

19<sup>th</sup> of January, 2016**EOCC feedback on the TRACES test-phase and recommendations for the future system for electronic certificates of imports**

*EOCC represents 50 control bodies and authorities operating in Europe and beyond towards European Institutions. Its aim is to increase the reliability of control and certification activities and decisions in relation to European legislation with regard to organic production and labelling of organic products. EOCC fosters the harmonization of interpretation of the European organic legislation and supports the exchange of information amongst all inspection bodies.*

*EOCC is listed in the transparency register under number 755639413555-75*

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Control bodies will be in front line in the implementation of TRACES. EOCC therefore closely follows-up on the current discussions on the design and implementation of TRACES. EOCC already made some comments on the design of TRACES in May, but generally welcomes the introduction electronic certificates of imports.

Considering the last draft introducing amendments Reg. 889/2008 and 1235/2008 in order to provide for the implementation of TRACES, we would like to raise points of concern regarding the draft or the implementation measures on following issues:

- I. Definition of processed/unprocessed products
- II. Provisions leading to uncertainty on the definition of "exporter"
- III. Cases of force majeure and exceptional circumstances
- IV. Access rights to and use of TRACES
- V. Issuance of the certificate
- VI. Link to OFIS
- VII. Changes in product categories (Annex IV)

**I. Definition of processed/unprocessed products**

The **definition of processed/unprocessed products** given in the draft bases on Reg. 852/2004 and would introduce an approach which is new for organic products. EOCC considers that this raises several concerns:

- Some of the products which are currently classified as processed (for example flour) could in the future be categorized as unprocessed;

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- Art. 2.1 (m) of Reg. 852/2004 gives examples of processing operations but is not exhaustive and therefore does not bring additional clarification;
  - This modification of Reg. 1235/2008 would introduce different definitions for process/unprocessed products depending on their place of production (EU/Third countries);
  - This change could have further implications, for instance on CBs recognized for the categories A and D of Annex IV of Reg. 1235/2008.

Considering these points, EOCC would like to suggest the following approach regarding definitions:

1. The inclusion of definitions of processed/unprocessed products in Reg. 834/2007. They would hence apply to all organic products independently from their place of production
2. General definitions in Reg. 834/2007 which would guarantee that the specificity of organic processed products is taken into consideration. For purposes of coherence with general EU-law on foodstuff, the Art. 2.1 (m) and (n) of Reg. 852/2004 could be taken over, cut out of the operations' examples:
  - *'processing' means any action that substantially alters (modifies and/or destroys the taste, the shape, chemical or nutritional composition) the initial product.*
  - *'unprocessed products' means foodstuffs that have not undergone processing*
3. More detailed guidelines with a list of preparation and processing operations to be submitted by the European Commission at a later stage. EOCC already started to work on such a list proposal and is available to give input.

## **II. Provisions leading to uncertainty on the definition of "exporter"**

EOCC further thinks that **certain definitions or provisions of the draft lead to uncertainty on the definition of an exporter and would thus need to be clarified.**

1. As the exporter and the operator performing the last preparation operation are not always the same operator, cumulative obligations to define the exporter cannot always be met (Boxes 4 and 8 of the certificate). EOCC would like to suggest that a sealing operation is considered as a preparation and to redraft the indications to fulfill boxes 4 and 8 as follows:
  - Box 4: *"[...] The exporter is the operator performing the last preparation operation of the preparation operations as defined in Article 2(i) of Regulation (EC) No 834/2007 on the products mentioned in box 13 and including sealing the products in*

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*appropriate packaging or containers, pursuant to Article 34 of Regulation (EC) No 889/2008”*

- Box 8: *“Country of export means the country where the product has been subject to the last preparation as defined in Article 2(i) of Regulation (EC) No 834/2007 ~~and including sealed in appropriate packaging or containers”~~*

2. In its current wording, the amended article 14 of Reg. 889/2008 does not take into account that an exporter could be EU-based if the last preparation before the release the product for free circulation takes place within the EU. EOCC asks that clarification is made on whether an exporter can be EU-based. Otherwise, it suggests that Box 8 is renamed “third country of export” for more clarity.

### **III. Cases of force majeure and exceptional circumstances**

Regarding the amendment of Art. 13 of Reg. 1235/2008 and **cases of force majeure and exceptional circumstances**, EOCC would like to underline that:

1. A clear definition of cases which could be considered as being “force majeure”/exceptional circumstances would be necessary to ensure a good implementation of the text.

2. An alternative to the automatic deliverance of serial numbers to certificates should be put in place for such cases. EOCC welcomes the inclusion of automatic deliverance of serial numbers by the system. However, a scheme to ensure continuity in the issuance of certificates in the event of force majeure should be available from the launch of TRACES.

### **IV. Access rights to and use of TRACES**

On **access rights to and use of TRACES**, EOCC would like to raise or reiterate following points which are key for a successful implementation of the system:

1. We see as necessary that not only importers but exporters can pre-fill the certificate. Exporters have most of the information pieces which have to be provided by the operators.

2. So far, it is not foreseen that operators can upload documents in TRACES (bills, invoices...). As these documents are necessary to CBs to accept or refuse the issuance of the certificate, we consider that the system should provide for this possibility.

3. EOCC considers that the possibility for CBs to extract at least the data from the certificates they issued from TRACES to be implemented in CB’s internal systems on

the one hand and to be used as input for enhanced risk-assessments on the other hand would be a major step forward. We therefore ask for the introduction of such provisions.

4. Presently, the draft lacks provisions on modification of existing information in TRACES. EOCC thinks that a precise methodology has to be proposed and put in place.

5. Finally, EOCC would like to ask for a clarification on the number of access rights per CB which are granted in Art. 13.b new of Reg. 1235/2008.

#### **V. Issuance of the certificate**

Regarding the issuance of the certificates, EOCC would like to raise following points:

1. As control bodies, we consider that "all relevant inspection documents" as mentioned in the draft for Art. 13§4 refers to the valid certificate as well as the last inspection report, which already includes possible non conformities.

2. We understood that legal provisions at EU-level do not provide so far for the electronic signature of the certificates and that certificates will therefore still have to be printed and hand-signed. Alternative "advanced electronic signature" possibilities are mentioned in the draft. At the implementation stage, EOCC would welcome a precise list of admissible signatures.

#### **VI. Link to OFIS**

EOCC welcomes the creation of a link between TRACES and OFIS but in our view, **provisions to link TRACES and OFIS are unclear at this stage**. If a control bodies detects a substance in a product which did not already entered the European Union and therefore blocks the issuance of the certificate, it does not seem to us that this case will fall under the current scope of OFIS.

In addition, control bodies would welcome clarification of the computer system referred to in the modified Art. 15.5 of Reg. 1235/2008.

#### **VI. Changes in product categories (Annex IV)**

Finally, as the draft provides for a modification of the **product categories in Annex IV**, EOCC would like to ask for clarifications regarding the replacement of "Aquaculture products and seaweeds" by "unprocessed aquaculture products and algae", and the coverage of Spirulina by this new category.