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Special Report No 9 2012

AUDIT OF THE CONTROL SYSTEM GOVERNING THE PRODUCTION, PROCESSING, DISTRIBUTION AND IMPORTS OF ORGANIC PRODUCTS

EN

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(pursuant to Article 287(4), second subparagraph, TFEU)

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REPLY OF THE COMMISSION

GLOSSARY

Accreditation body: A public or private body that gives a formal recognition that a control body is competent to carry out inspection and certification according to organic standards. In the European Union, organic control bodies have to be accredited to European Standard EN 45011 or ISO Guide 65.

Additional control visit: Control visit by a control body of an operator in addition to the compulsory annual control visit for that operator.

Competent authority: The central authority of a Member State competent for the organisation of official controls in the field of organic production, or any other authority to which that competence has been conferred. It shall also include, where appropriate, the corresponding authority of a third country.

Control body: An independent private third party carrying out inspection and certification in the field of organic production.

Non-compliance: An instance where a particular standard or certification requirement is not being met.

Operator: An individual or business enterprise that is producing, storing, processing, transporting, exporting or importing organic products.

Organic production: An overall system of farm management and food production that aims at sustainable agriculture, the production of high-quality products and the use of processes that do not harm the environment, human, plant or animal health and animal welfare.

Recognised control body for the purpose of compliance: Control body operating in a third country recognised by the Commission as able to guarantee that the objectives and principles for organic production, and the production and labelling rules in the third country are the same as those applied to organic production and labelling in the EU.

Recognised control body for the purpose of equivalence: Control body operating in a third country recognised by the Commission as able to guarantee that the production and labelling rules in the third country, as well as the control measures applied to the operators in the third country are equivalent to those applied to organic production and labelling in the EU.

Recognised equivalent third country: Third country recognised by the Commission as complying with production rules and control standards equivalent to those applied to organic production in the EU, and thereby capable of meeting the same objectives and principles by applying rules which ensure the same level of assurance of conformity.

Residue testing: Laboratory analysis of organic products in order to test for the presence of substances not authorised for organic production or for checking production techniques not in conformity with the organic production rules, such as the use of synthetic pesticides and fertilisers, antibiotics, certain food additives and processing aids.

Stages of production, preparation and distribution: Any stage from and including the primary production of an organic product up to and including its storage, processing, transport, sale or supply to the final consumer, and where relevant labelling, advertising, import, export and subcontracting activities.

Traceability: The ability to trace and follow a food, feed, food-producing animal or substance intended to be, or expected to be incorporated into a food or feed, through all stages of production, processing and distribution.

ABBREVIATION LIST

EAFRD: European Agricultural Fund for Rural Development

FVO: Food and Veterinary Office of the European Commission

GMO: genetically modified organisms

MANCP: multiannual national control plan

OFIS: Organic Farming Information System

SCOF: Standing Committee on Organic Farming

EXECUTIVE SUMMARY

I.
Organic production is an overall system of farm management and food production that aims at sustainable agriculture, the production of high-quality products and the use of processes that do not harm the environment, human, plant or animal health and animal welfare. The organic market has rapidly developed and experienced annual growth rates of more than 10 % in the last two decades. The European market for organic food amounts to about 20 billion euro annually, representing an estimate of 1,5 % share of the entire food market.

II.
The EU legal framework governing the sector of organic production aims at providing the basis for the sustainable development of organic production while guaranteeing fair competition, ensuring consumer confidence and protecting consumer interests and ensuring the effective functioning of the internal market. To that end, a control system has been set up that covers all stages of the organic supply chain, such as production at farm level, food processing, distribution, import and retailing activities. Each operator in this chain has to respect the same set of rules on organic production, processing, distribution, labelling and controls.

III.
The Court's audit focused on the effectiveness of the control system and how the various institutions involved (the Commission and competent authorities, accreditation bodies and control bodies in Member States) have carried out their responsibilities both for the control system within the EU and when managing the import regimes currently in operation.

IV.
The overall audit question addressed was: Does the control system for organic products provide sufficient assurance that the key requirements for organic production, processing, distribution and imports are fulfilled?

EXECUTIVE SUMMARY

V.
The control system for organic products as set out in the EU regulations aims at guaranteeing the production processes but not the organic character of the products themselves. This is because there is no scientific way to determine whether a product is organic or not. The Court considers that, in order to provide sufficient assurance that the system is operating effectively and to ensure that consumer confidence is not undermined, it would be appropriate to remedy the weaknesses highlighted by the Court's audit.

VI.
Based on the results of this audit, the Court concluded that:

(a) a number of competent authorities do not sufficiently fulfil their supervisory role over control bodies. As a result certain control bodies fail to satisfy a number of EU requirements and fail to take the opportunity to implement certain good practices;

(b) the exchange of information within Member States and from Member States to the Commission and other Member States is not yet adequate to ensure that the system is operating correctly;

(c) competent authorities in Member States encounter difficulties in ensuring the traceability of the organic products within the territory for which they have authority. Traceability is even more difficult to achieve for products crossing borders;

(d) the Commission has not given enough priority to supervision activities, including audits, to ensure the proper functioning of the Member States' control systems;

(e) the Commission does not have sufficient information to satisfy itself that the control system for organic production in third countries recognised as equivalent continues to fulfil the regulatory requirements as long as they keep this status. The Court further notes that there is a significant backlog in assessing applications for equivalence from third countries;

(f) weaknesses exist in the system used for granting import authorisations.

VII.
On the basis of the weaknesses found the Court makes the following recommendations:

(a) competent authorities should strengthen their supervisory role over control bodies by applying appropriate documented procedures for approving and supervising control bodies, by promoting harmonisation in the definition of infringements, irregularities and corresponding sanctions, and by promoting identified good practices;

(b) the exchange of information within Member States, between Member States and the Commission and between Member States should be improved in order to ensure high-quality controls and supervision;

(c) controls should be strengthened to ensure that operators fulfil the regulatory requirements regarding traceability; in this regard the Commission should clarify the roles and responsibilities of the different actors;

(d) the Commission should strengthen its monitoring of Member States' control systems by undertaking audit missions and gathering and exploiting the necessary data and information;

(e) as regards imports, the Commission should ensure adequate supervision of the countries included in the list of those recognised as being equivalent for organic production and carry out a timely assessment of the applications from third countries applying to be included in that list;

(f) the Court welcomes the simplification implicit in the Commission initiative of phasing out the import authorisations regime. However, as long as this regime is in operation Member States should ensure its correct application. Competent authorities in Member States should reinforce the checks carried out on control bodies authorised to issue certificates of inspection.

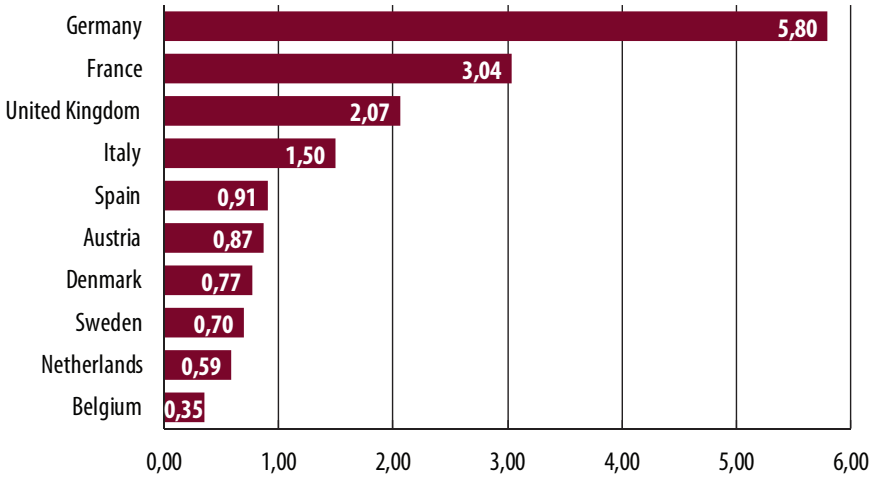
INTRODUCTION

ORGANIC PRODUCTION IN THE EU

1. Organic production is an overall system of farm management and food production that aims at sustainable agriculture, the production of high-quality products and the use of processes that do not harm the environment, human, plant or animal health and animal welfare. Organic products are thus produced according to a specific set of rules, such as crop rotation, the prohibition of the use of genetically modified organisms and very strict limits on chemical synthetic pesticide and synthetic fertiliser use, livestock antibiotics, food additives and processing aids. Organic products, being considered premium products, are generally sold at higher prices than conventional products.

FIGURE 1

EUROPEAN MARKET FOR ORGANIC FOOD AND DRINK: THE 10 EU COUNTRIES WITH THE HIGHEST SALES IN 2009 (BILLION EURO)

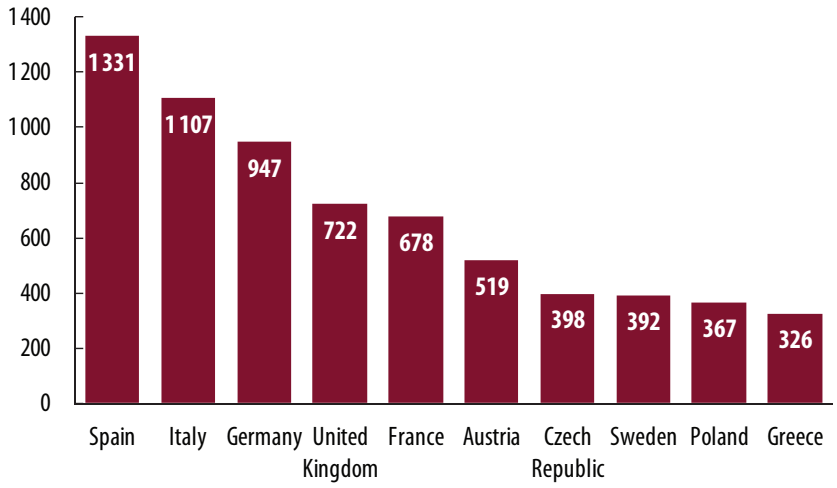


Source: Willer, H., *Organic agriculture in Europe 2009: production and market*. http://orgprints.org/18365/2/willer-2011-european-market.pdf

2. The organic market has developed rapidly and experienced annual growth rates of between 10 and 15 % in the last two decades[1]. The EU is one of the main producers and consumers of organic products in the world. In the period 2000–08, the total organic area[2] in the 27 Member States of the EU (EU-27) increased by an average of 7,4 % yearly. In 2008, it amounted to 4,3 % of the utilised agricultural area (UAA), i.e. an estimated 7,6 million ha of land. It is estimated that in the same year there were about 197 000 holdings involved in organic agriculture in the EU-27[3]. Around 15 % of the organic products consumed in Europe are imported from non-EU countries, mainly products that are not or are rarely grown in the EU (coffee, bananas, cotton, etc.)[4]. The European market for organic food amounts to about 20 billion euro[5] annually, representing an estimate of 1,5 % share of the entire food market[6]. ***Figure 1*** shows the EU Member States with the highest sales of organic food and drink[7] and ***Figure 2*** shows the EU Member States with the most organic agricultural land.

FIGURE 2

THE 10 EU MEMBER STATES WITH THE MOST ORGANIC AGRICULTURAL LAND (IN CONVERSION AND FULLY CONVERTED) IN 2009 (1 000 HA)



Source: Willer, H., *Organic agriculture in Europe 2009: production and market*. http://orgprints.org/18365/2/willer-2011-european-market.pdf

[1] *Source*: http://ec.europa.eu/agriculture/organic/consumer-confidence/consumer-demand_en

[2] Fully converted and in conversion.

[3] *Source: An analysis of the organic sector*, June 2010, European Commission. Data are for 2008 and for the EU-27.

[4] There is no consolidated statistical evidence supporting this since EU trade databases do not distinguish organic and conventional agricultural and food products.

[5] *Source:* Willer, H., *Organic agriculture in Europe 2009: production and market*. http://orgprints.org/18365/2/willer-2011-european-market.pdf

[6] *Source*: Research Institute of Organic Agriculture (FiBL), Agricultural Market Information Service (AMI) (Agrarmarkt Informations-Gesellschaft), Bonn, Germany. Data are for 2008.

[7] Organic food is just one type of organic product. Other organic products are for instance organic cosmetics, organic textiles and organic pet food.

FINANCIAL SUPPORT TO ORGANIC FARMING IN THE EU

3. The EU financially supports organic farming practices through the agri-environment payments under the European Agricultural Fund for Rural Development (EAFRD). The agri-environment payments are generally implemented through contracts between a public body in the Member States and a beneficiary (farmer or land manager). These contracts commit the beneficiary to apply specific farming practices. One of the farming practices beneficiaries may opt for is organic farming. By the end of 2010, public support commitment for organic agriculture under the agri-environment measures amounted to more than 690 million euro (EU-27)[8]. EAFRD support represents 58 % of total public support while the remainder is comprised of national contributions.

4. Organic production can also be supported indirectly through other measures from the EAFRD (such as modernisation of agricultural holdings, training etc.) or through specific support[9]. Certain Member States have prioritised giving aid to holdings or projects developing organic production.

LEGAL FRAMEWORK

5. The EU legal framework governing the sector of organic production aims at providing the basis for the sustainable development of organic production while guaranteeing fair competition, ensuring consumer confidence and protecting consumer interests and ensuring the effective functioning of the internal market.

PICTURE 1 — EXAMPLES OF ORGANIC PRODUCTION

Source: European Court of Auditors.

[8] According to the estimates based on monitoring data provided by Member States in the framework of the annual progress reports.

[9] Article 68 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ L 30, 31.1.2009, p. 16). As of 15 March 2012, 348 million euros were planned under this article for 2010–13. No available figures exist concerning the indirect EAFRD support.

6. Organic production covers all stages of the supply chain, such as production at farm level, food processing, distribution and retailing activities. Each operator in this chain has to respect the same set of rules on organic production, processing, distribution, labelling and controls. In the EU, these rules are laid down in several regulations:

— 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[10];

— 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[11];

— 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 [12].

Moreover, organic food must comply with the General Food Law (Regulation (EC) No 178/2002[13]), and organic production falls within the scope of Regulation (EC) No 882/2004[14], which is the more general legislation on official food and feed controls[15].

PICTURE 2 — THE EU ORGANIC FARMING LOGO

Source: Commission Regulation (EU) No 271/2010 of 24 March 2010 amending Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007, as regards the organic production logo of the European Union (OJ L 84, 31.3.2010, p. 19).

[10] OJ L 189, 20.7.2007, p. 1. The regulation was amended by Regulation (EC) No 967/2008 (postponing the obligatory use of the EU organic logo) (OJ L 264, 3.10.2008, p. 1).

[11] OJ L 250, 18.9.2008, p. 1. The regulation was amended by Regulation (EC) No 1254/2008 (introducing new rules on organic yeast production) (OJ L 337, 16.12.2008, p. 80).

