

Italy

Organic Products: Italy Strengthens its Control System by Implementing Legislative Decree No. 20 of 23 February 2018

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I. Introduction

The rules defining how organic products are to be produced, processed and labelled, are set out at European level, mainly in Regulation (EC) No. 834/2007 (Regulation) on organic production and labelling of organic products¹. In order to make sure that consumers who buy food with the EU organic logo or labelled as organic can be confident that it has been produced in accordance with these strict rules, in Title V of the Regulation, principles and rules for a strict control system are foreseen, with checks carried out at every stage of the organic chain. However, the implementation of these controls takes place at national level. As a matter of fact, Article 27 of the Regulation establishes that Member States must set up a system of controls and designate one or more competent authorities responsible for controls in respect of the obligations established in the Regulation in conformity with Regulation (EC) No 882/2004.²

As far as Italy is concerned, in accordance with the Regulation, the Council of Ministers recently ap-

proved Legislative Decree No. 20 of 23 February 2018 (Decree), entered into force on 22 March 2018, which laid down the provisions for the harmonization and rationalization of the laws on controls on the production of organic products.

Mainly, the Decree aims to strengthen consumer protection and fair competition, as well as to simplify and unify under one law the matter relating to controls on organic production and improve the control system by introducing a number of administrative sanctions.³

Following, the main novelties introduced by the Decree.

II. Control System

As previously established by Legislative Decree No. 220/1995 (which implemented the rules for the inspection system foreseen by the former Council Regulation (EEC) no. 2092/91 of 24 June 1991 on organic production, which then has been replaced by Regulation (EC) No. 834/2007), the Decree reaffirms the Ministry of Agriculture and Forestry (Ministry) as the competent authority for the organization of official controls in the field of organic production. The Ministry delegates the controlling activities to the authorized control bodies (*organismi di controllo*).⁴ The control bodies are responsible for supervising the activities of the businesses operating on the organic market (operators) and identifying any possible infringements or violations of the provisions set out by the laws on organic production.

III. Avoiding Conflict of Interest Between the Control Body and Controlled Business Operator

In the attempt to hinder any conflict of interest that may rise between the control body and the controlled

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1 On 14 June 2018 the New Organic Regulation (EU) 2018/848 was published in the Official Journal. The new rules will enter into force on 1 January 2021 and will repeal Council Regulation (EC) No 834/2007.

2 Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

3 In this regard, see also the communication of the Italian Ministry of Agriculture and Forestry, titled "Biologico: approvato in via definitiva il decreto controlli Martina: settore rafforzato e maggiori garanzie per i consumatori", 22 March 2018, available on the internet at <<https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/12255>> (last accessed on 29 August 2017).

4 Control bodies must be accredited by the UNI CEI EN ISO/IEC 17065:2012 standards.

business operator, the Decree has introduced a number of provisions, including:

- The operators on the organic market may not hold a control bodies' equity participation amounting to more than 50% of the control body's share capital;
- control bodies, when operating on the organic market, may not perform any activity that is not strictly related to the controlling activity. Furthermore, the representatives of the control body, its administrators as well as the personnel designated to controlling functions, may not offer goods or services that are not strictly related to the controlling activity of the operators;
- the inspector designated by the control body may not perform controlling activity on the same operator for more than three consecutive times.

IV. Database

Furthermore, the Decree provides that control bodies must guarantee the traceability of all commercial transactions regarding organic products. In order to comply with this, the Decree establishes for the set-up of a database, which shall be accessible by all operators and indicates all commercial transactions that have occurred on the field of organic productions.

V. Obligations of the Control Bodies and the Business Operators

In order to guarantee an effective control system on national level, the Decree foresees specific obligations for both, the control bodies as well as the operators.

For example, control bodies are obliged, amongst other things, to (i) promptly inform the Ministry and the competent control authorities about any infraction or irregularity that may have been detected during controls; (ii) take adequate measures against the operator in case of irregularities or infractions, even if subsequent to the withdrawal or exclusion of the operator itself from the control system; (iii) communicate to the Ministry the measures adopted in case of irregularities or infractions by the operators; and (iv) issue, within a period of 90 days from the operator's notification, pursuant to Article 28 of the Reg-

ulation, the supporting document and the certificate of conformity.

As far as the business operators' obligations are concerned, already at EU level (Article 28 of the Regulation), it is established that any operator who produces, prepares, stores, or imports from a third country organic products or distributes such products prior to placing them on the market must notify his activity to the competent authorities of the Member State where the activity is carried out and submit his undertaking to the control system, i.e. in Italy to an authorized control body.

Article 9 of the Decree sets out further duties of the operators, for example: (i) carrying out the measures adopted by the control body, even if subsequent to the exclusion or withdrawal of the operator itself from the control system; (ii) in the event of exclusion from the control system refraining from issuing a new notification pursuant to Article 28 of the Regulation before two years have passed; (iii) promptly communicating to the control body any claims presented by the clients; and (iv) in the event of objections for non-compliance, promptly communicating to the control body the results of the controls carried out by the competent authorities.

VI. Administrative Sanctions

Finally, the Decree introduces an administrative pecuniary sanctioning system which provides for fines against both, the control bodies that violate certain rules and obligations in connection with its control duties, as well as the business operators that infringe the rules and obligations regarding the production and marketing of organic products.

For instance, a control body that omits the verification of the corrective actions taken by the operators following suspension and suppression measures can be punished with high fines (€10.000 to €30.000, Article 8 of the Decree). To cite a further example, a control body that fails to adopt the necessary steps to maintain the personnel updated on the legislative changes and on the risk elements of related to organic products can be punished with a fine from €6.000 to €12.000 (Article 8 of the Decree).

As far as the sanctions against the operators are concerned, Article 10 of the Decree provides the following sanctions for matters concerning the desig-

nation, the presentation and commercial use of the organic product:

- €7.000 to €18.000, for use or indication of terms or symbols on the packaging, trademark or in the information that may mislead the consumers on the compliance of the product to the Regulation requirements;
- €1.000 to €3.000, in the event of a non-compliant use of terms indicating organic production on the labelling, advertising material or commercial documents;
- €600 to €1.800, in the event of non-compliant use of the Community logo on the labelling, advertising material or commercial documents.

Article 11 provides for a number of sanctions against operators, specifically:

- €10.000 to €20.000, for failing to withdraw all the products or communicating to its clients of the lost right to avail itself of terms indicating biological products;
- €6.000 to €18.000, against the operator that hinders the control body's inspection activities;
- €6.000 to €18.000, in the event that the control body has executed a definitive measure, suspending the operator's organic certification;
- €10.000 to €30.000, in the event that the control body has executed a definitive measure, withdrawing the operator's organic certification.

The competent authority to impose the fines is the Department of the Central Inspectorate for the protection of quality and repression of frauds in food products located within the Italian Ministry of Agriculture and Forestry.

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