



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Health and food audits and analysis

DG(SANTE) 2019-6705

FINAL REPORT OF AN AUDIT  
CARRIED OUT  
FROM 04 TO 06 MARCH 2019 and 12 TO 17 NOVEMBER 2019  
IN ORDER TO  
EVALUATE THE IMPLEMENTATION OF THE ORGANIC PRODUCTION  
STANDARDS AND CONTROL MEASURES APPLIED BY A RECOGNISED CONTROL  
BODY OPERATING IN TOGO

*In response to information provided by the competent authority, any factual error noted in the draft report has been corrected; any clarification appears in the form of a footnote.*

## ***Executive Summary***

*This report describes the outcome of an audit by the Directorate-General for Health and Food Safety in order to evaluate the application of the organic production standards and control measures applied by the Control Body (CB) in Togo. The audit was carried out in the headquarters of the CB in a European Union (EU) Member State between 4 and 6 of March 2019 and in Togo between 12 and 17 November 2019.*

*The report concludes that the Organic Production Rules (OPR) applied by the CB as regards the product categories listed in Annex IV of Commission Regulation (EC) No 1235/2008 are those for which it has been recognised by the European Commission as competent to carry out controls for the purpose of equivalence. The CB applies the most recent version of the production standard notified to the European Commission and its detailed set of procedures and work instructions to support the certification process are validated by the national accreditation body.*

*The CB largely implements its procedures but the approach taken to the certification and control of the Producer Group (PG) differs from that described in the guidelines on imports of organic products into the EU. Notably, the frequency of controls in terms of the number of farms to be inspected is not adjusted to take into account the risks of non-compliance and the controls are not always carried out at the high risk operators selected following the annual risk assessment. This undermines the ability of the CB to ensure that the PG controlled as an operator is subject to control measures of equivalent effectiveness to those referred to in Title V of Regulation (EC) No 834/2007 and that such control measures have been permanently and effectively applied such as required by Article 33(1)(b) of the same regulation.*

*There are indications that controls of the PG in Togo have been more thorough since 2018, which has resulted in numerous major non-compliances with the OPR being identified in the setup and operation of the ICS, while the adoption of more realistic yield estimates should reduce the potential for fraud. The CB has procedures in place for handling of irregularities and for the follow-up of EU notifications, although the prolonged nature of certain major non-compliances and delays in the implementation of corrective actions calls into question the ability of the CB to ensure that the operator in Togo meets the requirements of the OPR. According to the latest CB assessment, the operator has made substantial progress in this regard and it considers the major non-compliances identified previously addressed, subject to verification at the next inspection.*

*The report contains recommendations to the CB aimed at rectifying the shortcomings identified and enhancing the implementation of control measures.*

## Table of Contents

1	Introduction .....	1
2	Objectives and scope .....	1
3	Legal Basis .....	2
4	Background .....	3
5	Findings and Conclusions .....	3
5.1	Organic Production rules and Control measures .....	3
5.2	Surveillance and Re-Assessment .....	4
5.3	National Authorities and National Legal Requirements .....	4
5.4	Structure and Organisation of the Control System .....	5
5.4.1	Organisation and planning of controls .....	5
5.4.2	Off-farm input verification system .....	9
5.4.3	Handling of derogations and exemptions .....	9
5.4.4	Sampling .....	10
5.5	List of Organic Operators .....	12
5.6	Controls on Organic Production .....	12
5.6.1	Controls of operators .....	13
5.6.2	Labelling .....	17
5.6.3	Traceability .....	17
5.7	Export certification system .....	18
5.8	Irregularities and Follow-up of EU notifications .....	19
6	Overall Conclusions .....	21
7	Recommendations .....	22

## ABBREVIATIONS AND DEFINITIONS USED IN THIS REPORT

<b>Abbreviation</b>	<b>Explanation</b>
CB(s)	Control Body(ies)
CoI(s)	Certificate(s) of Inspection
DG AGRI	Directorate-General for Agriculture and Rural Development
EC	European Community
EU	European Union
GMO	Genetically modified organism
HQ	Headquarters
ICS	Internal Control System
ISO	International Organisation for Standardization
IEC	International Electro-technical Commission
OFIS	Organic Farming Information System
OMP(s)	Organic Management Plan(s)
OPR	Organic Production Rules
PG(s)	Producer Group(s)

## **1 INTRODUCTION**

The Control Body (CB) was selected for the audit by the Directorate-General for Agriculture and Rural Development (DG AGRI) of the European Commission based on a risk assessment. The audit forms part of the planned programme of DG for Health and Food Safety.

The assessment of the activities conducted at the CB's headquarters (HQ), located in an EU Member State, took place from 4 to 6 March 2019. The witnessing of the implementation of the CB's control measures in Togo, was postponed until 12 to 17 November 2019 taking into account the harvesting season of the main production of the only operator certified by the CB in Togo, consisting of a producer group (PG) with more than 5 000 producers of soya and tropical fruits. According to the CB, the members of the PG are divided into separate projects (fruit or soya) depending on the crops grown. Each of these projects operate according to their own Internal Control Systems (ICS). For clarity and consistency with the approach taken by the CB, reference to the appropriate project is made in the report where it is necessary to distinguish between soya or fruit producers within the PG.

An opening meeting was held on 4 March 2019 at the HQ of the CB. At this meeting, the objectives of, and itinerary for the audit were confirmed by the European Commission audit team and the control systems were described by the CB. A presentation of the preliminary findings of the assessment of the activities conducted at the HQ was made on 6 March 2019 at the CB headquarters.

A second opening meeting took place in Lomé on 12 November 2019 to confirm the objectives of, and itinerary for the fields visit in Togo. The audit team met with representatives of the CB in Sotouboua, Togo on 17 November 2019, during which preliminary observations of the field visits and additional clarifications were discussed. This report also takes into account the report of the CB inspection and associated documentation provided to the European Commission following the visits in Togo.

The audit of the CB will provide an input to the European Commission services' supervision of the CB under Article 33(3) of Council Regulation (EC) No 834/2007.

## **2 OBJECTIVES AND SCOPE**

The CB is recognised by the European Commission for applying in non-EU countries equivalent production rules as foreseen in Titles III and IV of Regulation (EC) No 834/2007 and control measures having equivalent effectiveness to that of the EU (Title V of Regulation (EC) No 834/2007).