[12] OJ L 334, 12.12.2008, p. 25. The regulation was amended by Regulation (EC) No 537/2009 (OJ L 159, 20.6.2009, p. 6), Regulation (EU) No 471/2010 (OJ L 134, 1.6.2010, p. 1) and Implementing Regulation (EU) No 590/2011 (OJ L 161, 21.6.2011, p. 9).

[13] Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

[14] 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 (OJ L 165, 30.4.2004, p. 1).

[15] Organic food must also comply with the specific legislation applicable to the relevant commodity, such as Regulation (EC) No 852/2004 on the hygiene of foodstuffs, Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin, or Regulation (EC) No 1760/2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products, to name but a few.

7. In the EU, organic products can thus be certified 'organic' and labelled as such when the production rules are compliant with the requirements of the abovementioned EU regulations. The placement of the EU logo has been mandatory since 1 July 2010 for pre-packaged food. It is voluntary for imported products.

8. In line with Article 37 of Regulation (EC) No 834/2007, the Commission has set up the Standing Committee on Organic Farming (SCOF). The SCOF is the Commission's regulatory committee on organic production, chaired by the Commission and composed of representatives of the Member States. Its aim is to ensure that the European Commission's responsibility for the implementation of secondary legislation is exercised in close consultation with the governments of the Member States.

9. The Commission, in cooperation with the Member States, has finalised the 'Working document of the Commission services on official controls in the organic sector'[16]. This document, even though it is not legally binding, shows the Commission's efforts to develop more concrete guidelines to Member States when implementing the regulations governing organic production.

THE CONTROL SYSTEM FOR ORGANIC PRODUCTION

10. A control system has been put in place that verifies and certifies for each operator in the supply chain (farmers, processors, importers) the correct application of the production rules. The control system aims at guaranteeing the production processes and not the products themselves since there is no scientific way to determine whether a product is organic or not[17]. The market for organic products is highly dependent on consumers' confidence and therefore upon this certification system to give a guarantee of genuine organic products. According to the Commission, consumers should be sure that, for example, every time they buy an organic apple or a piece of organic beef from their local supermarket, they were produced according to strict rules aimed at respecting the environment and animals.

[16] Version of 8 July 2011 — Presented in the SCOF on 27 and 28 September 2011.

[17] See also paragraphs 32 and 33.

11. The EU legal framework establishes that Member States set up a system of controls (see ***Figure 3***). The Commission is responsible for auditing Member States' control systems.

12. Member States may opt for setting up a public, private or mixed control system and they designate one or more competent authorities responsible for controls. The competent authority designates, depending on the system chosen: public control authorities; private control bodies; or a mix of the two. The majority of the Member States (18) have adopted a system of private control bodies while five Member States have designated public control authorities and four have a mixed system of a designated public control authority and approved private control bodies. Competent authorities are responsible for approving and supervising control bodies and control authorities. Competent authorities are required to organise audits or inspections of control bodies as necessary and, where needed, withdraw approval of control bodies that fail to satisfy the requirements.

FIGURE 3

INSTITUTIONS AND BODIES OPERATING IN THE CONTROL SYSTEM FOR ORGANIC PRODUCTS

Source: 'Economic concepts of organic certification' 29.7.2009, Certcost — Economic analysis of certification systems in organic food and farming.

13. Where a Member State chooses a system with private control bodies, these bodies need to be accredited[18]. Each EU Member State has appointed a single national accreditation body. The checks performed by these accreditation bodies concern the technical competence, the independence, the impartiality and the professional integrity of the control bodies. Public control authorities do not need to be accredited.

[18] According to the most recent version of the European Standard EN 45011 or ISO Guide 65 (General requirements for bodies operating product certification systems).

14. Control bodies (or control authorities as they are known in public systems) are the central element of the control system. They carry out checks at the level of the individual operators. Consumers, Member State authorities and the Commission rely to a large extent on the work of these bodies. Typical checks performed on organic operators include physical inspections of the production or processing premises, verification of the documentary accounts as well as sampling of final products, harvested products, leaves or soil for testing the use of non-authorised substances. The certificates issued by control bodies are paid for by the individual operators.

IMPORT OF ORGANIC PRODUCTS FROM THIRD COUNTRIES

15. For organic products produced outside the EU, four different import regimes are foreseen by Regulation (EC) No 834/2007 (see ***Table 1***); however, only two of them were in operation at the time of the audit.

TABLE 1

IMPORT REGIMES FORESEEN BY REGULATION (EC) NO 834/2007

Import regime	Managed by	In operation at the time of the audit
List of recognised equivalent third countries	the European Commission	Yes
List of recognised control bodies/authorities for the purpose of equivalence	the European Commission	No — First list of equivalent control bodies not published by the Commission at the time of the audit.
List of recognised control bodies/authorities for the purpose of compliance	the European Commission	No — Deadline for receiving applications to draw up the first list postponed until 31 October 2014.
Import authorisations	Member States	Yes

16. Since production conditions in third countries can be very different from those in the EU, it may not be possible to apply exactly the same rules for production or control. The Commission therefore recognises third countries for which it considers the production and control system for organic products as being equivalent, which means that products certified as organic in that third country are accepted as organic in the EU. Countries that are currently on the list of recognised equivalent third countries are Argentina, Australia, Canada, Costa Rica, India, Israel, Japan, Switzerland, Tunisia, New Zealand and, with effect from 1 June 2012, the United States.

17. In addition, two new import regimes are being put in place to ensure that organic products can be imported from third countries which have not yet attained recognition. These are the list of recognised control bodies/authorities for the purpose of equivalence (not published at the time of the audit) and the list of recognised control bodies/authorities for the purpose of compliance (deadline for receiving applications postponed until October 2014).

18. The fourth regime, the import authorisations regime, was established with only a transitional character by Council Regulation (EEC) No 2083/92. Since then the possibility to grant import authorisations has been extended several times[19]. The current Regulation (EU) No 1267/2011 of 6 December 2011 stipulates that it will no longer be possible to grant import authorisations as from 1 July 2014. The same regulation provides that authorisations granted as from 1 July 2012 must expire after 12 months at the latest. Nevertheless, this import regime is still extensively used since approximately 4 000 import authorisations are delivered yearly by the different EU Member States (mainly by Germany, France, Italy, the Netherlands and the United Kingdom).

19. The correct implementation of control procedures for imports (guaranteeing that imported products comply at least with equivalent production and control conditions) is important in order to ensure a proper functioning of the internal market with fair competition between products produced outside and products produced inside the EU.

[19] Council Regulation (EEC) No 2083/92 (OJ L 208, 24.7.1992, p. 15) allowed import authorisations until 31 July 1995; Council Regulation (EC) No 1935/95 (OJ L 186, 5.8.1995, p. 1) extended the deadline until 31 December 2002; Council Regulation (EC) No 1804/1999 (OJ L 222, 24.8.1999, p. 1) extended the deadline until 31 December 2005; Council Regulation (EC) No 1567/2005 (OJ L 252, 28.9.2005, p. 1) extended the deadline until 31 December 2006; Council Regulation (EC) No 1991/2006 (OJ L 411, 30.12.2006, p. 18) extended the deadline until 12 months after the publication of the first list of inspection bodies and inspection authorities recognised for the purpose of equivalence; Commission Regulation (EC) No 1235/2008 (OJ L 334, 12.12.2008, p. 25) fixed the deadline at 1 January 2013.

THE AUDIT

THE AUDIT SCOPE

20. The audit focused on the effectiveness of the control system and how the institutions and bodies involved (Commission and competent authorities, accreditation bodies and control bodies in Member States) have carried out their responsibilities. The overall audit question addressed was:

Does the control system for organic products provide sufficient assurance that the key requirements for organic production, processing, distribution and imports are fulfilled?

21. More specifically the audit aimed at answering the following questions:

(a) Is the implementation of the control procedures governing the organic production within the EU adequate:

— When Member States approve and supervise control bodies?

— When Member States exchange information within Member States, with the Commission and with other Member States?

— For guaranteeing the traceability of the products?

— When the Commission supervises Member States' control systems?

(b) Is the implementation of control procedures for importing products adequate:

— When the Commission manages the list of equivalent third countries?

— When Member States grant import authorisations?

— When control bodies in the EU check specific importers' requirements?

22. As regards control procedures governing the organic production within the EU, the audit considered the period starting from the entry into force of Regulation (EC) No 834/2007, i.e. from January 2009. In relation to control procedures for importing products, the audit considered the period starting from the entry into force of Council Regulation (EEC) No 2092/91[20] and amendments (i.e. from June 1991 for the list of recognised equivalent third countries and from July 1992 for import authorisations).

[20] Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuff (OJ L 198, 22.7.1991, p. 1).

THE AUDIT APPROACH

23. The audit evidence was collected through:

— A review of Commission files, including the review of documentation received by the Commission from third countries in the context of the different import regimes, and meetings with the services of the Directorate-General for Agriculture and Rural Development and of the Directorate-General for Health and Consumers — Food and Veterinary Office.

— Audit visits to six Member States (the United Kingdom — England, Germany — North-Rhine-Westphalia, Italy — Emilia Romagna, Spain — Andalucía, France and Ireland[21]). These visits included documentary reviews, meetings with the competent authorities, with the accreditation bodies and with two private control bodies per Member State as well as on-the-spot visits to producers, processors and importers. For the on-the-spot visits the auditors accompanied the inspectors in order to evaluate the quality of the inspection and understand how they carry out documentary checks and the checks on production practices.

— Traceability checks on 85 products verifying (a) whether it was possible to identify the full chain of operators who had intervened in supplying the products, (b) whether all of the operators hold an organic certificate, and (c) whether all of the operators had received an inspection visit during the previous year (find more details in ***Annex I***).

— Laboratory tests carried out on 73 products to check control bodies procedures when taking samples and interpreting laboratory results (find more details in ***Annex II***).

— An assessment report carried out by an internationally recognised expert contracted by the Court (focused on the quality of control bodies' procedures when carrying out laboratory tests and on the interpretation of the laboratory results of the 73 products).

— A review of the available multiannual national control plans (MANCPs) and the related annual reports sent by the 27 Member States to the Commission.

PREVIOUS AUDITS

24. The Court issued its Special Report No 3/2005 concerning rural development: the verification of agri-environment expenditure[22] which covered part of the control system for organic production (see paragraph 43) and its Special Report No 7/2011 concerning the design and management of the agri-environment support[23].

[21] The Member States visited were selected for their relevance within the EU market (see paragraph 2). Ireland was selected for testing and optimising the audit methodology.

[22] OJ C 279, 11.11.2005, p. 1.

[23] http://eca.europa.eu

OBSERVATIONS

IMPLEMENTATION OF CONTROL PROCEDURES GOVERNING THE ORGANIC PRODUCTION WITHIN THE EU

WEAKNESSES FOUND IN MEMBER STATES' PRACTICES WHEN APPROVING AND SUPERVISING CONTROL BODIES

25. Competent authorities in Member States should have documented procedures for approving and supervising control bodies in order to ensure that the regulatory requirements are respected. They should also promote the application of good practices. Control bodies (or control authorities in public systems) are the central element of the control system. Control bodies, when checking organic operators, must comply with the EU regulations.

BOX 1

EXAMPLES OF DELAYED OR INSUFFICIENTLY DETAILED COMPETENT AUTHORITIES' APPROVAL AND SUPERVISION PROCEDURES

In the United Kingdom the competent authority's procedures for approval and supervision of control bodies were formally adopted only on 18 October 2010, while Regulation (EC) No 834/2007 on organic production had entered into force in January 2009.

In France the competent authority had not laid down procedures or checklists to validate the control bodies' control plans which is the key document submitted by the control bodies.

In Spain — Andalusia the competent authority had no verification checklists for supervising control bodies in accordance with Article 27(8) and (9) of Regulation (EC) No 834/2007 (such as, for example, verification that each operator is inspected at least once a year) or in accordance with other procedures which would constitute good practice such as verification of the sampling policy, of the results of analyses or of the exchange of information between the control body and other entities.

In Ireland procedures for approval of control bodies did not specify which checks should be carried out and referred only to administrative work required when treating new applications. No procedures existed for withdrawing the approval of control bodies.

PROCEDURES FOR THE APPROVAL/WITHDRAWAL OR FOR THE SUPERVISION OF CONTROL BODIES NOT ADEQUATELY DOCUMENTED

26. Competent authorities approve control bodies and delegate to them control tasks if they have sufficient assurance that control bodies function according to the requirements of the EU regulations. One of the basic requirements for control bodies is that they be accredited. Accreditation bodies deliver initial accreditation and monitor the continued fulfilment of the requirements for accreditation. Nevertheless, competent authorities have the ultimate responsibility to supervise control bodies and monitor the continued fulfilment of the requirements of the EU regulations.

27. The Court carried out the audit in six Member States with a system of private control bodies and found in three of them that the procedures for approving, withdrawing or supervising control bodies were not sufficiently detailed (e.g. procedures describing in detail the checks to be carried out when validating the control bodies' control plans or when performing on-the-spot checks at the level of the control bodies). In one case they had not been updated in a timely manner (see ***Box 1***).

COMPETENT AUTHORITIES DO NOT HAVE SUFFICIENT INFORMATION TO ENSURE THAT ALL OPERATORS ARE INSPECTED AT LEAST ONCE A YEAR AS THE REGULATION REQUIRES

28. Control bodies are responsible for inspecting the operators and for issuing organic certificates in conformity with the EU rules. One of the key requirements is that control bodies/authorities must inspect operators, be they producers, processors or importers, at least once a year (Article 27(3) of Regulation (EC) No 834/2007). The respect of this requirement aims at guaranteeing consumers that operators continuously comply with the rules of organic production.

Regulation (EC) No 834/2007, **Article 27 — Control system**

'3. [...] all operators with the exception of wholesalers dealing only with pre-packaged products and operators selling to the final consumer or user as described in Article 28(2), shall be subject to a verification of compliance at least once a year.'

29. Competent authorities are expected to supervise that control bodies comply with this obligation. However competent authorities do not have sufficient information to properly supervise this issue because:

(a) The information provided by the control bodies in application of Article 27(14) of Regulation (EC) No 834/2007 is inadequate to verify this requirement. For example, summary reports submitted to the competent authorities mention the total number of controls carried out during the year. This does not take into account the fact that operators can enter or exit the control system during the year, and consequently it does not make it possible to verify that each individual operator has received one control visit in that year; and

> Regulation (EC) No 834/2007, **Article 27 — Control system**
>
> **'14. By 31 January each year at the latest the control authorities and control bodies shall transmit to the competent authorities a list of the operators which were subject to their controls on 31 December of the previous year. A summary report of the control activities carried out during the previous year shall be provided by 31 March each year.'**

(b) Some competent authorities rely on the work carried out by the accreditation body, but evaluation reports by the accreditation bodies do not contain sufficient information to confirm that the annual inspection requirement is complied with. The accreditation bodies frequently rely only on the description of procedures applied by the control bodies rather than checking whether such procedures are applied in practice. In addition, in the context of the accreditation cycle, which lasts four to five years, the EU requirement for an annual inspection is not required to be verified every year.

