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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the application of Council Regulation (EC) No 834/2007 on organic production and
labelling of organic products**

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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the application of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products

1. INTRODUCTION

Organic agriculture occupies 8.6 million hectares in the EU in 2009, which represents 4.7 % of EU-27 utilised agricultural area. In the period 2006-2009, its average annual rate of growth was 7.7 % in the EU-15 and 13 % in the EU-12 (EU-15 represented 81 % of all EU organic area in 2009). There were about 197.000 holdings involved in organic agriculture in 2008, i.e. 1.4 % of all EU-27 holdings. It is estimated that the organic sector represented 2 % of total food expenses in the EU-15 in 2007.¹

Council Regulation (EC) No 834/2007² and its implementing Regulations, Commission Regulations (EC) No 889/2008³ and (EC) No 1235/2008⁴ constitute the legal framework on organic food and farming at EU level.

Already when conceiving Regulation (EC) No 834/2007 - hereafter named "the Regulation" -, the Council pointed at the dynamic evolution of the organic sector and asked for a future review of a number of issues for which it was considered that experience gained from the application of the new rules should be taken into account. The Regulation specified in its Article 41 which particular issues must be reviewed:

- (a) the scope of the Regulation itself, in particular as regards organic food prepared by mass caterers;
- (b) the prohibition on the use of GMOs, including the availability of products not produced by GMOs, the vendor declaration, the feasibility of specific tolerance thresholds and their impact on the organic sector;
- (c) the functioning of the internal market and controls system, assessing in particular that the established practices do not lead to unfair competition or barriers to the production and marketing of organic products.

¹ More data and factual information concerning organic agriculture is provided in the publication by the Commission in 2010: "An analysis of the EU organic sector" available at: http://ec.europa.eu/agriculture/organic/files/eu-policy/data-statistics/facts_en.pdf

² Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91, OJ L 189, 20.7.2007, p. 1

³ Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regards to organic production, labelling and control, OJ L 250 of 18.9.2008, p.1

⁴ Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries, OJ L 334, 12.12.2008, p. 25

With this report the Commission takes stock of the experience gained by the application of the Regulation from 1st January 2009, when it started to apply.

This report will focus on the three main subjects set out above. In addition, it will highlight some other important issues under discussion with the Member States and stakeholders.

In order to get a better view on the experience gained so far with the Regulation, the Commission sent a questionnaire to all the Member States and to stakeholders, by distributing it to all the Members of the Advisory Group for Organic Farming. Twenty-six Member States replied to the questionnaire in March 2011, as well as eleven stakeholders. Those replies provided an essential input to this report.

2. THE SCOPE OF THE REGULATION

The Regulation created the basis for adopting detailed production rules on sectors which were not yet subject to harmonised rules⁵. So far implementing rules have been finalised and published on organic aquaculture, including seaweed, and on organic yeast. Work on the rules on organic wine making and on feed were ongoing when this report was drafted. For some other sectors, like poultry and greenhouses, the existing production rules have not been revised yet.

This chapter concentrates on a review of the experience with mass caterers and the question of the possible inclusion of textiles and cosmetics. Organic certification of certain products outside Annex I of the Treaty but which are closely linked to Annex I products or to rural economy, such as beeswax, essential oils, or maté is not examined in detail here, but the Commission recognises a need for clarifying whether such products may be certified in compliance with the Regulation where those products have been produced in accordance with the requirements laid down in the Regulation.

2.1. Mass caterers

The preparation of organic products in restaurants, hospitals, canteens and other food business is steadily gaining importance, in both private and public sectors. The catering sector comprises very different types of enterprises, from small restaurants to large catering chains.

At the time of conceiving the Regulation, including the catering sector was judged to be premature and the protection of terms referring to organic production considered sufficient. Anyhow, the mass catering sector is already subject to EU rules on hygiene and food labelling, which provide that labels referring to production methods cannot be used in a way that could mislead the purchaser⁶.

Currently, seven Member States have introduced national rules, while private standards are applied in ten other Member States. These rules provide certification of ingredients, dishes, menus or complete catering operations. Member States with an established control system did not report particular difficulties. Several Member States reported that projects to regulate mass catering are envisaged at national or regional level.

