

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION (EEC)

amending Regulation (EEC) N°2092/91 on organic
production of agricultural products and indications referring thereto
on agricultural products and foodstuffs

(presented by the Commission)

Explanatory Memorandum

1. Regulation (EEC) N°2092/91, as amended by Regulation (EEC) N°2083/92, sets up a harmonised framework for the labelling, production and inspection of agricultural foodstuffs bearing, or intended to bear, indications referring to organic production methods.

The current proposal aims to amend a number of provisions of this Regulation

- a) *What are the objectives of the action envisaged in this proposal in connection with the obligation the Community has ?*

Council Regulation (EEC) N° 2092/91 provides for certain transitional provisions expiring on 1.07.1994 and certain provisions subject to review by 1.7.1994 (see points 2 and 3 of this memorandum). In this context the Commission has reviewed the main provisions of the Regulation in consultation with Member States and industry. Where the review showed that amendments were necessary or appropriate to improve the implementation of the Regulation, the Commission introduced appropriate proposals for such amendments.

- b) *Does the action envisaged fall within the exclusive competence of the Community or is it a competence shared with the Member States ?*

Council Regulation (EEC) N° 2092/91 already regulates on the basis of Article 43 of the Treaty, the production standards, labelling requirements and inspection arrangements, for products placed on the market with a labelling referring to the organic production method. The present proposal amends, precises or completes the provisions of Regulation (EEC) N° 2092/91, and therefore this action falls within the exclusive competence of the Community.

- c) *Is a uniform regulation necessary or would a directive giving general objectives be sufficient in the case that the execution would be done by Member States ?*

The main objectives of Regulation (EEC) N° 2092/91 are to

- to establish conditions of fair competition between the producers in the Community of organically produced products;
- to improve the credibility of such products in the eyes of consumers;
- to ensure free circulation of such products through the Community
- to promote in this way an agricultural activity which may contribute to a better balance between supply and demand of agricultural products and to the environment.

To ensure these objectives being satisfied, obligatory production standards and labelling rules are necessary with sufficient precision, leaving however, where possible, flexibility for implementation by operators. With regard to the setting up of the inspection the same principles must apply in all the Member States.

- d) What modalities for action are at the disposal of the Community (recommandation, financial aid, regulation, mutual recognition).

For the reasons mentioned above a regulatory action is necessary; also the possibility for financial aid under certain conditions has been provided for in the framework of Regulation (EEC) N° 2078/92.

2. Article 5 (5) of Regulation (EEC) n° 2092/91 provides that during a transitional period expiring on 1 July 1994, products may be labelled as organically produced even during the conversion period if certain conditions are satisfied. From the consultations that the Commission has had with the experts of Member States and the industries concerned, it appeared that there is a large consensus to maintain after 1 July 1994 the possibility for a specific labelling of products obtained during the conversion period. Effectively, during the conversion period set at 2 full years before the first harvest, the producer is fully subject to the production standards of the Regulation, in particular the severe restrictions with regard to the use of fertilisers and plant protection products. In the absence of specific labelling provisions, he would not be able to valorise such products in the market. From the above mentioned consultations it appears also that in general the provisions relating to the duration of the conversion period as set out in Annex I of the Regulation may be maintained.

The Commission, therefore, proposes to transform Article 5 (4) into a permanent provision. To avoid discontinuity of specific labelling of products produced during the conversion period the proposal should be adopted by the Council before the 1st July 1994. This amendment has been proposed in Article 1(10) of the present proposal.

3. The provisions of Article 5 (9), Article 10 (7) and Article 11 (6) of Regulation (EEC) N°2092/91, as amended by Regulation (EEC) n° 2083/92, provide that the Commission would review by 1 July 1994 the provisions concerning the labelling of organically produced products (article 5), the use of Community inspection indication (article 10) as well as the import regime for products from third countries (article 11).

Since the adoption of the Regulation in July 1991 and in particular since the entry into force of its provisions in Articles 5, 8(1) and 11 (1) in January 1993, it has appeared that the above mentioned provisions as well as some other provisions required a number of technical improvements for their proper implementation by farmers and the food industry.

