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EU Regulation amendments may confuse rather than clarify

The latest amendment (EC 392/2004) to the EU Organic Regulation, which was published in the official journal of the EU on 3 March 2004, has received a mixed reception. Its confusing language and in places disappointing stand has been described as one step forward and two steps back.

Since its formation in 1991 the EU Organic Regulation has been through several amendments. The most recent round of amendment, however, seems to have created as much confusion as it attempted to clarify.

One of the recent amendments states that any operator who produces, prepares or stores a product, or imports a product from a third country, shall notify this activity to the competent authority and submit the undertaking to the inspection system. However, Member States may exempt operators from this requirement if they sell such products directly to the final consumer or user and do not produce, prepare or store any product, or import such products from a third country, other than those in connection with the point of sale. Unlike the other amendments that came into force a week after publication, this amendment will come into force in July 2005.

As in many cases with EU legal texts the language used in the amendment is ambiguous and interpretations vary depending on who is reading it. However, TOS believes that the new

rules probably mean that:

- Wholesalers, including those who do not 'prepare' products and those who just store the product, will now have to be inspected.
- Retailers will now have to be inspected, unless a Member State officially regulates an exemption. It is anticipated that many Member States will exercise this option and that this may create considerable confusion in the market place as it will not be clear how conditions differ for retailers between the Member States.
- All retailers who 'prepare' produce will have to notify their certification body/competent authority and submit to an inspection. However the meaning of 'preparing' is unclear. For instance, has a retailer of fresh fruit and vegetables 'prepared' the produce if they are offered unpacked from open boxes or poured into another box, or does this requirement refer to practices like cutting meat and dividing cheese? It is inevitable that this regulation will be interpreted in different ways by the Member States and certification bodies.