Therefore, the system should give assurances that organic products exported to the EU have been produced in accordance with the CB's organic production rules (OPR) and control measures.

The objectives of the audit were:

- to verify that the OPR applied by the CB as regards the product categories listed in Annex IV of Commission Regulation (EC) No 1235/2008 are those for which the CB has been recognised by the European Commission as competent to carry out controls for the purpose of equivalence.
- to verify that the control measures recognised by the European Commission as having equivalent effectiveness to that of the EU have been permanently and effectively applied by the CB.

In pursuit of this objective, the following sites were visited:

Visits/meetings	Days	Comments
<b>Control Body</b>		
HQ	3	Opening meeting, documents review and closing meeting
<b>On-Site-Visits</b> (visits to the PG certified by the CB in Togo)		
PG	1,5	Evaluation of the ICS
Pineapple Farms	2	Field visits to members of the fruit project of the PG
Soya Farms	2	Field visits to members of soya project of the PG
Avocado / Papaya farms	1	Field visits to members of the fruit project of the PG

In terms of scope, the audit focused on the organisation and performance of the CB, in particular, on the effective implementation of the OPR and control measures in place covering the whole production, preparation and distribution chain of organic products intended for export to the EU. The audit focused on the CB's activities in Togo.

The audit team was composed of two auditors from the DG for Health and Food Safety and one representative of DG AGRI at the HQ. An additional representative from this DG participated in the visits in Togo.

### 3 LEGAL BASIS

The audit was carried out under the general provisions of EU legislation and, in particular, Article 11(4) of Regulation (EC) No 1235/2008.

Full legal references to EU legal acts in this report are provided in Annex 1 and refer, where applicable, to the last amended version. International standards referred to in this report are provided in Annex 2.

## 4 BACKGROUND

The CB has been recognised by the European Commission for applying, in non-EU countries, equivalent production rules as foreseen in Titles III and IV of Regulation (EC) No 834/2007 and control measures having equivalent effectiveness to that of the EU (Title V of Regulation (EC) No 834/2007). Consequently, the CB is included in the list of recognised CBs established in Annex IV to Regulation (EC) No 1235/2008.

## 5 FINDINGS AND CONCLUSIONS

### 5.1 ORGANIC PRODUCTION RULES AND CONTROL MEASURES

#### Legal requirements

Article 12(1)(a) of Commission Regulation (EC) No 1235/2008.

#### Findings

1. The relevant version (06/02/2019) of the CB *“Policy on Certification equivalent to Regulation (EC) 834/2007 in Third Countries”* and related OPR were notified to its accreditation body for evaluation of the equivalence. The CB included the latest version of its OPR in the annual report sent to the European Commission.
2. According to the CB’s policy the OPR is to be considered as a combination of Regulation (EC) No 834/2007 and Commission Regulation (EC) No 889/2008, as well as the different organic certification policies published on its website.
3. Certified operators are informed of changes in the OPR through the website, newsletters or (e)-mails.
4. As the CB considers the PG in Togo as a single operator, the audit team assessed the implementation of the CB’s procedures by reviewing files related to controls and certification of additional operators in other non-EU countries that are managed following the same procedures as the one in Togo.
5. The audit team also assessed the reply of the CB to the Organic Farming Information System (OFIS) notifications or requests for information following the analysis of the CB’s annual report by the European Commission. Several inaccuracies in the calculation of volume of activities, number of operators or type of control performed were noted in the data included within the annual report. Discrepancies with the information submitted to the European Commission in the annual reports were already noted during a previous audit conducted of the CB activities in Ecuador, DG (SANTE) 2017-6070.

#### Conclusions

6. The CB fulfils its obligation to notify the European Commission of any changes that are made to the measures applied which is in line with Article 12(1)(a) of Regulation (EC)

No 1235/2008. However, the information submitted within the annual report is not fully accurate.

## **5.2 SURVEILLANCE AND RE-ASSESSMENT**

### **Legal requirements**

Article 33(3) of Regulation (EC) No 834/2007.

### **Findings**

7. The CB is accredited to the International Organisation for Standardization (ISO)/International Electro-technical Commission (IEC) norm 17065 and is subject to annual surveillance audits by an accreditation body. This is in line with Article 27(5)(c) of Regulation (EC) No 834/2007. In the absence of a local office and with only one operator and all decisions taken in the HQ in a Member State, Togo has not been classified as a critical location and no field audits have been carried out there by the accreditation body as it has focussed on the CB's activities in other non-EU countries.
8. The audit team was provided with evidence of communication between the CB and its accreditation body when the OPR is modified (a cross reference table between the OPR and the EU organic regulation is submitted with relevant documents to allow the accreditation body to assess the maintenance of equivalence).
9. The non-compliances identified by the accreditation body during the last annual supervision conducted at the HQ were subject to a corrective action plan validated by the accreditation body.

### **Conclusions**

10. The CB undergoes regular on-the-spot surveillance assessment of its activity by an accreditation body, although this has not been done in Togo. This is in accordance with Article 33(3) of Regulation (EC) No 834/2007.

## **5.3 NATIONAL AUTHORITIES AND NATIONAL LEGAL REQUIREMENTS**

### **Legal requirements**

Article 11(3)(d) of Regulation (EC) No 1235/2008.

### **Findings**

11. The CB notified its activities to the Togolese Ministry of Agriculture, Livestock and Fisheries in a letter of 23 October 2013. No additional contacts were made and no specific national regulation applicable to the production, control and certification of organic

products in Togo were identified. The CB continues to monitor the evolution of the national legislation during the preparation and performance of controls.

### **Conclusions**

12. The CB notified its activities to the Togolese competent authorities and undertakes to respect the legal requirements imposed by the local authorities of each of the non-EU countries where it conducts inspections as required by Article 11(3)(d) of Regulation (EC) No 1235/2008.

## **5.4 STRUCTURE AND ORGANISATION OF THE CONTROL SYSTEM**

### **Legal requirements**

Article 33(1) and (3) of Regulation (EC) 834/2007.