THE CONTROL BODIES' PROCEDURES AND PRACTICES WHEN INSPECTING OPERATORS COULD BE IMPROVED

30. In line with the provisions of Article 27(3) of Regulation (EC) No 834/2007 and Article 65(4) of Regulation (EC) No 889/2008 control bodies should apply systematic risk assessment of their operators against risk factors linked to the nature of their operation (such as the quantity of the products concerned and the risk of exchanging organic with conventional products) in order to decide on additional control visits (i.e. in addition of annual control visits, see paragraph 28). A high incidence of irregularities in a particular product or business type should then lead to additional monitoring in the form of random control visits to operators with the same profile. However seven of the 12 control bodies visited during the audit do not take into account risk factors linked to the nature of the operators when deciding on additional control visits.

Regulation (EC) No 834/2007, **Article 27 — Control system**

'3. In the context of this Regulation the nature and frequency of the controls shall be determined on the basis of an assessment of the risk of occurrence of irregularities and infringements as regards compliance with the requirements laid down in this Regulation. [...]'.

Regulation (EC) No 889/2008, **Article 65 — Control visits**

'4. Moreover, the control authority or control body shall carry out random control visits, primarily unannounced, based on the general evaluation of the risk of non-compliance with the organic production rules, taking into account at least the results of previous controls, the quantity of products concerned and the risk for exchange of products.'

31. Although this is not required by the regulations, rotation of inspectors is a good management practice in control bodies which reduces the risk of over-familiarity between inspector and operator. The results of the audit, however, show that only four of the 12 control bodies visited had defined procedures for rotation of inspectors (see ***Box 2***).

BOX **2**

EXAMPLE OF A CONTROL BODY NOT APPLYING ROTATION OF INSPECTORS

In Italy one of the control bodies visited did not impose an obligatory rotation of its inspectors after a certain number of years, despite the corrective action that it should have applied following a warning received in 2009 from one of the competent authorities of the region concerned in the framework of its surveillance activities. The control body indicated that work is ongoing with the aim of establishing a rotation of inspectors e.g. every four years.

RESIDUE TESTING CAN BE BETTER USED AS A TOOL FOR CONTROLLING PRODUCTION PROCESSES

32. Restrictions on the use of chemicals and other substances are a key requirement of organic production methods. Residue testing can provide evidence, in case of doubt, about the use of unauthorised substances, such as prohibited pesticides, GMOs, food additives or pharmaceuticals. Residue testing is one of the tools to be used by control bodies to ensure that operators respect the production rules set out in the various regulations. The applicable regulations do not foresee a minimum number of laboratory tests to be performed, but only require testing where the use of products not authorised for organic production is suspected. Consequently control bodies have different interpretations of when suspicion occurs and use this tool differently.

BOX 3

EXAMPLES OF CONTROL BODIES WITH A GOOD SAMPLING PLAN FOR LABORATORY TESTS

In Italy, the two control bodies visited had a sampling plan for carrying out routine laboratory analysis of products. Their sampling plan was determined based on a risk analysis. When dealing with low-risk operators, samples are taken only in the case of suspicion. For medium-risk operators, a percentage of the total number of operators in this class is sampled, while for high-risk operators 100 % are sampled.

In France, one of the control bodies visited draws up a laboratory testing programme each year on the basis of a risk analysis, any alerts and the previous years' results being taken into account. Since 2009 the certification board has drawn up a provisional testing programme specifying the minimum number of samples that are to be analysed and a minimum number of tests that are to be made on those samples.

A second control body visited in France has a testing strategy, which is set out in the control plan, that establishes the circumstances in which an analysis can be instigated. These include specific circumstances, such as mixed operators (organic and conventional) and GMO risk. The officer in charge prepares an annual guide of recommendations for testing in the organic farming sector, which is used to improve the way the number and types of tests are defined. The decision to perform an analysis remains at the inspector's discretion. The certification board sets an annual budget for testing, and each inspector/auditor is assigned his/her own annual budget depending on the typology for the sector.

33. In order to evaluate the residue testing system in the Member States visited, the Court purchased a range of products and had the Member States apply their normal tests for detecting non-allowed substances (see ***Annex II*** for more details). The results of the tests and the methodologies used were then evaluated by an independent expert. The Court observed that good practices in terms of residue testing are followed by a number of control bodies. Scope exists for other control bodies to apply them:

(a) The procedures of the control bodies visited in two of the Member States visited can be considered as good practice as they define a risk-oriented annual or multiannual sampling plan for routine laboratory tests, even though the EU legislation on organic farming only requires sampling in case of suspicion (see ***Box 3***). However, five control bodies visited do not have a sampling plan that defines a minimum number of analyses or that is based on a risk analysis.

(b) All control bodies visited sample for pesticides and fertilisers, some of the substances not allowed by the EU legislation on organic production; however, one of them fails to test for other substances such as feed and food additives or processing aids.

(c) Analytical results always need a qualified interpretation[24]. The Court has observed that the procedures of two control bodies visited do not adequately describe how to interpret analytical results, and what follow-up action needs to be taken in case of positive analytical results.

(d) The type of samples taken (e.g. food, leaves, soil) and the timing must be related to the hypothesis of the use of prohibited substances at some stage of production or processing[25]. For example, the analysis of leaves or soil will often provide much better results than the analysis of the harvested crop or the processed product (e.g. jam). Most control bodies for which this issue was examined take into account the type of samples taken in order to maximise the use of the analysis. However, one of the control bodies visited in Spain confines its samples where possible to final products to the detriment of checks to test production processes.

[24] In case of positive analytical results, it is important to identify the possible source of contamination and to develop measures to avoid contamination in the future.

[25] Modern pesticides have been developed to breakdown rapidly and recommendations for their use are designed to minimise pesticide residues. Most pesticide applications will not leave detectable residues in the final products.

34. The Court also found that two out of 10 control bodies where the issue was examined did not apply adequate procedures for sample taking and analysis. In Spain, the two control bodies visited do not take more than one sample from operators. This is not compliant with Article 11(5) and (6) of Regulation (EC) No 882/2004; furthermore it places the control body in a weak position should the operator decide to dispute the results as tests on a countersample are not possible. The Court considers that competent authorities could improve their approval and supervisory role by ensuring that EU requirements like the one mentioned are fulfilled by control bodies.

Regulation (EC) No 882/2004, **Article 11 — Methods of sampling and analysis**

'5. The competent authorities shall establish adequate procedures in order to guarantee the right of feed and food business operators whose products are subject to sampling and analysis to apply for a supplementary expert opinion, without prejudice to the obligation of competent authorities to take prompt action in case of emergency.

6. In particular, they shall ensure that feed and food business operators can obtain sufficient numbers of samples for a supplementary expert opinion, unless impossible in case of highly perishable products or very low quantity of available substrate.'

INFRINGEMENTS, IRREGULARITIES AND CORRESPONDING SANCTIONS APPLIED DIFFER BETWEEN MEMBER STATES, WITHIN MEMBER STATES AND EVEN WITHIN CONTROL BODIES

35. In several Member States, competent authorities have not defined detailed categories of non-compliances and corresponding sanctions (Germany, France and the United Kingdom). As a consequence, each control body within a Member State defines the non-compliances and applies sanctions in a different way. This leads to operators being sanctioned differently even within a Member State for having committed the same infringement.

36. Different control bodies apply different sanctions for the same non-compliance, do not apply the appropriate sanction (according to their control plan or according to the competent authority's instructions) or apply sanctions that are not foreseen in their control plan (see ***Box 4***).

37. Studies carried out by recognised academics have pointed out that considerable differences in control results exist between control bodies[26]. The Court observed that, in 2009, one control body in one Member State had not withdrawn any certificate and had decided upon only three suspensions (equivalent to 0,38 withdrawals or suspensions per 1 000 operators) whereas another control body in a different Member State had decided in the same year 5,26 withdrawals or suspensions per 1 000 operators. Such differences in control results could usefully be monitored and followed up by competent authorities in the first instance, and by the Commission at EU level, when carrying out their supervision activities.

[26] 'Supervision of an organic control system in Europe — an analysis of German control data', Certcost project, Presentation at Biofach Nürnberg, 19 February 2010; Zorn et al., 'Monitoring of the organic control system in Germany — an opportunity to increase consumers' trust', *Jahrbuch der Österreichischen Gesellschaft für Agrarökonomie*, 2010, Band 19(1):71–80.

BOX **4**

EXAMPLES OF DIFFERENT SANCTIONS APPLIED

The non-respect of one specific requirement related to animal production[27] in Italy leads to 'withdrawal of organic labelling', in one control body in France it would lead to a 'warning' whereas another control body in France would apply a 'request for corrective action'. Examples were found by the auditors where, for this requirement, operators in Italy were sanctioned with 'withdrawal of organic labelling', meaning that they were not allowed to sell their products as organic while, for the same infraction, in France operators have had the possibility to continue selling their products as organic.

One of the control bodies visited in Italy, in its inspection reports for producers, includes a section with 'Recommendations and measures for enforcement of the regulations' in addition to the section listing the instances of non-compliance. An example was found by the auditors where a non-compliance had been reported in this section instead of having been classified and sanctioned according to the procedures.

[27] According to Article 24(5) of Regulation (EC) No 889/2008 the withdrawal period between the last allopathic veterinary treatment to an animal under normal conditions of use, and the production of organically produced foodstuffs from such animals, should be twice the legal withdrawal period or 48 hours in case the period is not specified.

INSUFFICIENCIES FOUND IN THE EXCHANGE OF INFORMATION WITHIN MEMBER STATES, WITH THE COMMISSION AND WITH OTHER MEMBER STATES

38. The flow of information is a vital part of the control system. Without proper information flow there is the risk that the control system does not work effectively. The following sections present the Court's findings on two of the levels considered most relevant by the Court: the flow of information between the control system for organic production and the control system for agri-environment payments, and the flow of information from Member States to other Member States and to the Commission.

THE INFORMATION FLOW BETWEEN THE CONTROL SYSTEM FOR ORGANIC PRODUCTION AND THE CONTROL SYSTEM FOR AGRI-ENVIRONMENT PAYMENTS NEEDS TO BE IMPROVED

39. In the framework of the rural development pillar of the common agricultural policy, certain practices of organic farming are eligible for support through the European Agricultural Fund for Rural Development. Article 36(1) of Regulation (EC) No 1975/2006[28] provides for the exchange of information between the services and organisations involved in checks regarding the eligibility criteria for this support.

Regulation (EC) No 1975/2006, **Article 36 — Reporting of controls to the paying agency**

'1. Where controls are not carried out by the paying agency, the Member State shall ensure that sufficient information on the controls carried out is received by the paying agency. It is for the paying agency to define its needs for information.

[…].'

[28] Commission Regulation (EC) No 1975/2006 of 7 December 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 1698/2005, as regards the implementation of control procedures as well as cross-compliance in respect of rural development support measures (OJ L 368, 23.12.2006, p. 74).

40. In two Member States visited, the information flow between the control system for organic production[29] and the support scheme for rural development measures[30] concerning subsidies for organic farming under the agri-environment measures was insufficient. In France the results of the checks made by the control bodies are not communicated to the paying agency for the agri-environment subsidies. As a consequence, there is the risk that non-compliances affecting the conditions for receiving agri-environment payments, detected by a control body, do not result in a reduction or recovery of the payment. Likewise, in the United Kingdom there is no reverse flow of information and there is the risk that non-compliances concerning organic farming practices detected by the paying agency as a result of their inspections do not result in sanctions imposed by the control body. The Commission has also recognised weaknesses in this area (see paragraph 53).

[29] Regulated by Regulation (EC) No 834/2007 and its implementing regulations.

[30] Regulated by Council Regulation (EC) 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 277, 21.10.2005, p. 1) and its implementing regulations.

MEMBER STATES' REPORTING DOES NOT FULLY COMPLY WITH THE REGULATIONS

41. Member States have different reporting obligations to respect:

— Annual reporting on the implementation of the multiannual national control plan, including information on controls and audits carried out, non-compliances and sanctions (Article 44(3) of Regulation (EC) No 882/2004).

> Regulation (EC) No 882/2004, **Article 44 — Annual reports**
>
> '3. Member States shall finalise their reports and transmit them to the Commission, within six months of the end of the year to which the reports relate.'

— Reporting on irregularities and infringements affecting the organic status of a product (Article 30(2) of Regulation (EC) No 834/2007).

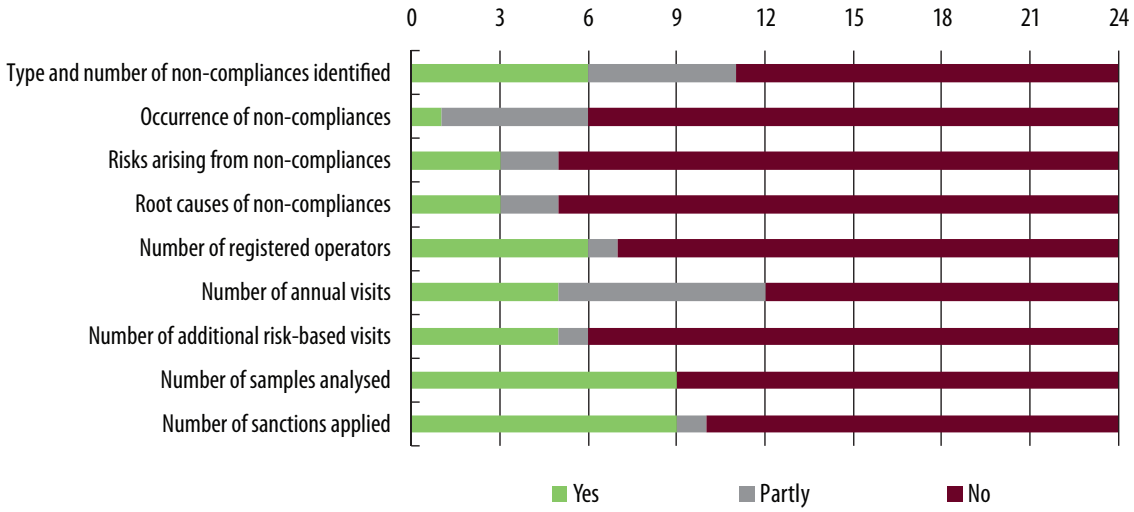
> Regulation (EC) No 834/2007, **Article 30 — Measures in case of infringements and irregularities**
>
> '2. Information on cases of irregularities or infringements affecting the organic status of a product shall be immediately communicated between the control bodies, control authorities, competent authorities and Member States concerned and, where appropriate, to the Commission.
>
> The level of communication shall depend on the severity and the extent of the irregularity or infringement found.
>
> […].'

42. The majority of Member States report significantly later than the regulatory deadlines to the Commission on the implementation of the multi-annual control plan. At the beginning of 2011, two Member States still had not provided the reports for 2009. As regards the reports' content, Member States are required to follow the Commission guidelines[31] on preparing the annual report and include a minimum of information regarding non-compliances detected, operators registered, inspection visits, samples analysed and sanctions applied. However, in practice, information relating to the organic control system in the annual reports is very limited. Most Member States did not provide an analysis of non-compliances detected or basic data on the organic sector (see ***Figure 4***).