⁵ Such as organic wine, organic aquaculture, including seaweed, organic yeast

⁶ Directive 2000/13/EC

Most Member States are of the opinion that mass catering operations should not become subject to EU Regulation on organic production in the short term, not only because of possible increased complexity, but also because of the limited impact on trade due to their local character. The Commission concludes that there is currently no need to include mass catering operations in the Regulation but will closely follow developments in this sector.

2.2. Textiles and cosmetics

During the last years, there has been significant market growth for textiles and cosmetics bearing reference to organic production. Private certification schemes for these products have been developed. However those two product categories are not included in the EU organic legal framework, which is limited to a series of agricultural products⁷ (in particular, non processed agricultural products or processed agricultural products for use as food). While it is widely recognised that textiles and cosmetics both constitute a valuable outlet for organically produced raw materials, a debate has generated in the organic production sector on the question of whether the reference to organic production for agricultural products outside the scope of the current Regulation could pose a risk for the credibility of the term "organic", as applied to foodstuffs. Additionally, it should be recalled that in order to systematically include non-agricultural products, the Regulation would have to be fundamentally changed.

The Union legislation on textiles deals with fibre names and labelling rather than production methods⁸. It has recently been revised⁹ with a view to simplify and improve the legislative framework in that sector. Within the voluntary EU Ecolabel scheme¹⁰ criteria have been established for textile products¹¹. In the case of cotton, if 95 % of the product is made of organic cotton, the denomination "organic cotton" is allowed under this scheme.

Agricultural raw materials, such as plant oils and plant extracts, are present in many cosmetics. The Union legislation on cosmetics regulates the use of claims on cosmetic products¹². Common criteria for all types of claims used with respect to cosmetic products, including 'natural and organic' claims, are being developed¹³.

The Commission considers that it may be worth exploring the opportunities offered by the Union legislation to extend the protection of the use of the word "organic" to textiles and cosmetics.

⁷ Listed in Article 1(2) of Council Regulation (EC) N° 834/2007 of 28 June 2007 on organic production and labelling of organic products (O.J. L 189, 20.07.2007, p.1)

⁸ Directive 2008/121/EC

⁹ Regulation (EU) No 1007/2011 of the European Parliament and of the Council of 27 September 2011 on textile fibre names and related labelling and marking of the fibre composition of textile products.

¹⁰ Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel

¹¹ Commission Decision of 9 July 2009 (2009/567/EC)

¹² Article 20 of Council Regulation (EC) No 1223/2009, OJ L 342 of 22.12.2009

¹³ ISO/NP 16128

3. PROHIBITION ON THE USE OF GMOs IN ORGANIC PRODUCTION

One of the overall principles of organic production set out in the Regulation is the prohibition of the use of:

- genetically modified organisms or GMOs¹⁴,
- products produced from GMOs¹⁵, or
- products produced by GMOs¹⁶.

These products are considered incompatible with the concept of organic production and consumers' perception of organic products.

In practice it means that GMOs and products produced from or by GMOs shall not be used as food, feed, processing aids, plant protection products, fertilisers, soil conditioners, seeds, vegetative propagating material, micro-organisms and animals in organic production. One exception only is made for veterinary medicinal products (vaccines and others).

However, as organic systems are not isolated from the general production chain, low and accidental presence of GM crops in non-GM farming systems such as organic farming cannot be completely excluded during cultivation, harvest, transport, storage and processing. Sources of possible GMO admixture are seed impurities, cross-pollination, volunteers and harvesting and storage practices. Another potential source are food and feed additives, which are commonly produced from or by GMOs.

The former Regulation (EEC) No 2092/91¹⁷ contained the same prohibitions on GMOs but did not address the issue of unintended presence of traces of GMOs. In the absence of specific rules, the horizontal rules of the EU Regulation on Genetically Modified Food and Feed¹⁸ thus applied equally to products used in organic farming. That Regulation lays down a general labelling threshold of 0.9% for the adventitious or technically unavoidable presence of GMOs or products from GMOs¹⁹.

