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⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/977**of 7 July 2020****derogating from Regulations (EC) No 889/2008 and (EC) No 1235/2008 as regards controls on the production of organic products due to the COVID-19 pandemic****(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 28(6), the third subparagraph of Article 30(2) and Article 38(c), (d) and (e) thereof,

Whereas:

- (1) The COVID-19 pandemic and the extensive movement restrictions put in place in the Member States and in third countries in the form of national measures constitute an exceptional and unprecedented challenge for Member States and operators in relation to performing controls as specified in Regulation (EC) No 834/2007 and Commission Regulations (EC) No 889/2008 ⁽²⁾ and (EC) No 1235/2008 ⁽³⁾.
- (2) On the basis of the information received from Member States, it is necessary to derogate from certain provisions of Regulations (EC) No 889/2008 and (EC) No 1235/2008.
- (3) As regards official controls and other official activities within the scope of Regulation (EU) 2017/625 of the European Parliament and of the Council ⁽⁴⁾, Commission Implementing Regulation (EU) 2020/466 ⁽⁵⁾ allows Member States to apply temporary measures to contain risks to human, animal and plant health and animal welfare in the specific situation linked to COVID-19 until 1 August 2020.

⁽¹⁾ OJ L 189, 20.7.2007, p. 1.

⁽²⁾ 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 (OJ L 250, 18.9.2008, p. 1).

⁽³⁾ 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 (OJ L 334, 12.12.2008, p. 25).

⁽⁴⁾ Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (OJ L 95, 7.4.2017, p. 1).

⁽⁵⁾ Commission Implementing Regulation (EU) 2020/466 of 30 March 2020 on temporary measures to contain risks to human, animal and plant health and animal welfare during certain serious disruptions of Member States' control systems due to coronavirus disease (COVID-19) (OJ L 98, 31.3.2020, p. 30).

- (4) In particular, a number of Member States and stakeholders have informed the Commission that their capacity to verify the integrity of organic products is hampered due to those restrictions and the resulting disruptions. Normally, in order to perform physical inspections for the purpose of official controls, the staff of the competent authorities, or where appropriate, the control authorities and control bodies need to visit operators and/or travel long distances. As travelling and carrying out physical inspections are currently not permitted or strongly restricted due to national measures, the competent authority, or where appropriate, the control authority or control body should have the possibility to base its controls on documentary checks and use any available means of distance communication instead during a certain period. In respect of low risk operators, as determined by the risk assessment procedure of the competent authority, or where appropriate, of the control authority or control body, as defined in Article 27(3) of Regulation (EC) No 834/2007, it is appropriate that physical inspections are substituted by such documentary checks. Moreover, the restrictions of movement have delayed the yearly control visits, making it difficult for competent authority or where appropriate, control authorities or control bodies, to fulfil their obligations to carry out additional random visits, unannounced inspections and sampling in respect of certain profile operators.
- (5) Operators should continue to have the possibility to adhere to the organic production scheme. However, pending the resumption of the normal control activities after the end of the national measures related to the COVID-19 pandemic, the competent authority or, where appropriate, the control authority or control body should be allowed to postpone physical inspections and rely on documentary checks, including checks carried out through available means of distance communication until the operations can be resumed.
- (6) It is of utmost importance to continue to carry out timely investigations on suspected infringements and irregularities relating to the organic production rules. Therefore, it is appropriate to provide that such investigations are to be carried out with any available means, while giving control authorities and control bodies the opportunity to carry out the necessary physical inspections at a later stage.
- (7) The restrictions of movement applied by Member States, due to the COVID-19 pandemic, are currently preventing timely communication between Member States, between the control bodies and Member States and between Member States and the Commission on the investigations carried out to determine the origin of the irregularities or infringements found. Therefore, certain deadlines should be extended.
- (8) The restriction of movement currently applied by Member States, due to the COVID-19 pandemic, can also affect the possibility of the competent authorities to carry out the annual inspection of the control bodies that have been delegated control tasks. It is necessary to clarify that a competent authority may temporarily apply supervision audits instead.
- (9) In addition, as a consequence of the measures introduced to protect human health, serious restrictions applied to transports affect the courier services that would deliver the printed and hand-signed paper version of the certificate of inspection required for imported consignments. For this reason, it is also necessary to derogate from the relevant provisions of Regulation (EC) No 1235/2008 as regards the obligation to have a paper version of the certificate of inspection.
- (10) This Regulation should apply until the end of September 2020. However, the documentary checks in respect of low risk operators, as determined by the risk assessment procedure of the competent authority, or where appropriate, of the control authority or control body, as defined in Article 27(3) of Regulation (EC) No 834/2007, should be allowed to replace the relevant physical inspections until the end of December 2020. In view of the information received from a number of Member States, it is appropriate to provide for a retroactive application of this Regulation from 1 March 2020. Moreover the number of the sampling, additional random visits and unannounced inspections shall be calculated over the year 2020. Therefore, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.
- (11) After the outbreak of the COVID-19 pandemic in China, that country has imposed travel restrictions since the beginning of January 2020. For that reason, it is appropriate to provide for an earlier date of application for control activities that have occurred in China.
- (12) 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