#### *5.4.1 Organisation and planning of controls*

### **Findings**

13. The CB activities in Togo are organised and supervised from the HQ. The organisation of the certification process is described and supported by the CB quality manual, which includes a detailed set of procedures and working instructions.
14. The annual inspection and sampling plans are defined by the headquarters, following a risk assessment. Country coordinators are tasked with organising and following the implementation of the plan including the performance of annual and additional inspections, as well as the sampling.
15. Country coordinators manage the clients' files and the CB pool of inspectors. In the absence of a local office in Togo, the CB designates a country coordinator from another country who supervises the inspectors selected within the pool of international inspectors (approved by the HQ).
16. The HQ is responsible for issuing Certificate of Inspections (CoIs) as well as complaints or OFIS notifications.

#### *Recruitment, training and evaluation of inspectors*

17. The CB's procedures for recruitment, training and supervision of the different categories of personnel contain comprehensive requirements and mechanisms to evaluate the competences and performance of employees and inspectors. The inspectors must undergo an initial training programme and pass a test before conducting their first inspection, which is supervised. Inspectors are approved by category of products and/or for the control of processors and traders. No specific designation is given for inspectors performing the audit of the effectiveness of the ICS of the PG. When the selected inspector

does not speak the language of the auditee, interpreters are included in the inspection team.

18. The CB continuously supervises the qualification and performance of inspectors through the review of reports by an evaluation officer and carrying out check / witness audits at least every three years. Additional training is provided where a need is identified and to ensure the knowledge of inspectors is up-to-date.
19. Requirements are monitored by the HQ and recorded electronically. Evidence was provided to the audit team of recent evaluations and training (including online training) of the auditors included in the pool of international inspectors.
20. The investigations carried out by the CB following complaints or difficulties encountered with certain local offices in non-EU countries have also led to the internal identification of inspectors who did not meet the expected level of performance and one case involving an undeclared conflict of interest. The accreditation body also commented in an assessment report that consistency in qualification, training and monitoring of staff could not be ensured owing to the lack of an effective database. The CB stated that it is working on a new database to resolve several administrative constraints, including these management and control elements.

*Absence of conflict of interest*

21. The CB has procedures and requirements to prevent conflict of interest for its inspectors. Staff are required to sign an annual declaration of absence of conflict of interest and provide information related to any risky activities. Inspectors are not permitted to conduct more than three consecutive inspections at the same operator.

*Risk assessment, planning of controls and timing of inspections*

22. Annually, the CB conducts a risk assessment of each operator to design the control and analyses plan. The CB takes into account the profile of the operators and data collected during controls or provided annually by the operators within their Organic Management Plan (OMP),
23. The CB implements a generic Standard Operating Procedure for the risk assessment and a specific working instruction for the risk assessment of organic operations. The procedure establishes that each operator be controlled annually with further additional controls equivalent to at least 10 % of the number of operators certified. The procedure furthermore states that the number of unannounced inspections to be achieved is approximately 10% of the number of certified operators rather than of all the inspections. This is not in line with Article 92c(2)(c) of Regulation (EC) No 889/2008. This article requires that at least 10% of all inspections and random control visits (and not of the number of operators) are unannounced. Documentation provided after the audit showed that in 2019, the worldwide averages of both additional and unannounced inspections exceeded the minimum required in Article 92c(2)(b) and (c) of Regulation (EC) No 889/2008. However, the two averages cover over a wide variation from country to country

and for many individual countries, the required minimum was not reached. Regarding the additional inspections, see also paragraph 26 below.

24. The methodology for the risk assessment includes the parameters given in Article 65(4) of Regulation (EC) No 889/2008. Operators categorised as being high-risk following the risk assessment are subject to actions such as additional or unannounced inspections and selection for sampling.
25. The annual sampling plan established at the beginning of the year takes into account the results of the risk assessment and includes a number of samples equivalent to at least 5% of the operators certified outside the EU.
26. The audit team observed that although the CB performs the number of additional or unannounced inspections planned these were not always carried out at the high-risk operators selected following the annual risk assessment, in line with article 92c(2)(b) of Regulation (EC) No 889/2008. Additional controls were carried out for different reasons such as the follow-up on non-compliances, requests to extend the scope of certification, complaints, or the identification of new risks.
27. The CB confirmed that the timing of inspections is sometimes based on the expiry date of the certificates in other countries, but stated that for Togo, this coincides with the soya harvest which it considers a critical period to witness. Accordingly, the annual controls to the PG in Togo, have previously been carried out during the third or fourth trimester. The CB stated that following the critical issues which had come up during the 2018 audit, the additional control in 2019 was timed to take place during or after soybean sowing. Apart from this exception in 2019, the focus on the harvest of soya does not enable the inputs and cultivation practices at different stages of the crops within the PG to be observed. The CB stated that timing of inspections for fruit farmers is less important as harvesting and other cultivation practices go on during most of the year.
28. The PG is subject to a risk assessment by the CB which includes the evaluation of the ICS, specific risks and performance during the previous controls.
29. The CB confirmed that based on its group certification policy, for groups of more than 5 000 members it calculates the number of PG members to be visited as the square root of 5 000 (i.e. 71). According to the inspection reports, the CB had followed this policy during the controls of the operator in Togo and in the case of the soya project (which accounts for most members of the PG), 71 producers were visited. However, the frequency of controls, in terms of numbers of farms to be inspected is not adjusted to take account of the risk of occurrence of irregularities and infringements, for example, by applying multiplication factors depending on risk factors, as described in section 8 of the guidelines on imports of organic products into the EU<sup>1</sup>. According to the guidelines, the square root of the number of farms subject to annual inspection should be multiplied by a

---

<sup>1</sup> [https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/guidelines-imports-organic-products\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/guidelines-imports-organic-products_en.pdf)

factor of 1.4 for a high risk PG, or even by a factor of 3.0, where the ICS seriously lacks reliability and effectiveness. The suspension of the certificate for the soya project in place at the time, following the major non-compliances detected during the previous control, would indicate such a serious lack of reliability and effectiveness in the ICS. As a result, the CB does not ensure that the PG controlled as an operator are subject to control measures of equivalent effectiveness to those referred to in Title V of Regulation (EC) No 834/2007 and that such control measures have been permanently and effectively applied such as required by Article 33(1)(b) of the same regulation.