¹⁴ The definition of 'Genetically modified organism (GMO)' is given in Directive 2001/18/EC. Examples: plants and seeds from genetically modified soya and maize.

¹⁵ 'Produced from GMOs' means derived in whole or in part from GMOs but not containing or consisting of GMOs (Article 2.u).

Examples: oil, starch or proteins from genetically modified soya or maize, not containing any genetically modified DNA.

¹⁶ 'Produced by GMOs' means derived by using a GMO as the last living organism in the production process, but not containing or consisting of GMOs nor produced from GMOs (Article 2.v).

Examples: food and feed additives (mainly vitamins and amino-acids) and processing aids (mainly enzymes) produced by genetically modified micro-organisms (such as bacteria and fungi).

¹⁷ Council Regulation (EC) N° 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs

¹⁸ Regulation (EC) n° 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed OJ L 268, 18.10.2003, p. 1–23, , article 12 (2)

¹⁹ For seed no threshold is defined.

In this sense, the Regulation clarifies that the general rules on unavoidable presence of GMOs apply. Moreover it introduces specific provisions in its Article 9 (3) on the responsibility of the organic operator for avoiding the presence of GMOs in organic products. The leading principles are to have the lowest possible adventitious presence of GMOs in organic products, as set out in recital 10, and at the same time to avoid undue constraints and additional burden on organic operators.

3.1. General experience with the prohibition on the use of GMOs

From the above mentioned questionnaire it appears that supervising the control system on the prohibition of the use of GMOs did not pose major problems to the Member States. However, feed is singled out as a risk product for adventitious presence of GMOs. Some very low findings of authorised GMOs below 0.1% were reported in soya and maize. Operators make considerable efforts and take common initiatives to keep organic products free from adventitious GMO presence. They bear the costs for these preventive actions.

In some Member States specific risk analysis and risk management tools have been developed, which offer a systematic approach for deciding on additional sampling and control visits. The Commission will monitor the development of these tools and propose them for EU wide application if appropriate.

Regarding coexistence, the Commission's report to the Council and the European Parliament of 2009 on the coexistence of genetically modified crops with conventional and organic farming²⁰ concluded that GM crops have not caused any demonstrable damage to existing non-GM farming. Further, on 13 July 2010 the Commission issued a Commission Recommendation²¹ on guidelines for the development of national co-existence measures to avoid the unintended presence of GMOs in conventional and organic crops, which recognises that the potential loss of income for producers of particular agricultural products such as organic products may occur as a result of the presence of GMO traces at levels even lower than the GM labelling threshold set out in EU legislation at 0.9 %. Moreover, the Recommendation acknowledges that the admixture of GMOs has specific implications for producers of particular products such as organic farmers, impacting also the final consumer, since such production is often more costly, as it requires stricter segregation efforts to avoid GMO presence to guarantee the associated price premium. In this same context, the Commission has submitted a Regulation proposal to the European Parliament and to the Council which, once adopted, would allow Member States to restrict or prohibit cultivation of GMOs on their territory²².

Recently, the European Court of Justice in joint cases C-58/10 to C-68 Monsanto provided an interpretation of Regulation (EC) No 1829/2003 on genetically modified food and feed indicating that for a Member State to adopt safeguard measures, only Art. 34 of that

²⁰ COM (2009) 153 final of 2.4.2009 Report from the Commission to the Council and the European Parliament on the coexistence of genetically modified crops with conventional and organic farming http://ec.europa.eu/agriculture/gmo/coexistence/index_en.htm

²¹ Commission Recommendation 2010/C/200/01, OJUE C 200 of 22 July 2010, page 1. <http://ecob.jrc.ec.europa.eu/documents/CoexRecommendation.pdf>

²² COM (2010) 375 final of 13.7.2010 Proposal for a Regulation of the European Parliament and of the Council amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of GMOs in their territory.

Regulation is applicable to existing products previously authorised under Directive 2001/18/EC. Also, the European Court of Justice (Case 442-09) provided an interpretation of Regulation (EC) No 1829/2003 as regards GM pollen in honey. The Commission, together with the Member States, is evaluating the ruling and its impacts, including on co-existence.