Derogations from Regulation (EC) No 889/2008

1. By way of derogation from Article 65(1) of Regulation (EC) No 889/2008, in respect of low risk operators, as determined by the risk assessment procedure of the competent authority, or where appropriate, of the control authority or control body, as defined in Article 27(3) of Regulation (EC) No 834/2007, in the event of movement restrictions caused by national measures related to the COVID-19 pandemic, physical inspections for the purpose of annual inspections and renewal of documentary evidence of organic operators may be substituted by documentary checks. Those documentary checks may be carried out, when necessary, also by any available means of distance communication, for low risk operators, as determined by the risk assessment procedure of the competent authority, or where appropriate, the control authority or control body laid down in Regulation (EC) No 834/2007 Article 27(3).
2. In respect of operators, other than those referred to in paragraph 1 of this Article and in respect of operators wishing to adhere to the organic production scheme for the first time, and in all the other cases such as retroactive recognition, in the event of movement restrictions caused by national measures related to the COVID-19 pandemic, the physical inspection, referred to in Article 65(1) of Regulation (EC) No 889/2008, shall occur as soon as control and certification activities can be resumed in the Member States and in the Third Country concerned, after the end of the national measures related to the COVID-19 pandemic. Until that moment, the documentary checks for the purpose of annual inspection, issue and renewal of the documentary evidence of organic operators and retroactive recognition, may be carried out, when necessary, also by any available means of distance communication.
3. By way of derogation from Article 65(2) of Regulation (EC) No 889/2008, the number of samples to be taken and analysed by the control body or the control authority every year shall correspond to at least 2 % of the number of operators under its control.
4. By way of derogation from the second sentence of the second subparagraph of Article 92a(4) of Regulation (EC) No 889/2008, the reply to a notification relating to non-compliant products, referred to in that sentence, shall be sent within 60 calendar days from the date of the original notification.
5. By way of derogation from point (b) of the second subparagraph of Article 92c(2) of Regulation (EC) No 889/2008, the additional random control visits carried out in accordance with Article 65(4) of that Regulation shall cover 5 % of operators under contract in accordance with the risk category.
6. By way of derogation from point (c) of the second subparagraph of Article 92c(2) of Regulation (EC) No 889/2008, at least 5 % of all inspections and visits carried out in accordance with Article 65(1) and (4) are unannounced.
7. By way of derogation from Article 92e of Regulation (EC) No 889/2008, the 'annual inspection' of the control body referred to in that Article, and planned until 30 September 2020, may be substituted by an 'annual supervision audit' carried out also by any available means of distance communication, as long as national emergency measures related to the COVID-19 pandemic in the Member State concerned prevent the competent authority from carrying out that inspection.