30. The CB has issued a single certificate to the operator in Togo, while the soya producers and those for fruit are organised into two separate projects, each operating under its own ICS. In the case of the soya project, the CB provided data to illustrate that the production systems, climatic conditions and the locations of the farms could be considered as similar and so satisfy the requirements of its group certification policy. This is less clear in the case of the fruit project, where the main crop is pineapples but different crops, with different production systems in other geographical locations are also included, such as papaya, avocado and mango.

*New operators previously certified by other control bodies*

31. The CB has a procedure to manage the acceptance of new operators previously certified by another CB. Under this procedure, the CB should contact the previous CB to obtain information related to the previous inspections and the status of the different sites or fields certified. Pending non-compliances are then subject to follow-up and the initial risk assessment should take into account the outcome of the last inspection.

**Conclusions**

32. The CB has detailed procedures to ensure that appropriate numbers of qualified staff are allocated to the control of certified operators and to prevent conflict of interests.
33. Although the CB plans to carry out a number of additional and unannounced controls broadly equivalent to the minimum required by Regulation (EC) No 889/2008, they are not all carried out in the high-risk operators selected following the risk assessment and the minimum is not reached in all countries where the CB is recognised and operates. This reduces the effectiveness of the control system and is not in line with Article 92c(2) of the above mentioned Regulation.
34. Although the CB follows its procedures to calculate the minimum number of farms of the PG to be inspected, the frequency is not adjusted to take account of the risk of occurrence of irregularities and infringements. Consequently, the CB does not ensure that the PG controlled as an operator are subject to control measures of equivalent effectiveness to those referred to in Title V of Regulation (EC) No 834/2007 and that

such control measures have been permanently and effectively applied such as required by Article 33(1)(b) of the same regulation.

#### 5.4.2 *Off-farm input verification system*

##### **Findings**

35. According to the CB's OPR, operators can only use the active substances listed in its annexes or in the annexes of Regulation (EC) No 889/2008. This is verified during the evaluation of the information included in the OMP submitted annually by operators and by inspectors during controls and additional visits.
36. The audit team noted that the verification at the operator in Togo focusses mainly on seeds, planting materials, plant protection products and fertilisers.
37. The use by growers of calcium carbide for flower induction in pineapples in Togo was identified following the replacement of an inspector in 2017. This was notified to the CB HQ and categorised as a non-compliance. The CB noted that it considered it fair to give the fruit project of the PG a transitional period to find alternatives and during the European Commission audit in March 2019, the CB presented a final communication to the operators that they must stop using it and find an alternative. Some continued use was found by the CB during controls in August 2019 and immediate correction of the practice was required. Evidence that calcium carbide was used was seen on farms visited by the audit team and confirmed by the farmers and CB inspectors. The date it was last used was difficult to determine as this was not recorded. One of the farmers concerned stated in the presence of the audit team that calcium carbide was last used in August 2019 and that he had been informed by the ICS that it should no longer be used. According to the CB, some members confirmed its use until 30 September 2019.
38. The CB inspectors checked the storage area in several of the farms visited to confirm that calcium carbide was not kept on the farm.

##### **Conclusions**

39. The CB applies its production rules to off-farm input products, and measures were taken, albeit with some delay to prevent the continued use of an unauthorised substance in Togo.

#### 5.4.3 *Handling of derogations and exemptions*

##### **Findings**

40. The CB has procedures in place to handle derogations. The derogations granted in Togo mainly relate to retroactive recognition of a period as being part of the conversion period from non-organic to organic status, mostly for fallow land.
41. For the PG in Togo, the relatively small plots (less than 1ha) allocated to organic production change regularly. Where new plots are included as organic, the president of the producer organisation in the village signs a declaration of the use of the plots and treatments applied during the last three years and this is then verified by the inspectors of the ICS. The CB stated that it does not recognise these declarations when granting retroactive recognitions. It further noted that in 2018, it only granted retroactive recognitions for those plots which were previously certified as organic by another CB as part of another PG. The CB and ICS verify during controls that crop rotations do not affect the organic status of the plots.

### **Conclusions**

42. The CB grants derogations in accordance with its production rules.

#### *5.4.4 Sampling*

### **Findings**

43. The annual sampling plan is established at the HQ taking into account the risk profile of the operators, risks associated with the products and processes, as well as any specific risks for the countries covered. The CB takes a number of samples at least equal to 5% of the total number of operators under its control. Although the Togolese operator is only one out of many operators certified by the CB, it was subject to regular sampling due to its size and relative importance to its business. All the analyses carried out were to detect the use of unauthorised pesticides.
44. The sampling procedure is detailed and describes the selection of samples to be drawn, the sampling methods and the necessary follow-up if the presence of an unauthorised substance is detected. During the controls, inspectors can call on the country coordinator and evaluation officer and a specialist in residues analyses at HQ for support and help with specific questions.
45. The CB has the samples analysed at laboratories that are accredited to ISO/IEC 17025 and employ analytical methods covering most of the active substances that can be used on the certified products.
46. In case the results of the first sample raises suspicion that an unauthorised substance has been applied or that organic and non-organic products could be co-mingled, the CB stated that it applies Article 91(2) of Regulation (EC) No 889/2008. For non-EU countries, this is relatively simple as no CoIs are issued for the products concerned until the case is clarified. The CB can perform a second analysis (in particular, if the producer objects to

the first sample result) before taking a final decision on the organic status of the batch or field concerned, and if sanctions should be applied.

