

Commission Implementing Regulation (EU) No 392/2013 of 29 April 2013 amending
Regulation (EC) No 889/2008 as regards the control system for organic production

COMMISSION IMPLEMENTING REGULATION (EU) No 392/2013

of 29 April 2013

amending Regulation (EC) No 889/2008 as
regards the control system for organic production

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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⁽¹⁾, and in particular Article 33(2) and (3) and Article 38(c) and (d) thereof,

Whereas:

- (1) According to Article 28(1) of Regulation (EC) No 834/2007, operators who produce, prepare, store, place on the market, import or export products produced in compliance with the production rules laid down in that Regulation must submit their undertaking to the control system referred to in Article 27 of that Regulation. Detailed rules for the application of that control system are laid down in Title IV of 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 regard to organic production, labelling and control⁽²⁾.
- (2) Under that control system the operators must notify their undertaking to the competent authority, including information on the relevant control body, and sign a declaration that they perform according to the organic rules, including the acceptance of enforcement of measures in case of infringements and irregularities.
- (3) Article 30(2) of Regulation (EC) No 834/2007 provides for the communication of information related to irregularities or infringements affecting the organic status of a product. To enhance efficiency, operators should inform their control authorities or control bodies of any irregularity or infringement affecting the organic status of their product including organic products they receive from other operators.
- (4) In the light of the experience gained with the implementation of the control system and in the interest of the organic sector, it is appropriate to establish a minimum number of samples to be taken and analysed by control authorities or control bodies every year on the basis of the general evaluation of the risk of non-compliance with the organic production rules. Where the control authorities or control bodies has suspicion that products not authorised for organic production are used, they should take and analyse samples of the products concerned. In such cases no minimum number of samples should apply. Samples may also be taken and analysed by control authorities or

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control bodies in any other case for detecting non-compliance with the Union organic requirements.

- (5) In the light of the experience gained with the implementation of the control system and in the interest of the organic sector, it is appropriate to provide for the transmission of the relevant information in cases where the operator or the subcontractors of that operator are checked by different control authorities or control bodies or where operators or their subcontractors change their control authority or control body. Adequate exchange of information and transmission of the control files of those operators should be possible in order to manage the control system, while observing the requirements of the protection of personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽³⁾. Operators should accept the transmission and exchange of their data and all information relating to their activities under the control system.
- (6) In order to ensure the uniform application of the control system and to avoid ambiguities, a definition of the term ‘control file’ should be included in Regulation (EC) No 889/2008.
- (7) Electronic certification is referred to in Article 29(3) of Regulation (EC) No 834/2007 in relation to the form of the documentary evidence. It is appropriate to clarify that in case of electronic certification, the signature of the documentary evidence is not required if the authenticity of the documentary evidence is otherwise shown by a tamper-proof electronic method.
- (8) The experience has shown that clarification is needed as regards the exchange of information between Member States in cases where a Member State finds irregularities or infringements concerning compliance of the products imported in accordance with Article 33(2) and (3) of Regulation (EC) No 834/2007 or Article 19 of 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⁽⁴⁾.
- (9) In addition, it is appropriate to clarify the procedure relating to the exchange of information between Member States in cases of irregularities or infringements, taking into account the best practices established since 2009.
- (10) In order to ensure the coherence with Article 33(1) of Commission Regulation (EU) No 65/2011 of 27 January 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures⁽⁵⁾, it is important to clarify that Member States should ensure that sufficient information on the controls carried out is received by the paying agency where controls are not carried out by the paying agency.
- (11) In accordance with Article 44(1)(a) of Regulation (EC) No 882/2004 of the European Parliament and of the Council⁽⁶⁾ Member States are required to indicate in their annual report any amendment to their multi-annual national control plan to take account

of, inter alia, new legislation. The Commission should have the necessary data and information on the supervision carried out by competent authorities of the Member States in relation to organic production. Therefore, Member States should be required to amend their national control plan in order to cover that supervision and to indicate those amendments and the relevant organic data in the annual report referred to in Article 44 of Regulation (EC) No 882/2004. Member States should be allowed to present those organic data as a separate chapter in the national control plan and in the annual report.

- (12) In addition to obligations relating to controls set out in Regulation (EC) No 882/2004, Title V of Regulation (EC) No 834/2007 and Regulation (EC) No 889/2008 set out more specific provisions on the controls in the organic sector. In case the competent authority delegates control tasks to control bodies, which are private entities, Regulation (EC) No 834/2007 sets out more detailed requirements and obligations each control body has to fulfil.
- (13) The experience has shown that the specific provisions on controls of organic production need to be more detailed, particularly in order to strengthen the supervision of competent authorities over the control bodies that have been delegated control tasks. Those provisions should be included in the control system of the Member States set up in accordance with Article 27 of Regulation (EC) No 834/2007 as uniform minimum requirements.
- (14) Competent authorities of the Member States should have documented procedures for delegating tasks to control bodies and supervising them in order to ensure that the regulatory requirements are respected.
- (15) The exchange of information within Member States, among Member States, and between Member States and the Commission relating to the supervision carried out by competent authorities should be improved and uniform minimum requirements should be adopted.
- (16) Regulation (EC) No 889/2008 should therefore be amended accordingly.
- (17) For the efficiency of the control arrangements, the additional elements, as added by this Regulation, which are to be covered by the undertaking included in the declaration to be signed by the operator as referred to in Article 63(2) of Regulation (EC) No 889/2008, should also apply to operators who signed that declaration before the date of application of this Regulation.
- (18) In order to ensure the smooth transition from the current control system to the amended system, this Regulation should apply from 1 January 2014.
- (19) The measures provided for in this Regulation are in accordance with the opinion of the regulatory Committee on organic production,

HAS ADOPTED THIS REGULATION:

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- (1) OJ L 189, 20.7.2007, p. 1.
- (2) OJ L 250, 18.9.2008, p. 1.
- (3) OJ L 281, 23.11.1995, p. 31.
- (4) OJ L 334, 12.12.2008, p. 25.
- (5) OJ L 25, 28.1.2011, p. 8.
- (6) OJ L 165, 30.4.2004, p. 1.

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