

Commission Communication — EU best practice guidelines for voluntary certification schemes for agricultural products and foodstuffs

(2010/C 341/04)

1. INTRODUCTION

Recent years have seen substantial growth in voluntary certification schemes for agricultural products and foodstuffs. An inventory compiled for the Commission in 2010 ⁽¹⁾ lists more than 440 different schemes, most of which were established during the last decade.

Certification schemes for agricultural products and foodstuffs provide assurance (through a certification mechanism) that certain characteristics or attributes of the product or its production method or system, laid down in specifications, have been observed. They cover a wide range of different initiatives that function at different stages of the food supply chain (pre- or post-farm gate; covering all or part of the food supply chain; affecting all sectors or just one market segment, etc.). They can operate at business-to-business (B2B) level (where the supermarket or processing business is the intended final recipient of the information) or at business-to-consumer (B2C) level. They can use logos although many, especially the B2B schemes, do not.

While certification schemes by definition employ third-party attestation, there are other schemes in the market which operate on the basis of a label or logo (often registered as a trademark) without involving any certification mechanism. Adherence to these schemes is done by self-declaration or through selection by the scheme owner. In line with the definitions provided in Section 2, these schemes will be referred to as 'self-declaration schemes'. The use of certification is most appropriate when the undertakings made are complex, laid down in detailed specifications and checked periodically. Self-declaration is more appropriate for relatively straightforward (single-issue) claims.

The development of certification schemes is driven mainly by factors such as societal demands for certain characteristics ⁽²⁾ of the product or its production process on the one hand (mostly for B2C schemes), and operators' desire to ensure that their suppliers meet specified requirements, on the other hand (mostly for B2B schemes). In the area of food safety, Regulation (EC) No 178/2002 laying down general principles and requirements of food law ⁽³⁾ puts the primary responsibility for ensuring that food and feed satisfy the requirements of food law and for verifying that such requirements are met, on the food and feed business operator. Large players in the food supply chain in particular often rely on certification schemes in order to satisfy themselves that a product meets the requirements and to protect their reputation and liability in the event of a food safety incident.

Clearly, private certification is not needed to show compliance with legal requirements. Any private certification scheme for the agricultural and food sector must remain voluntary. Where operators employ certification of compliance with basic requirements in order to facilitate transactions with other actors along the food chain, it should be clear that this practice cannot be used to differentiate products in the market.

Certification schemes can bring benefits:

- to intermediate actors in the food supply chain, by assuring standards and thereby protecting liability and reputation for product and label claims,
- to producers, by increasing market access, market share and product margins for certified products and also, potentially, by increasing efficiency and reducing transaction costs, and
- to consumers, by providing reliable and trustworthy information on product and process attributes.

Some stakeholders have argued that certification schemes can have drawbacks:

- threats to the single market ⁽⁴⁾,
- questions relating to the transparency of scheme requirements and the credibility of claims particularly for schemes that certify compliance with baseline requirements,
- potential for misleading consumers,
- costs and burdens on farmers, particularly where they have to join several schemes to meet demands from their buyers,

⁽¹⁾ Study conducted by Areté for DG AGRI; see http://ec.europa.eu/agriculture/quality/index_en.htm

⁽²⁾ For example: animal welfare; environmental sustainability; fair trade.

⁽³⁾ OJ L 31, 1.2.2002, p. 1.

⁽⁴⁾ In its Communication 'A better functioning food supply chain in Europe' (COM(2009) 591), the Commission stated its intention to review selected environmental standards and origin-labelling schemes that may impede cross-border trade.

- risk of rejection from the market of producers not participating in key certification schemes, and
- impacts on international trade, especially with developing countries ⁽¹⁾.