47. The audit team observed that even though the minimum number of samples required is taken every year, they were regularly delayed or a different analysis to the one planned was carried out. The CB stated that more than the minimum number of samples are tested each year and that the change in matrix or operator to be sampled can also be for reasons which make the programme more meaningful. In addition to the annual planned samples, inspectors can also take samples in case of suspicion. The CB informed the audit team that it can assess the effectiveness of its sampling programme and does monitor and evaluate the changes of sampling procedures and gives training and feedback where appropriate.
48. The inspectors did not have the necessary sampling equipment before the beginning of the controls in November 2019 preventing them from taking any samples as planned or on suspicion during the first week of controls.
49. The CB may ask laboratories to perform residue analyses on composite samples (produced by aggregating parts of samples coming from different farmers). If unauthorised substances are found the remaining parts of the original samples are individually analysed.
50. Where the analytical results for aggregate samples of products from more than one member of the fruit or soya project are positive and the investigation does not identify the source, the CB can allow the products to be sold as organic subject to certain conditions. These include that residues are found in less than 1% of (field) samples; that no residues are detected in batches containing products from the previously sampled products and; provided the ICS improve its performance.
51. The CB procedures recommend a distribution of type of samples taken for operators certified in non-EU countries equal to:
  - 75% plant tissues, mainly for pesticide residue testing
  - 20% (semi)finished products, mainly for pesticide residues testing
  - 5% other types (e.g. beeswax, soil, fertilisers, etc.)

## **Conclusions**

52. The CB has appropriate sampling procedures in place taking into account the risk assessment and takes more than the minimum number of samples each year, although the matrix, timing and location of sampling may be changed for various reasons. The actions taken by the CB to prevent the marketing of products where the results of the first sample raises doubts about their organic status are in accordance with Article 91(2) of Regulation (EC) No 889/2008.

## 5.5 LIST OF ORGANIC OPERATORS

### Legal Requirements

Article 11(3)(e) of Regulation (EC) No 1235/2008.

### Findings

53. The CB publishes on its website a list of certified operators and a list of revoked or suspended certificates. The first list contains the names of operators, the country where they operate as well as the certification scope (i.e. crop production – individual or group with ICS, processing or trading) and the expiry date of the certificate. Details of the products covered by the certification are provided on the certificate issued to the operator and a list of farmers in the PG is annexed to the certificate.
54. The audit team observed that the website was not updated promptly to take account of the suspension of the certificate for the operator in Togo following the control performed by the CB in August 2019 (identifying major non-compliances and deficiencies in the ICS for both the soya and fruit projects). Furthermore, at the time of the audit in November 2019, the listing had not been amended to show that the operator had regained its certification for the fruit project but not for the soya project.

### Conclusions

55. The CB publishes on its website a list of operators subject to the control system, although in the case of the operator in Togo, its certification status and scope was not updated promptly<sup>2</sup>.

## 5.6 CONTROLS ON ORGANIC PRODUCTION

### Legal Requirements

Articles 23, 27(13) and 33(1) and (3) of Regulation (EC) No 834/2007.

Title III of Regulation (EC) No 889/2008.

### Findings

#### 5.6.1 Controls of operators

56. In between the European Commission audit conducted at the HQ in March 2019 and the evaluation of the implementation of controls in Togo, the CB conducted a control of the PG (August 2019). This control identified many major non-compliances and that certain

---

<sup>2</sup> In its response to the draft report the CB stated that the problems keeping the list of certified operators up-to-date have been resolved and that the CB in any case would not issue any CoI to a suspended operator.

corrective actions planned for the resolution of non-conformities noted during the previous audit had not been fully implemented (see Section 5.8.1.). This led to the suspension of the operator's certificate.

57. Following an assessment by the CB of the corrective action plan and annexes from the operator, the CB partially lifted the suspension and re-authorised the marketing and issuance of CoIs for tropical fruits. The activities relating to soya beans remained suspended pending the results of the inspections planned for November 2019.
58. The European Commission audit team accompanied two CB inspectors during their controls at the PG HQ (verification of the two ICS - tropical fruits and soya, the central warehouse, the accounts and export records) and during the inspections of farmer members of the two projects.
59. The CB inspectors demonstrated a good level of professionalism and assertiveness in the performance of the controls and had a sound knowledge of the OPR. They managed well the tensions resulting from an alleged conflict of interest of one of the local interpreters and the recent suspension of the certificate. The manager of the PG expressed difficulties in understanding some of the CB decisions and claimed they were influenced partly by translation issues.
60. The sample of farms to be visited was selected by the inspectors following the CB instructions, which specify that approximately 75% of the farms should be chosen based on risk (e.g. large plots, risky crops, not yet visited by the ICS) with the remainder selected randomly.
61. Overall, 71 farmers producing soya beans were controlled by the CB. Of these, 17 chosen on the basis of risk were changed for those in close proximity to other farms visited and four of the 13 farms chosen randomly at the start of the control were replaced by the PG. As a result, only 37 of the farms originally selected on the basis of risk were visited, accounting for 52% rather than the 75% in the CB procedure. The CB noted that a decision taken during the inspection to give the ICS 24 hours notice of the farms to be inspected, helped to ensure that the farmers selected were present for the controls. The CB noted that this prior-notification would offer the ICS limited opportunity to 'clean up' beforehand. While the CB acknowledged the importance of risk-based selection of farmers, it stated that for such relatively homogenous groups, the role of risk-based sampling should not be overestimated, given that most of the factors used for sample selection were based on information in the farmers list (e.g. size of farm, quantity of soy delivered during previous seasons, discrepancies between information from farmers and the ICS, presence of high risk crops). According to the CB, this is supported by the results of the inspection which showed the risk-based sample was not significantly different from the randomly selected farmers and that most of the serious non-conformities found during previous inspections were actually detected at randomly selected farmers, rather than those selected on the basis of risk.