[31] Commission Decision 2008/654/EC of 24 July 2008 on guidelines to assist Member States in preparing the annual report on the single integrated multiannual national control plan provided for in Regulation (EC) No 882/2004 of the European Parliament and of the Council (OJ L 214, 9.8.2008, p. 56).

FIGURE 4

NUMBER OF MEMBER STATES THAT HAVE INCLUDED, IN THEIR LAST ANNUAL REPORT AVAILABLE[1], INFORMATION IN RELATION TO THE FOLLOWING POINTS[2]



[1] As at February 2011 the following reports had been made available to the Court: (i) *2009 annual report*: Estonia (however, the report could not be analysed because of technical problems for reading the files); (ii) *2008 annual report*: Austria, France, Latvia, Malta, Poland and Sweden; (iii) for 19 Member States the last annual report available was for the year 2007; however ,the annual report from Bulgaria could not be analysed because of technical problems for reading the files; (iv) for Portugal no report was available.

[2] Annual reports for Bulgaria, Estonia and Portugal were not analysed (see endnote 1 of ***Figure 4***).

43. In its Special Report No 3/2005 concerning rural development: the verification of agri-environment expenditure the Court identified several weaknesses related to the Member States' reporting on organic farming[32]. At the time of the Court's audit in 2005, Regulation (EEC) No 2092/91 required Member States to provide a specific report on organic production. However, this requirement was superseded by Regulation (EC) No 882/2004, which integrated organic farming in the overall reporting of official feed and food controls. ***Table 2*** gives an overview of some of the findings in that report together with the Court's assessment of the situation in 2011. However, the annual reporting by Member States is still unsatisfactory having taken into account the changed reporting requirements.

[32] Regulation (EC) No 1698/2005 includes organic farming as one of the agro-environment measures.

TABLE 2

OBSERVATIONS CONTAINED IN SPECIAL REPORT NO 3/2005 CONCERNING MEMBER STATES' REPORTING ON ORGANIC FARMING TOGETHER WITH AN ASSESSMENT OF THE CURRENT SITUATION (SEE COMPLETE TABLE IN *ANNEX III*)

Findings contained in SR No 3/2005	Court's assessment of the current situation in 2011
Annual implementation reports	
Not all Member States send the annual reports.	The majority of Member States report much too late on their control activities.
Annual reports do not conclude on the functioning of the system.	Information related to the organic control system in these annual reports is still very limited.
The Commission makes limited use of the reports.	The review of the annual reports by the Commission and its feedback focuses mainly on identifying missing information rather than on an analysis of them with respect to the design and functioning of the control system.
The quality is not always satisfactory and the reports include errors and inconsistencies.	Reports by Member States are still of unsatisfactory quality.
Even if these reports were complete and accurate, they would not give assurance about the objectiveness and effectiveness of the inspections carried out.	The Commission lacks basic information as regards the functioning of the control system in Member States.

44. The applicable regulation requires immediate communication of Member States' notifications of irregularities and infringements affecting the organic status of a product to other Member States and to the Commission. For the purpose of allowing a Member State to notify irregularities and infringements supposedly originated in another Member State, the Commission has put in place the Organic Farming Information System (OFIS). Despite the fact that communication is required to be 'immediate', the time elapsed between identification of the irregularity or infringement and the date on which it was notified through OFIS differs significantly between cases, ranging from around 1 to 7 months. One of the reasons for these variations is that, in practice, the Member States have different interpretations as regards the moment from which the term 'immediate' applies. For instance in case of detection of non-allowed substances, it is not clear if the notification should be done (i) following the first laboratory results or (ii) following second laboratory results confirming the first ones.

45. Once a notification has been made in OFIS, the Commission expects the notified country to investigate the possible causes of the irregularity and to reply via OFIS within 30 days[33]. Member States' replies to notifications are also not made in a timely manner. On 20 January 2011, there were 38 notifications still open. For 36 of these notifications, this deadline for replying had not been respected. In total, 100 notifications on EU irregularities were notified in OFIS in 2009 and 2010. For those cases where a reply was received from the notified Member State, the average time between notification and reply was 106 days.

DIFFICULTIES ENCOUNTERED FOR ENSURING THE TRACEABILITY OF THE PRODUCTS

46. Member States should ensure traceability of organic products in line with Article 27(13) of Regulation (EC) No 834/2007. Traceability of foodstuffs is cited by the Commission as an important element for consumer confidence[34] and allows the verification that all the operators involved at all stages of production, preparation and distribution have applied the EU requirements on organic production. It allows, when a non-compliance has been identified, to trace it back to its source and isolate the problem, preventing the concerned products from reaching consumers (see ***Boxes 5*** and ***6***).

[33] As established in 'Procedure to follow-up notifications from Member States according to Article 92(2) of Regulation (EC) No 889/2008 on measures in case of infringements and irregularities', agreed at SCOF on 28–29 January 2009.

[34] http://ec.europa.eu/agriculture/organic/the-farm/farm-fork_en and http://www.trace.eu.org/doc/TRACE_consumer-info-EA.pdf

Regulation (EC) No 834/2007, **Article 27 — Control system**

'13. Member States shall ensure that the control system as set up allows for the traceability of each product at all stages of production, preparation and distribution in accordance with Article 18 of Regulation (EC) No 178/2002, in particular, in order to give consumers guarantees that organic products have been produced in compliance with the requirements set out in this Regulation.'

47. In all the Member States visited, control bodies included checks on the identification of suppliers and customers in order to verify the operator's obligations regarding the documentary accounts[35]. Supervisory checks are also carried out by competent authorities in Member States. Some competent authorities perform traceability checks themselves at the level of the final product (Spain, France, Italy); whereas, in other Member States, competent authorities include checks of mandatory traceability documentation as part of their surveillance activities at the level of the control bodies (Germany, Italy).

[35] As defined by Article 66 of Regulation (EC) No 889/2008.

BOX 5

GOOD PRACTICE: ONLINE DATABASES FOR IMPROVED TRACEABILITY

In Italy several control bodies have developed online databases that allow consumers and companies acquiring organic products from operators certified by them to verify the veracity of the operator's transaction documents or certificate of conformity. The Court considers such procedures to be good practice in terms of transparency and traceability.

BOX 6

FINDING DISCOVERED WHILE CARRYING OUT THE TRACEABILITY EXERCISE

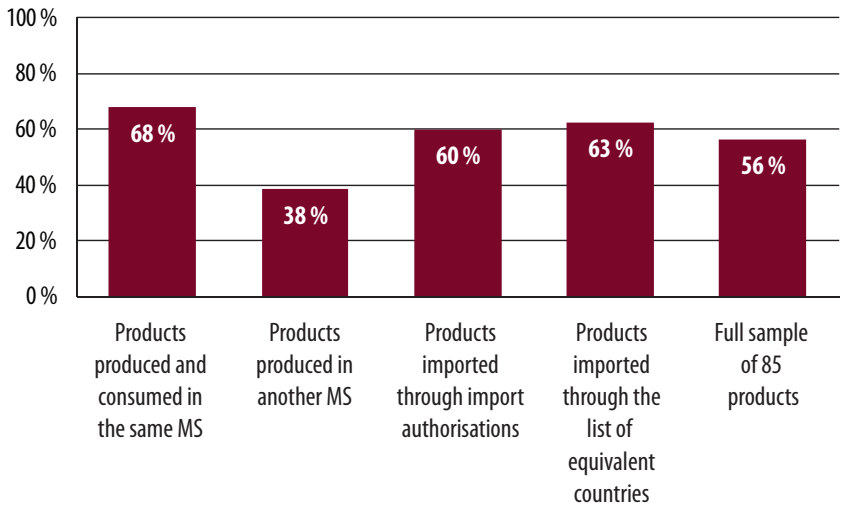
Through the traceability exercise carried out by the Court, one fraudulent organic transaction certificate was found. The Court purchased organic flour and the subsequent checks showed that the certificates were false, therefore the organic status of the product was not confirmed. The case is part of a larger investigation of alleged fraud made public at the end of 2011 which is being conducted by the responsible national authorities.

48. Despite the existence of control systems in place in the Member States visited to check traceability requirements, a traceability exercise carried out by the Court (see ***Annex I*** for more details) on 85 products from different origin and composition shows that traceability back to the producer level is not ensured for all products. Within the initial time frame of the exercise (3 months)[36], 40 % of the products could not be traced back to the producer level and the information requested (identification of operators down to producer level and certificate of conformity for each of the operators identified) was complete for only 48 % of the products. Taking into account the additional information provided by some Member States after the end of the exercise, i.e. within a total time frame of 6 months, 32 % of the products still could not be traced down to producer level and for only 56 % of the products, the documentation provided was complete (see also ***Figure 5*** for a summary of the results, split according to the origin of the product). One major explanation for this situation is that Member States do not have authority over operators outside their territory, in the case of products or product ingredients crossing intra- and extra-EU borders.

[36] Germany provided info after 9 weeks (13 products), Spain after 4 weeks (21 products), France after 8 weeks (23 products), Italy after 9 weeks (15 products) and the United Kingdom after 13 weeks (15 products).

FIGURE 5

SUMMARY RESULTS OF THE COURT'S TRACEABILITY EXERCISE (PRODUCTS FOR WHICH THE INFORMATION REQUESTED WAS COMPLETE)[1]



[1] 31 products were produced and sold in the same Member State, 26 products were produced in one Member State but sold in another Member State, 20 products contained at least one ingredient imported through the import authorisations regime and eight products contained at least one ingredient imported from a country considered as equivalent.

49. In addition, the traceability exercise has revealed a number of factors that are detrimental to the reliability of the control system, such as no clear reference to producers or producer groups on group certificates, group certification for countries other than developing countries, or the existence of documents that are similar to the certificate of conformity but that do not have the same value[37].

[37] In Italy, control bodies deliver an 'Enterprise Suitability Certificate' (*attestato di idoneità aziendale*) certifying the inclusion of the operator in the control system. In France, control bodies deliver a 'licence', a declaration of a commitment by the operators to adhere to organic production methods concerning their organic activities as a whole. These documents do not include the list of products subject to certification.

PICTURE 3 — EXAMPLE OF A SPECIALISED SHOP IN ENGLAND SELLING ORGANIC PRODUCTS

Source: European Court of Auditors.

ACTION TAKEN BY THE COMMISSION TO ENSURE PROPER FUNCTIONING OF THE MEMBER STATES' CONTROL SYSTEMS WAS FOUND TO BE INSUFFICIENT

50. Article 45 of Regulation (EC) No 882/2004 requires the Commission to carry out audits of Member States' official controls. The Commission has a general responsibility for the supervision and coordination of the control system for organic production and it should ensure Member States comply with their responsibilities. A first condition for enforcing a control system is to have access to information about its functioning. A second condition is the availability of proportionate enforcement measures that can be applied to Member States.

51. As mentioned in paragraphs 41 to 45, Member States' reporting to the Commission is very limited, often incomplete and subject to major delays. As a consequence, the Commission does not have the basic data available that it would need to improve its own monitoring, inform to the public or to reply to Parliamentary questions and to provide a reliable basis for the policy-making process. Concerning the multiannual national control plans and the related annual reports, the Commission services have not taken any action in order to obtain from Member States the annual reports in a timely manner. Once the reports are received, the Agriculture and Rural Development DG reviews them, identifies missing information, analyses them and, where necessary, comments on the content of the information provided.

52. Since 2001, the Commission has not carried out audits in Member States[38] to verify that official checks regarding organic production are being undertaken in accordance with the EU regulations. According to the Commission, working arrangements between the Agriculture and Rural Development DG and the Health and Consumers DG continue to be discussed and, as of 2012, organic farming should be a regular part of the FVO[39] annual inspection programme. However, the prioritisation of the FVO audit programme is risk based and the main risk factor considered continues to be 'food safety'. At the time of the audit organic production issues were not included in the annual inspection programme.

53. The Commission (the Agriculture and Rural Development DG) does carry out audit visits to Member States when auditing rural development expenditure. However, the review of the corresponding audit reports[40] shows that the information obtained is not comparable between Member States.

[38] Before 2001 audits carried out by the Food and Veterinary Office (FVO) highlighted important shortcomings in the control system for organic production.

[39] The FVO is a service of the Health and Consumer DG.

[40] One of the weaknesses identified by the Commission concerns the lack of a proper exchange of information between the system for organic production and the support scheme for agri-environment payments.

54. In case of non-application of EU legislation applicable to organic production the Commission has the general possibility to send pre-infringement letters to Member States or to initiate an infringement procedure. However, the regulations pertaining to organic production do not provide for any specific enforcement measures that the Commission could apply when Member States do not comply with their responsibilities. The Commission addressed six pre-infringement letters to four Member States[41]. However this procedure is very cumbersome and time consuming.

IMPLEMENTATION OF CONTROL PROCEDURES FOR IMPORTING PRODUCTS

WEAKNESSES FOUND IN THE MANAGEMENT OF THE LIST OF EQUIVALENT THIRD COUNTRIES

55. According to Article 33(2) of Regulation (EC) No 834/2007, the Commission may recognise third countries whose system of production is equivalent to the principles and production rules laid down in Regulation (EC) No 834/2007 and whose control measures are of equivalent effectiveness to those laid down in this same regulation, and establish a list of these countries. The countries currently recognised as equivalent are Argentina, Australia, Canada, Costa Rica, India, Israel, Japan, Switzerland, New Zealand, Tunisia and, with effect from 1 June 2012, the United States. The organic products certified as organic in these third countries are therefore accepted as organic in the EU.

56. The Commission has overall responsibility for managing this list but partly shares this responsibility with the Member States, who assist the Commission in the recognition and supervision process. Correct management of the list should include the appropriate implementation of clear procedures for inclusion of third countries in line with the aim and scope of the EU regulation as well as the provision of sufficient guarantees to ensure that third countries once recognised as equivalent keep fulfilling the requirements.

COMMISSION'S CAPACITY FOR TREATING REQUESTS OF INCLUSION IN THE LIST OF EQUIVALENT THIRD COUNTRIES IS INADEQUATE

57. When examining requests for recognition, the Commission has to assess the information[42] provided by the third country and may decide to examine on-the-spot the rules of production and the control measures of the third country concerned.

[41] Four letters concerned the accreditation of control bodies. A fifth letter concerned the number and results of performed controls, the follow-up of detected irregularities, the follow-up of a particular case of suspension and the follow-up of an audit mission by the FVO in 2000. A further letter was sent in July 2011, while the Court's audit was taking place.

[42] As defined in Article 8(2) of Regulation (EC) No 1235/2008.

58. In practice, the Commission assesses equivalence of applicant countries generally in line with the provisions of the regulation. The Commission uses a standardised 'comparison table' to document the checks carried out when assessing the equivalence of the production standards and the effectiveness of the control system applied in the third countries. In addition, except for Argentina, Australia, New Zealand and Switzerland (see ***Table 4***), it has carried out at least one visit to each applicant country before including it in the list. Since 2010, for the visits to third countries, the Commission has adopted the use of standardised checklists.

