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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1935/95

of 22 June 1995

amending Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the Commission has received a specific mandate in the framework of Regulation (EEC) No 2092/91 ⁽⁴⁾ to review a number of provisions of that Regulation by 1 July 1994 to submit any appropriate proposal for revision of that Regulation;

Whereas it has become apparent that the provisions, expiring on 1 July 1995 concerning the labelling of agricultural products and foodstuffs containing an ingredient of agricultural origin which was produced by producers converting to organic farming, should be extended in order to permit those producers to valorize the additional cost of their production by an appropriate labelling of their products;

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

Whereas it has become apparent from the review that the provisions concerning the labelling of foodstuffs prepared only partly from ingredients of agricultural origin which were produced according to organic production methods, should be improved in order to permit greater emphasis to be placed on the organically produced component in such foodstuffs;

Whereas it has also become apparent that the indication provided for in Annex V should remain optional, but should also, in order to prevent improper use of that indication, be restricted to sales of prepackaged foodstuffs or direct sales by the producer or preparer to the ultimate consumer, provided that the nature of the product can be identified unambiguously;

Whereas it has furthermore become apparent that propagating material should be obtained from organically grown plants but that a system of derogations is necessary in order to enable producers to use, during a transitional period, conventionally-produced propagating material, where no appropriate organically-produced propagating material is available;

Whereas, for the same reasons, it must be permissible for whole seedlings obtained in a conventional manner and intended for planting for plant production to be used for an interim period;

Whereas it has become apparent that a number of products which were used before the adoption of Regulation (EEC) No 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 to the extent that their use is also permitted in conventional agriculture;

Whereas it has appeared appropriate to clarify that the inspection system provided for applies also to importers of products from third countries established in the European Union;

Whereas Regulation (EEC) No 2092/91 should therefore be amended,

⁽¹⁾ OJ No C 326, 3. 12. 1993, p. 8.

⁽²⁾ OJ No C 128, 9. 5. 1994, p. 112.

⁽³⁾ OJ No C 148, 30. 5. 1994, p. 24.

⁽⁴⁾ OJ No L 198, 22. 7. 1991, p. 1. Regulation as last amended by the 1994 Act of Accession.

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 2092/91 is hereby amended as follows :

1. In Article 1 (2), the date of '1 July 1992' shall be replaced by '30 June 1995'.
2. Article 4 (2) shall be replaced by the following :
 - '2. "production" shall mean the operations on the agricultural holding involved in producing, packaging and initially labelling as products of organic production agricultural products produced on that holding ;'
3. Article 4 (3) shall be replaced by the following :
 - '3. "preparation" shall mean the operations of preserving and/or processing of agricultural products, and also packaging and/or alterations made to the labelling concerning the presentation of the organic production method of the fresh, preserved and/or processed products ;'
4. Article 4 (6) shall be replaced by the following :
 - '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 labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer ;'
5. In Article 4, the following paragraphs shall be added :
 - '9. "prepackaged 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) and Article 11 (6) (a), 'Articles 6 and 7' shall be replaced by 'Article 6' ;
7. In Article 5 (1), the following point shall be added :
 - '(d) in the case of products prepared after 1 January 1997, the labelling refers to the name and/or the code number of the inspection authority or body to which the operator is subject. Member States shall decide whether to require a reference to the name and/or to the code number and shall notify the Commission accordingly ;'

8. Article 5 (2) shall be deleted ;

9. Article 5 (3) shall be replaced by the following :

'3. The labelling and advertising of a product specified in Article 1 (1) (b) may bear indications referring to organic production methods in the sales description of the product 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 or have been provisionally authorized by a Member State in accordance with any implementing measures adopted where appropriate pursuant to paragraph 7 ;
- (c) the product contains only substances listed in Annex VI, Section A, as ingredients of non-agricultural origin ;
- (d) the products 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 has been prepared or imported by an operator who is subject to the inspection measures laid down in Articles 8 and 9 ;
- (g) in the case of products prepared after 1 January 1997, the labelling refers to the name and/or the code number of the inspection authority or body to which the operator who has carried out the most recent preparation operation is subject. Member States shall decide whether to require a reference to the name and/or to the code number and shall notify the Commission accordingly.