3.2. Availability of products not produced by GMOs

Vitamins, enzymes and amino-acids used in food processing are nowadays very often produced by genetically modified micro-organisms and can therefore not be used in organic production.

The Regulation has foreseen within the exceptional production rules the possibility for the Commission to provide exceptions to the prohibition of using products produced by GMOs when it would be necessary to use food and feed additives and other substances that would not be available on the market other than produced by GMOs. The Commission has not granted such exceptions so far.

However, some substances such as vitamins B2 (riboflavin) and B 12 (cobalamine) and the enzymes chymosin (for cheese making) and phytase (for feed) are regularly reported as available only produced by GMOs. Therefore the Commission will closely monitor this situation and propose appropriate action if necessary.

3.3. The vendor declaration

When organic operators buy inputs needed for their production processes, they need to make sure that these inputs are not GMOs or products produced from or by GMOs. The Regulation stipulates in its article 9 (2) that operators can rely on the labels accompanying products or any other accompanying document, affixed or provided pursuant to Directive 2001/18/EC²³, Regulation (EC) No 1829/2003²⁴ or Regulation (EC) No 1830/2003²⁵ unless they have obtained information indicating that the labelling of the product in question is not in conformity with those Regulations for instance when the labelling threshold of 0,9% of adventitious presence of GMOs is exceeded.

Products produced by GMOs and products produced from GMOs which are not food or feed are not covered by the GMOs legislation and therefore no labelling and traceability obligations are imposed on them. Therefore the Regulation provided in its article 9 (3) that the organic operator has to request in such cases a confirmation or vendor declaration²⁶ to be signed by the supplier of the products. In this document, the vendor must declare that his product has not been produced from or by GMOs.

²³ Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC - Commission Declaration OJ L 106, 17.4.2001, p. 1–39

²⁴ Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed ; OJ L 268, 18.10.2003, p. 1–23

²⁵ Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC OJ L 268, 18.10.2003, p. 24–28

²⁶ The model of the declaration is referred to in article 69 of Regulation (EC) No 889/2008 and included in Annex XIII thereof.

The vendor declaration represents a commitment of the supplier with legal value. However, stakeholders signal that many companies do not fully understand its function, may refuse using it, or, on the contrary, sign it very easily. Some Member States also indicate that they have difficulties to verify whether a given declaration is reliable because of technical and analytical constraints.

The Commission therefore considers that the reliability and effectiveness of the vendor declaration raises some concern and needs to be further examined.

3.4. Feasibility of specific tolerance thresholds (for the adventitious or technically unavoidable presence of GMOs) and their impact on the organic sector

In their answers to the above mentioned questionnaire, almost all Member States and most stakeholders judge the current legislative framework as providing sufficient guarantees regarding the prohibition of GMOs in the organic production system. It ensures that products marketed without references to GMOs on the label only contain adventitious and unavoidable levels below 0.9 %. A few Member States, making reference to the level of detection, do prefer a specific threshold for products used in organic production, going from a 0.1 % quantification limit²⁷ up to 0.3 %.

In about five Member States, there are private certification schemes certifying adventitious or technically unavoidable presence of GMOs in organic products below the general level of 0.9 %. The controls are reported to focus on soya, maize, rapeseed, rice and flax.

It can be retained that there is a majority of opinions in favour of keeping the same threshold of 0.9% for the adventitious presence of GMOs in organic products. A specific threshold would increase complexity and costs to be borne by producers and consumers.

4. FUNCTIONING OF THE INTERNAL MARKET AND CONTROL SYSTEM

A new element of the Regulation that could influence the functioning of the internal market, is the obligatory use of the EU logo on all organic products²⁸ produced in the EU applicable from 1st July 2010, with a transition period ending by 30 June 2012. Although it is fair to say that its introduction was quite successful, with an increasing visibility on a wide range of products, it is however impossible to assess its impact at this stage.