The Commission has noted that the issue of consumer confusion arising from different schemes with similar objectives is being taken up by private initiatives ⁽²⁾ aiming to create 'codes of good practice' for private standard-setting organisations mainly in the social and environmental field. Moreover, certain proponents of existing schemes have already taken steps to align requirements with similar schemes and some existing certification schemes (mostly at B2B level) have emerged from a harmonisation process of various individual standards.

1.1. Types of scheme

There is a great diversity of schemes in terms of their scope, their objectives, their structure and their operational methods. As mentioned earlier, one important distinction between schemes is whether or not they rely on a third-party attestation procedure, thereby grouping them into self-declaration schemes

on the one hand and certification schemes on the other. Certification schemes can be further distinguished based on whether they operate at business-to-business (B2B) level or whether they aim to provide information from the business chain to the consumer (B2C).

Another important classification criterion pertains to whether the scheme assesses products and processes (mostly B2C) or management systems (mostly B2B). In terms of specified requirements, schemes may attest compliance with provisions laid down by governmental authorities (baseline) or they can add criteria which go beyond the legal requirements (above baseline). Distinction between the two is not always easy to make: on the one hand, schemes often combine baseline criteria in some areas with higher requirements in others; on the other hand, certain baseline requirements particularly in the environmental and farming area require operators to use good and best practice, and make value-judgment about due care, so that the concrete actions to be taken can differ between actors and between Member States. Indeed, the technical requirements of some certification schemes are used by operators to interpret and make concrete these general obligations.

The following table illustrates this classification:

Classification of schemes

Type of attestation:	Self-declaration	Certification (third-party attestation)	
Audience:	B2C	B2C	B2B
Objects of specified requirements:	Products and processes	Mostly products (including services) and processes	Mostly management systems
Content of requirements:	Mostly above baseline	Mostly above baseline	Baseline and above baseline

The guidelines will focus on certification schemes as outlined in the right-hand side of the table above.

for certification schemes for agricultural products and foodstuffs in consultation with the Advisory Group on Quality ⁽⁵⁾.

1.2. Purpose of the guidelines

In its Communication on agricultural product quality policy ⁽³⁾, the Commission stated that in the light of developments and initiatives in the private sector, legislative action was not warranted to address the potential drawbacks in certification schemes at this stage ⁽⁴⁾. Instead, drawing on comments from stakeholders, the Commission undertook to develop guidelines

These guidelines are designed to describe the existing legal framework and to help improving the transparency, credibility and effectiveness of voluntary certification schemes and ensuring that they do not conflict with regulatory requirements. They highlight best practice in the operation of such schemes, thereby offering guidance on how to:

- avoid consumer confusion and increase the transparency and clarity of the scheme requirements,

⁽¹⁾ The issue of private standards has been discussed in the SPS Committee of the WTO.

⁽²⁾ E.g. the ISEAL Alliance (<http://www.isealalliance.org>).

⁽³⁾ COM(2009) 234.

⁽⁴⁾ This conclusion was based on a thorough impact assessment that explored different options for the way forward (see 'Certification schemes for agricultural products and foodstuffs'; http://ec.europa.eu/agriculture/quality/policy/com2009_234/ia_annex_d_en.pdf).

⁽⁵⁾ Advisory Group on 'Quality of Agricultural Production', established under Commission Decision 2004/391/EC (OJ L 120, 24.4.2004, p. 50).

- reduce the administrative and financial burden on farmers and producers, including those in developing countries, and
- ensure compliance with EU internal market rules and principles on certification.

The guidelines are directed primarily to scheme developers and operators.

Uptake of the guidelines is voluntary. Adherence to these guidelines does not mean that the Commission has endorsed the requirements set up by these schemes. The present guidelines neither have a legal status in the EU nor are they intended to alter requirements under EU legislation.

Finally, these guidelines should not be considered as a legal interpretation of the EU legislation as such interpretations are the exclusive competence of the Court of Justice of the European Union.

