Commission Implementing Regulation (EU) 2016/673 of 29 April 2016 amending Regulation (EC) No 889/2008 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 (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/673

of 29 April 2016

amending Regulation (EC) No 889/2008 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

(Text with EEA relevance)

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 13(3), Article 16(1) and (3)(a) and Articles 19(3), 20(3), 21(2), 22(1) and 38(a), thereof,

Whereas:

(1) Seaweeds and other algae are covered by Chapter 12 of the Brussels nomenclature, which is listed in Annex I to the Treaty. Seaweeds and other algae are therefore agricultural products falling within point (a) of the first subparagraph of Article 1(2) of Regulation (EC) No 834/2007. Since ‘other algae’ includes ‘micro-algae’, micro-algae are covered by the scope of Regulation (EC) No 834/2007.

(2) As in Commission Regulation (EC) No 889/2008[(2)] no detailed production rules have been laid down until now for micro-algae used as food and questions arose as regards which production rules operators have to respect when growing micro-algae for use as food, there is a need to clarify the situation and lay down detailed production rules for such products.

(3) The production of micro-algae resembles that of seaweed in many aspects, even though it does not take place in the sea. Moreover, when they are further used as feed for aquaculture animals, micro-algae, like multi-cellular marine algae and phytoplankton, are already subject to the detailed production rules for the collection and farming of seaweed on the basis of Article 6a of Regulation (EC) No 889/2008. Therefore, it is appropriate to clarify that the detailed production rules for seaweed should also apply to the production of micro-algae for further use as food.

(4) The transitional measures for the use of non-organic juveniles and of seed from non-organic bivalve shellfish hatcheries in organic production provided for in Article 25e(3)

and in the third subparagraph of Article 25o(1) of Regulation (EC) No 889/2008 ends on 31 December 2015, implying that after that date all juveniles and all shellfish seed used in organic production have to be organic. Since it appeared that organic juveniles and organic shellfish seed are not available in sufficient quantities, that date should be postponed with 1 year to give time to operators to develop organic juveniles and organic shellfish seed in sufficient quantities.

(5) In accordance with Article 29d(4) of Regulation (EC) No 889/2008 the Commission is to re-examine the use of certain oenological practices, processes and treatments before 1 August 2015 with a view to phase out or to further restrict those practices.

(6) The Commission requested the Expert group for technical advice on organic production ('EGTOP') to evaluate the effect of those oenological practices, processes and treatments on certain essential characteristics of organic wine and whether alternative techniques are available to replace them. EGTOP recommended[(3)] to continue allowing their use in organic wine production due to the lack of viable alternatives at present. It also recommended reassessing those techniques after a certain period with the same purpose as today, that is to phase them out or further restrict them. Therefore, the deadline of 1 August 2015 should be extended with 3 years.

(7) Competent authorities have the possibility to authorise exceptions from the production rules for animals on a temporary basis where specific circumstances would prevent operators from continuing or recommencing organic production. In particular, in case of high mortality of animals caused by health or catastrophic circumstances, they can allow that a herd or a flock is reconstituted or renewed with non-organic animals, when organically reared animals are not available. It should be clarified that in such case the respective conversion period still needs to be respected in relation to the non-organic animals introduced in the herd or the flock.

(8) In addition, since the possibilities to use non-organic juveniles in organic production have been limited in recent years, it is appropriate to provide for similar exceptional production rules in case of high mortality for aquaculture animals.

(9) Annex II to Regulation (EC) No 889/2008 lists the products that are authorised for use in organic production in accordance with Article 12(1)(h) and Article 16(1)(a) of Regulation (EC) No 834/2007. Those products have been classified into 7 groups on the basis of different criteria, such as the use or the origin. It is useful to simplify the presentation and to use only the criteria of origin for the classification.