Article 2

Derogations from Regulation (EC) No 1235/2008

1. By way of derogation from Article 13(2) of Regulation (EC) No 1235/2008, the certificate of inspection shall be issued by the relevant control authority or control body by introducing all necessary information and validating box 18 in the Trade Control and Expert System (TRACES). It shall be endorsed by the relevant Member State's competent authority by validating box 20 in TRACES and be completed by the first consignee in TRACES.
2. By way of derogation from Article 13(6) of Regulation (EC) No 1235/2008, at the verification of a consignment the relevant Member State's competent authority shall endorse the certificate of inspection by validating box 20 in TRACES.
3. By way of derogation from the second sentence of the first subparagraph of Article 15(4) of Regulation (EC) No 1235/2008, the reply to a notification relating to non-compliant products referred to in that sentence shall be sent within 60 calendar days from the date of sending of the original notification.

Article 3

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 March 2020 until 30 September 2020.

However, Article 1(1) shall apply from 1 March 2020 until 31 December 2020.

Article 1(3), 1(5) and 1(6) shall apply from 1 January 2020 until 31 December 2020.

For control activities carried out in China, this Regulation shall apply from 1 January 2020 until 30 September 2020.

This Regulation shall be binding in its entirety and directly applicable in the Member States.

Done at Brussels, 7 July 2020.

For the Commission

The President

Ursula VON DER LEYEN

GUIDELINES

GUIDELINE (EU) 2020/978 OF THE EUROPEAN CENTRAL BANK

of 25 June 2020

on the exercise of the discretion under Article 178(2)(d) of Regulation (EU) No 575/2013 of the European Parliament and of the Council by national competent authorities in relation to less significant institutions with regard to the threshold for assessing the materiality of credit obligations past due (ECB/2020/32)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

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

Having regard to Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions ⁽¹⁾, and in particular Article 6(1), and Article 6(5)(a) and (c) thereof,

Whereas:

- (1) The European Central Bank (ECB) is responsible for the effective and consistent functioning of the Single Supervisory Mechanism (SSM). It oversees the functioning of the system to ensure the consistent application of high supervisory standards and the consistency of supervisory outcomes across the participating Member States. The ECB may issue guidelines to national competent authorities (NCAs) in accordance with which supervisory tasks are to be performed and supervisory decisions are to be adopted by NCAs.
- (2) The ECB has to ensure the consistent application of prudential requirements for credit institutions within the participating Member States, as set out under Regulation (EU) No 1024/2013 and Regulation (EU) No 468/2014 of the European Central Bank (ECB/2014/17) ⁽²⁾.
- (3) As the authority competent to supervise significant credit institutions under Regulation (EU) No 1024/2013, the ECB has exercised the discretion conferred on it under Article 178(2)(d) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽³⁾ by adopting Regulation (EU) 2018/1845 of the European Central Bank (ECB/2018/26) ⁽⁴⁾ which defines the threshold for assessing the materiality of credit obligations past due.
- (4) Although NCAs are primarily responsible for exercising the relevant options and discretions in relation to less significant institutions, the ECB's overarching oversight role within the SSM enables it to promote the consistent exercise of options and discretions in relation to both significant and less significant institutions, where appropriate. This ensures that: (a) the prudential supervision of all credit institutions in the participating Member States is implemented in a coherent and effective manner; (b) the single rulebook for financial services is applied consistently to all credit institutions in the participating Member States; and (c) that all credit institutions are subject to supervision of the highest quality.

⁽¹⁾ OJ L 287, 29.10.2013, p. 63.

⁽²⁾ Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (ECB/2014/17) (OJ L 141, 14.5.2014, p. 1).

⁽³⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁽⁴⁾ Regulation (EU) 2018/1845 of the European Central Bank of 21 November 2018 on the exercise of the discretion under Article 178(2)(d) of Regulation (EU) No 575/2013 in relation to the threshold for assessing the materiality of credit obligations past due (ECB/2018/26) (OJ L 299, 26.11.2018, p. 55).