62. During the assessment at the PG HQ, the CB inspectors covered the different organisation and trading arrangements as well as the functioning of the two ICSs. Verification of accounting information related to the organic products was also done.
63. According to the CB inspectors, they checked the results of the self-monitoring by the PG for pesticides in each consignment intended for export to the EU during their inspection in August 2019 and found non-compliant results which had not been notified to the CB. The CB stated that this was one of the reasons why it stopped exports of organic soya from Togo following this inspection. Information provided by the CB confirmed the statement made by the manager of the PG that the affected consignments had been downgraded and sold as conventional products. During the current audit, the CB inspectors focussed on the corrective actions taken to rectify this non-compliance. There had not been any exports of organic soya products to the EU in the meantime. The inspectors noted as a non-compliance that the PG had not identified the root cause for the pesticide residues.
64. The CB inspectors conducted a visit to the plots and premises of the selected members of the fruit and soya projects. Although the CB inspectors correctly covered the verification of the documents and interviewed the producers on their cultural practices, the absence of registers for deliveries and delivery notes or labels impeded the verification of the origin and specifications of the seeds and fertilizers. The CB stated that the only input being distributed to farmers in the fruit project is very low volumes (5 bags each to some of the farmers) of compost obtained from waste from the juice factory. It considered that this does not need to be recorded. For the soya project, seeds were last distributed in 2018 – the CB stated delivery notes were available, although these were not seen by the audit team.
65. The audit team observed that the presidents of the producer organisations met carried out many activities including coordination and communication with farmers, distribution of inputs to farmers (bags, seeds, fertilisers), record keeping (on behalf of illiterate farmers) and organisation of the harvest. The CB inspectors interviewed the presidents met but this was not formalised and according to the CB, their role is not considered as being important in the ICS. The presidents of the producer organisations visited by the audit team were included in the farmer samples, so the performance of their farming activities and awareness of the organic principles and requirements were assessed.
66. The CB inspectors considered the risks of parallel production in the fruit and soya projects, taking into account the different land use and growing practices. For the fruit project, the pineapples are mainly produced on single plots, although the farmers may rent small plots for other crops. The audit team saw no evidence that the producers visited were practicing parallel production of pineapples. The PG harvests the fruit itself from the organic plots which minimises the potential for organic and non-organic products to be co-mingled. In some cases, family members may produce soya conventionally on their own plots. In cases seen by the audit team, the CB inspectors verified that the arrangements for production and storage of products were separate. This included visits

to private dwellings and storage places to verify the separation of production. In two cases, the organic plots were in conversion so the crop was sold as conventional products.

67. During the field visits, the CB inspectors paid attention to the plots around the organic ones and especially those where cowpea (*Vigna unguiculata*) is grown owing to the risk of pesticide use on this crop. The farmers were interviewed about other plots which were located some distance away, although these plots were not visited. In the report of the CB inspection for the soya project, an example is cited of one of the farms visited which had applied pesticide to cowpea. A major non-compliance was issued as the PG does not seem to have a reliable system for preventing farmers from planting conventional rotation crops on organic plots. Corrective actions to address this were proposed by the PG. For the fruit project, a major non-compliance was issued as the ICS did not pay attention to the source / organic status of seeds used for intercropping in pineapples and, in particular if the maize was genetically modified.
68. The CB verified that the internal inspectors (i.e. 32 for the soya project) are trained and subject to supervision by the ICS manager. The performance of seven of these inspectors was assessed during witness audits. In the CB inspection report for the soya project, major non-compliances were raised concerning shortcomings in the supervision of the internal inspectors (27 of 32 were supervised) and in their training. In the report of the CB inspection for the fruit project, a major non-compliance was issued regarding the training of ICS inspectors, which was based on the results of witness audits of two ICS inspectors. Among the issues raised was the need to consider the outcome of the previous inspections, in particular to verify the effectiveness of corrective actions taken to address non-compliances, to request evidence to verify farmer statements and to cover all questions in the inspection report.
69. During the visits, the CB inspectors verified the measurements of the plots made by the ICS inspectors using GPS. According to the inspection reports provided by the CB, the progress made in mapping the plots by GPS was acknowledged but a major non-conformity was issued as the mapping of the total farm area under organic production had not yet been completed and it has been wrongly captured in some cases. Furthermore, the CB raised a major non-conformity concerning non-declaration of a number of fields with soya or other crops. The PG proposed corrective actions to address these issues.
70. The CB inspectors examined the approach taken by the ICS inspectors to calculate potential yields, and they also verified this during their own farm controls.
  - For soya, the CB acknowledged that there is always space for improvement in yield estimates and noted the training it had carried out. More specifically, it provided details of work it had carried out in 2018 to arrive at a more reliable yield estimate for the soya project. The results of its own surveys and production data were supplemented by a review of crop yields established by other organisations and projects and in correspondence with other CBs. The resulting yield estimate was 1.0 t/ha less than that claimed by the PG. According to the CB, the PG

accepted this revised yield estimate and this is considered by the CB to have substantially reduced the scope for fraud.

- For the fruit project, the CB inspectors issued a major non-compliance for the ICS for a number of reasons including the methodology for yield estimates being missing. It issued a further major non-compliance as it considered some of the theoretical estimates for pineapple yields to be unrealistic as they did not take into account the impact of agronomic factors such as the low level of fertilisers or other measures to maintain soil fertility. According to documentation provided by the CB, the PG maintained that experience supported a yield of 40 t/ha, slightly lower than the theoretical yield questioned by the CB. The PG undertook to carry out a detailed study to determine a reliable yield estimate. For pineapple, the CB noted that the risk of fraud if yields are over-estimated is offset by the fact that demand is lower than supply. Furthermore, the PG harvests the pineapples itself, not relying on the farmers to deliver them, which reduces the risk of non-organic pineapples entering the supply chain.
  - For avocados, the CB issued a major non-compliance for unrealistic yield estimates which it stated, point to a general issue for the ICS that most are based on theoretical yields, rather than reality – for example, a fire had destroyed many of the trees in the plantation visited, with younger ones left unlikely to produce a high yield. According to documentation provided by the CB, the PG revised its procedures for estimating yields.
  - According to the CB, it requires buffer zones to be established in cases where there is a risk of pesticide drift from neighbouring fields. However, it noted that a buffer zone in a 2 ha plot would amount to approximately 1.5% of the crop area in the plot, which given the relatively few buffer zones needed, means the crop in them would amount to 0.06% of total group production. The CB stated that this is insignificant when considering that other factors could affect yield estimates by a factor of two.
71. The audit team noted that certain non-compliances detected in earlier controls were still present, despite undertakings given to address these in corrective action plan (burning of crop residues, waste management, insufficient buffer zone). This was raised as a non-compliance in the CB inspection report for the fruit project as ‘non-compliances detected by the ICS but no follow-up given’. According to the CB, many such issues were identified previously but the decreased number reflects improvements made in the performance of the ICS (see points 90, 91 and 92).
72. The CB HQ and its inspectors noted that the sanction catalogue of the ICS establishes the levels of seriousness and sanctions for non-compliances. The use of genetically modified organisms (GMOs) results in the current production being downgraded and the producer being excluded for one season. The CB acknowledged that the field should also be downgraded where GMOs have been used. It noted that no cases of GMO use have been

identified. For herbicide use, the field is downgraded to conventional. The sanction catalogue provides for producers to be excluded if non-compliances recur.