59. The number of third countries applying for inclusion in the list of equivalent third countries is increasing. Twenty-five applications have been received between 2000 and 2011, of which the Commission has been able to examine only eight. In addition, several of the countries already listed have requested an extension of the scope of the equivalence. The widespread and growing range of responsibilities the Commission has to fulfil in a situation where limited resources are available has resulted in very long delays when managing specific applications (e.g. Bolivia sent its application in 2006, and Chile sent its first application in 2000 and additional information in 2009, but the Commission has not yet finalised the examination of the information provided).

INADEQUATE COMMISSION PROCEDURES TO GUARANTEE THAT THIRD COUNTRIES RECOGNISED AS EQUIVALENT CONTINUE TO FULFIL THE REQUIREMENTS OF THE REGULATION

60. Recognised equivalent third countries have the obligation to report yearly to the Commission on the control activities carried out in the previous year[43]. The regulation foresees that Member States will assist the Commission in assessing the annual reports[44]. Based on the information in these annual reports, the Commission, assisted by Member States co-reporters, has to ensure appropriate supervision of the recognised third countries. The nature of the supervision has to be determined on the basis of an assessment of the risk of the occurrence of irregularities or infringements of the provisions set out in the EU regulation[45]. However, the Commission lacks detailed procedures for the management and review of the list of equivalent third countries and a risk assessment of the third countries has not been formalised.

[43] Article 12(1)(b) of Regulation (EC) No 1235/2008.

[44] Article 16(2) of Regulation (EC) No 1235/2008.

[45] Article 33(2) of Regulation (EC) No 834/2007.

61. The Commission's analysis of annual reports is not standardised (e.g. no checklists or standard report formats are used) and the analysis does not lead to specific actions (e.g. a Commission written note). In some cases (e.g. Israel report 2008/09, Argentina) no evidence could be found that the Commission reviewed the report (e.g. no handwritten notes or other documentary evidence). Frequently no evidence could be found that the Member States co-reporters assigned assisted the Commission to ensure appropriate supervision (e.g. by giving feedback on annual reports) as considered in the regulation. The Commission has not provided Member States co-reporters with guidelines on the expected content of their reports.

62. The Court analysed a sample of the annual reports of third countries currently recognised as equivalent. These annual reports are not complete as they lack information about monitoring activities, about the number and type of inspections conducted by control bodies or about the number of laboratory tests carried out and the results. In two cases they do not include any explanation regarding corrective actions taken following irregularities detected during the reporting period and for which there has been communication with the Commission (see ***Table 3***). The Commission has only recently (2011) sent guidelines to third countries about the content of these annual reports.

TABLE **3**

RESULTS OF THE COURT'S ANALYSIS OF THE CONTENT OF THE LAST ANNUAL REPORT AVAILABLE AT THE TIME OF THE AUDIT

Subject	Argentina	Israel	India	New Zealand	Tunisia[1]	Costa Rica
Monitoring and supervisory activities carried out by the competent authority in the third country	Yes	No	Yes	Yes	n.a.	Yes
Corrective actions taken by the competent authority in the third country	Yes	No	Yes	Yes	n.a.	No
Number of control bodies operating in the third country	Yes	Yes	Yes	Yes	n.a.	Yes
Number and type of inspections conducted by control bodies	No	No	No	No	n.a.	No
Number of laboratory tests carried out and results	No	Yes	No	No	n.a.	Yes

[1] Tunisia was included in the list of equivalent countries in 2009 but had not submitted any annual report by September 2010. It provided the 2009 annual report in November 2010.

63. Given that the Commission services have no internal procedures on how the supervision of recognised third countries should be carried out, it is uncertain when the Commission on-the-spot visits should be conducted after third countries are included in the list. The Court notes in this regard that no regular on-the-spot visits have been conducted to third countries (e.g. last visit to Israel in 1999, last visit to Costa Rica in 2000) (see ***Table 4***).

64. The fact that the information contained in the annual reports provided by the equivalent third countries is poor, together with the fact that the Commission does not regularly visit the equivalent third countries on the spot, does not allow the Commission to guarantee that the production standards and the effectiveness of the control systems in the third countries included in the list remain equivalent.

TABLE **4**

DETAILS OF THE COMMISSION'S ON-THE-SPOT VISITS TO THIRD COUNTRIES

Third countries recognised as equivalent	Date of inclusion in the list	On-the-spot visits carried out (year) *before* acceptance of the third country in the list of equivalent third countries	On-the-spot visits carried out (year) *after* acceptance of the third country in the list of equivalent third countries[1]
Argentina	1996	-	1999 and 2000
Australia	1996	-	1999
Canada	2011	2010	-
Costa Rica	2003	2000	-
India	2006	2004	-
Israel	1996	1994	1999
Japan	2010	2001 and 2009	-
New Zealand	2002	-	2003
Switzerland	1996	-	2001
Tunisia	2009	2008	-

[1] Marked in red the countries for which an on-the-spot visit has not taken place after their inclusion in the list or for which the last on-the-spot visit took place more than 7 years ago; marked in green the countries for which a recent on-the-spot visit has taken place after their acceptance as equivalent, or for which the date of inclusion in the list is recent.

WEAKNESSES FOUND IN THE MANAGEMENT OF THE IMPORT AUTHORISATION REGIME

65. Organic products produced outside the EU can be imported through the import authorisation regime. Import authorisations are issued for specified periods by the competent authority of each individual Member State; they are valid for a maximum of one year[46], for a specific importer and for well-identified products and can be withdrawn if the requirements referred to in Article 33(1)(a) and (b) of Regulation (EC) No 834/2007 are no longer satisfied.

[46] Recently, the maximum period of validity has been limited to 12 months (Regulation (EU) No 1267/2011). Previously, the exact length of validity of import authorisations was not specified in the EU regulations.

Regulation (EC) No 834/2007, **Article 33 — Import of products providing equivalent guarantees**

'1. A product imported from a third country may also be placed on the Community market as organic provided that:

(a) the product has been produced in accordance with production rules equivalent to those referred to in Titles III and IV;

(b) the operators have been subject to control measures of equivalent effectiveness to those referred to in Title V and such control measures have been permanently and effectively applied;

[…].'

66. The Commission has a supervisory role and may require a Member State which granted an authorisation to withdraw it when it considers that those requirements are not satisfied (see ***Box 8***).

67. Around 4 000 import authorisations are granted yearly by the 27 Member States of the EU. It is extremely difficult to ensure a harmonised approach by the competent authorities of the 27 Member States when issuing import authorisations. Due to these difficulties the import authorisation regime system is meant to be phased out by the end of June 2015. The Court's visits to Member States in the context of this audit have shown the following weaknesses both at the level of the checks carried out by the competent authorities and at the level of the Commission.

INSUFFICIENT CHECKS CARRIED OUT BY MEMBER STATES WHEN GRANTING IMPORT AUTHORISATIONS

68. Each consignment of organic products imported through this regime must be accompanied by a certificate of inspection. This certificate of inspection should be issued by a control body in the third country. The control body should be accepted by the competent authority of the Member State granting the import authorisation. When granting an import authorisation, the competent authority of the authorising Member State has therefore to accept the control body proposed by the importer that applies for the import authorisation as competent to issue certificates of inspection. However, the EU regulations do not define on what basis this acceptance may be made.

69. In practice most competent authorities base the decision of accepting a control body in a third country as competent to issue certificates of inspection by checking if the concerned control body is accredited. However competent authorities in Member States do not actively check whether control bodies charged with issuing the certificates of inspection keep their accreditation up to date and whether the scope of the accreditation provided is pertinent to ensure equivalence with EU standards.

70. The Court observed that only some Member States (Ireland, Spain, Italy) carry out additional checks and require importers applying for import authorisations to provide inspection reports issued by the concerned control bodies in the third countries in order to check if control practices are equivalent to the ones requested by the EU regulation. All Member States' checks rely solely on documentary checks, none of the Member States visited carry out on-the-spot inspections.

71. Once an import authorisation is granted, the concerned operators in the EU rely on the certificate of inspection accompanying each consignment of imported products which states (in box 15 of the mentioned certificate, and in accordance with Article 13(4) of Regulation (EC) No 1235/2008) that equivalent production rules and equivalent control measures have been applied in the third country.

Regulation (EC) No 1235/2008, **Article 13 — Certificate of inspection**

'4. The authority or body issuing the certificate of inspection shall only issue the certificate of inspection and endorse the declaration in box 15 of the certificate, after:

(a) it has carried out a documentary check on the basis of all relevant inspection documents, including in particular the production plan for the products concerned, transport documents and commercial documents; and

(b) it has either made a physical check of the consignment, or it has received an explicit declaration of the exporter declaring that the consignment concerned has been produced and/or prepared in accordance with Article 33 of Regulation (EC) No 834/2007; it shall carry out a risk-oriented verification of the credibility of this declaration.

It shall furthermore give a serial number to each issued certificate and keep a register of the delivered certificates in chronological order.'

72. Notably the endorsement of box 15 in this certificate is in effect a self-declaration, by the same control body, in the third country issuing the certificate of inspection. Competent authorities in Member States do not perform any checks to assess the reliability of this declaration. This highlights why the verifications carried out by the competent authorities of the authorising Member States about the competence of the control body issuing this certificate before granting an import authorisation are of extreme importance.

THE COMMISSION DOES NOT HAVE ACCESS TO SUFFICIENT RELIABLE DATA TO BE ABLE TO ASSESS WHETHER IMPORT AUTHORISATIONS GRANTED BY MEMBER STATES SATISFY THE CONDITIONS ESTABLISHED BY THE REGULATION

73. The Commission guidelines about the content of the annual reports sent by Member States to the Commission do not foresee the inclusion of information regarding import authorisations granted by Member States.

74. OFIS provides for the transmission of information concerning import authorisations between Member States and the Commission, as required according to Article 19(2) of Regulation (EC) No 1235/2008. Results from the Member States' visits carried out in the context of this audit have shown examples where the information communicated by the Member States in OFIS concerning the import authorisations is not reliable and complete (see ***Box 7***).

> Regulation (EC) No 1235/2008, **Article 19 — Transitional rules on equivalent import of products not originating in listed third countries**
>
> '2. Each Member State shall inform the other Member States and the Commission of each authorisation granted pursuant to this Article, including information on the production standards and control arrangements concerned.'

75. A review of the minutes of the Standing Committee on Organic Farming (years 2010 and 2011) has shown that this committee does not adequately perfom its role for exchanging information regarding the functioning of the import authorisation regime.

BOX 7

INFORMATION ON IMPORT AUTHORISATIONS IN OFIS IS NOT RELIABLE

The audit showed that, of the 26 import authorisations withdrawn by Germany in 2009, only 11 appeared correctly in OFIS, 11 had been labelled 'expired' instead of 'withdrawn' and four had not been entered in OFIS at all.

In 2009, Germany temporarily suspended eight import authorisations due to detection of pesticide residues in certain consignments. However, the current EU regulation does not provide for the possibility to suspend an import authorisation. Therefore, as OFIS does not provide for encoding the status 'suspended', four of the authorisations had been labelled 'expired' and one had been labelled 'withdrawn'. Three of the import authorisations were not encoded in OFIS at all.

One import authorisation from Italy for 2009 was erroneously labelled as 'withdrawn' when it should have remained active.

76. Since 2001 the Commission has not carried out any audits in Member States to verify that they grant import authorisations only when the conditions of the regulation are complied with. In the absence of any on-the-spot visits to Member States in the last 10 years, the Commission has no up-to-date information to assess whether import authorisations could and should be granted.

77. Regarding import authorisations, when an examination finds that the equivalent production rules and equivalent control measures have not been applied in the third country[47], the Commission can request the authorising Member State to withdraw the import authorisation[48]. The Commission, in the almost 20 years of existence of this import regime, has never used this procedure. In one case, however, the Commission has recommended (but not requested) the Member States to withdraw import authorisations for a certain product; however, this recommendation was not followed by all Member States (see ***Box 8***).

[47] Article 33(1)(a) and (b) of Regulation (EC) No 834/2007.

[48] Article 19(3) of Regulation (EC) No 1235/2008.

BOX **8**

A PRODUCT IMPORTED FROM A THIRD COUNTRY

In October and November 2009, following an increased number of findings of unauthorised substances in a certain product imported from one third country, the Commission issued two communications to the competent authorities of Member States through the SCOF. In these communications, the Commission recommended the withdrawal of import authorisations for this product from the concerned third country. Most Member States followed the recommendation and withdrew the import authorisations concerned. The Court identified three Member States that did not follow it. On 1 March 2010 the Commission issued a communication to SCOF delegates allowing new authorisations for the products concerned. Some Member States had at that time already started to grant new import authorisations for the same products.

COMMON PROVISIONS ON IMPORTS — INCOMPLETE CHECKS CARRIED OUT BY CONTROL BODIES ON IMPORTERS

78. For imported products the first stages of the production chain are required to be checked in the third country in accordance with equivalent production rules and equivalent control measures (see paragraphs 55 to 77). Once these products arrive to the EU, the control system operating within the EU has only the possibility to check the last part of the production chain, i.e. the importer. The Court has observed that the checks carried out in this sense are often not complete.

CHECKS MADE BY CONTROL BODIES ON IMPORTERS AND IMPORTED PRODUCTS ARE OFTEN INCOMPLETE

79. The Court's visits to Member States in the context of this audit have shown the following results in relation to control bodies respecting their obligations as established in Articles 82 and 84 of Commission Regulation (EC) No 889/2008:

— for three out of eight control bodies where the issue was examined, control bodies did not ensure importers provide a complete description of the unit together with an undertaking committing themselves to submit to control any facility used for the storage of the products (Article 82 of Regulation (EC) No 889/2008);

> Regulation (EC) No 889/2008, **Article 82 — Control arrangements**
>
> '1. In the case of the importer, the full description of the unit referred to in Article 63(1)(a) shall include the importer's premises and of his import activities, indicating the points of entry of the products into the Community and any other facilities the importer intends to use for the storage of the imported products pending their delivery to the first consignee.
>
> In addition, the declaration referred to in Article 63(2) shall include an undertaking by the importer to ensure that any facilities that the importer will use for storage of products are submitted to control [...].'

— for five out of seven control bodies where the issue was examined, control bodies did not require importers to notify them of each imported consignment (Article 84 of Regulation (EC) No 889/2008).

Regulation (EC) No 889/2008, **Article 84 — Information on imported consignments**

'The importer shall, in due time, inform the control body or control authority of each consignment to be imported into the Community [...]'.

PICTURE 4 — EXAMPLE OF AN IMPORTED PRODUCT LABELLED ORGANIC SOLD IN THE EU

Source: European Court of Auditors.