- (5) With the aim of balancing the need for the consistent application of supervisory standards between significant and less significant institutions on the one hand with the application of the principle of proportionality on the other hand, the ECB considers that the NCAs which supervise less significant institutions should exercise the discretion under Article 178(2)(d) of Regulation (EU) No 575/2013 and Commission Delegated Regulation (EU) 2018/171 ⁽³⁾ in the same way as exercised by the ECB in Regulation (EU) 2018/1845 (ECB/2018/26),

HAS ADOPTED THIS GUIDELINE:

Article 1

Subject matter and scope

This Guideline specifies how NCAs shall exercise the discretion conferred on competent authorities under Article 178(2)(d) of Regulation (EU) No 575/2013 in relation to less significant institutions with regard to the threshold for assessing the materiality of credit obligations past due, irrespective of the method used for the calculation of their risk-weighted exposure amounts. The exercise of this discretion by the NCAs in relation to the less significant institutions shall be fully aligned with the ECB's exercise of the relevant discretion in Regulation (EU) 2018/1845 (ECB/2018/26).

Article 2

Definitions

For the purposes of this Guideline, the definitions contained in Article 4(1) of Regulation (EU) No 575/2013, Article 2 of Regulation (EU) No 1024/2013 and Article 2 of Regulation (EU) No 468/2014 (ECB/2014/17) shall apply.

Article 3

Threshold for the assessment of the materiality of a credit obligation past due

1. For the purpose of Article 178(2)(d) of Regulation (EU) No 575/2013, NCAs shall require less significant institutions to assess the materiality of a credit obligation past due against the following threshold, which comprises two components:
 - (a) a limit in terms of the sum of all amounts past due owed by the obligor to the credit institution, the parent undertaking of that credit institution or any of its subsidiaries (hereinafter the 'credit obligation past due'), equal:
 - (i) for retail exposures, to EUR 100;
 - (ii) for exposures other than retail exposures, to EUR 500; and
 - (b) a limit in terms of the amount of the credit obligation past due in relation to the total amount of all on-balance sheet exposures to that obligor for the credit institution, the parent undertaking or any of its subsidiaries, excluding equity exposures, equal to 1 %.
2. NCAs shall require less significant institutions applying the definition of default laid down in points (a) and (b) of the first subparagraph of Article 178(1) of Regulation (EU) No 575/2013 for retail exposures at the level of an individual credit facility to apply the threshold laid down in paragraph 1 at the level of the individual credit facility granted to the obligor by the credit institution, the parent undertaking or any of its subsidiaries.
3. A default shall be deemed to have occurred when both of the limits set out in points (a) and (b) of paragraph 1 are exceeded for more than 90 consecutive days.

⁽³⁾ Commission Delegated Regulation (EU) 2018/171 of 19 October 2017 on supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the materiality threshold for credit obligations past due (OJ L 32, 6.2.2018, p. 1).

*Article 4***Date of application of the materiality threshold**

The NCAs shall ensure that less significant institutions notify them of the exact date on which they will commence applying the threshold for the assessment of the materiality of a credit obligation past due and that less significant institutions apply such threshold no later than 31 December 2020.

*Article 5***Taking effect and implementation**

1. This Guideline shall take effect on the day of its notification to the NCAs of the participating Member States.
2. The NCAs shall comply with this Guideline no later than 31 December 2020.

*Article 6***Addressees**

This Guideline is addressed to the NCAs of the participating Member States.

Done at Frankfurt am Main, 25 June 2020.

For the Governing Council of the ECB
The President of the ECB
Christine LAGARDE

CORRIGENDA

Corrigendum to Regulation (EU) 2018/1845 of the European Central Bank of 21 November 2018 on the exercise of the discretion under Article 178(2)(d) of Regulation (EU) No 575/2013 in relation to the threshold for assessing the materiality of credit obligations past due (ECB/2018/26)

(Official Journal of the European Union L 299 of 26 November 2018)

On page 57, in Article 3, paragraph 3:

- for:* '3. A default shall be deemed to have occurred when both of the limits set out in points (a) and (b) of paragraph 1 are exceeded for 90 consecutive days.'
- read:* '3. A default shall be deemed to have occurred when both of the limits set out in points (a) and (b) of paragraph 1 are exceeded for more than 90 consecutive days.'
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