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### **INTERPRETATIVE NOTE N° 2015-01**

This interpretation does not prejudice any decision by the Court of Justice, which alone is competent to hand down legally binding rulings on the validity and interpretation of acts adopted by the institutions of the European Union

<b>SECTOR:</b>	<b>Organic farming</b>
<b>MEASURE:</b>	<b>Absence of detailed EU production rules for certain animal species, aquatic plants and certain microalgae</b>
<b>SUBJECT:</b>	<b>Treatment of these products in the EU internal market and the harmonised import regime</b>
<b>PROVISIONS CONCERNED:</b>	<b>Council Regulation (EC) No 834/2007 – Article 42, second subparagraph</b>

#### **Question 1:**

*Do products referred to in Article 42, second subparagraph (animals, aquatic plants and microalgae) fall within the scope of [Regulation \(EC\) No 834/2007](#)?*

#### **Answer:**

Article 1(2) of [Regulation \(EC\) No 834/2007](#) defines the scope of this Regulation. It applies to the following products originating from agriculture, including aquaculture, where such products are placed on the market or are intended to be placed on the market:

- (a) live or unprocessed agricultural products;
- (b) processed agricultural products for use as food;
- (c) feed;
- (d) vegetative propagating material and seeds for cultivation.

**Live animals** are listed in Annex I to the Treaty of the Functioning of the European Union (TFEU) and are agricultural products, falling within point (a) of Article 1(2) of [Regulation \(EC\) No 834/2007](#) (live or unprocessed agricultural products).

**Aquatic plants** would mainly be covered by Chapter 6 or 7 in the Brussels nomenclature listed in Annex I to the TFEU. Aquatic plants are therefore agricultural products, falling within point (a) of Article 1(2) of [Regulation \(EC\) No 834/2007](#) (live or unprocessed agricultural products) or point (d) (vegetative propagating material and seeds for cultivation).

Seaweeds and other **algae** are part of Chapter 12 in the Brussels nomenclature, which is listed in Annex I to the TFEU. Algae are therefore agricultural products, falling within point (a) of Article 1(2) of [Regulation \(EC\) No 834/2007](#) (live or unprocessed agricultural products).

The products referred to in Article 42, second subparagraph fall therefore all within the scope of [Regulation \(EC\) No 834/2007](#).

## Question 2:

*What rules do products referred to in Article 42, second subparagraph, have to comply with to be placed on the EU market as organic and to be able to move freely according to Article 34 of [Regulation \(EC\) No 834/2007](#)?*

### Answer:

Article 1 of [Regulation \(EC\) No 834/2007](#) lays down the aim of the Regulation as to provide "the basis for the sustainable development of organic production, while ensuring the effective functioning of the internal market, guaranteeing fair competition, ensuring consumer confidence and protecting consumer interests."

Article 1 (2) defines a wide scope of the Regulation, including inter alia the products referred to in Article 42, second subparagraph (see answer to question 1).

Article 3 to 7 lays down objectives and principles for organic products falling within the scope of the Regulation, including specific principles applicable to farming and the processing of organic food and feed.

Article 8 provides that operators shall comply with the production rules set out in Title III of the Regulation and with the implementing rules provided for in Article 38(a).

Articles 9 to 22 lay down production rules, including rules on farm production and notably on plants, seaweed, livestock, aquaculture animals and on processing of food and feed.

Article 23 (1) and (2) makes it clear that products, covered by the scope of the Regulation, can be labelled and sold as organic in the EU if they satisfy the requirements of [Regulation \(EC\) No 834/2007](#).

Article 34 deals with the principle of free movement of organic products and specifies in its paragraph 1 that competent authorities, control authorities and control bodies may not, on grounds relating to the method of production, to the labelling or to the presentation of that method, prohibit or restrict the marketing of organic products controlled by another control authority or control body located in another Member State, in so far as those products meet the requirements of this Regulation.

Article 42, second subparagraph, provides that "For certain animal species, certain aquatic plants and certain micro-algae, where detailed production rules are not laid down, the rules provided for labelling in Article 23 and for controls in Title V shall apply. Pending the inclusion of detailed production rules, national rules or, in the absence thereof, private standards accepted or recognised by the Member States shall apply."

