, Forestry and Water Management or the Ministry of Health, or by an authorized body, for the purpose of verifying compliance of operators with this law and with requirements prescribed in the areas to which this law applies, as well as verifying whether animals or goods meet those requirements, including requirements for issuing an official certificate or official confirmation.

The new Law on Official Controls prescribes that its provisions apply to official controls carried out to verify compliance with regulations governing the area of food and food safety at any stage of production, processing and placing on the market, including import, export, primary production, treatment, processing, preparation, storage, transport, sale or supply of animals and goods to consumers.

Do donošenja Zakona o službenim kontrolama, način sprovođenja službenih kontrola hrane uz uvoza koja podleže sanitarnom nadzoru nije bio regulisan nijednim propisom.

Saga o ovom postupku i troškovima kreće 2009-te godine, odnosno donošenjem Zakona o bezbednosti hrane “Sl. glasnik RS”, br. 41/2009) – („Prva verzija ZoB“).

Stupanjem na snagu Prve verzije ZoB prestao je da važi Zakona zdravstvenoj ispravnosti životnih namirnica i predmeta opšte upotrebe (“Sl. list SFRJ”, br. 53/91 i “Sl. list SRJ”, br. 24/94, 28/96 i 37/2002 i “Sl. glasnik RS”, br. 101/2005 - dr. zakon, 79/2005 - dr. zakon i 41/2009 - dr. zakon). Ovim zakonom je bilo propisano:

1. kako se pokreće postupak utvrđivanja zdravstvene ispravnosti namirnica koje se uvoze;
2. način sprovođenja ovog postupka i ovlašćenja organa koji sprovodi postupak zdravstvenog nadzora da uzima uzorke i
3. da uvoznik snosi troškove ispitivanja i utvrđivanja zdravstvene ispravnosti namirnica.

Until the adoption of the Law on Official Controls, the manner of conducting official controls of imported food subject to sanitary supervision had not been governed by any regulation.

The saga concerning this procedure and its costs began in 2009 with the adoption of the Food Safety Law (“Official Gazette of RS”, no. 41/2009) - (“First version of the FSL”).

Upon its entry into force, the Law on the Health Safety of Foodstuffs and Items of General Use (“Official Gazette of SFRY”, no. 53/91 and “Official Gazette of FRJ”, nos. 24/94, 28/96 and 37/2002 and “Official Gazette of RS”, no. 101/2005 – other law, 79/2005 – other law and 41/2009 – other law) ceased to apply. That former law prescribed:

1. how the procedure for determining the health safety of imported foodstuffs was initiated;
2. the manner in which the procedure was conducted and the powers of the authority conducting sanitary supervision to take samples; and
3. that the importer bears the costs of testing and determining the health safety of foodstuffs.

Na osnovu člana 32 stav 2 ovoga zakona, tadašnji savezni ministar za rad, zdravstvenu i socijalnu politiku je doneo Naredbu o visini i načinu plaćanja naknade za pokrivanje troškova ispitivanja i utvrđivanja zdravstvene ispravnosti životnih namirnica i predmeta opšte upotrebe koji se uvoze (“Sl. list SRJ”, br. 9/97, 24/97 i 20/99 „Naredba“).

Tačkom 1 Naredbe bilo je propisano da za pokriće troškova ispitivanja i utvrđivanja zdravstvene ispravnosti životnih namirnica i predmeta opšte upotrebe koji se uvoze uvoznik plaća naknadu, koja obuhvata:

1. naknadu za pokrivanje troškova pregleda, uzimanja i slanja uzoraka na analizu po grupi proizvoda čiji se pregled vrši, odnosno od kojih su uzeti uzorci radi ispitivanja zdravstvene ispravnosti;
2. naknadu za pokrivanje troškova laboratorijskih ispitivanja uzoraka koji se, na zahtev saveznog sanitarnog inspektora, vrše radi utvrđivanja zdravstvene ispravnosti pošiljke.

Stupanjem na snagu Prve verzije ZoB 10.06.2009. godine postupak koji reguliše službene kontrole hrane iz uvoza koji sprovodi Ministarstvo zdravlja je ostao da „lebdi u vazduhu“. Nijednim zakonom nije bilo propisano kako se pokreće postupak i koja su ovlašćenja sanitarnih inspektora.