2. SCOPE AND DEFINITIONS

2.1. Scope

The guidelines are applicable to voluntary certification schemes covering:

- agricultural products, whether or not intended for human consumption (including feed),
- foodstuffs covered by Article 2 of Regulation (EC) No 178/2002, and
- processes and management systems related to the production and processing of agricultural products and foodstuffs.

The guidelines do not apply to official controls carried out by public authorities.

2.2. Definition of terms ⁽¹⁾

1. Specified requirement: need or expectation that is stated.

⁽¹⁾ Based on EN ISO/IEC 17000 'Conformity assessment — Vocabulary and general principles'.

2. Conformity assessment: demonstration that specified requirements relating to a product, process, system, person or body are fulfilled.
3. Review: verification of the suitability, adequacy and effectiveness of selection and determination activities, and the results of these activities, with regard to fulfilment of specified requirements.
4. Attestation: issue of a statement, based on a decision following review that fulfilment of specified requirements has been demonstrated.
5. Declaration: first-party attestation. For the purpose of these guidelines, the term 'self-declaration schemes' is used for collective schemes and label claims that are not certified, and which rely on the producer's self-declaration.
6. Certification: third-party attestation related to products, processes, systems or persons.
7. Accreditation: third-party attestation related to a body conveying formal demonstration of its competence to carry out specific tasks. In the EU ⁽²⁾, accreditation shall mean an attestation by a national accreditation body that a conformity assessment body meets the requirements set by harmonised standards and, where applicable, any additional requirements including those set out in relevant sectoral schemes, to carry out a specific conformity assessment activity.
8. Inspection: examination of a product design, product, process or installation and determination of its conformity with specific requirements or, on the basis of professional judgement, with general requirements.
9. Audit: systematic, independent, documented process for obtaining records, statements of fact or other relevant information and assessing them objectively to determine the extent to which specified requirements are fulfilled.

3. EXISTING LEGAL PROVISIONS AT EU LEVEL

3.1. Rules related to the operation of schemes

Certification schemes operating in the EU are subject to the following basic EU provisions:

⁽²⁾ Article 2(10) of Regulation (EC) No 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products (OJ L 218, 13.8.2008, p. 30).

- Rules on the internal market. Certification service-providers may benefit from the freedom of establishment and freedom to provide services as enshrined in Articles 49 and 56 of the Treaty on the Functioning of the European Union (TFEU) and relevant provisions of the Directive on Services ⁽¹⁾. They shall face no unjustified restrictions when establishing in another Member State. Equally, they should face no unjustified restrictions when providing the services across the borders. Certification schemes must also not result in de facto barriers to trade in goods in the internal market.
 - Rules on State involvement in schemes. Certification schemes supported by public bodies, such as regional or national authorities, may not lead to restrictions based on the national origin of producers or otherwise impede the single market. Any support for certification schemes granted by a Member State or through State resources within the meaning of Article 107 of the TFEU, must comply with State aid rules.
 - Rules on competition. Certification schemes may not lead to anticompetitive behaviour, including in particular on a non-exhaustive basis:
 - horizontal or vertical agreements restricting competition,
 - foreclosure of competing undertakings by one or more undertakings with significant market power (such as preventing access of competing buyers to supplies and/or access of competing suppliers to distribution channels),
 - preventing access to the certification scheme by market operators that comply with the applicable pre-requisites,
 - preventing the parties to the scheme or other third parties from developing, producing and marketing alternative products which do not comply with the specifications laid down in the scheme.
 - Consumer information and labelling requirements ⁽²⁾. The labelling, advertising and presentation of food must not be such as it could mislead a purchaser to a material degree, particularly:
 - as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production,
 - by attributing to the foodstuff effects or properties which it does not possess,
 - by suggesting that the foodstuff possesses special characteristics when in fact all similar foodstuffs possess such characteristics.
- Schemes certifying only compliance with legal requirements may not lead to any suggestion that the certified products possess special characteristics which are different from those of similar products. Nor should the effect of the schemes be to discredit or tend to discredit other products on the market, nor the reliability of official controls.
- Moreover, labelling, advertising and presentation of food must not be such as it could mislead consumers according to the provisions of the Directive in Unfair Commercial Practices ⁽³⁾.
- The EU takes into account its international obligations, in particular the requirements set out in the WTO Agreement on Technical Barriers to Trade, when it introduces a conformity assessment procedure in a given piece of legislation.