In particular, it has appeared from the above mentioned consultations:

(a) that the provisions of Article 5 (6) with regard to labelling of processed products which contain less than 95 % of organically produced agricultural ingredients are too restrictive. They in fact make the marketing of an important category of products which cannot comply with the 95 % level, impossible due to the fact that certain ingredients of agricultural origin are not produced at all (exotic products) or not in sufficient quantities in the Community

according to the organic production method. The current provisions of Article 5 (6) limit any indications referring to the organic production method to the list of ingredients. The proposal therefore provides, in relation to processed products which contain more than 70 per cent ingredients of agricultural origin for a specific statement permitting the total percentage of the organically produced ingredients of agricultural origin to be declared. This amendment has been introduced in Article 5(6)(b) Article 1(11) of the present proposal. At the same time paragraphs 8 to 14 of Article 1 of the present proposal aim to clarify the current provisions of Article 5 without introducing substantial amendments.

(b) that whilst a specific EEC indication referring to the EEC regime (Annex V to regulation (EEC) n° 2092/91) should be maintained as an option for operators, the use of this indication, however, should be restricted to situations which are fully covered by the inspection regime, i.e. direct sales from the producer to the consumer and products placed on the market as prepared foodstuffs (see Article 1(22) of the present proposal).

(c) that there is an urgent need for clear provisions with regard to the origin of the reproductive material to be used in organic farming. The proposal provides for the principle that reproductive material should be obtained from organically grown plants, but at the same time provides for flexible transitional arrangements permitting the use of conventional reproductive material in cases where such material obtained from organic production is not available (see Article 1(15) and (16) of the present proposal).

(d) that there is a need to maintain the parallel functioning of the arrangements for this evaluation of equivalency in third countries by the Commission (covered by Article 11(2) of Regulation (EEC) n° 2092/91) and by the Member States (covered by Article 11(6), created by Council Regulation (EEC) n° 2083/92). The procedure of Article 11(6) has been shown to be very effective, in particular for the evaluation of the equivalency for small scale production projects in third countries, whose produce is imported into the Community by one or a very limited number of importers. The Commission feels that this procedure should be maintained and the present proposal, in Article 1(26), provides for an improvement of the parallel functioning of the two evaluation procedures.

(e) that for a number of provisions the current text needs to be clarified. Therefore the proposal (see paragraphs 2 to 6, 14, 17 to 20, 22 to 24 of Article 1) contains redrafted provisions for certain parts of Articles 4, 6, 7, 9, 10 and 11.

4. In line with the provisions provided for in Regulation (EEC) n° 2081/92 of 14 July 1992 on the protection of geographical indications of origin for agricultural products and foodstuffs, and Regulation (EEC) n° 2082/92 of 14 July 1992 on certificates of specific character for agricultural products and foodstuffs, which provide for similar inspection arrangements as Regulation (EEC) 2092/91, the current proposal provides :

- that the private inspection bodies approved by Member States satisfy the Standard EN45011 of 26 June 1989 by 1 January 1998 (see Article 1(21) of the present proposal);

- the possibility for the Commission to develop a Community symbol which would replace or complete the indication "Organic Farming - EEC Inspection System" provided for in Annex V of Regulation (EEC) N°2092/91 (see Article 1(28) of the present proposal);
 - a mandate to the Commission to adopt detailed rules for applying the Regulation, where necessary (see Article 1(27) of the present proposal).
5. The Commission feels that the current review covers conclusions from only a very short period of implementation of the labelling provisions. Therefore a further review of these provisions should be envisaged after a longer period of implementation. The proposal provides for such review by 30 June 1999, 5 years after the envisaged date of adoption of this proposal by Council (see Article 1(13) of the present proposal).
 6. Since adoption by the Council of Regulation (EEC) N° 2092/91, which was restricted in a first phase to unprocessed agricultural crop products and processed foodstuffs essentially composed of ingredients of plant origin, the Commission has concentrated on the proper management of the regime. As explained above, this short experience has shown that a number of provisions need to be clarified or improved now to permit proper implementation. In this new field of regulation, it is expected that further improvements may become necessary in the light of longer experience.

In this situation, it appeared premature to extend at this stage the scope of this Regulation to animal products, given also the greater complexity of the issues involved. The Commission has therefore given priority to the development of the present proposal which aims primarily to improve the functioning of the current regime.

