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COVER NOTE

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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 25.9.2024 amending Delegated Regulation (EU) 2021/1698 and Delegated Regulation (EU) 2021/2306 as regards the import into the Union of high-risk organic and in-conversion products

Delegations will find attached document C(2024) 6624 final.

Encl.: C(2024) 6624 final



EUROPEAN
COMMISSION

Brussels, 25.9.2024
C(2024) 6624 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 25.9.2024

amending Delegated Regulation (EU) 2021/1698 and Delegated Regulation (EU) 2021/2306 as regards the import into the Union of high-risk organic and in-conversion products

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Commission Delegated Regulation (EU) 2021/1698 lays down provisions dealing with controls on operators and groups of operators in third countries carried out by control authorities and control bodies that are recognised in accordance with Article 46(1) of Regulation (EU) 2018/848 and establishes the rules on the verification of the consignments of organic and in-conversion products intended for import into the Union to be carried out by those control authorities and control bodies.

Commission Delegated Regulation (EU) 2021/2306 lays down rules on the official controls at border control posts and points of release for free circulation in respect of consignments of organic products and in-conversion products intended for import into the Union.

Both Delegated Regulation (EU) 2021/1698 and Delegated Regulation (EU) 2021/2306 set out specific rules on the controls in respect of consignments of high-risk products intended for import into the Union as organic or in-conversion products.

Pursuant to Article 8 of Delegated Regulation (EU) 2021/1698, high-risk products originating from third countries are to be listed in an implementing act adopted pursuant to Article 46(8) of Regulation (EU) 2018/848 on the basis of a selection made after major, critical or repetitive cases of non-compliance affecting the integrity of organic or in-conversion products or their production.

Pursuant to Article 16(6) of Delegated Regulation (EU) 2021/1698, systematic physical checks and at least one representative sample for each consignment of high-risk organic products to be imported into the Union are to be carried out as part of other control requirements.

In parallel, referring to the high-risk products listed in the implementing act that is indicated in Article 8 of Delegated Regulation (EU) 2021/1698, Article 6(2) of Commission Delegated Regulation (EU) 2021/2306 provides that Member States' competent authorities must carry out systematic identity and physical checks and take at least one representative sample of the consignments of high-risk products to be imported into the Union.

Experience so far with controls - by control authorities and control bodies operating in third countries and by Member States' competent authorities - on imports into the Union of products from third countries substantially involved in notifications that have been opened by Member States in the Organic Farming Information System (OFIS) due to suspicions of non-compliance with the Union organic legislation, including notifications of contaminations with products and substances not authorised for use in organic production, shows that the compliance with the conditions and measures for the import of organic products and in-conversion products into the Union can be ensured by subjecting a share of consignments lower than 100% to identity and physical checks and sampling. In many cases, identity and physical checks and sampling on a lower share of such consignments have been effective in terms of verification of the compliance with the conditions and measures for the import of the organic products and in-conversion products established by Regulation (EU) 2018/848. Subjecting different shares of consignments to identity and physical checks and sampling by control authorities and control bodies in third countries and by the competent authorities of the Member States, does not affect the efficiency of controls.

Checks on shares lower than 100% of consignments of high-risk products would also prevent undue increases in control costs for operators, control authorities and control bodies operating in third countries and Member States' competent authorities for organics and thus possibly also the final consumer prices of organic products in the Union, the perceived high final consumer prices of organic products being one of the main obstacles to the demand for organic products increasing in the Union. At the same time, these lower-share checks would prevent undue decreases in trading volumes and values between the third countries in which the high-risk products originate and the Union due to high control costs.

For these reasons, it is proposed to delete the requirement of identity and physical checks and sampling for 100% of the consignments of high-risk products, and to introduce flexibility as regards the share of consignments of high-risk products to be subjected to physical checks and sampling.