Pursuant to Article 32 paragraph 2 of this law, the competent federal minister adopted a Regulation on the amount and method of payment of fees for covering the costs of testing and determining the health safety of imported foodstuffs and items of general use (“Official Gazette FRY”, nos. 9/97, 24/97 and 20/99 “the Regulation”).

Point 1 of the Regulation provided that, to cover the costs of examination and determination of health safety of imported foodstuffs and items of general use, the importer paid a fee covering:

1. the costs of inspection, sampling and dispatch of samples for analysis by product group, i.e. from which the samples were taken for the purpose of health safety testing;
2. the costs of laboratory testing of samples carried out at the request of the sanitary inspector to determine shipment health safety.

With the entry into force of the First version of the FSB on June 10th, 2009, the procedure governing official controls of imported food conducted by the Ministry of Health remained legally “suspended in mid-air”. No regulation prescribed how the procedure was to be initiated or what powers sanitary inspectors had.

## I Prva verzija ZoB

Članom 70 stav 1 Prve verzije ZoB bilo je propisano da inspektori u postupcima službenih kontrola imaju pravo da uzimaju uzorke kao da uvoznici imaju pravo na dodatno stručno mišljenje (superanalizu).

Dalje je stavom 2 istog člana istog zakona bilo propisano da troškove analize i superanalize svih uzoraka snosi stranka od koje je uzorak uzet, ako se u konačnom postupku utvrdi da ne odgovara propisanim svojstvima. Ako uzorak odgovora propisanim svojstvima troškovi laboratorijskih analiza i superanaliza padaju na teret sredstava predviđenih budžetom Republike Srbije.

Stavom 3 istog člana istog zakona bilo je propisano da visinu naknade iz stava 1. ovog člana utvrđuje Vlada.

Na osnovu ovlašćenja iz člana 71 stav 3 ZOBH Prve verzije ZoB, Vlada Republike Srbije je najpre donela Odluku o visini naknade za laboratorijske analize uzoraka hrane i hrane za životinje biljnog porekla uzetih tokom službenih kontrola ("Sl. glasnik RS", br. 57/2009 i 31/2010), a zatim i Odluku o visini naknade za laboratorijske analize uzoraka hrane i hrane za životinje biljnog porekla uzetih tokom službenih kontrola („Sl. glasnik RS“ br. 113/13).

## I The First Version of FSL

Article 70 paragraph 1 of the First Version of the FSL provided that inspectors, in official control procedures, were entitled to take samples and that importers had the right to request an additional expert opinion (counter-analysis).

It was further provided by paragraph 2 of the same law that the costs of analyses and counter-analyses were borne by the party from whom the sample was taken if it was established in the final procedure that the product did not meet prescribed requirements; if the sample complied with prescribed requirements, the costs were borne by the budget of the Republic of Serbia.

Paragraph 3 of the same article of the same law stipulated that the amount of compensation from paragraph 1 of this article is determined by the Government

Pursuant to its authorisations in article 71 paragraph 3 of the First Version of FSL, The Government of the Republic of Serbia first adopted the Decision on the Amount of Fees for Laboratory Analyses of Food and Feed Samples of Plant Origin Taken During Official Controls ("Official Gazette of the RS", nos. 57/2009 and 31/2010), and then the Decision on the Amount of Fees for Laboratory Analyses of Food and Animal Feed Samples of Plant Origin Taken During Official Controls ("Official Gazette of the RS", no. 113/13).

Obe odluke su regulisale visinu i obavezu plaćanja naknada za kontrolu hranu i hranu za životinje biljnog porekla (službene kontrole koje sprovodi Ministarstvo poljoprivrede, šumarstva i vodoprivrede) ali ne i visinu i obavezu plaćanja naknade za kontrolu hrane koja je predmet službenih kontrola koje sprovodi Ministarstvo zdravlja.

Both decisions regulated the amount and obligation to pay fees for food and feed for animals of plant origin control (official controls carried out by the Ministry of Agriculture, Forestry and Water Management), but not the amount and obligation to pay fees for food control subject to official controls carried out by the Ministry of Health.



## II Izmene i dopune ZoB

Izmenama i dopunama Prve verzije ZoB („Sl. glasnik RS“ br. 17/2019) – „Važeća verzija ZoB“) od 01.04.2019. godine brisane su odredbe člana 70 Prve verzije ZoB.

