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## ANNEX VIII

### Requirements for approval and control of SAs by Member States

#### CHAPTER I

##### APPROVAL REQUIREMENTS

- (a) The SA must be an entity having legal capacity and has to be registered in the Register of companies of the responsible Member State.
- (b) The SA's constituting articles must stipulate that one of its declared aims is control and supervision of agricultural products at international level.
- (c) The SA must have international coverage in order to be able to carry out certification on a worldwide basis, either by implantation through subsidiaries in a number of third countries and/or by way of directly attending the discharge operations with their own salaried inspectors from the nearest regional office or from the national office in the Community or with local agents that are subjected to proper supervision by the SA.

The subsidiaries referred to in the first subparagraph must be owned by more than half of the capital by the SA. However, if national legislation in the third country concerned limits foreign ownership of the capital to 50 % or less, effective control of the subsidiary shall be sufficient for the purpose of the first subparagraph. This control shall be proved by appropriate means, such as, in particular, the existence of a management agreement, composition of its board of directors and senior management or similar arrangements.

- (d) The SA must have proved experience in control and supervision in agricultural and food products. This experience shall be established by submitting evidence relating to the inspections carried out over the previous three years, or currently in progress. These references must include information on the type of checks carried out (nature, quantity of products, place of inspection, etc.) and names and addresses of bodies or entities which can provide information about the applicant.
- (e) The SA must fulfil the requirements laid down in the standard norm EN 45011, points 4.1.1, 4.1.2, 4.1.4, 4.2(a) to (p), 4.4, 4.5, 4.7, 4.8.1(b) to (f), 4.8.2, 4.9.1, 4.10, 5, 7, 9.4.
- (f) The SA's financial situation (capital, turnover, etc.) must be sound. Proofs of the financial soundness, as well as its annual accounts for the past three years, containing the balance sheet, the profit and loss account, and, if required by law the auditors' report and the directors' report, shall be presented.
- (g) The administrative organisation of the SA must have an 'internal audit unit', which will be responsible for assisting the national authorities in the activities of control and inspection that they will undertake on the approved SAs.

#### CHAPTER II

##### 1. Performance's engagements of SAs

Approved SAs must engage at all time their responsibility and professional competence when delivering the certificates of arrival.

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Approved SAs must conform in the course of their activities to the following criteria:

- (a) they must execute all possible controls to determine the identity and weight of the products covered by the certificates;
- (b) the management of the SA must properly oversee the controls undertaken by the staff of the company in the third countries of destination;
- (c) SAs must keep a file on each certificate delivered, in which evidence of the survey work carried out in order to support the conclusions stated in the certificate is recorded (quantitative controls and documentary checks effected, etc.). Files on the certificates issued must be kept for five years;
- (d) the approved SAs shall verify the unloading operations with their own suitably qualified, permanent personnel or with local agents based or active in the country of destination, or by sending their own personnel from regional offices or a national office in the Community. Intervention of local agents must be regularly supervised by suitably qualified, permanent employees of the SAs.

## 2. Controlling the performance of SAs

- 2.1. Member States will have the responsibility for checking the soundness and appropriateness of the certification functions carried out by the SAs.

Prior to the three-year renewal period, national authorities shall carry out an inspection visit to the registered office of the SA.

Whenever there are reasonable doubts about the quality and accuracy of the certificates drawn up by a particular SA, the competent authority shall make an on the spot inspection to the registered office of the company in order to verify that the rules contained in this Annex are applied correctly.

The Member States shall pay particular attention while inspecting the SA, to the working methods and operational procedures of the SA in carrying out its functions, as well as examining at random, files concerning certificates presented to the paying agency in the procedure for payment of refunds.

Member States may employ external and independent auditors to carry out the task of controlling the SAs in the framework of the procedure set up in this Annex.

Member States may take any other measures they consider necessary for a proper control of the SAs.

- 2.2. Member States authorities must pay particular attention, when checking the claims for export refunds supported by certificates from SAs, to the following aspects of the certification:
  - (a) requiring that the work done is described in the certificates and satisfying itself that the work as described was sufficient to support the conclusions drawn in the certificate;
  - (b) inquiring into all discrepancies of the certificates submitted;
  - (c) requiring the certificates to be issued within a reasonable time limit, depending of the case at hand.

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### CHAPTER III

1. Certification issued by approved SAs shall include not only the appropriate information necessary to identify the goods and consignment in question as well as details of means of transport, dates of arrival and unloading, but also a description of the controls and methods applied to verify the identity and weight of the certified products.

The controls and verifications undertaken by the SAs must be carried out at the time the unloading, which can take place during completion of customs formalities for importation or after. However, in exceptional and duly justified cases, the controls and verification for issuing the certificates may take place within six months following the date on which the goods were unloaded and the certification must describe the steps taken for the verification of facts.

2. In the case of certificates of unloading and importation (Article 17(1)(b)), the certification shall include also verification that the goods have been cleared through customs for definitive importation. This check has to establish a clear link between the relevant customs import document or customs clearing procedure and the operation concerned.
3. The approved SAs shall be independent of the parties involved in the transaction under scrutiny. In particular, neither the SA carrying out the controls for a particular transaction, nor any subsidiary company belonging to the same group, may take part in the operation as exporter, customs agent, carrier, consignee, warehousekeeper or in any other capacity likely to give rise to a conflict of interest.

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**Changes and effects yet to be applied to :**

- Regulation revoked by [2023 c. 28 Sch. 1 Pt. 2](#)