Although preparative technical work to develop the standards and specific inspection rules for animal products is in hand, the Commission considers it would be prudent to delay finalisation of a proposal on animal products to the more realistic date of 30 June 1995 (see Article 1(1) of the present proposal).

7. The proposal is unlikely to have a negative impact on business, including SME.

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amending Regulation (EEC) N°2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the Commission has received a particular mandate in the framework of Regulation (EEC) n° 2092/91 to review a number of provisions of that Regulation by 1 July 1994 and to submit any appropriate proposals for revision of this Regulation, if any;

Whereas it has appeared that the provisions, expiring on 1 July 1994, concerning the labeling of agricultural products and foodstuffs containing an ingredient of agricultural origin, which was produced by producers in conversion from conventional farming to organic farming, should be prolonged in order to permit these producers to valorise the supplementary cost of their production by an appropriate labeling of their products;

Whereas the review of Articles 5, 10 and 11 requested by Council by 1 July 1994 has shown that a number of technical and drafting amendments in these articles as well in certain other provisions are necessary to ensure a proper management and implementation of the Regulation; whereas therefore priority has been given to the development of these amended rules and that consequently the development of the rules concerning animal production should be delayed for a limited period;

Whereas it has appeared from the review that the provisions concerning the labeling of foodstuffs prepared only partly from ingredients of agricultural origin which were produced according to the organic production method, should be improved in order to permit a better highlighting of the organically produced component in such foodstuffs;

Whereas it has further appeared that the indication provided for in Annex V should be maintained optional, but should also be restricted, in order to prevent abuse of this indication, to direct sales in closed packaging from the producer to the consumer and to other sales only in prepackaged foodstuffs;

Whereas it has also appeared that reproductive material should be obtained from organically grown plants but that a derogation regime is required in order to permit producers to use, during a transitional period, conventionally produced propagating material, where no appropriate organically produced reproductive material is available;

Whereas it has appeared that a number of products which were used before the adoption of Regulation (EEC) N° 2092/91 in accordance with the codes of practice of organic farming followed in the Community, have not been included in Annex II of the Regulation; whereas the use of such products should be permitted as far as their use is also permitted in conventional agriculture;

Whereas it has appeared appropriate to clarify in the text of the Regulation that the inspection system provided for applies also to importers from third countries;

HAS ADOPTED THE FOLLOWING REGULATION

Article 1

Regulation (EEC) N° 2092/91 is amended as follows:

1. In Article 1 (2) the date of 1 July 1992 is replaced by 30 June 1995.
2. Article 4 (2) is amended as follows:
 - "2. 'production' shall mean the operations involved in producing, packaging and labeling of agricultural products in the state in which they are normally marketed from the farm;".
3. Article 4 (3) is amended as follows:
 - "3. 'preparation' shall mean the operations of preserving and/or processing of agricultural products, as well as the packaging and or labelling of the preserved and/or processed products;".
4. Article 4 (6) is amended as follows:
 - "6. 'ingredients' shall mean the substances, including additives, used in the preparation of the products specified in Article 1(1)(b), as defined in Article 6 (4) of Directive 79/112/EEC on the approximation of the laws of the Member States relating to the labeling, presentation and advertising of foodstuffs;".
5. The following paragraphs are introduced in Article 4 after paragraph 8 of this article:
 - "9. 'prepacked foodstuff' shall mean any single item as defined in Article 1(3)(b) of Directive 79/112/EEC.

10. 'list of ingredients' shall mean the list of ingredients referred to in Article 6 of Directive 79/112/EEC."
6. In Article 2, Article 5 (1) (b), Article 9 (9)(a), Article 11 (1) (b), Article 11 (2) (a), the words " Articles 6 and 7" are replaced by "Article 6".
7. The text of Article 5 (2) is deleted.
8. Article 5 (3) is replaced by the following:
 - "3. The labeling and advertising of a product specified in Article 1 (1)(b) may bear, in the sales description of the product, indications referring to organic production methods only where:
 - (a) at least 95% of the ingredients of agricultural origin of the product are, or are derived from, products obtained in accordance with the rules laid down in Article 6 or imported from third countries under the arrangements laid down in Article 11;
 - (b) all the other ingredients of agricultural origin of the product are included in annex VI, section C;
 - (c) these indications clarify that they concern a method of agricultural production and are accompanied by a reference to the ingredients of agricultural origin concerned, unless such reference is clearly given in the list of ingredients;
 - (d) the product contains only substances listed in Annex VI, Section A, as ingredients of non-agricultural origin;
 - (e) the product or its ingredients of agricultural origin, referred to in subparagraph (a), have not been subjected to treatments involving the use of substances not listed in Annex VI, section B;
 - (f) the product or its ingredients have not been subjected, to treatments involving the use of ionizing radiation;
 - (g) the product was prepared or imported by an operator who is subject to the inspection measures laid down in Articles 8 and 9."