CONCLUSIONS AND RECOMMENDATIONS

80. The control system for organic products as set out in the EU regulations aims at guaranteeing the production processes but not the organic character of the products themselves. This is because there is no scientific way to determine whether a product is organic or not. In order to provide sufficient assurance that the system is operating effectively and to ensure that consumer confidence is not undermined, it would be appropriate to remedy the weaknesses highlighted by the Court's audit.

81. The Court found examples where competent authorities do not sufficiently fulfil their supervisory role over control bodies. As a result certain control bodies fail to satisfy a number of EU requirements and fail to take the opportunity to implement certain good practices (paragraphs 27, 29 to 31, 33 to 37 and 79). The Court recommends that:

RECOMMENDATION 1

Competent authorities should strengthen their supervisory role over control bodies by applying appropriate documented procedures for approving and supervising control bodies, by promoting harmonisation in the definition of infringements, irregularities and corresponding sanctions, and by promoting identified good practices.

82. The exchange of information within Member States and from Member States to the Commission and other Member States is not yet adequate to ensure that the system is operating correctly (paragraphs 40 and 42 to 45). The Court recommends that:

RECOMMENDATION 2

Member States should ensure a direct flow of all relevant information on infringements and irregularities from the control bodies to the paying agencies and vice versa; and the Commission should specify the form and timing of communications of infringements and irregularities, introduce appropriate measures to ensure that Member States respect their reporting obligations and revise the information system provided for the communication of infringements and irregularities and consider including communications affecting third countries.

83. Competent authorities in Member States encounter difficulties in ensuring the traceability of the organic products within the territory for which they have authority. Traceability is even more difficult to achieve for products crossing borders (paragraphs 48 to 49). The Court recommends that:

RECOMMENDATION 3

Controls should be strengthened to ensure that operators fulfil the regulatory requirements regarding traceability; in this regard the Commission should clarify the roles and responsibilities of the different actors.

84. The Commission has not given enough priority to supervision activities, including audits, to ensure the proper functioning of the Member States' control systems (paragraphs 51 to 54). The Court recommends that:

RECOMMENDATION 4

The Commission should strengthen its monitoring of Member States' control systems by undertaking audit visits and gathering and exploiting the necessary data and information.

85. The Commission does not have sufficient information to satisfy itself that the control system for organic production in third countries recognised as equivalent continues to fulfil the regulatory requirements as long as they keep this status. The Court further notes that there is a significant backlog in assessing applications for equivalence from third countries (paragraphs 59 to 64). The Court recommends that:

RECOMMENDATION 5

The Commission should ensure adequate supervision of the countries included in the list of those recognised as being equivalent for organic production and carry out a timely assessment of the applications from third countries applying to be included in that list.

86. The Court found weaknesses in the system used for granting import authorisations (paragraphs 68 to 77). The Court welcomes the simplification implicit in the Commission initiative of phasing out the import authorisations regime and recommends that:

RECOMMENDATION 6

As long as the import authorisations regime is in operation Member States should ensure its correct application. Competent authorities in Member States should reinforce the checks carried out on control bodies authorised to issue certificates of inspection.

This report was adopted by Chamber I, headed by Mr Ioannis SARMAS, Member of the Court of Auditors, in Luxembourg at its meeting of 28 March 2012.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA
President

ANNEX I

TRACEABILITY EXERCISE — METHODOLOGY

1. Article 27(13) of Regulation (EC) No 834/2007 establishes that:

'13. Member States shall ensure that the control system as set up allows for the traceability of each product at all stages of production, preparation and distribution in accordance with Article 18 of Regulation (EC) No 178/2002, in particular, in order to give consumers guarantees that organic products have been produced in compliance with the requirements set out in this Regulation.'

2. The traceability exercise carried out by the Court in the context of this audit consisted of requesting a number of documents for 85 products bought during the Member States' visits to trace the products back to their origin. The information requested was:

- identification details of all operators having intervened in supplying the product (back to the producer level) — for products composed of more than one ingredient this information was requested for the two most important organic ingredients (in terms of weight);
- the organic certificate for each of the operators identified in the previous point; and
- the last inspection report for each of the operators identified.

3. Different types of products were selected to be included in the exercise for the purpose of covering several risks associated to the following variables:

- different composition (products composed of one single ingredient of vegetable origin, composed of one single ingredient of animal origin, composed of more than one ingredient);
- different origin (products produced in the same Member State where they are bought, produced in a different Member State than the Member State where they are bought, produced in a third country);
- different system used for importing the products (products imported through national import authorisations, imported through the list of equivalent third countries).

4. To carry out this exercise the Court's auditors, for each Member State visited:

- prepared a list of products to be bought (taking into account the coverage mentioned in paragraph 3), which included products certified by the control bodies operating in the Member State visited or operating in the Member States of the remaining Court's audit visits, and bought the products;
- requested, from the competent authority of the Member State visited, the traceability records for the products bought during the audit visit and for which the control body appearing in the label of the product was operating in that Member State;
- requested, from the competent authority of the Member State visited, the traceability records for the products bought in other Member States during previous audit visits but for which the control body appearing in the label was a control body operating in that Member State.

5. The following tables give an overview of the distribution of the products included in the exercise:

TABLE 1 — DISTRIBUTION OF THE PRODUCTS PER ORIGIN AND TYPE OF IMPORT REGIME

Country the product was bought in	Produced and consumed in the same Member State	Produced in another Member State	Produced in a country listed on the list of equivalent third countries	Produced in a country exporting through national import authorisations	Total number of products bought per country
DE	3	5	3	5	16
ES	15	5	0	3	23
FR	7	7	0	2	16
IT	2	4	2	4	12
LU	0	1	0	0	1
UK	4	4	3	6	17
Total	**31**	**26**	**8**	**20**	**85**

TABLE 2 — COUNTRIES COVERED BY THE TRACEABILITY EXERCISE

EU Member States (14)	Third countries from the equivalent third-country list (6)	Other third countries (14)
Denmark	Canada	Bolivia
Germany	Costa Rica	Brazil
Ireland	India	China
Greece	Japan	Dominican Republic
Spain	Tunisia	Ecuador
France	Switzerland	Kazakhstan
Italy		Paraguay
Hungary		Peru
Netherlands		Philippines
Austria		South Africa
Poland		Sri Lanka
Romania		Turkey
Sweden		Ukraine
United Kingdom		Uruguay

TABLE 3 — DISTRIBUTION OF THE PRODUCTS BY COMPOSITION

	Products composed of one single ingredient of vegetable origin	Products composed of one single ingredient of animal origin	Products composed of more than one ingredient	Total
Number of products	37	11	37	**85**

TABLE 4 — DISTRIBUTION OF THE PRODUCTS ACCORDING TO THE MEMBER STATE THEY HAVE BEEN BOUGHT IN

Traceability information requested in	Bought in the same Member State	Bought in a different Member State	Total
DE	12	1 (UK)	13
ES	20	1 (DE)	21
FR	16	3 (ES), 1 (IT), 2 (DE), 1(UK)	23
IT	11	1 (DE), 2 (UK), 1 (LU)	15
UK	13	-	13
Total	**72**	**13**	**85**

TABLE 5 — PRODUCTS WITH AT LEAST ONE INGREDIENT IMPORTED FROM COUNTRIES LISTED IN THE EQUIVALENT THIRD-COUNTRY LIST

Traceability information requested in	Bought in the same Member State	Bought in a different Member State	Total
DE	3	-	3
ES	-	-	0
FR	-	1 (UK)	1
IT	2	-	2
UK	2	-	2
Total	**7**	**1**	**8**

TABLE 6 — PRODUCTS WITH AT LEAST ONE INGREDIENT IMPORTED THROUGH IMPORT AUTHORISATIONS GRANTED BY MEMBER STATES

Traceability information requested in	Bought in the same Member State	Bought in a different Member State	Total
DE	4	-	4
ES	2	-	2
FR	2	1 (ES)	3
IT	4	1 (DE)	5
UK	6	-	6
Total	**18**	**2**	**20**

ANNEX II

LABORATORY TESTS — METHODOLOGY

1. The Court commissioned laboratory tests for 73 products that were bought during the Member States" visits. In each Member State, one of the control bodies visited was asked to carry out laboratory tests on the products bought by the Court. Sampling and testing had to be done following the control bodies' own procedures and practices. The Court's auditors selected and bought the products, and the control body was asked to (1) choose the substances for which each product had to be tested; (2) choose the laboratory/laboratories it usually works with; (3) take the samples following its normal procedures; (4) send the laboratory results to the Court. The interpretation of the analytical results was carried out by an expert contracted by the Court for this purpose.

2. From the 73 samples analysed, 67 samples were subject to a single type of analysis while six samples were subject to two different types of analysis. This resulted in a total of 79 analyses including tests for pesticides, antibiotics, GMO, heavy metals and conservation agents.

TABLE — OVERVIEW OF ALL PRODUCTS FOR WHICH LABORATORY TESTS WERE COMMISSIONED AND CORRESPONDING TESTS

Product code Court	Country	Product	Type of analysis
DE-01	Germany	Shrimps	Heavy metals, conservation agents
DE-02	Germany	Bilberries	Pesticides
DE-03	Germany	Manouri cheese	Cow milk
DE-04	Germany	Paprika	Pesticides
DE-05	Germany	Eggs	Roll marks
DE-06	Germany	Plums	Pesticides
DE-07	Germany	Banana chips	Pesticides
DE-08	Germany	Lemonade	GMO
DE-09	Germany	Cereal muesli	Pesticides
DE-10	Germany	Green tea	Pesticides
DE-11	Germany	Tea	Pesticides
DE-12	Germany	Olive oil	Pesticides
DE-13	Germany	Olive oil	Pesticides
DE-14	Germany	Fig jam	Pesticides
DE-15	Germany	Linseed	Pesticides, GMO
DE-16	Germany	Wheat bran	Pesticides, GMO
DE-17	Germany	Plums with chocolate	Pesticides
DE-18	Germany	Dates	Pesticides
DE-19	Germany	Cane sugar	Heavy metals

Product code Court	Country	Product	Type of analysis
DE-20	Germany	Soy beans	Pesticides, GMO
DE-21	Germany	Blue poppy seeds	Heavy metals, pesticides
DE-22	Germany	Honey	GMO
DE-23	Germany	Ginger	Pesticides
ES-01	Spain	Neck chops	Conservation agents
ES-02	Spain	Mayonnaise	Pesticides
ES-03	Spain	Olive oil	Pesticides
ES-04	Spain	Baguette	Pesticides
ES-05	Spain	Manzanilla olives	Pesticides
ES-06	Spain	Eggs	Conservation agents
ES-07	Spain	Courgette garnish	Pesticides
ES-08	Spain	Olive oil bread sticks	Pesticides
ES-09	Spain	Mandarine jam	Pesticides
ES-10	Spain	Paraguay tea	Pesticides
ES-11	Spain	Fried potatoes	Pesticides
ES-12	Spain	Chocolate	Pesticides
ES-13	Spain	Cane sugar	Pesticides
ES-14	Spain	Quince spread	Pesticides
ES-15	Spain	Fresh goats' cheese	Pesticides
ES-16	Spain	Grapefruit	Pesticides
FR-01	France	Fresh milk	Pesticides
FR-04	France	Apples	Pesticides
FR-05	France	Pumpkin seeds	Pesticides
FR-07	France	Tomato soup	Pesticides
FR-08	France	Hibiscus juice	Pesticides
FR-09	France	Sushi rice	Pesticides
FR-10	France	Oat drink	Pesticides
FR-12	France	Pears	Pesticides
IT-01	Italy	Milk	Antibiotics
IT-02	Italy	Apples	Pesticides
IT-03	Italy	Maize oil	Pesticides, GMO
IT-04	Italy	Fruit pulp	Pesticides
UK-01	United Kingdom	Potatoes	Pesticides
UK-02	United Kingdom	Bacon	Antibiotics
UK-03	United Kingdom	Prawns	Antibiotics
UK-04	United Kingdom	Avocado	Pesticides
UK-05	United Kingdom	Lamb mince	Antibiotics

Product code Court	Country	Product	Type of analysis
UK-06	United Kingdom	Chicken breast	Antibiotics
UK-07	United Kingdom	Oranges	Pesticides
UK-08	United Kingdom	Cheddar	Antibiotics
UK-09	United Kingdom	Muesli	Pesticides
UK-10	United Kingdom	Walnut pieces	Pesticides
UK-11	United Kingdom	Sultanas	Pesticides
UK-12	United Kingdom	Honey	Pesticides
UK-13	United Kingdom	Sugar	Pesticides
UK-14	United Kingdom	Wild rice	Pesticides
UK-15	United Kingdom	Fruit-T-loaf	Pesticides
UK-16	United Kingdom	Radish	Pesticides
UK-17	United Kingdom	Fusilli	Pesticides
UK-18	United Kingdom	Baby food — Lancashire hotpot	Pesticides
UK-19	United Kingdom	Vinegar	Pesticides
UK-20	United Kingdom	Yerba mate	Pesticides
UK-21	United Kingdom	Green tea	Pesticides
UK-22	United Kingdom	Sweet potatoes	Pesticides

OBSERVATIONS CONTAINED IN SPECIAL REPORT NO 3/2005 CONCERNING MEMBER STATES' REPORTING ON ORGANIC FARMING TOGETHER WITH AN ASSESSMENT OF THE CURRENT SITUATION

Findings contained in SR 3/2005	Commission's replies given to SR 3/2005	Court's assessment of the current situation in 2011
Annual implementation reports		
47. (a) Not all Member States send these supervision reports. There were no reports from Austria, for example. At the end of the audit (November 2004), of the 48 reports due over the period 2000–03 in respect of the 12 Member States obliged to file such reports, 15 had not been sent. The missing reports in respect of Austria, France, Ireland, Portugal, Spain and the United Kingdom have since been received.		As of 1 January 2006 organic farming falls under the scope of Regulation (EC) No 882/2004 on official food and feed controls and should be covered by the MANCP and its related general annual report. Member States send these reports very late (see paragraph 42).
47. (b) The reports are composed of a table with the number of visits carried out by the various private inspection bodies, the number of samples taken for analysis and the number of irregularities found and penalties applied. There is no conclusion on the functioning of the system.	Completion of the standardised table is the minimum reporting requirement, though the 'guidance document' states that 'further information may be submitted as Member States feel fit'. Some Member States also send a written report giving a description of their inspection system and drawing up conclusions on the inspections carried out.	Information related to the organic control system in these annual reports is very limited. Most Member States do not provide an analysis of non-compliances detected nor basic data on the organic sector (see paragraph 42).
47. (c) The Commission makes limited use of the reports.	These reports were of limited use for the evaluation of supervision by Member States' authorities, but were nevertheless helpful to show whether all operators were submitted to inspections (see also paragraph 49).	The review of the annual reports by the Commission and its feedback focuses mainly on identifying missing information rather than on remarks with respect to content regarding design and functioning of the control system (see paragraph 51).
47. (d) The quality is not always satisfactory and the reports include errors and inconsistencies. The Commission guidance states that 'the reports submitted to the Commission so far have been a very mixed bag, making it difficult for the Commission to have an overall view of implementation'. This situation still remained at the time of the Court's audit.	This document aimed at giving some guidance to the Member States on the type and format of information they have to submit. The reports have since then been written in a more uniform format. The Commission has now embarked on a process of improving the format and the content of the supervision report, in cooperation with the Member States.	See assessment under finding 47. (b) in this table.
48. Although Member States communicate the list of inspection bodies, not all send details of their standard inspection procedure annually. 49. The Court concludes that, even if these reports were complete and accurate, they would not give assurance about the objectiveness and effectiveness of the inspections carried out.	These reports give a number of indications on the inspection system in place such as confirmation of the number of inspection visits carried out, which is at the least very close to, and in most cases exceeds, the number of operators, and the number of infringements notified. The Commission identified in the European action plan on organic food and farming the need to improve the quality of the supervision reports.	The Commission lacks basic information as regards the functioning of the control system in Member States (see paragraphs 51 and 52).