(10) The right column of the table in Annex II to Regulation (EC) No 889/2008 specifies the description, compositional requirement and conditions for use of the products listed in that Annex, which include micro-organisms and substances. The conditions for use of those products in organic production, and in particular the corresponding use category (such as insecticide, acaricide or fungicide) must, however, comply with the conditions for use for active substances as set out in the Annex to Commission Implementing Regulation (EU) No 540/2011[(4)] for farming in general. If the use is restricted by that Regulation for farming in general, the authorisations for use are also restricted for organic production. In addition, experience has shown that the conditions for use of the

products listed in Annex II to Regulation (EC) No 889/2008 are very often the same in organic agriculture as in conventional agriculture and that restrictions of use are limited.

(11) The system should therefore be simplified to avoid that Annex II to Regulation (EC) No 889/2008 lists uses that are not approved anymore under Implementing Regulation (EU) No 540/2011. At the same time, it should be indicated that all uses that are approved for farming in general by Implementing Regulation (EU) No 540/2011 are automatically authorised for use in organic production, except where it is specifically indicated that more restrictive conditions apply to certain uses.

(12) In accordance with the procedure provided for in Article 16(3) of Regulation (EC) No 834/2007, Member States have submitted dossiers on certain substances to the other Member States and the Commission, in view of their authorisation and inclusion in Annex II to Regulation (EC) No 889/2008. Those dossiers have been examined by EGTOP and the Commission.

(13) In its recommendations[(5)], EGTOP concluded, inter alia, that the substances carbon dioxide, kieselgur (diatomaceous earth), fatty acids and potassium bicarbonate comply with the organic objectives and principles. Therefore, those substances should be included in Annex II to Regulation (EC) No 889/2008. In addition, in order to align the names of active substances with Implementing Regulation (EU) No 540/2011, it is appropriate to change the name of fatty acid potassium salt (soft soap) into fatty acids.

(14) According to Article 23 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council[(6)] basic substances are substances which are useful in plant protection, but are not predominantly used for this purpose. Many of them have traditionally been used in organic farming before even being classified as basic substances. Among those, there are numerous foodstuffs of plant or animal origin. It is appropriate to authorise the use of those basic substances in organic farming and therefore include them in Annex II to Regulation (EC) No 889/2008 if they fulfil the two criteria of being covered by the definition of 'foodstuff' in Article 2 of Regulation (EC) No 178/2002 of the European Parliament and of the Council[(7)] and having plant or animal origin.

(15) Annex VI to Regulation (EC) No 889/2008 lists the feed additives that are authorised in organic products in accordance with Article 14(1)(d) and Article 16(1)(d) of Regulation (EC) No 834/2007.

(16) To align to the approach taken in Regulation (EC) No 1831/2003 of the European Parliament and of the Council[(8)], the presentation of Annex VI should be modified. In particular, the left column of the table of Annex VI should be amended by indicating the specific ID number of the additives or the functional groups and the classification in the group of 'technological additives' and 'nutritional additives' should be aligned to the classification used in Regulation (EC) No 1831/2003. The name of the substances of the group of 'zootechnical additives' in Section 4 of Annex VI to Regulation (EC) No 889/2008 should also be aligned to the wording of Regulation (EC) No 1831/2003.

(17) In accordance with the procedure provided for in Article 16(3) of Regulation (EC) No 834/2007, Member States have submitted dossiers on certain feed additives to the

other Member States and the Commission, in view of their authorisation and inclusion in Annex VI to Regulation (EC) No 889/2008. Those dossiers have been examined by EGTOP and the Commission. Based on the recommendations from EGTOP with regard to feed materials and feed additives[9], the use of the following substances which EGTOP has considered compatible with the organic principles and objectives should be authorised: selenised yeast, dicopper chloride trihydroxide (TBCC) and zinc chloride hydroxide monohydrate (TBZC).

(18) In the light of the changes introduced by Commission Implementing Regulations (EU) No 131/2014[10], (EU) 2015/861[11] and (EU) 2015/1152[12], it is necessary to substitute the substances 'tocopherol-rich extracts of natural origin', 'E2 iodine' and 'E3 cobalt', which do not exist anymore, by the new ones from the same category respectively. In addition, certain inaccuracies as regards the identification numbers of bentonite-montmorillonite and clinoptilolite in the functional group '(d) Binders, and anti-caking agents' should be corrected.