The Member States indicate that the control system as applied in 2009 and 2010 does not cause significant problems to the smooth functioning of the internal market for organic products. However, several Member States and stakeholders pointed out that varied reading and interpreting of the EU legislation reveal a need for harmonisation, and sometimes simplification, of the actual implementation of the organic rules throughout the Union. In 2010, there were 199 Control Authorities and Control Bodies in the EU in charge of the organic farming control system.

²⁷ Currently 0.1% is the lowest level at which the presence of GMO can reliably be quantified

²⁸ Introduced by Commission Regulation (EU) n° 271/2010, OJ L 84 of 31.03.2010

In order to improve transparency the Commission has adopted Regulation (EU) No 426/2011²⁹ which obliges the Member States to draw up a publicly available updated list of operators, as from 1 January 2013. As regards cases of infringements and irregularities, the Commission considers that, although Member States generally take adequate measures, there is room for improvement on the exchange of information in such cases, in particular as regards timeliness and completeness of the notifications.

Group certification for small organic producers in tight cooperation inside the Union raised some interest from Member States and stakeholders, as it facilitates the placing of their products on the market. But all respondents underlined the need to guarantee its capacity to safeguard or improve the reliability and the efficiency of the controls.

The Commission recognises that the control system can be further improved, and will continue its work in this direction with the Member States. Given that the Court of Auditors has performed a recent audit in respect of organic production and labelling of organic products, of which a report is expected to be published early 2012, the Commission will also base itself on the findings of this audit to guide its work on the matter. Commission services and Member States are in the process of developing a common understanding of all elements of the control system, in particular on the linkage between the specific legislation on organic production and the general legislation on official food and feed controls Regulation (EC) No 882/2004³⁰, and a more active supervision of competent authorities both in Member States and in recognised third countries including audits carried out by the Food and Veterinary Office. The Commission will not hesitate to launch infringement procedures when control systems are not complying with the EU legislation.

5. APPLICATION OF THE IMPORT REGIME

Together with the USA, the EU is the world's leading organic market attracting exports from many third countries, representing together around 95 % of the world's organic sales. The Regulation includes provisions and harmonised procedures for importing organic products on the EU market through two possibilities: either in compliance with the EU organic legislation, or based on equivalence between standards and control systems.

Outside this import regime, other imports of equivalent organic products into the EU are based on import authorisations³¹, which are granted by the Member States authorities consignment by consignment for a limited period of time. This possibility is transitional and to be phased out progressively³².

5.1. Imports under the equivalence regime

Equivalent, in describing different systems or measures, means that they are capable of meeting the same objectives and principles by applying rules which ensure the same level of

²⁹ OJ L 113 of 3.5.2011, p. 1

³⁰ Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, OJ L 191, 30.4.2004, p. 1–141

³¹ Member States granted 2440 authorisations in 2009 and 3754 in 2010.

³² Article 19 of Commission Regulation (EC) n° 1235/2008.

assurance of conformity³³. Equivalence agreements can encourage the development of standards and controls adapted to local conditions. They are encouraged by the World Trade Organisation.

The specific Codex Alimentarius guidelines³⁴ on organic food constitute the international point of reference intended to facilitate the harmonization of requirements for organic products worldwide.

5.1.1. Recognition of third countries as providing equivalent guarantees

The list of recognized third countries comprised eleven countries at the moment of drafting this report. Another seventeen requests are pending. The recognition process is initiated by an official application lodged by the national authorities to the Commission. It includes the detailed assessment of the third country's organic standard and control system to determine whether they are equivalent to the ones of the EU. This assessment requires significant resources. Minor differences may be accepted, but too divergent rules may impose restrictions on the imports. Control measures must be proved to be as effective as inside the EU. The Commission also carries out on-the-spot examinations and reviews the list of recognised third countries regularly.

The Commission considers that once the initial assessment has been successfully finalised, this list of third countries offers the most stable and reliable approach to organic imports, and also contributes to stimulate developing countries to engage in setting up their own rules and control system. It is the Commission's intention to continue examining the existing requests and possible new ones with a view to promote the equivalence concept at world level.