9. Article 5 (4) is replaced by the following:

"4. Ingredients of agricultural origin may be included in Annex VI, section C only where it has been shown that such ingredients:

- are of agricultural origin and are not produced in the Community in accordance with the rules laid down in Article 6, or
- are of agricultural origin and are not produced in sufficient quantity in the Community in accordance with the rules laid down in Article 6."

10. Article 5 (5) is replaced by the following:

"5. Products labelled or advertised in accordance with paragraphs 1 or 3 may bear indications referring to conversion to organic production methods, provided that:

- (a) the requirements referred to in paragraph 1 or paragraph 3 respectively are fully satisfied, with the exception of that concerning the length of the conversion period referred to in paragraph 1 of Annex I;
- (b) a conversion period of at least 12 months before the harvest has been complied with;
- (c) such indications do not mislead the purchaser of the product regarding its difference from products which satisfy all the requirements of paragraphs 1 or 3; they appear in a colour, size and style of lettering which is not more prominent than the sales description of the product;
- (d) the product contains only one ingredient of agricultural origin."

11. Article 5 (6) is replaced by the following:

"6. Without prejudice to the provisions in paragraph 3, the labelling and advertising of a product as referred to in Article 1 (1)(b) may only bear indications referring to organic production methods where:

- (a) at least 50% of the ingredients of agricultural origin are, or are derived from, products obtained in accordance with the rules laid down in Article 6 or imported from third countries under the arrangements laid down in Article 11;
- (b) the indications referring to organic production methods appear in the list of ingredients and only in clear relation to those ingredients obtained according to the rules laid down in Article 6; they appear in the same

colour and with an identical size and style of lettering as the other indications in the list of ingredients. Moreover such indications may appear in a separate statement, mentioning the names of the ingredients concerned and their total proportion in the product, only where this proportion is higher than 70%. The statement may only appear in a colour, size and style of lettering which is not more prominent than the sales description of the product.

- (c) the product contains only substances listed in Annex VI, section A as ingredients of non-agricultural origin;
- (d) the product or its ingredients of agricultural origin referred to in subparagraph (a) have not been subjected to treatments involving the use of substances not listed in Annex VI, section B;
- (e) the product or its ingredients have not been subjected to treatments involving the use of ionizing radiation;
- (f) the product was prepared or imported by an operator who is subject to the inspection measures laid down in Articles 8 and 9;

12. The first subparagraph of Article 5 (8) is amended as follows:

"Limitative lists of the substances and products referred to in paragraphs 3 (b), (d) and (e) and 6(c) and (d) shall be established in Annex VI, sections A, B and C, according to the procedure laid down in Article 14."

13. Article 5 (9) is replaced and completed by the following:

"9. For the calculation of the percentages referred to in paragraphs 2 and 6, the rules provided for in Articles 6 and 7 of Directive 79/112/EEC shall be applied.

10. In a product as referred to in Article 1(1), an ingredient obtained according to the rules laid down in Article 6 shall not be present together with the same ingredient not obtained according to these rules."

11. Before 1 July 1999, the Commission shall review the provisions of this Article and of Article 10 and submit any appropriate proposals for a revision thereof, if any".

14. The first sentence of Article 6 (1) (b) is amended as follows:

Only products composed of substances listed in Annexes I and II may be used as plant-protection products, detergents, fertilisers, soil conditioners or for another purpose where such purpose is specified in Annex II in regard to certain substances."