Članom 71 Važeće verzije ZoB propisano je da subjekti u poslovanju hranom (uvoznici) i hranom za životinje plaćaju taksu za izvršene službene kontrole u skladu sa ovim zakonom i posebnim propisima. Troškovi laboratorijskih analiza i superanaliza su ostali neregulirani.

U skladu sa članom 71 Važeće verzije ZoB, odluke koje uređivale visinu i obavezu plaćanja troškova za službene kontrole koje sprovodi Ministarstvo poljoprivrede, šumarstva i vodoprivrede prestale su da važe Zakonom o izmenama i dopunama Zakona o republičkim taksama (Sl. glasnik RS. 86/2019).

Stupanjem na snagu Važeće verzije ZoB, tačka 6 Naredbe kojom je bilo propisano da naknadu za troškove laboratorijskih ispitivanja uvoznik uplaćuje u korist ovlašćene ustanove koja prema cenama i računu koji ta ustanova ispostavi uvozniku, a i ostale odredbe Naredbe postale su bespredmetne

## II Amendment and Supplements to FSL

Amendments to the First Version of the FSL (“Official Gazette of the RS” No. 17/2019) - “the Valid Version of the FSL”) dated April 1st, 2019. superseded Article 70 of First Version of the FSL.

Article 71 of the Valid Version of the FLS prescribes that that food operators (importers) pay a fee for performed official controls in accordance with this law and other regulations. However, the costs of laboratory analyses and counter-analyses remained unregulated.

In accordance with Article 71 of the Valid Version of the FSL, decisions regulating the amount and obligation to pay costs for official controls carried out by the Ministry of Agriculture, Forestry and Water Management ceased to be valid by the Law on Amendments to the Law on Republic Taxes (Official Gazette RS. 86/2019).

With the entry into force of the Valid Version of FLS, point 6 of the Regulation, which prescribed that the importer pays the compensation for the costs of laboratory tests in favour of the authorized institution, which according to the prices and the invoice issued by that institution to the importer, and other provisions of the Regulation became irrelevant

Važeća verzija ZoB, za razliku od ovlašćenja iz člana 32 stav 2 Zakona o zdravstvenoj ispravnosti životnih namirnica i predmeta opšte upotrebe i člana 71 stav 3 Prve verzije ZoB, ne predviđa ovlašćenje Vlade za donošenje podzakonskog akta niti reguliše pitanje naknada.

Odredbe Naredbe se ne primenjuju iz razloga što su u suprotnosti sa Važećom verzijom ZoB, odnosno nisu skladu sa članom 88 stav 2 ovog zakona.

Ovaj član predviđa da će se do donošenja podzakonskih propisa na osnovu ovlašćenja iz ovog zakona primenjivati propisi doneti na osnovu zakona koji su prestali važe početkom primene Važeće verzije ZoB, ako nisu u suprotnosti sa ovim zakonom.

Osnov za prestanak važenja Naredbe je sadržan u članu 16 stav 2 Zakona o državnoj upravi koji propisuje da ministarstva i posebne organizacije ne mogu propisom određivati svoje ili tuđe nadležnosti, niti fizičkim i pravnim licima ustanovljavati prava i obaveze koje nisu već ustanovljene zakonom.

In contrast to the authorization from Article 32 paragraph 2 of the Law on the Safety of Foodstuffs and Items of General Use and Article 71 paragraph 3 of the First Version of the FSL, the Valid Version of the FLS does not provide for the Government's authorization to pass a by-law nor does it regulate the issue of fees.

The provisions of the Regulation are not applied for the reason that they are in conflict with the Valid Version of the FSL, i.e., in accordance with Article 88 paragraph 2 of this law.

This article prescribes that until the adoption of by-laws based on the authority from this law, the regulations adopted on the basis of the law that ceased to be valid at the beginning of application of the Valid Version of the FLS, if they are not in conflict with this law.

The basis for the termination of validity the Regulation is contained in Article 16 paragraph 2 of the Law on State Administration, which stipulates that ministries and special organizations can neither by regulation determine their own or others' competences, nor establish rights and obligations for natural and legal persons that are not already established by law.



Sa druge strane, zakonodavac nikada nije stavio van snage Naredbu. Autori ovog članka smatraju da Naredba ne može ostati snazi jer je osnov za njeno važenje prestao brisanjem odredbe u Prvoj verziji ZOB koja ovlašćuje Vladu da uredi pitanje naknade.

