

**Comment from European Organic Certifiers Council (EOCC) on questionnaire
“Consultation on Detailed Applicatory Rules”
October 2007**

General:

The comments of the EOCC take mainly two aspects into account

- improving inspectability of the 834/2007 and its annexes
- harmonising the implementation of the requirements given in the regulation

Section I.

Flexibility and exceptional production rules versus inspectability and harmonisation

The annexes of the regulation 2092/91 contain implementation rules and the referring derogations. It is the impact of these derogations e.g. granted on national or regional level that causes an important part of distortion of the market and frequently impedes inspectability.

Furthermore, the present system of asking for derogations (or not), granting them, following them up and eventually sanctioning the operator, has to be simplified in order to obtain a higher degree of inspectability and harmonisation.

In the present article 22 of the regulation 834/2007, exceptional production rules are mentioned for the first time. The EOCC interprets the points a) to h) of this article as contingency to allow exceptional production rules.

The EOCC proposes the system of RULE and EXCEPTION to replace the system of derogations. Within this system, exceptions are clearly defined, valid for all partners involved in organic farming or processing and set in force under clearly defined conditions. Therefore, the combination of rules and exceptions ensures a maximum transparency without impeding the flexibility of operators under certain conditions. Since exceptions are defined on a European level, distortion of the market is reduced to a minimum. If needed, exemptions may be defined for a limited time frame or with decreasing degree of liberty in order to enhance the development of the organic market.

Examples:

1. RULE = animals that are bought, have to be organic animals.

EXCEPTION 1: a maximum annual amount of 10 % of the adult animals can be bought from conventional farms provided that these animals are nullipares.
(motivation for this exception is availability of live animals).

2. RULE = mutilation of animals is prohibited.

EXCEPTION : dehorning, castration and arresting tails of sheep are allowed when performed by qualified personnel.
(motivation for this exception is animal welfare and protection of personnel)

3. RULE = animals should be fed with organic feed

EXCEPTION: the annual ration of monogastric animals may contain up to max 15% of non-organic feed. The type of non-organic feed allowed is mentioned on a restrictive positive list disclosing animal feed (that is generally not available in organic form.)

(motivation for this exception is availability of feed)

Following this system, operators and control bodies (CBs) get clear view over what the rules are, as well as the exceptions. In case the farmer wants to use the exception, he has to provide the required proof. The responsible CB may perform this approval before exemption is implemented. Not respecting the exception to the rule needs to be sanctioned.

With respect to this system of rules and exceptions, find enclosed in part I of this document the comments of EOCC on the questionnaire for expert consultation. In part II of this document, further proposals of EOCC regarding the revision of the implementation rules are given.

Question I:

Which derogations from regulation 2092/91 have to be prolonged?

Derogations may be replaced by exemptions under given conditions e.g. as follows

Exemptions for housing of animals in buildings that have been used as stable before current rules started applying or in case of small farms

When the proof is available that buildings have been used before 2000 as animal housing or in case of small farms, animals may be e.g. tethered without further application for derogation. The verification of proof is performed during inspection. There is a need to define “small” farms (eventually taking transition periods during constructions into account) e.g. on a national level.

Parallel production (organic/non-organic) of same species or variety (mixed operators):

Parallel production in combination with incomplete record keeping and or incomplete access and verification during inspection highly impedes the inspectability of mixed operators. This is the case for any species or variety produced (seeds, seedlings, perennial crops, some crops like carrots, beehives etc.). The compliancy of such operators is extremely difficult to inspect since non-authorized products are constantly present at the unit of conventional farming. Coherent separation of production units can only be inspected during unannounced visits. Separation in terms of correct and complete record keeping of field data is hard to obtain. Additionally there is a high risk of commingling. Inspection quality highly depends on the documentation available, the personal information of the operator and the knowledge/position of the inspector.

Suggestion:

Parallel production should not be maintained. Exempt operations from this rule are exclusively perennial crop production in conversion periods and recognised research projects, providing the proof that parallel production is part of the scientific program. If products from parallel production are merchandized with reference to organic

farming, it must be possible for the clients to distinguish between varieties based on the information on the certificate of the seller/supplier.