It is also proposed that the list of high-risk products originating from third countries to be adopted via an implementing act pursuant to Article 46(8) of Regulation (EU) 2018/848 will contain two percentages for each high-risk product:

- a first percentage on the share of consignments of high-risk products to be exported to the Union and to be subjected to physical checks and sampling by control authorities and control bodies operating in third countries, and
- a second percentage on the share of consignments of those same high-risk products to be imported into the Union and to be subjected to identity and physical checks and sampling by Member States' competent authorities for organics at border control posts and points of release for free circulation.

This list and the two percentages will be based on a selection made after major, critical or repetitive non-compliances affecting the integrity of organic or in-conversion products or production.

In order to ensure coherence, it is proposed to align Article 6(2) of Commission Delegated Regulation 2021/2306 with the approach to be taken in Delegated Regulation (EU) 2021/1698.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The act was discussed thoroughly with the Group of Experts on Organic Production as well as with the main organisations representing accreditation and control authorities and control bodies active in the import of organic products from third countries. It was also published for feedback on Europa's "Have Your Say" portal from 18 June 2024 to 16 July 2024 and notified to WTO partners for feedback from 5 July 2024 to 3 September 2024. DG AGRI also cooperated closely with other DGs in the field of their specific expertise when drafting this act.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This act amends Delegated Regulations (EU) 2021/1698 and Delegated Regulation (EU) 2021/2306 as regards specific rules on the controls in respect of consignments of high-risk products intended for import into the Union as organic or in-conversion products and in particular the share of consignments of high-risk products to be subjected to identity and physical checks and sampling.

COMMISSION DELEGATED REGULATION (EU) .../...

of 25.9.2024

amending Delegated Regulation (EU) 2021/1698 and Delegated Regulation (EU) 2021/2306 as regards the import into the Union of high-risk organic and in-conversion products

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007¹, and in particular Article 46(7), point (b)(ii), thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2021/1698² lays down provisions dealing with controls on operators and groups of operators in third countries carried out by control authorities and control bodies that are recognised in accordance with Article 46(1) of Regulation (EU) 2018/848 and establishes the rules on the verification of the consignments of organic and in-conversion products intended for import into the Union that are to be carried out by those control authorities and control bodies.
- (2) Commission Delegated Regulation (EU) 2021/2306³ lays down rules on the official controls at border control posts and points of release for free circulation in respect of consignments of organic products and in-conversion products intended for import into the Union.
- (3) Both Delegated Regulation (EU) 2021/1698 and Delegated Regulation (EU) 2021/2306 set out specific rules on the controls in respect of consignments of high-risk products intended for import into the Union as organic or in-conversion products.
- (4) Pursuant to Article 8 of Delegated Regulation (EU) 2021/1698, high-risk products originating from third countries are to be listed in an implementing act adopted pursuant to Article 46(8) of Regulation (EU) 2018/848 on the basis of a selection made after major, critical or repetitive cases of non-compliance affecting the integrity of organic or in-conversion products or their production.

¹ OJ L 150, 14.6.2018, p. 1., ELI: <http://data.europa.eu/eli/reg/2018/848/oj>.

² Commission Delegated Regulation (EU) 2021/1698 of 13 July 2021 supplementing Regulation (EU) 2018/848 of the European Parliament and of the Council with procedural requirements for the recognition of control authorities and control bodies that are competent to carry out controls on operators and groups of operators certified organic and on organic products in third countries and with rules on their supervision and the controls and other actions to be performed by those control authorities and control bodies (OJ L 336, 23.9.2021, p. 7), ELI: http://data.europa.eu/eli/reg_del/2021/1698/oj.

³ Commission Delegated Regulation (EU) 2021/2306 of 21 October 2021 supplementing Regulation (EU) 2018/848 of the European Parliament and of the Council with rules on the official controls in respect of consignments of organic products and in-conversion products intended for import into the Union and on the certificate of inspection (OJ L 461, 27.12.2021, p. 13), ELI: http://data.europa.eu/eli/reg_del/2021/2306/oj.