On the other hand, the legislator never repealed the Regulation. The authors of this article believe that the Regulation cannot remain in force because the basis for its validity ended with the deletion of the provision in the First Version of the ZOB that authorizes the Government to regulate the issue of compensation.

### III Kako stvari funkcionišu u praksi?

Važeća verzija ZoB, odnosno Izmene ZoB iz 2019. godine ne reguliše način pokretanja i vođenja postupka službenih kontrola koje sprovodi Ministarstvo zdravlja.

U odsustvu regulative postupak sprovođenja službenih kontrola se improvizuje, a što ima negativne posledice za uvoznike.

Postupak službene kontrole se pokreće zbog zaštite javnog interesa (zdravlje stanovništva) i to kad organ utvrdi ili sazna da je, s obzirom na činjenično stanje, neophodno da se zaštiti javni interes, bez obzira na volju uvoznika. Tzv. „zahtev“ - obrazac koji je dostupan na internet stranici Ministarstva zdravlja, nazvan „zahtev za sanitarni pregled pošiljke iz uvoza radi utvrđivanja zdravstvene ispravnosti – bezbednosti“ nema nikakvo utemeljenje u pozitivnim propisima. Radi se o tome da granična sanitarna inspekcija uvoznicima nameće popunjavanje i podnošenje predmetnog „zahteva“. Kako autori ovog članka pretpostavljaju, granična sanitarna inspekcija to čini upravo iz razloga da bi da se prilikom donošenja rešenja o odobrenju uvoza u delu odluke o troškovima upravnog postupka mogla neosnovano poziva na odredbu člana 85 stav 3 Zakona o opštem upravnom postupku (da je uvoznik dužan da snosi troškove postupka jer se postupak službene kontrole pokreće na njegov zahtev).

### III How do things work in practice?

The Valid Version of the FSL, i.e. the Amendments to the FSL from 2019, does not regulate the way of initiating and conducting the procedure of official controls carried out by the Ministry of Health.

In the absence of regulations, the procedure for implementing official controls is improvised, which has negative consequences for importers.

The official control procedure is initiated to protect the public interest (health of the population) when the authority determines or learns that, given the factual situation, it is necessary to protect the public interest, regardless of the importer's will. The so-called "request" - the form available on the website of the Ministry of Health, called "request for sanitary inspection of imported shipments to determine health conformity and safety" has no basis in applicable regulations. It is about the fact that the border sanitary inspection forces importers to fill out and submit the "request" in question. As the authors of this article assume, the border sanitary inspection does so to refer (ungroundedly) to the provision of Article 85 paragraph 3 of the Law on General Administrative Procedure when issuing a decision on import approval, in the part of the decision on the costs of the administrative procedure, (that the importer is obliged to bear the costs of the procedure because the official control procedure is initiated at his request).

„Zahtev“ nije inicijalna procesna radnja stranke u smislu odredbi Zakona o opštem upravnom postupku jer se postupak sanitarnog nadzora na granici uvek i bez izuzetka mora pokrenuti po službenoj dužnosti. Sledstveno tome, pomenuti obrazac/„zahtev“ može da ima samo karakter informacije na osnovu koje je upravni organ (granični sanitarni inspektor) dužan da po službenoj dužnosti pokrene postupak sanitarnog nadzora na granici, a u skladu sa odredbama člana 90 stav 2 u vezi sa članom 91 stav 2 Zakona o opštem upravnom postupku, te se ovakav postupak mora pokrenuti ex officio čim roba pristigne na mesto carinjenja, bez obzira na to da li je stranka (uvoznik) podnela „zahtev“ ili ne.

Kod situacija kada se upravni postupak pokreće na zahtev stranke, zahtev stranke je obavezna procesna radnja kako bi postupak uopšte mogao da se pokrene. U toj situaciji podnošenje zahteva je neophodni uslov da bi organ mogao da pokrene postupak (npr. kod zahteva za izdavanje građevinske dozvole, zahtev stranke je *conditio sine qua non* za preduzimanje radnji od strane upravnog organa (član 90 stav 1 u vezi sa članom 91 stav 1 Zakona o opštem upravnom postupku)).

“Request” is not the party’s initial procedural action in the sense of the provisions of the Law on General Administrative Procedure, because the border sanitary surveillance procedure must always and without exception be initiated ex officio. Consequently, the mentioned form/“request” can only have the character of information on the basis of which the administrative authority (border sanitary inspector) is obliged to initiate the sanitary control procedure at the border ex officio, and in accordance with the provisions of Article 90 paragraph 2 in connection with Article 91 paragraph 2 of the Law on General Administrative Procedure, such a procedure must be initiated ex officio as soon as the goods arrive at the place of customs clearance, regardless of whether the party (importer) submitted a “request” or not.

