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

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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

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:

Article 1

Amendment of Regulation (EC) No 889/2008

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

(1) in Article 2, the following point (s) is added:

(s) "control file" means all the information and documents transmitted, for the purposes of the control system, to the competent authorities of the Member State or to control authorities and control bodies by an operator subject to the control system as referred to in Article 28 of Regulation (EC) No 834/2007, including all the relevant information and documents relating to that operator or the activities of that operator held by competent authorities, control authorities and control bodies, with the exception of information or documents that have no bearing on the operation of the control system.;

(2) in the first subparagraph of Article 63(2), the following points (d) to (h) are added:

(d) to accept, in cases where the operator and/or the subcontractors of that operator are checked by different control authorities or control bodies in accordance with the control system set up by Member State concerned, the exchange of information between those authorities or bodies;

(e) to accept, in cases where the operator and/or the subcontractors of that operator change their control authority or control body, the transmission of their control files to the subsequent control authority or control body;

(f) to accept, in cases where the operator withdraws from the control system, to inform without delay the relevant competent authority and control authority or control body;

(g) to accept, in cases where the operator withdraws from the control system, that the control file is kept for a period of at least five years;

(h) to accept to inform the relevant control authority or authorities or control body or bodies without delay of any irregularity or infringement affecting the organic status of their product or organic products received from other operators or subcontractors.;

(3) in Article 65, paragraph 2 is replaced by the following:

2. The control authority or control body shall take and analyse samples for detecting of products not authorised for organic production, for checking production techniques not in conformity with the organic production rules or for detecting possible contamination by products not authorised for organic production. The number of samples to be taken and analysed by the control authority or control body every year shall correspond to at least 5 % of the number of operators under its control. The selection of the operators where samples have to be taken shall be based on the general evaluation of the risk of non-compliance with the organic production rules. This general evaluation shall take into account all stages of production, preparation and distribution.

The control authority or control body shall take and analyse samples in each case where the use of products or techniques not authorised for organic production is

suspected. In such cases no minimum number of samples to be taken and analysed shall apply.

Samples may also be taken and analysed by the control authority or control body in any other case for detecting of products not authorised for organic production, for checking production techniques not in conformity with the organic production rules or for detecting possible contamination by products not authorised for organic production.;

(4) in Article 68(1), the following subparagraph is added:

In case of electronic certification as referred to in Article 29(3) of Regulation (EC) No 834/2007, the signature in box 8 of the documentary evidence shall not be required if the authenticity of the documentary evidence is otherwise shown by a tamper-proof electronic method.;

(5) Articles 92 and 92a are replaced by the following:

Article 92

Exchange of information between control authorities, control bodies and competent authorities

1 Where the operator and/or the subcontractors of that operator are checked by different control authorities or control bodies, the control authorities or control bodies shall exchange the relevant information on the operations under their control.

2 Where operators and/or their subcontractors change their control authority or control body, the change shall be notified without delay to the competent authority by the control authorities or control bodies concerned.

The previous control authority or control body shall hand over the relevant elements of the control file of the operator concerned and the reports referred to in the second subparagraph of Article 63(2) to the subsequent control authority or control body.

The new control authority or control body shall ensure that non-conformities noted in the report of the previous control authority or control body have been or are being addressed by the operator.

3 Where the operator withdraws from the control system, the control authority or control body of that operator shall, without delay, inform the competent authority.

4 Where a control authority or control body finds irregularities or infringements affecting the organic status of products, it shall without delay inform the competent authority of the Member State which designated or approved it in accordance with Article 27 of Regulation (EC) No 834/2007.

That competent authority may require, on its own initiative, also any other information on irregularities or infringements.

In case of irregularities or infringements found with regard to products under the control of other control authorities or control bodies, it shall also inform those authorities or bodies without delay.

5 Member States shall take the appropriate measures and establish documented procedures to enable exchange of information between all control