Simultaneous transport of eggs or milk

The collection of raw materials may be considered as one step within the entire transformation process. Considering the EOCC proposal given in part II of this document under 4.1 (removal of sealing of open transports), there is no need to keep an exemption for the collection of any product.

As an alternative solution, this derogation may be maintained as exception for the two products mentioned above since there is a crucial need of the sector.

In both cases, the operator must provide specific information about preventive measures against commingling.

Question 2:

Exceptions for farmers to find organic farm input on the market

Use of conventional feed - approval of need

Missing basic information for recognition of use of conventional feeding stuffs (Annex I B 4.8) by control body (neither control bodies nor farmers know the day to day availabilities of the raw material market).

Suggestion:

Remove the obligation to approve the need and simultaneously restrict the list of admitted conventional feed that is not available in organic form (referring to procedure in Annex VI C).

Inspectability of percentage of conventional feed coming from pasture

In case the use of 20% use of animal feed deriving from own fields in first year of conversion (C1) will be admitted (non-paper at SCOF), then this exemption should be included (0% conventional feed from 1/1/08 for ruminants).

Criteria for calculation / inspection the xy % range for pasture (Annex I B 4.8).

Suggestion:

Calculation of feed %: audited at inspection and where required in the office.

(Calculation based on the following variables: average daily intake of grassland feed per animal type / number of days pasture for the referring year; or the potential harvest of the C1 grassland registration (of the proper farm); this quantity is taken into the calculation based on the total quantity an animal can eat during a year).

Use of non-organic 18-week-old poultry for future egg production:

This derogation should be replaced by the amendment of the regulation with requirements for rearing young hens.

Inspectability and harmonisation of feeding organic animals with partly non-organic feed (bees not included):

Referring to present Annex III: high levels of documentation (yields, diets) and separation methods (e.g. stock) required whenever mixtures of C1, C2 feed is available on the farm.

Suggestion:

For conventional feed that issues not from own farm unit: restrict the list of admitted conventional feed that is not available in organic form (referring to procedure in Annex VI C) and aim for 0% conventional feed for all animals on long run (e.g. reducing continuously the current admitted percentages of conventional feed with time).

For conventional feed that issues from own farm unit or for when animals are feeding on farm own pastures: admit free use of C1 and C2 feed without any restriction on quantities.

Question 3:

Inspectability of final phase of fattening

Derogation should be kept as exemption but durations have to be clarified in function of period that animals have no access to outdoor areas due to unsuitable weather conditions.

Suggestion:

Add to the existing Annex: “The final fattening phase ... this indoors period does not exceed one fifth of their lifetime and in any case for a maximum period of three months. The periods mentioned do not include periods during which weather conditions are not suitable for animals to be spent outdoors. “

Consequently, outside this fattening period animals must have free access to pastures or outdoor areas. Respect of fattening periods has to be verified during unannounced visits. Further inspection quality highly depends on the documentation of animal management available and the personal information of the operators.

Question 4:

Exemptions in case of catastrophes

Catastrophes need to be approved by responsible authorities in order to reduce misuse. Catastrophes on national or regional level: responsible authorities have to approve the status of catastrophe (e.g. basing on extreme weather situations) and the resulting exemptions. If, e.g. a catastrophe is approved by responsible authorities on a regional level there is no further need for operators located in the “approved area” to ask for individual approval.

Catastrophes on single farm level: the operator has to prove the extreme situation (e.g. extreme harvest loss due to climatic conditions) to responsible authority.

The fulfilment of the exemption rules is verified during inspections.

Question 5:

Approval of commercial non-availability e.g. of organic breeding stock

Adequate information on the availability of farm inputs e.g. organic breeding stock is not available in a form to base non-availability proof on. Neither the control body nor the farmer does know the actual details of local or national markets.

Suggestion:

Remove the obligation to approve the commercial non-availability of organic breeding stock and reduce continuously the current percentages with time to strengthen the market of organic breeding stock production. For rare animal species special exemptions are needed e.g. referring to national lists defining endangered or rare species of animal livestock.

Section II:

Decisions about derogations: who, where, when may use the derogation? How the use of derogation is reported (documented and communicated)?

Suggestion:

The suggestion of EOCC to replace this system of derogations by a more transparent system of exceptions has already been described under section I (p1). This exception system supersedes to establish responsibilities according to level of derogation admission.