In situations where the administrative procedure is initiated at the request of the party, the request of the party is a mandatory procedural action in to initiate the procedure at all. In that situation, the submission of a request is a necessary condition for the authority to initiate the procedure (e.g. in the case of a request for the issuance of a construction permit, the party’s request is a *conditio sine qua non* for taking action by the administrative authority (Article 90 paragraph 1 in conjunction with Article 91 paragraph 1 of the Law on General Administrative Procedure)).

Sa druge strane, do pokretanja postupka sanitarnog nadzora dolazi na osnovu saznanja organa da je reč o pošiljci hrane koja ulazi u zemlju i za pokretanje ovog postupka nije potreban zahtev – isti se mora sprovesti bez obzira na volju stranke.

Reč je o postupcima koji se pokreću na osnovu informacije koje organu dostavlja stranka – da je reč o pošiljci iz uvoza koja podleže postupku službene kontrole. Onog trenutka kada organ dobije informaciju od stranke da je takva roba dopremljena na granicu ili u mesto carinjenja, organ je dužan da pokrene postupak (član 90 stav 2 u vezi sa članom 91 stav 2 Zakona o opštem upravnom postupku).

Postupak se pokreće prvom radnjom organa po prijemu informacije od uvoznika da je reč o pošiljci hrane za koje postoji namera da se uveze u zemlju.

On the other hand, the initiation of the sanitary inspection procedure occurs based on the knowledge of the authorities that it is a shipment of food entering the country, and a request is not required to initiate this procedure - it must be carried out regardless of the will of the party.

It is about procedures that are initiated on the basis of information provided to the authority by the party - that it is a shipment from import subject to the official control procedure. The moment the authority receives information from the party that such goods have been delivered to the border or to the place of customs clearance, the authority is obliged to initiate proceedings (Article 90 paragraph 2 in connection with Article 91 paragraph 2 of the Law on General Administrative Procedure).

The procedure is initiated by the first action of the authority upon receiving information from the importer that it is a shipment of food intended to be imported into the country.

U vezi sa zahtevom uvoznika za superanalizu:

Superanaliza je prigovor na upravnu radnju i primenjuje se član 85 stav 6 Zakona o opštem upravnom postupku kojom je propisano da ako žalba (u konkretnom slučaju prigovor) bude odbaćena ili odbijena ili žalilac odustane od žalbe, troškove drugostepenog postupka snosi žalilac.

Sa druge strane, ako žalba bude usvojena, troškove drugostepenog postupka snosi organ koji je odlučivao u prvom stepenu - u konkretnom slučaju inspektori Ministarstva zdravlja.

U praksi granična sanitarna inspekcija uslovljava pokretanje postupka službene kontrole podnoženjem zahteva od strane uvoznika i insistira na tome da uvoznici upisuju u rubriku 7 „zahteva“ da oni sami snose troškove postupka.

Uvoznici bi trebalo da budu svesni da insistiranje sanitarne inspekcije na popunjavanju „zahteva“ i na pomenutom upisivanju u rubriku 7 „zahteva“ nema nikakav pravni značaj. Uvoznici niti podnose zahtev niti mogu da imaju bilo kakve troškove u vezi sa uzorkovanjem robe da bi morali da ih do okončanja postupka opredele.

Regarding the importer's request for counter-analysis:

Counter-analysis is an objection to an administrative action and article 85 paragraph 6 of the Law on General Administrative Procedure applies, which stipulates that if the appeal (in the specific case, the objection) is dismissed or rejected or the appellant withdraws from the appeal, the costs of the second-instance proceedings shall be borne by the appellant.

On the other hand, if the appeal is upheld, the costs of the second-instance procedure are borne by the authority that decided in the first instance - in this particular case, the inspectors of the Ministry of Health.

In practice, the border sanitary inspection conditions the initiation of official control procedure upon the submission of a request by the importer and insists that the importers indicate in column 7 of “the request” that they themselves bear the costs of the procedure.