- (5) Pursuant to Article 16(6) of Delegated Regulation (EU) 2021/1698, systematic physical checks and at least one representative sample for each consignment of high-risk organic products to be imported into the Union are to be carried out as part of other control requirements.
- (6) Experience with controls on imports into the Union of products from third countries substantially involved in notifications that have been opened by Member States in the Organic Farming Information System (OFIS) due to suspicions of non-compliance with the Union organic legislation, including notifications of contaminations with products and substances not authorised for use in organic production, shows that the compliance with the conditions and measures for the import of organic products and in-conversion products into the Union can be ensured by subjecting a share of consignments lower than 100% to identity and physical checks and sampling. Subjecting different shares of consignments to identity and physical checks and sampling by control authorities and control bodies in third countries and by the competent authorities of the Member States, does not affect the efficiency of controls.
- (7) Reduced identity and physical checks and sampling on consignments of high-risk products would enable lower control costs for operators, control authorities and control bodies operating in third countries and for the competent authorities of the Member States, which may have a lowering effect on final consumer prices for organic products in the Union, given that perceived high final consumer prices for organic products constitute one of the main obstacles to increasing the demand for organic products in the Union.
- (8) Furthermore, reduced identity and physical checks and sampling on consignments of high-risk products would avoid undue decreases in trading volumes and values between the third country in which the high-risk products originate and the Union.
- (9) It is therefore necessary to focus on the control of high-risk products originating from certain third countries and to provide that the list of high-risk products contains the country of origin of those products as well as the necessary amount of identity checks, physical checks and sampling percentages for consignments of those products.
- (10) Pursuant to Article 6(2) of Delegated Regulation (EU) 2021/2306, each consignment of high-risk products to be imported into the Union is subject to systematic identity and physical checks and representative sampling at border control posts and at points of release for free circulation. In order to ensure a consistent approach to the frequency of checks on consignments of high-risk organic and in-conversion products, this requirement should be aligned with the approach to be taken under Delegated Regulation (EU) 2021/1698.
- (11) Delegated Regulations (EU) 2021/1698 and (EU) 2021/2306 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment to Delegated Regulation (EU) 2021/1698

Delegated Regulation (EU) 2021/1698 is amended as follows:

(1) Article 8 is replaced by the following:

‘List of high-risk third countries and high-risk products

High-risk products and the third countries in which they originate shall be listed together with the shares of consignments of those products to be subject to identity and physical checks and sampling by control authorities and control bodies in third countries, and by the competent authorities of the Member States, as appropriate, in an implementing act adopted in accordance with Article 46(8) of Regulation (EU) 2018/848 on the basis of a selection made after major, critical or repetitive non-compliances affecting the integrity of organic or in-conversion products or production.

The shares referred to in the first subparagraph can be lower than 100% and may, for the same product, be different for controls by control authorities and control bodies in third countries and the competent authorities of the Member States respectively.’;

(2) the first sentence of Article 16, paragraph (6), is replaced by the following:

‘For consignments of high-risk products referred to in Article 8, the relevant control authority or control body shall carry out physical checks and take at least one representative sample in accordance with the applicable percentage laid down in the implementing act referred to in Article 8.’.

Article 2

Amendment to Delegated Regulation (EU) 2021/2306

The first sentence of Article 6, paragraph (2), of Delegated Regulation (EU) 2021/2306 is replaced by the following:

‘For consignments of high-risk products referred to in Article 8 of Delegated Regulation (EU) 2021/1698, the competent authority referred to in paragraph 1 of this Article shall check the documentation referred to in Article 16(6) of that Regulation and carry out identity and physical checks and take at least one representative sample of consignments in accordance with the applicable percentage laid down in the implementing act referred to in Article 8 of Delegated Regulation (EU) 2021/1698’.

Article 3

Entry into force and application

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

It shall apply from the date on which the implementing act adopted in accordance with Articles 46(8) of Regulation (EU) 2018/848 becomes applicable.

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

Done at Brussels, 25.9.2024

For the Commission
The President
Ursula VON DER LEYEN