3.2. Rules related to the content of schemes

In addition, specific legislation exists on many subjects covered by the requirements of certification schemes (e.g. regulatory requirements for food safety and hygiene ⁽⁴⁾; organic farming; animal welfare; environmental protection; marketing standards for specific products).

In areas where relevant standards or legislation exist, claims must take into account and be consistent with such standards or legislation and make reference to them in the specifications (e.g. if a scheme is making organic farming claims, it must be based on Regulation (EC) No 834/2007 about organic production and labelling of organic products ⁽⁵⁾; schemes making claims about nutrition and health must be in accordance with Regulation (EC) No 1924/2006 ⁽⁶⁾, and go through the required scientific assessment by EFSA).

⁽¹⁾ Directive 2006/123/EC of 12 December 2006 on services in the internal market (OJ L 376, 27.12.2006, p. 36).

⁽²⁾ Article 2(1)(a) of Directive 2000/13/EC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ L 109, 6.5.2000, p. 29).

⁽³⁾ Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (OJ L 149, 11.6.2005, p. 22) and guidance for its implementation: SEC(2009) 1666.

⁽⁴⁾ Regulation (EC) No 852/2004 of 29 April 2004 on the hygiene of foodstuffs; Regulation (EC) No 853/2004 of 29 April 2004 laying down specific hygiene rules for the hygiene of foodstuffs and Regulation (EC) No 854/2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ L 139, 30.4.2004, p. 1).

⁽⁵⁾ OJ L 189, 20.7.2007, p. 1.

⁽⁶⁾ OJ L 404, 30.12.2006, p. 9.

In particular, with regard to food safety and hygiene:

- schemes may not prejudice or aim to replace existing official standards and/or requirements, nor should they purport to substitute for official controls carried out by competent authorities for the purposes of official verification of compliance with official obligatory standards and requirements,
- product marketed under schemes which set safety and hygiene standards beyond legal requirements may not be advertised or promoted in a way that would discredit or tend to discredit the safety of other products on the market or the reliability of official controls.

3.3. Rules governing conformity assessment, certification and accreditation

Rules on the organisation and operation of accreditation of bodies performing conformity assessment activities in the regulated area have been laid down in Regulation (EC) No 765/2008. While this Regulation does not contain a requirement for conformity assessment bodies to become accredited, such a requirement is part of some other EU legislation ⁽¹⁾.

In addition, the internationally recognised rules for operating product/process or system certification schemes are set out in the International Standards Organisation (ISO) Guide 65 (EN 45011) or ISO 17021, respectively. While product/process or system certification schemes are voluntary initiatives, to deliver product/process or system certificates under accreditation, certification bodies have to be accredited against EN 45011/ISO 65 or ISO 17021.

However, the above is without prejudice to all applicable EU food law requirements, including the general objectives laid down in Article 5(1) of Regulation (EC) No 178/2002:

'Food law shall pursue one or more of the general objectives of a high level of protection of human life and health and the protection of consumers' interests, including fair practices in food trade, taking account of, where appropriate, the protection of animal health and welfare, plant health and the environment'.

Within this framework, Regulation (EC) No 882/2004 ⁽²⁾ of the European Parliament and of the Council on official controls

performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules includes certain rules for delegation by competent authorities of official control tasks to independent third parties (including accreditation and reporting obligations).

The guarantees given by the official control activities are the baseline, on top of which specific certification schemes may operate on a voluntary basis, bearing in mind that any breach is liable to food law. Assessment of conformity with baseline requirements through certification schemes does not exempt the official control authorities from their responsibility.