REPLY OF THE COMMISSION

EXECUTIVE SUMMARY

V.
The Commission is aware of certain weaknesses in the control system and the risk of undermining consumer confidence. Improving the supervision and control system is at the core of the Commission's current action in the organic sector. The Commission is currently assessing the EU legal framework governing organic production. The issue of controls is one of the main items covered by this assessment. The legislation may subsequently be amended, where necessary.

VI. (a)
The Commission is making constant efforts to assist the Member States in exercising their supervisory role, mainly by providing them with relevant information on the proper functioning of the control system.

The Commission has recently made public a 'Working document of the Commission services on official controls in the organic sector'[1] to assist Member States in implementing the regulatory provisions regarding the organic farming control system. Member States were also invited to participate in training on organic farming that is currently ongoing under the 'Better training for safer food' initiative. Both the working document and the training contain a section on the supervision of control bodies.

VI. (b)
Provisions stipulating exchange of information are contained in the EU regulations on organic production. There are several channels through which Member States communicate with each other and the Commission: the Organic Farming Information System (OFIS), an IT tool operated by the Commission; the organic farming page of the Communication and Information Resource Centre Administrator (CIRCA); and the Standing Committee on Organic Farming (SCOF).[2] The Commission is aware that improvements can be made and will further reflect upon this.

[1] Version 8 July 2011 — presented to the SCOF on 27–28 September 2011 (http://ec.europa.eu/agriculture/organic/files/eu-policy/data-statistics/control_guidelines_version_08072011_en.pdf).

[2] In 2011, nine 2-day SCOF meetings took place in Brussels.

REPLY OF THE COMMISSION

VI. (c)
The assessment of traceability is part of the audits to be conducted as from this year (2012) by the Food and Veterinary Office (FVO).

VI. (d)
The Commission is making constant efforts to ensure that the control system functions properly. Some recent examples are: the Commission working document on controls in the organic sector, made public mid-2011; specific audits of control systems put in place for organic farming both in Member States and third countries as from 2012[3]; and the ongoing assessment of the EU legal framework governing organic production.

VI. (e)
Annual reports by the respective authorities in charge are the main source of information on recognised third-countries' control systems. The Commission also collects, shares, and checks, with Member States, information on irregularities concerning products from third countries and the results of their investigation.

The Commission is strengthening its supervision of recognised third countries by improving the information flow[4] and organising audits[5].

As regards the existing backlog in assessing equivalence requests from third countries, the Commission has made progress and recently included two third countries in the list (Canada in 2011 and the United States in 2012).

[3] The FVO has included in its programme of audits for 2012 two audits in Member States (Portugal and Poland) and one in a third country (India). The programme is made public at: http://ec.europa.eu/food/fvo/inspectprog/index_en.htm.

[4] Through providing a template for the annual report and formalising the internal supervision procedure.

[5] In 2012, the FVO will audit organic farming control systems in India.

VI. (f)
The Commission acknowledges certain weaknesses in the system of import authorisations. Therefore, between June 2012 and July 2015, the system of import authorisations granted by Member States is going to be phased out and replaced by a system of recognised control bodies, which will be directly managed and supervised by the Commission, thereby ensuring harmonised application of the import regime at the EU borders. This new system will enter into force as from 1 July 2012.

VII. (a)
The Commission agrees with this recommendation and is making constant efforts to facilitate Member States' supervisory role by providing them with relevant information and training on supervision.

See also the reply to point VI (a) above.

VII. (b)
In addition to the several existing communication channels referred to in the reply to point VI (b), new IT modules are being developed[6]. The Commission is aware that improvements can be made and will further reflect upon this.

VII. (c)
The roles and responsibilities of actors are spelled out in the general food law[7], Regulation (EC) No 882/2004 and the EU regulations on organic production[8]. Nevertheless, better coordination between stakeholders and authorities in charge of controls in the food chain would improve the application of general and organic traceability requirements. The development of other tools, such as electronic certification or databases, could also improve traceability. The Commission will consider the need for improvement in the ongoing assessment of the EU legal framework governing organic production.

[6] The Commission is currently developing new OFIS modules for communicating irregularities concerning imported products and for exchanging information with third countries and control bodies recognised as equivalent for certification of imports.

[7] Traceability requirements laid down by the general food law apply to all food operators. The roles and responsibilities of the different actors are already clarified in Regulation (EC) No 178/2002 on the general principles and requirements of food law.

[8] EU regulations on organic production do impose a number of additional traceability requirements on organic operators (e.g. specific record keeping).

REPLY OF THE COMMISSION

VII. (d)
The Commission has resumed specific audits on organic production in Member States (see the reply to point VI (d) above). The purpose of these audits is to verify the implementation of EU regulations on organic production, with a specific focus on the implementation and functioning of the control system. In order to gather the necessary data and information, Member States' reporting to the Commission could be improved.

VII. (e)
The Commission is making constant efforts to strengthen the supervision of equivalent third countries[9]. Regarding the timely assessment of equivalence requests from third countries, the Commission has made progress recently (see the reply to point VI (e) above).

VII. (f)
The Commission agrees with the Court's recommendation. The main challenge of the system of import authorisations is to ensure that the competent authorities of the 27 Member States adopt a harmonised approach[10]. However, communication and exchange of information between the main importing Member States is improving: Member States meet regularly in an informal import group and information is exchanged via CIRCA and OFIS. Furthermore, where necessary, the Commission coordinates the action taken by Member States in respect of import authorisations granted for a particular product/operator/control body/third country if problems arise.

[9] These efforts include the audits planned as from 2012 to third countries, providing the third countries with a template for the annual report, formalising internal procedures for supervision, and inviting third countries to participate in the training on organic farming organised under the 'Better training for safer food' initiative.

[10] The Commission will verify the checks carried out by Member States on control bodies during the audits planned in the Member States as from 2012.

INTRODUCTION

15.
The Commission published the first list of recognised control bodies and authorities for the purpose of equivalence in Regulation (EU) 1267/2011 of 6 December 2011, applicable as from 1 July 2012.

OBSERVATIONS

25.
In the 'Working document of the Commission services on official controls in the organic sector'[11], the Commission highlighted the need for documented procedures concerning the supervision of control bodies (Chapter 6 — Supervision of control bodies). In the same document, the Commission reminded Member States of the general requirement for competent authorities to have documented procedures (Chapter 4 — Requirements of the Competent Authority responsible for official controls in the organic sector).

27.
The weaknesses reported by the Court in relation to this point pertain to the documentation of procedures rather than to their implementation. The information at the Commission's disposal does not allow it to conclude that the approval, withdrawal and supervision of control bodies in the Member States does not take place in line with EU regulation. See also the reply to points 30–37.

Box 1
The existence and quality of competent authorities' procedures for the approval and supervision of control bodies was checked by the Commission as part of the pilot audit on organic farming in Austria in 2011 and will be systematically checked in all subsequent organic farming audits as from 2012. For more information on the audits, please see the reply to point 52.
See also the reply to point 25.

[11] See footnote to the reply to point VI (a).

REPLY OF THE COMMISSION

29. (a)
The list of operators and the summary report requested from the control bodies in accordance with Article 27(14) is not provided with the purpose of enabling the competent authority to verify that all operators were inspected at least once per year. Its main purpose is to inform the competent authority of which operators were certified as organic and provide it with a general overview of the activities of the control body in the given year.

A practicable way for the competent authority to verify compliance with the requirement for an annual inspection per operator is to verify the control body's procedure upon its approval and then to verify its application by checking a sample of operator files during the annual supervision. Performing a simple comparison between the number of controls and the number of certified operators is not possible because some operators do not need to be visited every year whereas some operators, which have been identified as more risk-prone in the framework of a risk assessment, may require more frequent control visits.

29. (b)
Competent authorities may have cooperation agreements with the accreditation bodies regarding the supervision of control bodies. The main reason is to avoid duplication of work. However, the overall responsibility for the supervision of control bodies lies with the Member State's competent authority for organic production.

Article 5 of Regulation (EC) No 882/2004 requires competent authorities who delegate a control task to audit or inspect the control body, but the frequency of such audits or inspections is not specified.

30. and 37. Joint reply
Each Member State is responsible for verifying that a control body has appropriate procedures and that they are correctly implemented. A constant effort is made by the Commission to assist Member States in exercising their responsibility. This assistance mainly consists in providing Member States with information on how the control system should work. To this end, the Commission published a working document on official controls in the organic sector, which assists Member States in implementing regulatory provisions regarding the organic farming control system. A specific recommendation is made to the Member States concerning the risk assessment and the risk-based approach (Chapter 8 — Risk-based approach). Furthermore, Member States may participate in the training on organic farming which is currently ongoing under the Commission's 'Better training for safer food' (BTSF) initiative.

31.
The Commission agrees with the Court that the rotation of inspectors, although not specifically required by the regulations, is a good practice to be followed by control bodies. The Commission will include this recommendation in a future version of its working document on official controls in the organic sector.

Box 2
See the reply to point 31.

32.
The EU regulations on organic production consider sampling as a supplementary control tool that becomes obligatory in cases where the use of non-authorised substances is suspected. Control bodies and control authorities are required to act on any kind of suspicion. In its working document on controls, the Commission recommends the sampling policy and its result as one of the areas to be verified by the competent authorities as part of the supervision of control bodies. The same document requires the competent authorities to report the number of samples analysed to the Commission. Sampling and residue testing is one of the areas that was checked by the Commission as part of the pilot audit on organic farming in Austria in 2011 and will be systematically checked in all subsequent organic farming audits as from 2012.

REPLY OF THE COMMISSION

33.
Please see the reply to point 32.

34.
See the reply to point 32.

35.
Sanctions policy is one of the areas that was checked by the Commission as part of the pilot audit on organic farming in Austria in 2011 and will be systematically checked in all subsequent organic farming audits as from 2012.

36. and Box 4 - Joint reply
Although further harmonisation might be sought, sanctions are determined by Member States in line with the principles of subsidiarity and proportionality (as laid down in Article 55 of Regulation (EC) No 882/2004 on sanctions). Since a case-by-case assessment is required, the fact that an identical non-compliance has led to different sanctions is not automatically questionable: whether the operator's behaviour was intentional or mere negligence, or whether the non-compliance was a repeat or first occurrence might, inter alia, constitute aggravating or mitigating circumstances.

37.
In its supervisory role, the Commission monitors all cases of irregularities that are communicated by the Member States in accordance with Article 92(2) of Regulation (EC) No 889/2008. However, such communication is limited to cases of irregularities concerning products traded between Member States.

As from 2012, the FVO will carry out specific audits on organic production, which will include verification that Member States apply appropriate enforcement measures and sanctions.

38.
The Commission recognises the importance of proper exchange of information between the control system for organic production and the control system for agri-environmental payments. The need to set up a functioning communication system between the competent authority for organic production and competent authorities in other (horizontal) fields is also stressed by the Commission in the recently published working document on official controls in the organic sector, which underlines that irregularities found in organic farming should be systematically communicated to the relevant authorities in charge of EU rural development or the EU Fisheries Fund.

39.
Although control bodies are not delegated bodies for the purposes of agri-environment measures, the Commission endorses the good practice of sharing information between different services and organisations involved in controls. The paying agencies have to perform their own controls on organic farming beneficiaries. Following the audits it carries out, the Commission gives recommendations and, if appropriate, applies financial corrections, in particular when exchanges of information between the services and organisations involved in checks are found insufficient or when it is considered that controls performed by the paying agencies are not exhaustive and not independent from the controls carried out by the control bodies on their own.

40.
In the framework of the conformity audits on measure 214, the Commission services verify the flow of information between the competent authority for organic farming and the paying agency for rural development, and, if needed, recommend setting up a functioning cross-notification system. The paying agencies assess whether beneficiaries respect the EU regulations on organic production by checking the certificates provided by the control bodies in accordance with the relevant and regular controls for every beneficiary who is part of the scheme.

REPLY OF THE COMMISSION

42.
Regarding the transmission of reports, the situation has improved significantly from 2010 onwards. The Commission has also specified, in its working document on official controls in the organic sector, the minimum amount of information regarding organic controls that should be included in the annual report. Member States were reminded of their obligation to include information on controls in the organic sector in the annual report at various meetings organised by the Commission (Standing Committee on Organic Farming and multiannual national control plan (MANCP) and annual report (AR) network meetings).

44.
As the wording of the regulation is sufficiently precise ('immediately'), there is no need to set any other time frame. On the contrary, the establishment of such a time frame would imply that some delay would be tolerated. Member States were reminded at the SCOF meeting of 7 July 2011 of their obligation to notify cases of irregularities immediately.

The regulation also states very clearly that 'where a Member State finds irregularities …' (Article (92(2) of Regulation (EC) No 889/2008), implying that the obligation to notify irregularities applies at the time they are detected. In the example given by the Court, should the subsequent laboratory results prove that the first result was a false positive, the Member State still has the option of withdrawing its notification and informing the other Member States of the reasons.

45.
Several measures have been taken by the Commission with a view to ensuring that Member States reply to notifications of irregularities in a timely manner. First of all, in January 2009 the Commission shortened the deadline for replying from 4 months to 30 calendar days. Furthermore, notifications of irregularities are discussed at each meeting of the SCOF, at which the Commission indicates all the open cases for which the 30-day deadline for reply was not met and asks the Member States concerned to reply. The Commission also regularly sends written reminders to Member States.

Box 5
The Commission agrees with the Court that such databases are a useful tool for strengthening the transparency and effectiveness of the organic farming control system. Control bodies in other Member States have developed similar databases. In order to allow the wider public to find out about operators and their products which are subject to the organic farming control system, the Commission required the Member States to publish on the Internet updated lists of operators and their documentary evidence (Regulation (EU) No 426/2011).

48.
The Commission takes account of the Court's comment. The assessment of traceability is part of the audits to be conducted by the FVO as from this year (2012).

49.
In order to standardise the appearance of the certificate issued by control bodies to operators who comply with the EU regulations on organic production, the Commission published a model of documentary evidence to be used throughout the EU in Annex XII to Regulation (EC) No 889/2008.