### 5.6.2 Labelling

73. The CB requires the operator to provide information on the packaging and labelling of products at the different stages of production, transport and processing, as well as the information included on labels, and to update this annually. These elements can be crosschecked during the verification of information provided by the operator for the issuance of CoIs.
74. During the previous control (August 2019), the operator was found using bags referring to another CB. A major non-compliance was recorded and the corrective action plan proposed by the operator and validated by the CB was to order new bags with the correct CB code before the next harvest. The new bags were seen during the audit.

### 5.6.3 Traceability

75. A traceability system from harvest to export is implemented by the PG. The CB inspectors checked the implementation of this system at the various stages of production and commercialisation.
76. A mass balance calculation, comparing the quantities sold as organic to the EU and the quantities purchased by the PG over a defined period of time, was carried out for products such as pineapples and papayas. These volumes were evaluated as equivalent on the basis of the documents available at the PG headquarters in Lomé.
77. The assessment of the traceability system did not include verification of the traceability and use of products harvested from the buffer zones. According to the CB, this is not done because it estimates the crop within buffer zones to account for 0.06% of total group production, which is insignificant when compared to the uncertainty of the yield estimates which can vary by a factor of two (see point 70).
78. In its inspection report for the soya project, the CB issued three major non-compliances for insufficient traceability: the communication of buying / handling procedures; control of bags; and the lack of controls over the buying activities of internal inspectors.

### **Conclusions**

79. The CB has set a target for the selection of farms to be controlled on the basis of a risk assessment, although practical constraints affected the ability to achieve this in practice in Togo. However, this is mitigated by the fact that the results of the inspections of the risk-based or randomly selected farms belonging to the relatively homogenous groups in Togo do not differ significantly.
80. Improvements made in the controls of the operator in Togo since 2018 are evidenced in the identification of previously undetected use of non-authorized inputs, the

adoption of more realistic yield estimates, which have reduced the potential for fraud, and in the identification of major non-compliances in the established ICS and in its implementation. Notwithstanding certain deficiencies identified, the controls carried out by the CB provide a mostly satisfactory basis for assessing the performance of the ICS, although their ability to ensure the OPR are respected is weakened given the prolonged nature of certain non-compliances (see section 5.8.1) and shortcomings identified in the supervision and training of internal inspectors for the soya project.

81. The control measures implemented by the CB provide for the traceability of organic products at all stages of production, preparation and distribution and attention is paid to the risks of parallel production.

## **5.7 EXPORT CERTIFICATION SYSTEM**

### **Legal Requirements**

Article 13 of Regulation (EC) No 1235/2008.

### **Findings**

82. The CB procedures require documentary checks before CoIs are issued and to that effect, the operator must provide CB HQ with all the necessary documents (commercial, transport and financial documents and when available, the results of analyses). This is in line with Article 13(4) of Regulation (EC) No 1235/2008. Physical checks of the consignments are not carried out by the CB as appropriate according to the results of a risk assessment. This is not in line with Article 13(4) of the above mentioned regulation.
83. The CoIs are issued by a dedicated team in the CB HQ. The audit team reviewed the records for several CoIs and the checks performed. The checks covered the completeness of the documentation provided and verified that traceability is ensured and that the total volume of products exported per year does not exceed the maximum potential of production based on the estimated yield.
84. All of the required documents were available for the files checked by the audit team. However, some differences between the volumes of the two varieties of pineapples purchased and sold and the use of a packer based in Burkina Faso had not been detected by the CB.
85. The verification that a producer or the PG does not exceed their potential production is carried out using annual figures, whereas repeated assessments over a shorter time-period would enable anomalies to be better detected. Furthermore, sales to other markets than the EU are not taken into account in the calculations. The stage of the crops for products such as pineapples (biennial crops) is also not taken into account.

## Conclusions

86. The lack of physical checks, as appropriate according to the results of a risk assessment, and weakness in the verification that producers and the PG do not exceed their potential production, means that the system for issuing CoIs for organic products for export to the EU does not fully comply with Article 13 of Regulation (EC) No 1235/2008.

## 5.8 IRREGULARITIES AND FOLLOW-UP OF EU NOTIFICATIONS

### Legal Requirements

Articles 30 and 33(1) and (3) of Regulation (EC) No 834/2007.

### Findings

#### 5.8.1 Handling of irregularities by the CB including complaints received

87. The CB has a working instruction on how to handle non-compliances. The inspector records the findings, but it is for the evaluation officer to define if it is a non-compliance and its level of seriousness. The designated person responsible for certification determines any consequences.
88. There is a procedure to deal with the ‘*risk of non-compliant products being sold as organic*’ and ‘*severe violations*’. Except for cases where there is an obvious risk of non-compliant products being sold as organic where immediate action is taken, the CB’s work instruction recommends giving two weeks for the receipt of corrective actions or to appeal the decision of the certification officer
89. The audit team reviewed the records related to previous inspections in Togo and the handling of the non-conformities detected.
90. Following the controls carried out from 5 to 16 November 2018, the PG received the list of non-conformities (including major non-conformities such as the use of unauthorised pesticides, insufficient description and location of farms, poor estimates of yields and volumes) on 20 December 2018. There followed an exchange of corrective action plans and assessments by the CB until the plan was validated on 12 February 2019. Verification in the field was then carried out during the following controls from 8 to 16 August 2019. According to the reports provided to the audit team, 4 out of the 10 major recommendations for the fruit project were addressed whereas none of the 25 major non-conformities identified in the soya project in November 2018 had been fully addressed by the time of the inspection and 3 minor non conformities were upgraded to major. For fruit, the main outstanding non-compliances concerned the description of farms, crop rotation, fertilisers and burning of crop residues.
91. During the November 2019 inspections, both at the operator’s HQ and on the farms, it was evident that many of the corrective actions proposed by the operator to the CB HQ

following the suspension of the certificate after the control in August 2019 had not been implemented (see section 5.6.1.). In the CB reports of the November 2019 inspection, 8 major non-compliances were raised for the fruit project and 19 major non-conformities and 6 minor non conformities were identified for the soya project. While the CB acknowledged that the non-compliances had not all been corrected at the time of the audit, it noted substantial progress had been made in addressing long standing issues, such as the GPS mapping of fields, which was key to supporting more reliable estimates of potential production. It further stated that it considered its actions, to lift the suspension of the certificate, appropriate in light of the requirements of Article 30(1) of Regulation (EC) No 834/2007 that suspension should be proportionate to the relevance of the requirement that has been violated and to the nature and particular circumstances of the irregular activities.