4. RECOMMENDATIONS REGARDING SCHEME PARTICIPATION AND DEVELOPMENT

1. Schemes should be open under transparent and non-discriminatory criteria to all participants willing and able to comply with the specifications.
2. Schemes should have a supervisory structure which allows for the contribution of all concerned stakeholders in the food chain (farmers and their organisations ⁽³⁾, agricultural and agri-food traders, food industry, wholesalers, retailers and consumers, as appropriate) in the development of the scheme and in decision-making in a representative and balanced way. Mechanisms for participation by stakeholders and the organisations involved should be documented and publicly available.
3. Managers of schemes operating in different countries and regions should facilitate the participation of all concerned stakeholders from those regions in scheme development.
4. Scheme requirements should be developed by technical committees of experts and submitted to a broader group of stakeholders for inputs.
5. Managers of schemes should ensure the participation of concerned stakeholders in the development of inspection criteria and checklists, as well as in the design and determination of thresholds for sanctions.
6. Managers of schemes should adopt a continuous development approach where feedback mechanisms exist to regularly review rules and requirements in a participatory manner. In particular, scheme participants should be involved in the future development of the scheme.

⁽¹⁾ E.g. Article 11(3) of Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs requires that 'The product certification bodies referred to in paragraphs 1 and 2 shall comply with and, from 1 May 2010 be accredited in accordance with European standard EN 45011 or ISO/IEC Guide 65 (General requirements for bodies operating product certification systems)'.

⁽²⁾ OJ L 165, 30.4.2004, p. 1.

⁽³⁾ E.g. cooperatives.

7. Changes to scheme requirements must be made only when justified, so as to avoid unnecessary adaptation costs for scheme participants. Scheme participants must be given appropriate notice of any change to the scheme requirements.

8. Schemes should include contact information on all documentation associated with the scheme (including on a website) and establish a process to receive and reply to comments on the scheme.

5. RECOMMENDATIONS REGARDING SCHEME REQUIREMENTS AND CORRESPONDING CLAIMS

5.1. Clarity and transparency of scheme requirements and claims made

1. Schemes should clearly state the social, environmental, economic and/or legal objectives.

2. Claims and requirements should be clearly linked to the objectives of the scheme.

3. The scope of the scheme in terms of products and/or processes should be clearly defined.

4. Scheme specifications⁽¹⁾, including a public summary, should be freely available (e.g. on a website).

5. Schemes operating in different countries should provide translations of the specifications if a duly justified request is made by potential participants or certification bodies.

6. Scheme specifications should be clear, sufficiently detailed and easily understandable.

7. Schemes using logos or labels should provide information about where consumers can find further details on the scheme, such as a website address, either on the product packaging or at the point of sale.

8. Schemes should clearly state (e.g. on their website) that they require certification by an independent body and provide contact details of certification bodies which provide this service.

⁽¹⁾ Exceptions may be needed where scheme specifications are based on standards which are not freely available (e.g. ISO and EN standards).

5.2. Evidence base of scheme claims and requirements

1. All claims should be based on objective and verifiable evidence and scientifically sound documentation. These documents should be freely available, e.g. on a website⁽²⁾.

2. Schemes operating in different countries and regions should adapt their requirements in line with the relevant local agro-ecological, socio-economic and legal conditions and agricultural practices, while ensuring consistent results across different contexts.

3. Schemes should clearly indicate (e.g. on a website) whether, where and to what extent their specifications go beyond the relevant legal requirements, including in the areas of reporting and inspections, if applicable.

6. RECOMMENDATIONS REGARDING CERTIFICATION AND INSPECTIONS

6.1. Impartiality and independence of certification

1. Certification of compliance with the scheme requirements should be carried out by an independent body accredited:

— by the national accreditation body appointed by Member States according to Regulation (EC) No 765/2008, in accordance with relevant European or international standards and guides setting out general requirements for bodies operating product certification systems, or

— by an accreditation body signatory to the multilateral recognition arrangement (MLA) for product certification of the International Accreditation Forum (IAF).