15. After subparagraph b of Article 6 (1), the following subparagraph is inserted:

"(c) only seed or vegetative reproductive material is used, which has been obtained from plants which were grown according to the provisions of subparagraphs (a) and (b) for at least one generation or, in case of perennial crops, two growing seasons, whichever is the shortest."

16. Article 6 (2) is amended as follows:

2. (a) By derogation of paragraph 1 (c), seeds and vegetative reproductive material not obtained according to the provisions of paragraph 1, may, during a transitional period expiring on 31 December 1996, be used to the extent that a Member State has authorised such reproductive materials being used on its territory for certain species or certain varieties for the reason that appropriate reproductive material produced according to the rules laid down in Article 6(1) is not available on the market in sufficient quantities.

(b) According to the procedure of Article 14 may be decided:

- the introduction, before 31 December 1996, of restrictions to the transitional measure referred to in subparagraph (a) with regard to certain species and/or types of reproductive material;
- the maintenance, after 31 December 1996, of the derogation provided for in subparagraph (a) with regard to certain species and/or types of reproductive material and with regard to the whole Community or certain parts thereof;
- the introduction of procedural rules and criteria concerning the authorisations granted by Member States and the information thereon communicated to the other Member States and the Commission.

17. The following subparagraph is introduced after paragraph 1 of Article 7:

"1a. The conditions provided for in paragraph 1 do not apply to products which were in common use before the adoption of this Regulation according to the Codes of practice on organic farming followed in the Community or relevant parts thereof."

18. In Article 9 (1), the words "operators producing or preparing products as referred to in Article 1" are replaced by the words "operators producing, preparing or importing from third countries products as referred to in Article 1."

19. In Article 9 (5) (b), the word, "irregularities" is replaced by "irregularities and infringements".

20. In Article 9 (6) (c), the word, "infringements" is replaced by "irregularities and infringements".
21. After Article 9 (10), the following paragraph is inserted:
- "11. Without prejudice to the provisions of paragraphs 5 and 6, Member States shall ensure that from the 1st January 1998 only private inspection bodies satisfying the conditions of Standard EN 45011 of 26 June 1989 are approved for the purposes of this Article."
22. Article 10 (1) is amended as follows:
- "1. The indication that products are covered by the specific inspection scheme, shown in Annex V, may appear on the labelling of products as referred to in Article 1 only where such products:
- (a) satisfy fully the requirements of Article 5 (1) or (3);
 - (b) have been subject to the inspection arrangements referred to in Article 9 (3) throughout the whole production and preparation process;
 - (c) are sold directly from the producer to the consumer, or are placed on the market as prepacked foodstuffs;
 - (d) show on the labelling the name or mark of the inspection body, and any indication required according to the provisions of Directive 79/112/EEC.
23. Paragraphs 5, 6 and 7 of Article 10 are replaced by the following:
- "Article 10a - General enforcement measures
1. Whereas Member State finds, in a product coming from another Member State and bearing any indication referred to in Article 2 and/or Annex V, irregularities or infringements in the application of this Regulation, it shall inform thereof the Member State which approved the inspection body and the Commission.
 2. Member States shall take whatever measures and action are required to prevent fraudulent use of the indications referred to Article 2 and/or Annex V, in particular when they are repeatedly informed of infringements accomplished by the same operator."

24. In article 11(3)(a) the words "inspection authorities" are replaced by "inspection body and/or inspection authority".

25. In Article 11(6)(a) the wording "until 31 July 1995" is deleted.
26. In article 11(6)(a) the last sentence "It shall expire from the time of inclusion of a third country in the list referred to in paragraph 1 (a)" is replaced by the following:
- "It shall expire from the time of the decision to include a third country in the list referred to in paragraph 1 (a), unless it concerns a product which was produced in a region or a production unit or under the inspection of an inspection body not specified in the decision referred to in paragraph 1(a), and was not examined in the framework of the request presented by the third country."
27. In article 13, the following hyphen is inserted before the first hyphen :
- "detailed rules for applying this Regulation;"
28. In article 13, the last hyphen is replaced by the following :
- "- amendments to Annex V in order to define a Community symbol to be used in connection or in replacement of the indication that products are covered by the inspection scheme."

Article 2

This Regulation shall enter into force 7 days from the date of its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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