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COMMISSION IMPLEMENTING REGULATION (EU) …/...

of XXX

amending Regulation (EC) No 889/2008 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

(Text with EEA relevance)

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(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 22(1) thereof,

Whereas:

(1) Article 25l(3)(b) of Commission Regulation (EC) No 889/2008[2] allows to supplement natural feed in the grow-out stage of penaeid shrimps and freshwater prawns (*Macrobrachium* spp.) as referred to in Section 7 of Annex XIIIa to that Regulation. For those shrimps and prawns in earlier life stages in nurseries and hatcheries supplementation of feed, in particular the need for cholesterol, is essential for their development. It is therefore necessary to extend the supplementation of feed with cholesterol to those shrimps and prawns also in their earlier life stages.

(2) In accordance with Article 27(1)(f) of Regulation (EC) No 889/2008 minerals (trace elements included), vitamins, amino acids and micronutrients can be used in the processing of organic food only as far as their use is legally required in the foodstuffs in which they are incorporated. According to the judgment of the Court of Justice of the European Union in case C-137/13[3], the use of these substances in the processing of organic food is legally required only when a provision of Union law or a provision of national law compatible therewith directly requires that that substance be added to a foodstuff in order for that foodstuff to be placed on the market.

(3) Regulation (EU) 2018/848 of the European Parliament and of the Council[4] will allow the use of minerals (trace elements included), vitamins, amino acids or micronutrients in organic infant formula and follow-on formula and processed organic cereal-based foods and baby food when their use is authorised by the relevant Union legislation. In order to avoid a gap between the current interpretation of the use of these substances in foods for infants and young children and to ensure consistency with the upcoming

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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 Judgment of the Court of Justice of 5 November 2015, C-137/13, ECLI:EU:C:2014:2335.

4 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 834/2007 (OJ L 150, 14.6.2018, p. 1).

organic legislation it is appropriate to allow their use in the production of organic baby foods for infants and young children.

(4) Article 42 of Regulation (EC) No 889/2008 allows, under certain conditions and when organic reared pullets are not available, for non-organically reared pullets for egg production of not more than 18 weeks to be brought into an organic livestock unit until 31 December 2018.

(5) Production of organically reared pullets for egg production is not sufficiently available, both in terms of quality and quantity, on the Union market to meet the needs of laying hen farmers. In order to allow more time for the production of organically reared pullets for egg production and to establish detailed rules for the production of organically reared pullets, the period of application of the exceptional production rules for non-organically reared pullets for egg production of not more than 18 weeks should be extended until 31 December 2020.

(6) Article 43 of Regulation (EC) No 889/2008 allows the use of a maximum of 5% of non-organic protein feed for porcine and poultry species per period of 12 months for the calendar year 2018.

(7) Organic protein supply is not sufficiently available, both in terms of quality and quantity, on the Union market to meet the nutritional requirements of pigs and poultry raised on organic farms. The production of organic protein crops is still lagging behind demand. It is therefore appropriate to extend the period in which it is allowed to use a limited proportion of non-organic protein feed for porcine and poultry species until 31 December 2020.

(8) Article 30(2) of Regulation (EC) No 834/2007 provides for the communication of information related to irregularities or infringements affecting the organic status of a product. Experience shows that the current tools to communicate information in case a Member State finds irregularities or infringements with regard to a product coming from that Member State need to be improved. To enhance efficiency and effectiveness, such communications should take place via the system referred to in Article 94(1) of Regulation (EC) No 889/2008.

(9) In accordance with the procedure set out in Article 16(3) of Regulation (EC) No 834/2007, several Member States have submitted dossiers on certain substances to the other Member States and the Commission, in view of their authorisation and inclusion in Annexes I, II and VIIIa to Regulation (EC) No 889/2008. Those dossiers have been examined by the Expert Group for Technical Advice on Organic Production (EGTOP) and the Commission.

(10) In its recommendations with regard to fertilisers[5] EGTOP concluded, inter alia, that the substances "industrial lime from sugar production" on the basis of sugar cane and "xylite" comply with the objectives and principles of organic production. Therefore, those substances should be included in Annex I to Regulation (EC) No 889/2008.

(11) In its recommendations with regard to plant protection products[6] EGTOP concluded, inter alia, that the substances "*Allium sativum* (garlic extract)", "COS-OGA", "*Salix spp.* Cortex (aka willow bark extract)" and "sodium hydrogen carbonate" comply with

[5] Final Report on Fertilisers (II) https://ec.europa.eu/agriculture/organic/eu-policy/expert-advice/documents/final-reports_en.

[6] Final report on plant protection (III) https://ec.europa.eu/agriculture/organic/eu-policy/expert-advice/documents/final-reports_en.

the objectives and principles of organic production. Therefore, those substances should be included in Annex II to Regulation (EC) No 889/2008.