The operator himself has to prove to the CB that the conditions under which he implements an exception are fulfilled. All information and measures are verified during inspection. Exclusively the case of catastrophe needs to be approved case by case from responsible authorities.

Section III.

Clarifications

Question 8:

No input on inspectability.

Question 9:

Specification of slaughter age

Slow growing species have to be defined to increase inspectability and harmonization.

Suggestion:

Either: definition of slow growing species e.g. is given in national lists. Or, if there is no list (or an empty list) of slow growing species, the minimum slaughter age shall be given for all species.

As an alternative, the average weight increase of animals may be used as parameter to prove adopted livestock systems. This weight increase could be restricted to e.g. 80% of the average weight increase of intensive poultry systems (to be defined). In that case, slaughter age remains the decision of the producer.

Question 10

Management practices (mutilations) performed “systematically” (Annex I B 6.1.2)

Management practices do not have to be performed systematically. But, if these practices are applied in a livestock unit, in general, they are performed systematically e.g. castration and removal of horns for an entire group of animals.

Suggestion:

In general, mutilations should be restricted to few excepted treatments that are considered as necessary for either animal welfare or livestock management and safety of personnel like e.g. to castrate, remove horns or to arrest tails of breeding sheep.

Consequently there is no need for the producer to prove the need of mutilation.

However, he has to prove that all mutilations have been realized by qualified personal with suitable equipment (to be verified during inspection). In that case of exemption, no limitation of animals treated is necessary. Therefore, the incipient sentence of the referring paragraph indicating that those practises have not to be performed “systematically” should be removed.

Question 11:

Definition of “recent past” for land for poultry

Retroactive recognitions of conversion times have a very high potential to create distortion of the market. Therefore, if included in regulation text, the time frame has to be clear and restrictive.

Suggestion:

Remove the reference “where the land has not been treated in the recent past“ when the land is to be used for poultry or pigs exercise land and define a conversion time as minimum conversion period for the land e.g. 6 months. Define the conversion periods for the different animals. This is a separated conversion of land and animals.

Retroactive recognition in general:

There have been difficulties concerning the inspectability of starting point of conversion in the past. This is a critical point of inspections with regard to competition between inspection bodies and the equivalence of products especially coming from third countries. Therefore there is a strong need for harmonization of the procedure within Europe and between European and non-European countries.

Suggestion:

- a) starting point of conversion must be
 - for new operators starting with organic cultivation of land: the date of notification with the control body
 - for certified operators who include new fields in their cultivation: the application date when the operator notifies to the certification body that the parcel is applying for organic certification.
- b) retroactive recognition has to be restricted to cases where the previous cultivation practices can be proved by field related documents from the responsible authority (on national/regional or local level).
- c) there should be possibilities for a reduction of the conversion period but the starting date remains as being stated in point a.

Question 12:

Definition which non-organic animals may graze together with organic animals (on organic and non-organic pastures)

These derogations should be turned into an exemption without previous authorisation (Annex IB 1.7 and 1.8).

Suggestion:

- a) non-organic animals may graze organic pasture as long as the concerned animals come from farms where the density is less than 2U/ha. Operators have to prove that the non-organic animals fulfil that requirement during inspection. If animals can be individually distinguished e.g. bovines for meat production, organic livestock may graze at the pasture at same time as non-organic animals.
- b) organic animals may graze on pasture from non-organic farms in case the field book of the concerned pasture in the previous years indicates that this is compliant to the organic rules. Furthermore there is a written engagement of the owner of the non-organic pasture that he respects the organic criteria.

Question 13

Maximum amount of nitrogen

Calculation of maximum density of animals per ha / broken down to nitrogen units

The amount of nitrogen brought to the different plots of the farm is difficult to estimate and therefore it has to be clarified what this maximum of 170 kg N/(ha.y) actually covers.

Suggestion:

It must be possible to distribute all organic waste material of the farm itself over the farm's plots under agricultural cultivation. In order to determine the average number of animals on the farm over a period of one year, a minimum number of x random dates has to be selected. Whenever the farmer wants to buy manure, he has to present a calculation that indicates that it respects the maximum of 170 kg N/(ha.y).

Specialized crop production as vegetable production (to be defined) should be excluded from this limit.