However, the time needed for the assessments performed so far shows that this task is complex and requires highly technical expertise. While the Commission can call on co-reporting Member States to help perform assessments and on-the-spot visits, it is however clearly not sufficient to meet the resources needed to cover the whole process and for the subsequent monitoring of the list. The Commission will study further streamlining of the procedures used and may propose ways of simplification and reinforcement of the supervision. In the meantime, the Commission is intensifying its efforts to treat the pending requests. It must be noted that imports from the third countries in question, are not affected because they now take place via import authorisations granted by the Member States (see above) and in future they will be possible via the recognition of control bodies and control authorities in third countries, as described below.

5.1.2. Recognition of control bodies and control authorities as providing equivalent guarantees

Regarding imports of organic products from third countries that are not recognised, the Commission started to implement the recognition of equivalence for control bodies with the opening of applications from 2008. By the first deadline of 31 October 2009 the Commission received 73 applications from control bodies and control authorities all over the world. The Commission assessed the technical dossiers prepared by the applicants; in most cases it

³³ Regulation (EC) No 834/2007, article 2(x)

³⁴ Codex CAC/GL 32 - 1999 Guidelines for the production, processing, labelling and marketing of organically produced foods.

needed to request additional information from the applicants, which made the process longer. The first list of recognised control bodies adopted by the Commission³⁵ will be regularly updated. It will be applicable from 1st July 2012.

The Commission considers that the list of control authorities and control bodies could also offer a reliable approach to imports, provided adequate supervision is ensured to guarantee the correct functioning of the regime. In particular, whereas Member States competent authorities are responsible for the controls on all imported organic products from their release for free circulation in the EU territory, it will become essential that the Commission reacts in a timely manner to possible deficiencies in the functioning of a listed control body and withdraws it from the list if the requirements are no longer met.

This regime being new and not yet operational no conclusion can be drawn at this stage. However, from the experience gained with the functioning of the Regulation, it is clear that implementing this part of the import regime and ensuring appropriate supervision will create a substantial additional workload for the Commission.

As regards the supervision of the import regime in general, the feasibility of applying precautionary measures by the Commission to allow known or emerging risks to be countered more effectively should be explored, taking account of measures foreseen in the Regulation itself, and in other parts of European law applicable to controls³⁶.

5.2. Imports under the compliance regime

Under the compliance regime a non-EU operator has to fulfil all the requirements of EU legislation, including all detailed production rules and labelling. In contrast to the equivalence regime, the rules followed must be identical, and not merely equivalent, to the ones applicable in the EU. The operator must be subject to controls by a control body or a control authority recognised for the purpose of compliance by the Commission.

The compliance regime has not been activated yet. The Commission fixed the deadline for the receipt of first applications from control authorities and control bodies at 31 October 2014, thus giving time to the equivalence regime to develop.

Based on the experience gained so far, it is doubtful that the compliance regime will provide for better access to the EU market and will bring additional benefit to the EU's trading partners compared to what is already provided by the equivalence regime. It will neither bring significant benefit for the consumers regarding the corresponding imported organic products, which cannot be distinguished on the market. Moreover, the system creates an additional administrative workload comparable to the equivalence system without any additional benefit. The Commission therefore prefers concentrating its efforts on equivalence rather than on compliance, whose usefulness and efficiency need to be reconsidered together with trading partners, in the light of current and future organic trade activities.

³⁵ Commission implementing Regulation (EU) n° 1267/2011 of 6 December 2011, OJ L 324, 7.12.2011, p. 9

³⁶ Regulation (EC) No 882/2004 and Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC, OJ L 194, 25.7.2009, p. 11–21

5.3. Certificate of inspection

The release for free circulation in the EU of a consignment of organic products under the equivalence regime is conditional on the submission of an original certificate of inspection delivered by a control body or a control authority supervised either by a recognised third country or the Commission or a Member State's competent authority (under the regime of import authorisations). At importation into the EU, the consignment is checked against the information contained in the certificate of inspection, in particular markings and batch numbers identifying the organic products, and the certificate is endorsed by Customs. The certificate of inspection thus constitutes a key element in the traceability of each batch of organic products from the third country producer to the EU importer, traceability that can be used to track the onwards distribution of the product in the EU in case the withdrawal from the market becomes necessary.