The indications referring to organic production methods must make it clear that they relate to a method of agricultural production and must be accompanied by a reference to the ingredients of agricultural origin concerned, unless such reference is clearly given in the list of ingredients.'

10. Article 5 (4) shall be 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 sufficient quantity in the Community in accordance with the rules laid down in Article 6, or cannot be imported from third countries in accordance with the rules laid down in Article 11.'

11. Article 5 (5) shall be 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. After 1 January 1996 such indications must take the form of the words "product under conversion to organic farming", and must appear in a colour, size and style of lettering which is not more prominent than the sales description of the product ; in this indication the words "organic farming" shall not be more prominent than the words "product under conversion to" ;
- (d) the product contains only one ingredient of agricultural origin ;
- (e) for products prepared after 1 January 1997, the labelling refers to the name and/or the code number of the inspection authority or body to which the operator who has carried out the most recent production or preparation operation is subject. Member States shall decide whether to require a reference to the name and/or to the code number and shall notify the Commission accordingly ;

12. In Article 5, the following paragraph shall be inserted after paragraph 5 :

'5a. Without prejudice to the provisions of 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 70 % 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) all the other ingredients of agricultural origin of the product are included in Annex VI, Section C or have been provisionally authorized by a Member State in accordance with any implementation measures adopted where appropriate pursuant to paragraph 7 ;
- (c) 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 or imported from third countries under the arrangements laid down in Article 11 ; they appear in the same colour and with an identical size and style of lettering as the other indications in the list of ingredients. Such indications must also appear in a separate statement set in the same visual field as the sales description and indicating the percentage of the ingredients of agricultural origin or derived therefrom which were obtained in accordance with the rules laid down in Article 6 or were imported from third countries under the arrangements laid down in Article 11. The statement may not appear in a colour, size and style of lettering which is more prominent than the sales description of the product. The statement shall be in the following form : "X % of the agricultural ingredients were produced in accordance with the rules of organic production" ;

- (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 has been prepared or imported by an operator who is subject to the inspection measures laid down in Articles 8 and 9 ;
- (h) for products prepared after 1 January 1997, the labelling refers to the name and/or the code number of the inspection authority or inspecting body to which the operator who has carried out the most recent production or preparation operation is subject. Member States shall decide whether to require a reference to the name and/or to the code number and/or shall notify the Commission accordingly ;

13. Article 5 (6) shall be replaced by the following :

'6. During a transitional period expiring on 31 December 1997, the labelling and advertising of a product as referred to in Article 1 (1) (b) prepared partly from ingredients not satisfying the requirements in paragraph 3 (a) may refer to organic production methods provided that :

- (a) at least 50 % of the ingredients of agricultural origin satisfy the requirements referred to in paragraph 3 (a) ;
- (b) the product satisfies the requirements referred to in paragraph 3 (c), (d), (e) and (f) ;