2. Schemes should be open to certification by any qualified and accredited certification body, without the imposition of geographical restrictions.

6.2. Inspections

As a general principle, inspections should be effective, clear, transparent, based on documented procedures and relate to verifiable criteria underlying the claims made by the certification scheme. Unsatisfactory inspection results should lead to appropriate action.

1. Regular inspections of scheme participants should be carried out. There should be clear and documented procedures for inspections, including frequency, sampling and laboratory/analytical tests in parameters related to the scope of the certification scheme.

⁽²⁾ An exception should be made for confidential and/or proprietary information, which should be clearly indicated.

2. The frequency of inspections should take into account previous inspection results, inherent risks posed by the product or process or management system, as well as the existence of internal audits in collective producer organisations which can complement third-party inspections. A minimum inspection frequency for all scheme participants should be determined by the scheme supervisor.
3. There should be a systematic evaluation of the results of inspections.
4. Unannounced inspections and inspections at short notice should be used as a general rule (e.g. within 48 hours).
5. Inspections and audits should be based on publicly available guidelines, checklists and plans. The inspection criteria should be closely linked to the requirements of the scheme and the corresponding claims.
6. There should be clear and documented procedures for dealing with non-compliance which are effectively implemented. Knock-out criteria should be defined which could lead to:

- non-issue or withdrawal of the certificate,
- withdrawal of membership, or
- reporting to the relevant official enforcement body.

These knock-out criteria should include at least non-fulfilment of basic legal requirements in the area covered by the certification. Cases of non-compliance with adverse implications for health protection should be notified to the relevant authorities in accordance with regulatory requirements.

7. Inspections should focus on analysing the verifiable criteria which underlie claims made by certification schemes.

6.3. Costs

1. Scheme managers should make public the membership fees (if any) and require their certification bodies to publish the costs associated with certification and inspection for different types of scheme participants.
2. Possible discrepancies in fees charged to different scheme participants should be justified and proportionate. They should not serve to deter certain groups of potential participants, e.g. from other countries, to join the scheme concerned.

3. Any cost savings arising from mutual recognition and benchmarking should be passed on to the operators subject to inspections and audits.

6.4. Qualification of auditors/inspectors

As a general principle, auditors/inspectors should be impartial, qualified and competent.

Auditors carrying out the certification audits should have the relevant knowledge in the specific sector and should work for certification bodies that are accredited under the relevant European or international standards and guides for product certification schemes and for management system certification schemes. The required auditor skills should be described in the scheme specifications.

6.5. Provisions for small-scale producers

Schemes should include provisions enabling and promoting the participation of small-scale producers (especially from developing countries, if relevant) in the scheme.

7. RECOMMENDATIONS REGARDING MUTUAL RECOGNITION AND BENCHMARKING/OVERLAP WITH OTHER SCHEMES

1. Where schemes are entering a new sector and/or expanding in scope, the need for the scheme should be justified. Where possible, scheme managers should make explicit reference (e.g. on their website) to other relevant schemes operating in the same sector, policy area and geographical region and identify where approaches converge and agree. They should actively explore possibilities for mutual recognition for parts or all of the scheme requirements.
2. In areas where schemes have been identified to have partial or total overlap with the requirements of other schemes, schemes should include recognition or acceptance partially or totally of inspections and audits already carried out under those schemes (aiming to not re-audit the same requirements).
3. If mutual acceptance cannot be achieved, scheme managers should promote combined audits based on combined audit checklists (i.e. one combined checklist and one combined audit for two or more different schemes).
4. Managers of schemes that overlap in their requirements should as much as practically and legally possible also harmonise their auditing protocols and documentation requirements.