At the initiative of the Commission, Regulation (EC) No 889/2008 was amended in May 2011 in order to include a provision on publication of the list of organic farming operators in each Member State, including updated information on their documentary evidence (Regulation (EC) No 426/2011).

Box 6
The Commission closely follows cases of fraud occurring in the EU and makes sure that the relevant authorities carry out a thorough analysis and investigation. The Commission also actively participates in the anti-fraud initiative, a joint private initiative founded in 2007 that brings together stakeholders from the organic sector with the aim of discussing common approaches to ensuring organic integrity. The Commission is making ongoing efforts to improve the effectiveness of the organic farming control system[12]. The Commission confirms that the case referred to by the Court in Box 6 is being investigated at national level.

[12] A case in point is its recent initiative of requiring Member States to publish lists of organic farming operators, including updated information on their documentary evidence (Regulation (EC) No 426/2011).

REPLY OF THE COMMISSION

50. and 51. Joint reply

The Commission considers that the timeliness of Member States' reporting has improved since the time of the audit. However, the extent of coverage of official controls on organic farming is still limited and the Commission will encourage Member States to improve timely and substantial reporting. This issue will be considered in the ongoing assessment of the EU legal framework governing organic production.

Apart from the annual reports, the Commission obtains information on the functioning of the control system via other channels. A continuous exchange of information on infringements and irregularities takes place between the Member States and the Commission through OFIS. These issues are also regularly discussed by the SCOF, as are, on an ad hoc basis, other control-related matters. Recently, the SCOF had an extensive exchange of information on the control system in the context of the preparation of the working document on official controls[13].

As part of general audit and general follow-up missions, Member States are reminded of the requirement to submit their annual reports in a timely manner. Similar reminders may be made in the context of more specific audit missions.

Publication of the first Commission report under Article 44 of Regulation (EC) No 882/2004, which includes comments on the Member States' annual reports, has also increased the pressure on all parties to present their reports in a timely manner. The Commission also encourages Member States to present executive summaries of their annual reports, following agreed criteria, to allow more consistent understanding of the report and to overcome translation difficulties (some reports are several hundred pages long).

[13] The document was discussed at SCOF meetings on 14–15 December 2009, 1 March 2010, 26 April 2010, and 16–17 June 2010.

52.

Working arrangements between the Agriculture and Rural Development DG and the Health and Consumers DG were agreed in the form of a memorandum of understanding signed in December 2011 and, as a result, the FVO included specific audits on organic production in its regular annual inspection programme as from 2012.

The audits performed before 2001, mentioned in the first footnote to point 52, were subject to specific follow-up by the Commission.

53.

The information received by the Member States can vary; it depends on the variety and number of the agri-environmental sub-measures present in the Member State/region.

54.

Apart from the infringement procedure, which is to be initiated for all cases of persistent, overall non-application of EU law, the Commission currently does not have any other enforcement measures specific to the organic sector. Its duration notwithstanding, the infringement procedure generally has a positive impact on Member State compliance.

58.

In 2011, the Commission services prepared an internal procedure regarding the inclusion of third countries. The procedure provides for a detailed description of the recognition process and contains standardised checklists and working papers for documentary and on-the-spot assessment.

59.

The Commission has recently made progress with the assessment of some third countries, resulting in the inclusion of Tunisia in 2009, Japan in 2010, Canada in 2011 and the United States in 2012. Intensive work on several other applications is ongoing.

60. and 61. Joint reply

The Commission services are developing an internal procedure for the supervision, management and review of the list of equivalent third countries in order to formalise and standardise the work. In 2011, the Commission introduced a standardised template for the assessment of annual reports referring to the year 2010. Where appropriate, the analysis prompted the Commission to send a request for additional information to the concerned countries. All replies have been received.

REPLY OF THE COMMISSION

62.
The analysis performed by the Court related to the 2009 annual reports. In 2011, the Commission sent to the listed third countries a detailed template explaining the type of information that needs to be contained in the report. As a result, the quality of the 2010 reports improved. Where necessary, the Commission sent a request for additional information (see the reply to point 61)[14].

63.
The Commission services are developing an internal procedure for the supervision, management and review of the list of equivalent third countries. As from 2012, the FVO will carry out on-the-spot audits in listed third countries as part of its annual auditing. The FVO programme of audits for 2012 includes an audit of organic farming in India[15].

64.
The Commission has recently taken steps to strengthen the supervision of listed third countries, including the development of a detailed internal procedure, a template for the annual report and its assessment and audits in listed third countries. For details see replies to points 60–63.

67.
In order to overcome the intrinsic weaknesses of the system of import authorisations, the system is being phased out and replaced by a system of recognised control bodies for the purpose of imports, which enters into force as from 1 July 2012 and is under the Commission's direct management.

[14] For example, at the request of the Commission, Israel has sent detailed information about its 2009/10 annual report. Details about the scope of the assessment, the evaluation, the findings (non-compliance), corrective action and the status of corrective actions of each approved control body have been provided. The report also stated that, where pesticide residues were found, the operator was immediately suspended. Thorough investigations were conducted by the control bodies and corrective actions were taken by the administration.

[15] Please see the footnote to reply to point VI (d).

68–70. Joint reply
Member States can issue an import authorisation only if there is (1) sufficient evidence that the products were produced in accordance with equivalent production rules and (2) the operators were subject to control measures of equivalent effectiveness (Article 19(1) of Regulation (EC) No 1235/2008). Member States can accept a certificate of inspection only if it is issued by a control body that can guarantee that the abovementioned two conditions were met for the products and operators in question. The system for issuing import authorisations was checked by the Commission as part of the pilot audit on organic farming in Austria in 2011 and will be systematically checked during all subsequent organic farming audits as from 2012.

72.
It is the responsibility of the competent authority of the Member State to verify the competence of the control body to issue a certificate of inspection, and in particular the evidence that the conditions referred to in Article 19(1) of Regulation (EC) No 1235/2008 are met, before granting an import authorisation. The system for issuing import authorisations was checked by the Commission as part of the pilot audit on organic farming in Austria in 2011 and will be systematically checked during all subsequent organic farming audits as from 2012.

73.
The guidelines referred to (Commission Decision 2008/654/EC) specify the information which Member States are required to report in accordance with Article 44(1) of Regulation (EC) No 882/2004.

While Member States are not expected to include information on import authorisations they have granted in the annual reports, they are required to enter each import authorisation in the specific module of OFIS. The module gives the Commission and the Member States access to up-to-date, standardised information on all import authorisations granted across the EU.

REPLY OF THE COMMISSION

74.
The Commission systematically requests Member States to use OFIS[16]. The Commission also provided training for Member States on the uses of OFIS in response to remarks concerning difficulties in using the system expressed by some Member States.

75.
Regarding imports, the work of the SCOF concentrated mainly on implementation of the new import regime (Regulation (EC) No 1235/2008). The system of import authorisations is a transitional measure that is going to be phased out and replaced by a system of recognised control bodies, which will be directly managed and supervised by the Commission, ensuring harmonised application of the import regime at the EU borders. Cases presenting difficulties under the system of import authorisations are discussed with a view to ensuring that Member States adopt a harmonised approach, such as in the case mentioned by the Court in Box 8.

76.
As from 2012, the FVO will carry out specific audits on organic production (see the reply to point 52)[17]. These audits will include the system of import authorisations. During the pilot audit carried out in Austria in 2011, the Commission found that the Member State itself had decided to take action in order to improve the quality of import authorisations issued. In that Member State, the issuing of import authorisations, which was previously carried out at regional level, had been centralised to a single point in order to harmonise the system.

77.
Member States should have the relevant information and expertise necessary for granting import authorisations: the requests and all supporting documents are submitted by an importer directly to them. Withdrawing an import authorisation as provided for by Article 19 of Regulation (EC) No 1235/2008 has not proved necessary so far. The Commission has made use of Article 19 in order to facilitate harmonisation in the approaches developed individually by each of the 27 Member States' competent authorities, and to force the Member States to re-examine some specific cases where necessary.

Box 8
The communications issued by the Commission to the Member States constituted only a recommendation and cannot be considered as an official request for withdrawal pursuant to Article 19(3) of Regulation (EC) No 1235/2008.

79.
The Commission considers proper controls on imported products a high priority. It convened a specific meeting of the SCOF on 22 June 2011 in order to discuss the new system of recognised control bodies and related controls on imported products. At the meeting, the Commission reminded Member States of the basic architecture of the EU control system and their control obligations regarding imported products. Furthermore, checks on controls of imports are included by the Commission in the scope of the specific audits on the Member States' control systems.

[16] In 2011, the Commission requested Member States to use OFIS at every SCOF meeting.

[17] The FVO has included in its programme of audits for 2012 one audit of a third country (India).

REPLY OF THE COMMISSION

CONCLUSIONS AND RECOMMENDATIONS

80.
The Commission is aware of certain weaknesses in the control system and the risk of undermining consumer confidence. Improvement of the supervision and control system is at the core of the Commission's current action in the organic sector.

81.
The Commission is making constant efforts to help the Member States in exercising their supervisory role, mainly by providing them with relevant information on the proper functioning of the control system.

The Commission recently made public a working document on official controls in the organic sector[18] to assist Member States in implementing the regulatory provisions regarding the organic farming control system. Member States were also invited to participate in training on organic farming that is currently ongoing under the 'Better training for safer food' initiative. Both the working document and the training contain a section on the supervision of control bodies.

Recommendation 1
The Commission agrees with this recommendation and is making constant efforts to facilitate Member States' supervisory role by providing them with relevant information and training on supervision.

See also the reply to point 81 above. In addition, the Commission is currently assessing the EU legal framework governing organic production. The legislation may subsequently be amended, where necessary.

[18] Please see the footnote to reply to point VI (a).

82.
Provisions stipulating exchange of information are contained in the EU regulations on organic production.

The Commission regularly reminds Member States of these provisions and makes every effort to provide them with tools facilitating exchange of information. There are several channels through which Member States communicate with each other and the Commission.

Recommendation 2
There are several channels through which Member States communicate with each other and the Commission: OFIS, an IT tool operated by the Commission; the organic farming page of CIRCA; and the SCOF[19]. The Commission is currently developing new OFIS modules for communicating irregularities concerning imported products and for exchanging information with third countries and control bodies recognised as equivalent for certification of imports.

83.
The assessment of traceability is part of the audits to be conducted as from this year (2012) by the FVO.

Recommendation 3
The roles and responsibilities of actors are spelled out in the general food law[20], Regulation (EC) No 882/2004 and the EU regulations on organic production[21]. Nevertheless, better coordination between stakeholders and authorities in charge of controls in the food chain would improve the application of general and organic traceability requirements. The development of other tools, such as electronic certification or databases, could also improve traceability. The Commission will consider the need for improvement in the ongoing assessment of the EU legal framework governing organic production.

[19] In 2011, nine 2-day SCOF meetings took place in Brussels.

[20] Traceability requirements laid down by the general food law apply to all food operators. The roles and responsibilities of the different actors are already clarified in Regulation (EC) No 178/2002 on the general principles and requirements of food law.

[21] EU regulations on organic production do impose a number of additional traceability requirements on organic operators (e.g. specific record keeping).

REPLY OF THE COMMISSION

84.
The Commission is making constant efforts to ensure that the control system functions properly. Recent examples are the Commission working document on controls in the organic sector, made public mid-2011, or the specific audits planned of the control systems put in place for organic farming in both Member States and in third countries as part of the FVO programme of audits for 2012[22].

Recommendation 4
The Commission has resumed specific audits on organic production in Member States. The purpose of these audits is to verify the implementation of EU regulations on organic production, with a specific focus on the implementation and functioning of the control system. Additionally the Commission has worked with the Member States to improve both the quality and timeliness of reporting on control activities in order to gather the necessary data and information, and the situation regarding reporting is now much improved.

85.
Annual reports submitted by the respective authorities in charge are the main source of information at the Commission's disposal on control systems of recognised third countries. In addition, the Commission collects, informs and checks, with all Member States, information on irregularities concerning products from third countries and the results of their investigation.

The Commission is strengthening its supervision of recognised third countries by improving the information flow (through providing a template for the annual report and formalising the internal supervision procedure) and organising audits (the FVO has included in its programme of audits 2012 one audit in a third country (India)).

As regards the existing backlog in assessing equivalence requests from third countries, the Commission has made progress with the assessment and recently included two third countries in the list (Canada in 2011 and United States in 2012). For further details see the replies to points 58–64.

Recommendation 5
The Commission is making constant efforts to strengthen the supervision of equivalent third countries[23]. Regarding the timely assessment of equivalence requests from third countries, the Commission has made progress recently.

86.
The Commission acknowledges certain weaknesses in the system of import authorisations. Therefore, between June 2012 and July 2015, the system of import authorisations granted by Member States is going to be phased out and replaced by a system of recognised control bodies, which will be directly managed and supervised by the Commission, ensuring harmonised application of the import regime at the EU borders. This new system will enter into force as from 1 July 2012.

Recommendation 6
The Commission agrees with the recommendation of the Court. The main challenge of the system of import authorisations is to ensure that the competent authorities of the 27 Member States adopt a harmonised approach[24].

However, communication and exchange of information between the main importing Member States is improving. Member States meet in an informal import group and information is exchanged via CIRCA and OFIS. Furthermore, where necessary, the Commission coordinates the action taken by Member States in respect of import authorisations granted for a particular product/operator/control body/third country if problems arise.

[22] Please see the footnote to reply to point VI (d).

[23] These efforts include the planned audits as from 2012 to third countries, providing the third countries with a template for the annual report, formalising internal procedures for supervision, and inviting third countries to participate in the training on organic farming organised under the 'Better training for safer food' initiative.

[24] The Commission will verify the checks carried out by Member States on control bodies during the audits planned in the Member States as from 2012.

European Court of Auditors

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THE MARKET FOR ORGANIC PRODUCTS IS HIGHLY DEPENDENT ON CONSUMER CONFIDENCE. ACCORDINGLY, EU LEGISLATION WAS DESIGNED TO ENSURE THAT CONSUMERS CAN BE SURE THEY ARE BUYING ORGANIC PRODUCTS WHEN THEY ARE LABELLED AS SUCH. THE SYSTEM OF CHECKS LAID DOWN IN THE LEGISLATION AIMS AT VERIFYING AND CERTIFYING THAT EACH OPERATOR IN THE SUPPLY CHAIN (E.G. FARMERS, PROCESSORS, IMPORTERS) APPLIES THE ORGANIC PRODUCTION RULES CORRECTLY. THE COURT AUDITED THE APPLICATION OF THE EU RULES THAT APPLY TO THIS SYSTEM OF CHECKS.

IN ORDER TO GAIN SUFFICIENT ASSURANCE THAT THE SYSTEM IS OPERATING EFFECTIVELY AND TO PROTECT CONSUMER CONFIDENCE, THE WEAKNESSES THE COURT HAS IDENTIFIED SHOULD BE REMEDIED BOTH AT THE LEVEL OF THE EUROPEAN COMMISSION AND IN THE MEMBER STATES.

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