- (c) the indications referring to organic production methods :
- appear only in the list of ingredients as provided for in Directive 79/112/EEC, as last amended by Directive 89/395/EEC,
 - clearly refer to only those ingredients obtained according to the rules referred to in Article 6 or imported under the arrangements laid down in Article 11 ;
- (d) the ingredients and their relative levels appear in descending order by weight in the list of ingredients ;
- (e) indications in the list of ingredients appear in the same colour and with an identical size and style of lettering ; ;
14. The first subparagraph of Article 5 (8) shall be replaced by the following :
- ‘8. Limitative lists of the substances and products referred to in paragraph 3 (b), (c) and (d) and paragraph 5a (b), (d) and (e) shall be established in Annex VI, Sections A, B and C, according to the procedure laid down in Article 14.’ ;
15. Article 5 (9) shall be replaced by the following and paragraphs 10 and 11 shall be added :
- ‘9. For the calculation of the percentages referred to in paragraphs 3 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 those rules.
11. Before 1 January 1999, the Commission shall review the provisions of this Article and of Article 10 and submit any appropriate proposals for their revision.’ ;
16. Article 6 shall be replaced by the following :
- Article 6*
1. The organic production method implies that for the production of products referred to in Article 1 (1) (a) other than seeds and vegetative propagating material :
- (a) at least the requirements of Annex I and, where appropriate, the detailed rules relating thereto, must be satisfied ;
 - (b) only products composed of substances listed in Annexes I and II may be used as plant-protection products, detergents, fertilizers, soil conditioners or for another purpose where such purpose is specified in Annex II in regard to certain substances. They may be used only under the specific conditions laid down in Annexes I and II in so far as the corresponding use is authorized in general agriculture in the Member States concerned in accordance with the relevant Community provisions or national provisions in conformity with Community law ;
- (c) only seed or vegetative propagating material produced by the organic production method referred to in paragraph 2 is used.
2. The organic production method implies that for seeds and vegetative reproductive material, the mother plant in the case of seeds and the parent plant(s) in the case of vegetative propagating material have been produced in accordance with the provisions of subparagraphs (a) and (b) of the previous paragraph for at least one generation or, in the case of perennial crops, two growing seasons.
3. (a) By way of derogation from paragraph 1 (c), seeds and vegetative propagating material not obtained by the organic production method may, during a transitional period expiring on 31 December 2000 and with the approval of the competent authority of the Member State, be used in so far as users of such propagating material can show to the satisfaction of the inspection body or authority of the Member State that they were unable to obtain on the market propagating material for an appropriate variety of the species in question and satisfying the requirements of paragraph 2. In that case, propagating material which is not treated with products not listed in Annex II, Section B must be used, if available on the Community market. Member States shall inform the other Member States and the Commission of any authorization granted under this paragraph.
- (b) The procedure laid down in Article 14 may be applied to decide on :
- the introduction, before 31 December 2000 of restrictions concerning the transitional measure referred to in subparagraph (a) with regard to certain species and/or types of propagating material and/or the absence of chemical treatment,
 - the maintenance, after 31 December 2000, of the derogation provided for in subparagraph (a) with regard to certain species and/or types of propagating material and with regard to the whole Community or certain parts thereof,
 - the introduction of procedural rules and criteria concerning the derogation referred to in subparagraph (a) and the information thereon communicated to the professional organizations concerned, to other Member States and the Commission.
4. Before 31 December 1999 the Commission shall review the provisions of this Article, in particular paragraph 1 (c) and paragraph 2 and submit any appropriate proposals with a view to their revision.’ ;

17. The following Article shall be inserted after Article 6:

Article 6a

1. For the purposes of this Article, "seedlings" shall mean whole seedlings intended for planting for plant production.

2. The organic production method implies that when producers use seedlings, they have been produced in accordance with Article 6.

3. By way of derogation from paragraph 2, seedlings not obtained by organic production methods may be used during a transitional period expiring on 31 December 1997 in so far as the following conditions are met:

(a) the competent authority of the Member State has authorized the use after the user of users of such material have demonstrated to the satisfaction of the inspection body or authority of the Member State that they were not able to obtain an appropriate variety of the species in question on the Community market;

(b) the seedlings have not been treated, since sowing, with any products other than those listed in Annex II, Sections A and B;

(c) the seedlings come from a producer who has accepted an inspection system equivalent to the arrangements laid down in Article 9 and has agreed to apply the restriction in subparagraph (b); this provision shall enter into force on 1 January 1996;

(d) after planting, the seedlings must have been cultivated in accordance with the provisions of Article 6 (1) (a) and (b) for a period of at least six weeks before harvesting;

(e) the labelling of any product containing ingredients derived from such seedlings may not include the indication referred to in Article 10;

(f) without prejudice to any restriction resulting from the procedure referred to in paragraph 4, any authorization granted under this paragraph shall be withdrawn as soon as the shortage comes to an end, and shall expire on 31 December 1997 at the latest.

4. (a) Where an authorization as referred to in paragraph 3 has been granted, the Member State shall immediately notify to the other Member State and to the Commission the following information:

- the date of the authorization,
- the name of the variety and species concerned,

— the quantities that are required and the justification for those quantities,

— the expected period of the storage,

— any other information requested by the Commission or the Member States.

4. (b) If the information submitted by any Member State of the Commission and to the Member State which granted the authorization shows that an appropriate variety is available during the period of the storage, the Member State shall consider withdrawing the authorization or reducing its period of validity, and shall inform the Commission and the other Member States of the measures it has taken, within 10 days of the date of receipt of the information.