(12) In its recommendations with regard to products and substances used or added in organic products during certain stages of the production process and as type of treatment in accordance with Annex I A to Commission Regulation (EC) No 606/2009[7] in the wine sector[8] EGTOP concluded, inter alia, that the substances "potato proteins", "yeast protein extracts" and "Chitosan derived from *Aspergillus niger*" for clarification (point 10 of Annex I A to Regulation (EC) No 606/2009), "inactivated yeast, autolysates of yeast and yeast hulls" for addition (point 15 of that Annex), "di-ammonium phosphate", "yeast mannoproteins", and "Chitosan derived from *Aspergillus niger*" for use (points 6, 35 and 44 of that Annex) comply with the objectives and principles of organic production. Therefore, those substances should be included in Annex VIIIa to Regulation (EC) No 889/2008.

(13) In its recommendations with regard to products for cleaning and disinfecting[9], EGTOP concluded, inter alia, that sodium hydroxide should also be available for organic beekeeping.

(14) Regulation (EC) No 889/2008 should therefore be amended accordingly.

(15) 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

Regulation (EC) No 889/2008 is amended as follows:

(1) in Article 25, paragraph 1 is replaced by the following:

'1. For the purpose of cleaning and disinfection of frames, hives and combs, only sodium hydroxide may be used.

For the purpose of protecting frames, hives and combs, in particular from pests, only rodenticides (to be used only in traps), and appropriate products listed in Annex II, are permitted.';

(2) in Article 25l(3), point (b) is replaced by the following:

'(b) the feed ration of penaeid shrimps and freshwater prawns (*Macrobrachium* spp.) referred to in Section 7 of Annex XIIIa may comprise a maximum of 25 % fishmeal and 10 % fish oil derived from sustainable fisheries. In order to secure the quantitative dietary needs of those shrimps and prawns, organic cholesterol may be used to supplement their diets. Where organic cholesterol is not available, non-organic cholesterol derived from wool, shellfish or other sources may be used. The option to supplement their diet with cholesterol applies both in the grow-out stage and in earlier life stages in nurseries and hatcheries.';

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7 Commission Regulation (EC) No 606/2009 of 10 July 2009 laying down certain detailed rules for implementing Council Regulation (EC) No 479/2008 as regards the categories of grapevine products, oenological practices and the applicable restrictions (OJ L 193, 24.7.2009, p. 1).

8 Final report on Wine https://ec.europa.eu/agriculture/organic/eu-policy/expert-advice/documents/final-reports_en.

9 Final report on cleaning and disinfecting https://ec.europa.eu/agriculture/organic/sites/orgfarming/files/docs/body/final_report_egtop_on_cleaning_disinfection_en.pdf

(3) in Article 27(1), point (f) is replaced by the following:

'(f) minerals (trace elements included), vitamins, amino acids and micronutrients, provided that:

(i) their use in food for normal consumption is ‘directly legally required’, in the meaning of being directly required by provisions of Union law or provisions of national law compatible with Union law, with the consequence that the food cannot be placed at all on the market as food for normal consumption if those minerals, vitamins, amino acids or micronutrients are not added; or

(ii) as regards food placed on the market as having particular characteristics or effects in relation to health or nutrition or in relation to needs of specific groups of consumers:

- in products referred to in points (a) and (b) of Article 1(1) of Regulation (EU) No 609/2013 of the European Parliament and of the Council*, their use is authorised by that Regulation and acts adopted on the basis of Article 11(1) of that Regulation for the products concerned,

- in products regulated by Commission Directive 2006/125/EC**, their use is authorised by that Directive, or

- in products regulated by Commission Directive 2006/141/EC***, their use is authorised by that Directive.

*Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (OJ L 181, 29.6.2013, p. 35).

** Commission Directive 2006/125/EC of 5 December 2006 on processed cereal-based foods and baby foods for infants and young children (OJ L 339, 6.12.2006, p. 16).

*** Commission Directive 2006/141/EC of 22 December 2006 on infant formulae and follow-on formulae and amending Directive 1999/21/EC (OJ L 401, 30.12.2006, p. 1). ';

(4) in Article 42(b), the date '31 December 2018' is replaced by '31 December 2020';

(5) in Article 43, the second subparagraph is replaced by the following:

'The maximum percentage of non-organic protein feed authorised per period of 12 months for those species shall be 5% for calendar years 2018, 2019 and 2020.';

(6) in Article 92a, the following paragraph 1a is inserted:

'1a Where a Member State finds irregularities or infringements relating to the application of this Regulation with regard to a product coming from that Member State and bearing indications as referred to in Title IV of Regulation (EC) No 834/2007 and in Title III of this Regulation or in Annex XI to this Regulation, and if such irregularities or infringements have implications for one or more other Member States, it shall notify the Member State or States concerned, the other Member States and the Commission without delay via the system referred to in Article 94(1) of this Regulation.';

(7) Annex I is replaced by the text set out in Annex I to this Regulation;

(8) Annex II is replaced by the text set out in Annex II to this Regulation;

(9) Annex VIIIa is replaced by the text set out in Annex III to this Regulation.

Article 2

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

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

Done at Brussels,

For the Commission
The President
Jean-Claude Juncker