

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 392/2004
of 24 February 2004
amending Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto in agricultural products and foodstuffs**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) Regulation (EEC) No 2092/91 ⁽²⁾ provides for a harmonised framework for the labelling, production and inspection of agricultural products, which bear or are intended to bear indications referring to the organic production method.
- (2) Regulation (EEC) No 2092/91 also provides for Community-wide protection of certain terms used to indicate to consumers that a food or feed product, or its ingredients, are obtained in accordance with the organic production method laid down in that Regulation. That protection also applies to the usual derivatives or diminutives of those terms, whether they are used alone or combined, and independently of which language is used. In order to remove any possibility of misinterpretation as regards the scope of the protection it is appropriate to amend that Regulation correspondingly.
- (3) Regulation (EEC) No 2092/91 also provides that operators producing, preparing or importing products from third countries, which fall within the scope of that Regulation are subject to an inspection system. In recent years, some products bearing indications referring to the organic production method have been placed on the market without complying with Regulation (EEC) No 2092/91. Moreover, contamination with herbicides has occurred recently during the storage of products from organic farming. It is therefore necessary to reinforce the

inspection system and to submit to the inspection system all operators throughout the production and the preparation process.

- (4) In conformity with the principle of a risk-based approach, it might appear in some cases disproportionate to apply notification and inspection requirements to certain types of retail operators. It is therefore appropriate to provide for the possibility for Member States to exempt such operators from those requirements.

- (5) For the purpose of respecting the obligation of professional secrecy, the inspection authorities and bodies are required not to disclose information and data they obtain in their inspection activity. However, the exchange of information should be possible between inspection authorities and bodies in order to improve traceability and to guarantee compliance with Regulation (EEC) No 2092/91 throughout the production and preparation process.

- (6) Since the Community logo indicating that products are covered by the specific inspection scheme may be used for products imported from third countries, it is appropriate to provide, for reasons of clarity, that equivalent inspection requirements are to be applied to those products.

- (7) It is appropriate to provide for a deferred date of application of the new notification and inspection requirements in order to allow for the necessary adjustments, in particular in the Member States where no such requirements currently exist. This should be without prejudice to such inspection requirements which already exist at national level.

⁽¹⁾ Opinion delivered on 4 December 2003 (not yet published in the Official Journal).

⁽²⁾ OJ L 198, 22.7.1991, p. 1. Regulation last amended by Commission Regulation (EC) No 2277/2003 (OJ L 336, 23.12.2003, p. 68).

- (8) Regulation (EEC) No 2092/91 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. Article 2 shall be replaced by the following:

'Article 2

For the purposes of this Regulation a product shall be regarded as bearing indications referring to the organic production method where, in the labelling, advertising material or commercial documents, such a product, its ingredients or feed materials are described in terms suggesting to the purchaser that the product, its ingredients or feed materials have been obtained in accordance with the rules of production laid down in Article 6. In particular, the following terms or their usual derivatives (such as bio, eco etc.) or diminutives, alone or combined, shall be regarded as indications referring to the organic production method throughout the Community and in any Community language, unless they are not applied to agricultural products in foodstuffs or feedingstuffs or clearly have no connection with this method of production:

- in Spanish: ecológico,
- in Danish: økologisk,
- in German: ökologisch, biologisch,
- in Greek: βιολογικό,
- in English: organic,
- in French: biologique,
- in Italian: biologico,
- in Dutch: biologisch,
- in Portuguese: biológico,
- in Finnish: luonnonmukainen,
- in Swedish: ekologisk.;

2. in Article 8, paragraph 1 shall be replaced by the following:

'1. Any operator who produces, prepares, stores or imports from a third country products as specified in Article 1 with a view to the subsequent marketing thereof, or who markets such products, shall:

- (a) notify this activity to the competent authority of the Member State where the activity is carried out; such notification shall include the information referred to in Annex IV;
- (b) submit his undertaking to the inspection system referred to in Article 9.

Member States may exempt from the application of this paragraph operators who sell such products directly to the final consumer or user provided they do not produce, prepare, store other than in connection with the point of sale, or import such products from a third country.

Where an operator contracts out any of the activities referred to in the first subparagraph to a third party, that operator shall nonetheless be subject to the requirements referred to in points (a) and (b), and the subcontracted activities shall be subject to the inspection system referred to in Article 9.;

3. Article 9 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. Member States shall set up an inspection system operated by one or more designated inspection authorities and/or by approved private bodies to which the operators referred to in Article 8(1) shall be subject.;

(b) in paragraph 7, point (b), the following sentence shall be added:

'However, upon request duly justified by the necessity to guarantee that the products have been produced in accordance with this Regulation, they shall exchange with other inspection authorities or approved inspection bodies relevant information on the results of their inspection. They may also exchange the abovementioned information on their own initiative.;

(c) in paragraph 9, point (a) shall be replaced by the following:

'(a) ensure that, where an irregularity is found regarding the implementation of Articles 5 and 6 or of the provisions referred to in Articles 3 and 4 of Commission Regulation (EC) No 223/2003 of 5 February 2003 on labelling requirements related to the organic production method for feedingstuffs, compound feedingstuffs and feed materials (*), or of the measures referred to in Annex III, the indications provided for in Article 2 referring to the organic production method are removed from the entire lot or production run affected by the irregularity concerned;

(*) OJ L 31, 6.2.2003, p. 3.;

4. in Article 10(1), point (b) shall be replaced by the following:

'(b) have been subject to the inspection system referred to in Article 9 throughout the production and preparation process or, in the case of imported products to equivalent measures; in the case of products imported according to Article 11 (6), the implementation of the inspection system shall comply with requirements equivalent to those provided for in Article 9, and in particular paragraph 4 thereof.;

Article 2

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

Article 1(2) shall apply from 1 July 2005.

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

Done at Brussels, 24 February 2004.

For the Council

The President

J. WALSH