(19) Annex VIII to Regulation (EC) No 889/2008 lists certain substances that are authorised in the production of processed organic food, yeast and yeast products in accordance with Article 19(2)(b) and Article 21 of Regulation (EC) No 834/2007.

(20) To be coherent with Regulation (EC) No 1333/2008 of the European Parliament and of the Council[13], it is necessary to change the specific conditions of use of silicon dioxide gel or colloidal solution (E 551) and the specific purity criteria of bentonite. The existing authorisation of kaolin (E 559) should be withdrawn as under Regulation (EC) No 1333/2008 the use of that additive was authorised until 31 January 2014.

(21) In accordance with the procedure provided for in Article 21(2) of Regulation (EC) No 834/2007, Member States have submitted dossiers on food additives, processing aids and certain other substances to the other Member States and the Commission, in view of their authorisation and inclusion in Annex VIII to Regulation (EC) No 889/2008. Those dossiers have been examined by EGTOP and the Commission.

(22) Based on the recommendations from EGTOP with regard to food additives[14], the use of the following substances which EGTOP has considered compatible with the organic principles and objectives should be authorised: beeswax (E 901), carnauba wax (E 903), gellan gum (E 418) and erythritol (E 968).

(23) In addition, the conditions for the use of the following additives should be amended following the recommendation of EGTOP: sulphur dioxide, potassium metabisulphite, tocopherol-rich extract, lecithins, citric acid, sodium citrate, tartaric acid, glycerol, sodium carbonate, silicon dioxide gel or colloidal solution and sodium hydroxide. Lecithin derived from organic raw material is available on the market, but appropriate qualities of such lecithin are needed for most of the uses in the organic food processing industry. The appropriate qualities for the organic food production are currently not available in sufficient quantities. Taking account of the temporary lack of the different qualities of the organic lecithin needed for the organic production of food, it should be provided that during a transitional period of 3 years lecithin not derived from organic raw material may be used in the production of organic food.

(24) Based on the recommendations from EGTOP regarding processing aids, acetic acid/ vinegar, thiamin hydrochloride, diammonium phosphate, sodium carbonate and wood fibre should be authorised. As regards sodium carbonate, citric acid, sodium hydroxide, vegetable oils, bentonite, beeswax and carnauba wax, the specific conditions should be amended.

(25) For processing aids used in yeast production, it should be required that potato starch and vegetables oils be used only if derived from organic production, given that those processing aids are now available in their organic form in sufficient quantity and quality.

(26) Finally, in Annexes II, VI and VIII to Regulation (EC) No 889/2008 it is no longer relevant to refer to the Regulation under which the products or substances had been authorised.

(27) Regulation (EC) No 889/2008 should therefore be amended accordingly.

(28) To allow operators and control authorities and control bodies a reasonable time to adapt to the fact that the detailed production rules for seaweed also apply to the production of micro-algae for further use as food, the amendment of Article 6a of Regulation (EC) No 889/2008 should apply as from 12 months after the entry into force of this Regulation.

(29) In order to allow continuity and a prolongation of the possibility to use non-organic juveniles and seed from non-organic bivalve shellfish hatcheries, the amendment of Articles 25e(3) and 25o(1) of Regulation (EC) No 889/2008 should apply retroactively from 1 January 2016.

(30) In order to give the possibility to operators to adapt to the modifications introduced in respect of certain products and substances for use in the production of processed organic food, yeast and yeast products, the amendments to Annex VIII to Regulation (EC) No 889/2008 should apply as from 6 months after the entry into force of this Regulation.

(31) The measures provided for in this Regulation are in accordance with the opinion of the Committee on organic production,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Regulation (EC) No 889/2008

Regulation (EC) No 889/2008 is amended as follows:

(1) Article 6a is replaced by the following:

Article 6a

Scope

This Chapter lays down detailed production rules for seaweed.