Question 14

Risk based inspections and the necessity for annual “physical” on-site inspections

Comment on the question: a risk based control system cannot be reduced on the question whether an operator should be inspected on-site at least once a year (please refer to further EOCC comments point 1 in Part II of the document)

Suggestion:

Concerning annual on-site inspections: according to Article 27.3 there should be a yearly “verification of compliance”. In order to guarantee the exchange between CBs and operators as well as to ensure CBs the insight in the actual situation of the operation, on-site inspections seem to be crucial. This aspect has to be clarified taking into account harmonisation and free flow of services (Guidelines 2006/123 of the EP and the Council).

Further comments on risk-based inspections refer to part II .1 of this document.

Part II

Further suggestions of the EOCC to improve inspectability of existing annexes of 2092/91.

In order to facilitate the reading, these suggestions are categorised under 4 aspects:

- 1: adoptions needed according to the new articles (834/07)
- 2: insufficient information available in present texts demand for further clarification
- 3: confusion of terms demands for further clarification
- 4: other points

1: Adoptions needed according to the new articles (834/07):

Annex III:

Referring to Article 27: risk-based inspections

General comment: There is a high need for minimum criteria for assessment and approval of risk in order to avoid a distortion of the requirements of different inspection bodies. (Examples: take into account history of operator, present situation and activity/ies, products, mixed operations, internal control system and flexibility of the system in relation to available market information). These criteria should be given by e.g. the association of European accreditation bodies (EA) or responsible authorities should approve the member states and the whole risk based control system.

1.1 Monitoring of efficiency of the functioning system and implemented measures (internal audit system) by the operator (linked to risk based analysis)

In Annex III there is no requirement that the operator is responsible for monitoring his own internal measures and controls to ensure that he implements the requirements of the regulation.

Suggestion:

Include an internal “audit” requirement that discloses the operator’s measures and controls by the operator in Annex III 4. The documentation requirements of the audit system have to be adapted to the structure of the operator. One additional possibility is to give a reference e.g. to the EU regulation 178/2002 to include topics linked to auto-inspection (this document served already as the basis for the development of the autocontrol systems in some member states).

1.2 Number of additional inspections (link to risk based analysis)

Suggestion:

Add to Annex III 5 that the number of additional (means: additional to the annual inspection) announced or unannounced inspections has to be based on risk-evaluation of the operators. Furthermore, a minimum percentage of additional announced or unannounced inspections e.g. xy% of all operators based on risk-evaluation should be defined on EU level or on a national level / by national authorities.

1.3 Word addition (link to risk based analysis)

“random” inspection visits (Annex III 5).

Suggestion:

Amend the word “random” with the term “risk-based” inspection visits since both have to be included in the inspection system.

1.4 General statement on sampling has to be cleared (link to risk based analysis)

Annex III 5 gives only some very general requirements for sample taking and testing by the inspection body

Suggestion:

Sample taking by public authorities or inspection bodies should be based on risk-evaluation of the operators and their activity/ies. Certification bodies should implement the sample taking in the risk-based analysis, which has to be approved by the competent authority and/or accreditation body.

On a national level, a minimum level of samples (e.g. xy % of the operators) to be taken either by the operator or by other competent public authorities or by the inspection body may be given. Certification bodies have to disclose a sampling policy in their internal quality management system.

Alternatively, a minimum level of samples may be given on the European level to harmonize it for all member countries. The level may be increased gradually over the years.

1.5 Documentary evidence (linked to Article 23a 1)

There is a strong need for harmonization of information given and layout of certificates. The points given in Article 23.a 1 are not sufficient to meet that task.

Suggestion:

Enlarge the information required on certificates with identification of the inspection body (e.g. code number of inspection body compulsory).

Include a sample certificate in annexes like the import certificates.

2: Insufficient information available in present texts demand for further clarification

2.1 Plant production and livestock records (Annex III A 1 and A 2.1)

There is no requirement for keeping records of inputs for plant production as there is for livestock production in Annex III A.2. and there is no description of what such a document should contain (there is no requirement for “records of cultures” but there is one for “livestock records” point A.2.3).

Suggestion:

Add to Annex III A 1 that operators must keep documentary records of plant production and indicate similar references as given in Annex III A 2.3, second part, (e.g. crop protection, fertilizer use, cultivation measures etc.).