Operators consider the obligation to submit an original certificate of inspection as burdensome due to the potential delays caused by the time needed for forwarding the original certificate and call for the possibility of submitting electronic certificates of inspection. Some Member States who clear a large percentage of all EU imports have signalled their interest in investigating the feasibility of electronic certificates made available through a secured database for control, clearance and supervision purposes to Member State authorities and the Commission. The Commission intends to examine the feasibility of introducing such a system, which would offer faster clearance to operators and provide key data on import transactions to the Commission for its supervision of control bodies in third countries. Importantly, such a system would also facilitate quick response by Member States in cases of infringement by blocking non compliant products.

6. CONCLUSIONS

This report has reviewed the limited experience gained with the application of the Regulation since 2009, from which the Commission draws the following conclusions:

- (a) There is currently no objective need to extend the scope of the Regulation to mass caterers. The organic labelling of textiles and cosmetics could possibly be given an adequate protection of consumers and producers interest through other instruments. It is preferable to deepen the regulatory and control aspects for agricultural products rather than to expand the scope to more products and sectors.
- (b) While the prohibition on the use of GMOs in organic production is correctly implemented, the vendor declaration needs to be further re-examined and the availability of some products in non-GM version to be followed up. Preventive measures and harmonised actions are preferred to a specific GMO threshold for organic products, which does not seem to be justified under current circumstances. On co-existence, further guidance to Member States has been provided on 13 July 2010, when the Commission issued a Commission Recommendation on guidelines for the development of national co-existence measures to avoid the unintended presence of GMOs in conventional and organic crops. However, recent developments need to be analysed.

- (c) The control system in most cases suited the functioning of the internal market; however it still shows some weaknesses in its application. Further work needs to be undertaken in order to make it more performing.

Moreover, while progress has been made in the implementation of the new import regime based on equivalence, some streamlining is desirable and the usefulness of activating the compliance regime is put into question.

The Commission believes that it is too early to add proposals to change the Regulation to this Report, especially at the time when the corresponding proposal for its alignment to the Lisbon Treaty³⁷ is still discussed in the Parliament and the Council. With this report, the Commission aims at providing factual elements which can guide a constructive debate on the organic farming Regulation. Following up on this debate, the Commission may come forward with legal proposals at a later stage.

For making such debate most constructive, and with a view to facilitate citizens' involvement, the Commission considers that topics like the simplification of the legislative framework - while at the same time ensuring that the standards are not watered down-, coexistence of genetically modified crops in particular with organic farming, the improvement of the control system and of the equivalence regime in trade of organic products are key issues for future reflections about organic agriculture.

The Commission invites the European Parliament and the Council to discuss the issues highlighted in this Report and welcomes feedback from other stakeholders.

³⁷ COM(2010) 759 final of 17.12.2010

ANNEX

Suggestion of issues to address in the framework of the discussion on the Report from the Commission to the European Parliament and the Council on the application of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products

1. Could the legislative framework be simplified and how, at the same time ensuring that the standards are not watered down?
2. What measures should be taken in order to ensure that co-existence is respected and that the standards of organic production can be fulfilled by any farmer who opts for this sector?
3. Is there a need to revise current production standards and go for stricter rules, for instance in relation to the availability of organic young animals, feed and seed and other elements? If yes, what to propose to farmers or regions not able to fulfil such new conditions? Would regionalised flexibility be compatible with fair competition conditions? Would controls be feasible?
4. Controls are based on physical inspections of each operator along the food chain at least once a year. Operators must be attested by independent certifiers. How could the control system be improved?
5. In line with the European Action Plan³⁸, the Commission has promoted equivalence in trade of organic products, recognising either third countries or control bodies. Should equivalence be the unique concept for trading organic products? In recent years the Commission has also achieved reciprocal recognition from third countries recognised equivalent by the EU. Should this approach be enhanced with a view to better defend offensive interest of the EU?

³⁸ COM (2004) 415 final of 10.06.2004, COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT European Action Plan for Organic Food and Farming