4. (c) At the request of a Member State or at the Commission's initiative, the matter shall be submitted for examination to the Committee referred to in Article 14. It may be decided, in accordance with the procedure laid down in Article 14, that the authorization shall be withdrawn or its period of validity amended;

18. In Article 7, the following paragraph shall be inserted after paragraph 1:

'1a. The conditions provided for in paragraph 1 shall 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.'

19. In Article 9 (1), the terms 'operators producing or preparing products as referred to in Article 1' shall be replaced by the terms 'operators producing, preparing or importing from third countries products as referred to in Article 1'.

20. In Article 9 (5) (b), the term 'irregularities' shall be replaced by 'irregularities and/or infringements'.

21. In Article 9 (6) (c), the term 'infringements' shall be replaced by 'irregularities and/or infringements'.

22. In Article 9 (6) (d), the term 'laid down in paragraph 7, 8 and 9' shall be replaced by 'laid down in paragraphs 7, 8, 9 and 11'.

23. In Article 9, the following paragraph shall be added after paragraph 6:

'6a. Before 1 January 1996, Member States shall issue a code number to each inspection body or authority approved or designated in accordance with the provisions of this Article. They shall inform the other Member States and the Commission thereof; the Commission shall publish the code numbers in the list referred to in the last subparagraph of Article 15.'

24. In Article 9, the following paragraph shall be added :

'11. As from 1 January 1998 and without prejudice to the provisions of paragraphs 5 and 6, approved inspection bodies must satisfy the requirements laid down in the conditions of standard EN 45011 of 26 June 1989.'

25. Article 10 (1) shall be replaced by the following :

'1. The indication and/or the logo shown in Annex V indicating that products are covered by the specific inspection scheme, may appear on the labelling of products as referred to in Article 1 only where such products :

- (a) satisfy the requirements of Article 5 (1) of (3);
- (b) have been subject to the inspection arrangements referred to in Article 9 throughout the production and preparation process ;
- (c) are sold directly by the producer or preparer to the ultimate consumer in sealed packaging, or placed on the market as prepackaged foodstuffs ; in the case of direct sales by the producer or preparer to the ultimate consumer, the sealed packaging is not required when the labelling enabled the product requiring this indication to be indentified clearly and unambiguously ;
- (d) show on the labelling the name and/or business name of the producer, preparer or vendor together with the name or code number of the inspection authority or body, and any indication required in accordance with the provisions of the regulations on the labelling of foodstuffs, in accordance with Community legislation.'

26. In Article 10 (3) (a), the terms 'Articles 5, 6 and 7' shall be replaced by 'Article 5 and 6'.

27. In Article 10, paragraphs 5, 6 and 7 shall be replaced by the following :

'General enforcement measures

Article 10a

1. Where a Member State finds irregularities or infringements relating to the application of this Regulation in a product coming from another Member State and bearing indications as referred to in Article 2 and/or Annex V it shall inform the Member State which designated the inspection

authority or approved the inspection body and the Commission thereby.

2. Member States shall take whatever measures and action are required to prevent fraudulent use of the indications referred to in Article 2 and/or Annex V.'

28. In Article 11 (3) (a), the terms 'inspection authorities' shall be replaced by 'inspection body and/or inspection authority' ;

29. In Article 11 (6) (a), the date '31 July 1995' shall be replaced by '31 December 2002' ;

30. In Article 11 (6) (a), the last sentence shall be 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 not specified in the decision referred to in paragraph 1 (a), and which was not examined in the framework of the request submitted by the third country, and only where that third country has agreed to the continuation of the authorization arrangements provided for in this paragraph.'

31. In Article 11, the following paragraph shall be added :

'7. The Commission may, in accordance with the procedure laid down in Article 14 at the request of a Member State, approve a third country's inspection body which has previously been assessed by the Member State concerned and add it to the list referred to in paragraph 1 (a). The Commission shall forward the request to the third country concerned.'

32. In Article 13, the following indent shall be inserted before the first indent :

'— detailed rules for applying this Regulation ;'

33. In Article 13, the last indent shall be replaced by the following :

'— amendments to Annex V in order to define a Community logo to accompany or replace the indication that products are covered by the inspection scheme.'

Article 2

This Regulation shall enter into force on the seventh day following 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.

Done at Brussels, 22 June 1995.

For the Council

The President

Ph. VASSEUR