2.2 Wild crop harvest (Annex I A 4)

More detailed criteria are needed for the sustainability of wild harvested crops.

Suggestion:

Include certification requirements for:

- minimal distances from conventional agriculture and preventive measures against possible sources of contamination,
- operators and control bodies to have access to data concerning all (harvest) operations in the area where wild harvesting is performed,
- operators to provide a description of their activity and its impact (to prepare plans to include areas, yields, traceability and effect on other species etc.).

2.3 Applicability of plant protection products (Annex II B)

The use of plant protection products as post-harvest treatments on products or on farm facilities (cfr Art 16.f) is not included in actual annexes.

Suggestion:

Enlargement of applicability with post-harvest sector by inclusion of specific list of compounds that may be used, not only on the farm but also during all storage activities on raw materials. Consequently, this asks for a modification of Annex I A.3 where the use of plant protection products is restricted to cases of immediate threat to “crops”.

2.4 Microorganisms for pest control (Annex II.B.1.II)

This paragraph gives no information if there are products of microorganisms included in the definition.

Suggestion:

It has to be clarified by the EC that products of microorganisms are not permitted, with any specific ones that are permitted listed separately.

2.5 Synergists in plant protection products (Annex II.B.1.III)

Suggestion:

It has to be clarified by the EC that synergists should not be included in this part.

2.6 Plant strengtheners (Annex II.B)

Suggestion:

It has to be clarified by the EC if plant strengtheners are included.

2.7 Vitamins (Annex II D)

Procedure to issue a derogation to add synthetic vitamins A, D and E in feed for ruminants

Actually regulated by authorization of public authority of member state. In some cases, derogation has to be granted by inspection authority for each single farmer.

Suggestion:

Replace single farm authorization with exemption (referring to system rules / exemptions described in part I of this document) based on general veterinary statements of need for ruminants for special regions or member states.

Definition of vitamins

They are only synthetic vitamins, or they are on a carrier from non-organic agricultural origin.

Suggestion:

It has to be clarified by the EC if anti-oxidants and carriers should be included.

General information concerning anti-oxidants: According to some feed producers it is presently impossible to produce vitamin A without using ethoxyquine as an antioxidant. Given this information in Annexe II.D the feed producing companies are faced with an impossibility of producing. No concrete suggestions available at the moment. However, there is an intensive discussion in some member states on that point. If desired or needed, CBs concerned will be pleased to give further information.

3: Confusion of terms demands for further clarification

3.1 Interpretation differences of “annual inspections” (Article 27.3)

There is confusion about the interpretation of Article 27.3 whether this leaves the possibility to CBs to realise inspections ‘off spot’.

3.2 Calculation of maximum density of animals per ha.year broken down to nitrogen units in order to respect the 170 kg N/(ha.y)

Suggestion:

Calculate the average number of animals based on the calculation given in the referring national programmes for agricultural operations or based on documentation in operators’ bookkeeping e.g. taking a number of minimum x random dates during the past year and calculate an average density. Or include a maximum density that has to be verified during inspection (e.g. 2,5 U / ha).

4: Other points

4.1 Obligation of sealing open transports (Annex III 7)

Sealing of open transports does not add additional value of the protection of organic food.

Suggestion:

Remove the requirement for sealing open transports.

4.2 Annex III part A:

Documentation requirements:

Inspections require more and more statistical data collection due to documentation requirements e.g. (Annex III A) “quantities sold directly to the final consumer shall be accounted on a daily basis”.

A daily basis of documentation is not suitable for all operators and does not necessarily raise the quality of record keeping.

Suggestion:

Remove the requirement for “on a daily basis”. Add a functional definition of documentation requirements such as “the documentation has to be traceable and to disclose the quantities produced and sold”.

4.3 Annex III part E:

Preparing animal feedstuff (Annex III E 1, 4 and 5)

Requirements prescribed for units preparing animal feedstuff are different from requirements for food processing units. There is no transparent reason for these specific requirements since processing procedures and critical points like e.g. critical ingredients or points of potential contamination are the same for preparing feedstuff or products for human consumption.

Suggestion:

Remove specific requirements for units preparing animal feedstuff or implement only the supplementary requirements for units preparing animal feed in Annex III B.