92. According to the CB's assessment of the corrective actions taken by the operator, by 15 February 2020, all major non-compliances for both the fruit and soya project were either closed or considered to be adequately addressed, subject to verification of implementation at the next inspection. The audit team noted that the operator had provided evidence of corrective actions in the form of documentation, although this was not feasible in some cases.

#### *5.8.2 Follow-up of EU notifications*

93. The CB has a work instruction to deal with notifications issued and managed by OFIS. The audit team reviewed the notifications related to Togo and noted that the CB correctly investigated and reported the findings and actions taken against the products or producers concerned.
94. The 30-day deadline for replies was only exceeded in one case in which another CB was responsible for the primary producer and this led to delays in collecting the necessary information. The CB has since amended its work instruction to require an answer to be provided within 30 days, even if the investigation is not yet finalised.

#### **Conclusions**

95. The CB has procedures in place for handling of irregularities and for the follow-up of EU notifications, although the prolonged nature of certain major non-compliances and delays in the implementation of corrective actions by the operator in Togo calls into question the ability of the CB to ensure that it meets the requirements of the OPR. According to the latest CB assessment, the operator has made substantial progress in this regard and the major non-compliances identified previously are considered as addressed, subject to verification at the next inspection.

## 6 OVERALL CONCLUSIONS

The OPR applied by the CB as regards the product categories listed in Annex IV of Commission Regulation (EC) No 1235/2008 are those for which it has been recognised by the European Commission as competent to carry out controls for the purpose of equivalence. The CB applies the most recent version of the production standard notified to the European Commission and its detailed set of procedures and work instructions to support the certification process are validated by the national accreditation body.

The CB largely implements its procedures but the approach taken to the certification and control of the PG differs from that described in the guidelines on imports of organic products into the EU. Notably, the frequency of controls in terms of the number of farms to be inspected is not adjusted to take into account the risks of non-compliance and the controls are not always carried out at the high risk operators selected following the annual risk assessment. This undermines the ability of the CB to ensure that the PG controlled as an operator is subject to control measures of equivalent effectiveness to those referred to in Title V of Regulation (EC) No 834/2007 and that such control measures have been permanently and effectively applied such as required by Article 33(1)(b) of the same regulation.

There are indications that controls of the PG in Togo have been more thorough since 2018, which has resulted in numerous major non-compliances with the OPR being identified in the setup and operation of the ICS, while the adoption of more realistic yield estimates should reduce the potential for fraud. The CB has procedures in place for handling of irregularities and for the follow-up of EU notifications, although the prolonged nature of certain major non-compliances and delays in the implementation of corrective actions calls into question the ability of the CB to ensure that the operator in Togo meets the requirements of the OPR. According to the latest CB assessment, the operator has made substantial progress in this regard and it considers the major non-compliances identified previously addressed, subject to verification at the next inspection.

## 7 RECOMMENDATIONS

No.	Recommendation
1.	<p>Ensure that the results of the risk assessment are used to decide the nature and intensity of the announced and unannounced inspections, as required by Article 92c(2) of Regulation (EC) No 889/2008, and in particular that</p> <ul style="list-style-type: none"><li>a) Controls take place at the appropriate and planned times.</li><li>b) The minimum number of additional, planned risk-based inspections is reached in each of the countries for which the CB is recognised and active</li><li>c) The minimum percentage of inspections, carried out unannounced, is reached in each of the countries for which the CB is recognised and active</li></ul> <p><i>Recommendation is based on conclusion No 33</i></p> <p><i>Associated findings Nos 23, 26 and 27</i></p>

No.	Recommendation
2.	<p>Ensure that producer groups controlled as an operator are subject to control measures of equivalent effectiveness to those referred to in Title V of Regulation (EC) No 834/2007 and that such control measures have been permanently and effectively applied such as required by Article 33(1)(b) of the same regulation. In particular that:</p> <ul style="list-style-type: none"> <li>a) The minimum number of farmers are selected for inspection during the annual controls using a risk multiplier to reflect different risk factors across similarly sized PGs. An example of an acceptable methodology for determining a risk-orientated sample is described in section 8.E.17 of the 2008 EU guidelines on imports of organic products into the EU;</li> <li>b) The CB procedure for selection of individual farmers, based on risk is fully implemented in Togo.</li> </ul> <p><i>Recommendation is based on conclusions Nos 34 and 79</i></p> <p><i>Associated findings Nos 29, 61</i></p>
3.	<p>Ensure that the procedure for the issuance of CoIs for products exported to the EU is implemented in an effective manner to guarantee the fulfilment of Article 13 of Regulation (EC) No 1235/2008, and in particular that:</p> <ul style="list-style-type: none"> <li>a) Maximum quantities that can be certified for export are based on correctly calculated and verified production estimates.</li> <li>b) Physical checks are carried out where appropriate according to the results of a risk assessment.</li> </ul> <p><i>Recommendation is based on conclusion No 86</i></p> <p><i>Associated findings Nos 82, 844 and 85</i></p>

The Control Body's response to the recommendations can be found at:

[http://ec.europa.eu/food/audits-analysis/rep\\_details\\_en.cfm?rep\\_inspection\\_ref=2019-6705](http://ec.europa.eu/food/audits-analysis/rep_details_en.cfm?rep_inspection_ref=2019-6705)

## ANNEX 1 – LEGAL REFERENCES

<b>Legal Reference</b>	<b>Official Journal</b>	<b>Title</b>
Reg. 1235/2008	OJ L 334, 12.12.2008, p. 25-52	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
Reg. 889/2008	OJ L 250, 18.9.2008, p. 1-84	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
Reg. 834/2007	OJ L 189, 20.7.2007, p. 1-23	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