While it is clear from Articles 1, 2, 8, 23 and 34 that the Regulation sets up a harmonised system for products which are covered by the scope of the Regulation and which are produced, labelled, controlled and placed on the market as organic, in which there is no room for mandatory national rules, Article 42, second subparagraph gives Member States for certain products - despite the fact that these products are covered by the scope of [Regulation \(EC\) No 834/2007](#) and fall therefore under the legal framework of the harmonised rules of this Regulation -, the possibility to adopt national production rules or to accept or recognise nationally private standards.

However, it also follows from the above-mentioned Articles that the legislator aimed at a harmonisation at EU level for products covered by the scope when they are placed on the EU Market as organic, ensuring the free movement of goods in the EU.

Detailed national rules or accepted/recognised private standards have therefore to respect fully the provisions of [Regulation \(EC\) No 834/2007](#), including the overall principles of Title II and the (relevant) general production rules laid down in Title III.

Moreover, these detailed national rules or accepted/recognised standards can also not prohibit or restrict the marketing of organic products imported from other Member States. If a product complies

with the rules of the Regulation and has been controlled by another control authority or control body located in another Member State, a Member State can therefore not, in addition, impose detailed national production rules or recognised private standards to these products and control compliance with these rules.

As a consequence, Article 42, second subparagraph does not allow Member States to impose national rules or nationally accepted or recognised private standards to organic products being imported to their territory from other Member States, when these products comply with [Regulation \(EC\) No 834/2007](#).

As regards compliance with the production rules, this must be understood as referring to the (relevant) production rules in Title III of the Regulation. Three "layers" of rules can be distinguished in this respect:

1. General production rules, which apply to all forms of organic production (Articles 8 to 10) ("layer 1").
2. Production rules for different sectors: general farm production rules (Article 11, 16 and 17) and production rules for specific categories of products (plants, seaweed, livestock, aquaculture animals) and production rules for processed feed (Article 18) and processed food (Article 19, 20 and 21) ("layer 2"), including the rules implementing those provisions.
3. Detailed production rules as referred to in Article 42 ("layer 3")

The production of all products within the scope of the Regulation which are placed on the market as organic has to comply with the general production rules of Articles 8 to 10 ("layer 1").

All products will normally also be covered by the production rules for different sectors ("layer 2") and have to comply with these rules.

For some products, detailed production rules have been laid down which also need to be complied with ("layer 3). Article 42, second subparagraph, addresses specifically the situation of "certain animal species, certain aquatic plants and certain microalgae" for which no detailed production rules have yet been set at EU level.

If a Member State has laid down detailed production rules for these products, these detailed production rules have to be complied with, in addition to the production rules laid down at EU level ("layers 1 and 2"), by operators producing these products on the territory of this Member State. However, when a Member State has not laid down any detailed production rules for these products, operators producing on its territory have to comply only with the production rules laid down in the Regulation ("layers 1 and 2") as there exist no additional national detailed production rules.

All products that comply with [Regulation \(EC\) No 834/2007](#) benefit from the principle of the free movement of goods laid down in Article 34 of this Regulation.

Therefore, Member States cannot impose the additional national detailed production rules under Article 42 on products coming from other Member States complying with [Regulation \(EC\) No 834/2007](#).

The specific case of micro algae

Due to the characteristics of micro algae, it is unclear in which category of products, for which rules are laid down in Articles 12 to 15, micro algae fall and which production rules for micro algae therefore apply. Without any production rules for the sector ("layer 2"), only the general production rules ("layer 1") would apply to the production of micro algae. However, it follows from Articles 1, 3, 11 to 22 and Article 42 that the legislator did not intend to create this situation. The legislator did not envisage the absence of production rules for the sector, but only the temporary absence of detailed production rules for certain animal species, certain aquatic plants and certain microalgae ("layer 3"). It seems that all products were considered to fall within one of the different categories in Title III.