Importers should be aware that the sanitary inspection's insistence on filling out “requests” and said indicating in section 7 of “the request” has no legal significance. Importers neither submit a request nor can they incur any costs related to the sampling of the goods to be obliged to specify them by the end of the procedure

Eventualni troškovi koje bi uvoznici mogli da imaju su troškovi superanalize iz člana 70 stav 2 Važeće verzije ZoB, ali uvoznici ni te troškove u tzv. „zahtevu“ ne mogu da opredele jer i ne znaju i ne mogu unapred da znaju da li će isti u postupku uopšte nastati.

U praksi sanitarni inspektori donose rešenja kojima ne odlučuju o troškovima postupka, a ovlašćene laboratorije bez pravnog osnova potražuju od uvoznika naknade za izvršena laboratorijska ispitivanja od uvoznika.

Sve navedeno ukazuje da je potreban društveni konsenzus u vezi sa ovom temom.

Possible costs that importers could have are the costs of counter-analysis from Article 70 paragraph 2 of the Valid Version of the FSL, but importers even those costs in the so-called on “the request” could not specify because they do not know and cannot know in advance whether it will arise in the process at all.

In practice, sanitary render decisions by which they do not decide on the costs of the procedure, and authorized laboratories without legal basis claim from the importer fees for the performed laboratory tests from the importer.

All of the above indicates that a social consensus regarding this topic is needed.

#### IV Novi Zakon o službenim kontrolama

Novi zakon reguliše:

- a. kontrolu pošiljki hrane na graničnim kontrolnim mestima

Pored obaveze uvoznika da najavi prispeće pošiljke, novi zakon propis i obavezu uvoznika da podnese zahtev za sprovođenje službene kontrole hrane na graničnom kontrolnom mestu. Ostaje nejasno zbog čega se propisuje obaveza podnošenja zahteva kada se već postoji obaveza najave prispeća pošiljke. Autori ovog članka smatraju da sama najava pošiljke obavezuje inspektore da pokrenu postupak službene kontrole, u skladu sa članom 90 stav 2 Zakona o opštem upravnom postupku (kad organ utvrdi ili sazna da je, s obzirom na činjenično stanje, neophodno da se zaštiti javni interes). Podnošenje zahteva ima karakter informacije na osnovu koje su inspektori dužni da pokrenu postupak po službenoj dužnosti.

- b. kontrolu pošiljki hrane u mestima carinjenja

Novi Zakon o službenim kontrolama propisuje da se ovaj vid službenih kontrola sprovodi proverom dokumentacije, identiteta i fizičkim pregledom hrane. Zakon propisuje ovlašćenje organa koji vodi postupak da uzima uzorke hrane koja se uvozi.

#### IV New Law on Official Controls

The new law governs:

- a. control of food shipments at border control points

Apart from importer's obligation to announce the arrival of shipments, the new law prescribes importer's obligation to submit a request for the implementation of official food control at the border control point. It remains unclear why the obligation to submit a request is prescribed when the obligation to announce the arrival of the shipment is already prescribed. The authors of this article believe that the very announcement of the shipment obliges the inspectors to initiate the official control procedure, in accordance with Article 90 paragraph 2 of the Law on General Administrative Procedure (when the authority determines or learns that, given the factual situation, it is necessary to protect the public interest). The submission of a request has the character of information on the basis of which the inspectors are obliged to initiate the procedure ex officio.

- b. Control of food shipments at customs clearance points

The new Law on Official Controls stipulates that this type of official control is carried out by checking documentation, identity and physical inspection of food. The law stipulates the authorization of the authority conducting the procedure to take samples of imported food.

Zakon propisuje ovlaštenje nadležnog ministra da propiše:

- način provere dokumentacije, provedu identiteta i fizičkog pregleda pošiljki određene hrane u mestu carinjenja;
- u kojim slučajevima se prijavljuje prispeće pošiljke određene robe osim one koje obavezno podležu službenim kontrolama na graničnim kontrolnim mestima koja se uvozi, kao i zahteve za prispeće pošiljke te robe;
- način postupanja sa pošiljkom hrane koja se zadržava do dobijanja rezultata ispitivanja ili dijagnostike, kao i dokumentaciju koja prati pošiljku hrane osim one koje obavezno podležu službenim kontrolama na graničnim kontrolnim mestima.

Zakon ne propisuje kako se pokreće postupak službene kontrole pošiljki hrane u mestu carinjenja niti ovlašćuje ministra da uredi pitanje troškova i naknada za laboratorijska ispitivanja u postupcima službenih kontrola.