In order not to disrupt trade within the internal market and as regards imports, it is appropriate to consider that micro algae are covered by one of the categories of Article 12 to 15.

Micro-algae and plants are both photosynthetic organisms and the production rules for plants could be suitable for micro-algae - as they also cover aquatic plants, like water cress. At the same time, the production of micro-algae resembles in many aspects that of seaweed, even though it does not take place in the sea. Moreover, when they are further used as feed for aquaculture, micro-algae are already subject to the detailed production rules for the collection and farming of seaweed apply according to Article 6a of [Commission Regulation \(EC\) No 889/2008](#).

Therefore, the categories of plants as well as of seaweed are both categories under which micro-algae could fall. Until an implementing act adopted on the basis of Article 38 has clarified the situation, operators producing organic micro algae (except for use as feed for aquaculture) have therefore to comply with the general production rules, which apply to all forms of organic production ("layer 1") and with the production rules for the sector of plants or seaweed ("layer 2").

Following Article 42, operators producing in Member States that have laid down detailed production rules for micro algae (except for use as feed for aquaculture) also have to comply with these additional detailed production rules.

### **Question 3:**

*Can products referred to in Article 42 bear the EU organic logo?*

#### **Answer:**

The rules on the EU logo can be found in Article 24 and Article 25 of [Regulation \(EC\) No 834/2007](#). Article 25(1) states that the EU logo may be used in the labelling, presentation and advertising of products "which satisfy the requirements set out under the Regulation".

Article 42, subparagraph 2 provides that the rules in Article 23 on the use of terms referring to the organic production method apply to products for which no detailed rules have been set. In case the terms referring to the organic production method are used, Article 24 imposes certain compulsory indications, including the EU logo for pre-packaged food.

As explained in the answer to question 2 the satisfaction of the requirements set out under the Regulation must be understood for the production rules as referring to the (relevant) general production rules in the Regulation ("layers 1 and 2").

If these rules are respected, the terms referring to organic production can be used. It follows from Article 25 that the EU logo may then also be used. Neither Article 42 nor any other provision of the Regulation contains an indication that the legislator intended to prevent the latter possibility.

Also in case detailed national production rules are in place, the EU logo may be used, provided that the production carried out in this Member State complies with the detailed national rules, in addition to those of [Regulation \(EC\) No 834/2007](#).

### **Question 4:**

*What rules do products referred to in Article 42, second subparagraph, have to comply with to be imported to the EU as organic?*

#### **Answer:**

Products imported from third countries can be placed on the EU market as organic if, in short:

(a) all requirements of [Regulation \(EC\) No 834/2007](#) have been met and the product has been subject to a control by a recognised control authority or control body (Art. 32) ("compliance regime"); or

(b) the product has been produced and controlled in accordance with production rules equivalent to those in [Regulation \(EC\) No 834/2007](#) (Art. 33). For that purpose, the Commission can either recognise the equivalence of the system of production of a third country as a whole (Art. 33(2)), or recognise control authorities or bodies which apply equivalent standards (Art. 33(3)) ("equivalence regime").

Once a product can be imported and placed on the market in the EU as organic, it may bear the EU logo according to Article 25 and can circulate freely in the EU internal market as provided for in Article 34.

As regards the production rules, a product can be imported into a Member State as organic under the "compliance regime" of option (a) if, in the absence of detailed EU production rules, the general production rules and the production rules for different sectors ("layers 1 and 2") are complied with.

Under the "equivalence regime" of option (b), the equivalence of rules would need to be assessed. According to Article 2(x) of [Regulation \(EC\) No 834/2007](#), 'equivalent', in describing different systems or measures, means 'that they are capable of meeting the same objectives and principles by applying rules which ensure the same level of assurance of conformity'. The assessment of equivalence for products for which no detailed rules have been set at EU level, would need to be carried out as regards the equivalence with the general production rules and the production rules for different sectors ("layers 1 and 2").

Once it is recognised that a third country or a control authority or control body in a third country applies equivalent standards, the import of these products cannot be subjected to further rules and controls in a Member State having detailed national production rules in place on the basis of Article 42.