Zakon propisuje identično rešenje kao i važeća verzija ZoB – da uvoznici plaćaju taksu za sprovedene službene kontrole i druge službene aktivnosti u skladu sa ovim zakonom i posebnim zakonima kojima se uređuje odgovarajuća oblast na koju se ovaj zakon primenjuje i da se visina takse utvrđuje zakonom kojim se uređuju republičke administrativne takse.

The law prescribes the authority of the competent minister to prescribe:

- method of document verification, identity verification, and physical inspection of certain food shipments at the place of customs clearance;
- in which cases the arrival of shipments of certain goods, except for those that are necessarily subject to official controls at border control points, that are imported is reported, as well as requests for the arrival of shipments of those goods;
- the way of dealing with a food shipment that is held until the results of testing or diagnostics are obtained, as well as the documentation that accompanies the food shipment, except for those that are necessarily subject to official controls at border control points.

The law neither prescribes the procedure of official control of food shipments at the place of customs clearance initiation, nor it authorize the minister to define the matter of costs and the amounts of fees for laboratory tests in official control procedures.

The law prescribes an identical solution as the Valid Version of the FSL - that importers pay a fee for implemented official controls and other official activities in accordance with this law and special laws regulating the respective area to which this law applies and that the amount of the fee is determined by the law regulating republican administrative fees.

Sve navedeno ukazuje da se saga o troškovima u postupcima službenih kontrola nastavlja i da u skorijoj budućnosti ovo pitanje neće biti razrešeno.

All of the above indicates that the saga of costs in official control procedures continues and that this issue will not be resolved in the near future.



## Endnotes:

1 Član 12 tačka 1 alineja 2 Zakona o bezbednosti hrane propisuje da službene kontrole u smislu ovog zakona, u oblasti bezbednosti hrane sprovodi Ministarstvo nadležno za poslove zdravlja preko nadležne sanitarne inspekcije u svim fazama proizvodnje, prerade i prometa (promet na veliko, promet na malo, uvoz na mestima carinjenja i izvoz), i to: nove hrane, hrane za specifične populacione grupe (hrana za odojčad i malu decu, hrana za posebne medicinske namene, zamene za kompletnu dnevnu ishranu za osobe na dijeti za mršavljenje), dodataka ishrani (dijetetski suplementi), hrane sa izmenjenim nutritivnim sastavom (hrana za osobe intolerantne na gluten, zamene za so za ljudsku ishranu, hrana obogaćena vitaminima, mineralima i drugim supstancama sa hranljivim ili fiziološkim efektom i dr), soli za ishranu ljudi i proizvodnju hrane, prehrambenih aditiva, prehrambenih aroma, prehrambenih enzima, pomoćnih sredstava u proizvodnji hrane, vode za piće koja se potrošačima isporučuje putem javnog vodovodnog sistema ili u originalnoj ambalaži (prirodne mineralne, izvorske i stone vode), kao i voda koja se upotrebljava, odnosno dodaje tokom pripreme, obrade ili proizvodnje hrane, materijala.

2 Article 12, item 1, indent 2 of the Food Safety Law provides that, for the purposes of this law, official controls in the field of food safety are carried out by the ministry responsible for health, through the competent sanitary inspection authority, at all stages of production, processing and distribution (wholesale, retail, import at places of customs clearance and export). These controls cover novel foods; foods for specific population groups, including infant and young child food, food for special medical purposes and total diet replacements for weight control; food supplements (dietary supplements); foods with modified nutritional composition, such as foods for persons intolerant to gluten, salt substitutes for human consumption and foods fortified with vitamins, minerals and other substances with nutritional or physiological effect; salt for human consumption and for food production; food additives, flavourings and enzymes; processing aids used in food production; drinking water supplied to consumers through a public water supply system or in its original packaging (natural mineral water, spring water and table water); as well as water used or added during the preparation, treatment or production of food materials.

# Autori/Authors



Ivan Milošević

Partner

E: [ivan.milosevic@jpm.law](mailto:ivan.milosevic@jpm.law)



Janez Vončina

Partner

E: [janez.voncina@jpm.law](mailto:janez.voncina@jpm.law)

JPM | PARTNERS

8a Vladimira Popovića,

DELTA HOUSE, V Floor

11070 Belgrade, Serbia

T: +381/11/207-6850

E: [office@jpm.law](mailto:office@jpm.law)

[www.jpm.law](http://www.jpm.law)