

Sector Briefing on Commission Review of the Organic Regulation

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With this briefing IFOAM EU provides an overview of the first assessment of the Commission legal proposal for a new organic regulation published on 24 March 2014. It is a special service of IFOAM EU to its members. It should be noted that this is only a first analysis and that the internal consultation process within IFOAM EU is still under way. Further important or crucial points will be discovered during the ongoing analytical work of the proposal.

As IFOAM EU member, you are invited to contribute to the position of IFOAM EU on the legislative proposal by participating in our consultation process through your national delegate to the IFOAM EU Council. The consultation foresees the following steps:

- *Collecting input until 24 April from membership. Members are invited to contact their national delegate to the IFOAM EU Council with comments on the Commission proposal.*
- *An internal IFOAM EU Council meeting on April 28 will discuss the different input received from membership*
- *A [stakeholder conference](#) on April 29 in Brussels - open to the membership and the organic sector - to discuss together with Commission and members states representatives, the Commission legal proposal*
- *An in-depth analysis and positioning, which takes into consideration the different inputs of members, is planned to be adopted in May 2014.*
- *Based on above, suggestion for amendments of the Commission proposal will be developed*

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General Overview Review

Following the media briefing sent to the IFOAM EU membership (e-mail of 23.3.2014) we want again to give a general overview for better understanding of the process, now followed by more details.

Political Review Process

In 2012 the Commission decided to start a process to review the current legislative and political framework for organic farming. The Commission completed an impact assessment process in summer 2013 and from autumn 2013 has been working on a proposal for a new regulation to replace the current Regulation (EC) No 834/2007.

On 24 March 2014 the Commission published its legislative proposal for a new regulation ([COM \(2014\) 180](#)). Complemented by annexes, the impact assessment report and a new European Organic Action Plan ([COM\(2014\) 179](#)). The same day it has been presented to the Council and DG AGRI Commissioner Ciolos held a press conference on 25 March to present the Commission proposal to the public.

It must be underlined that this is only the Commission legislative proposal and not yet the new organic regulation – the final legislation must be agreed in a co-decision process between the European Parliament and the Council.

Further steps:

- The *legislative proposal for a new regulation* must be discussed in a [co-decision process](#) between the European Parliament and the Council. However, with the parliamentary election in May 2014, the European Parliament will only deal with the issue by autumn 2014. The running Greek EU Presidency which presides the Council until the end of June already started to schedule meetings with member states to find first common positions. According to the proposal the new regulation will enter into force in July 2017.
- The *EU Organic Action plan* has been adopted by the European Commission and does not have the status of EU legislation, it is a strategy instrument and although Council and Parliament will most likely comment on it, it does not undergo co-decision. Therefore it is not binding for member states and Parliament.

Commissions objective

We understand that three drivers convinced the Commission of the need to start the revision process:

- The risk that organic farming and production could become victim of its own success due to the significant growth of the market. According to the Commission the current legislative framework no longer meets the needs neither of the sector nor of consumers and consequently needs to be revised.
- The risk of losing consumer's trust. This pushed the Commission to focus on a principle-driven approach to the new regulation.
- The [report](#) of the European Court of Auditors of 2012 that revealed some weaknesses in the organic control system.

IFOAM EU position in process

IFOAM EU has provided different positions during the review process in 2012 and 2013 (see for example the official papers from 2013 on the [organic regulation options](#) and on the [action plan](#)).

Based on these positions, a **preliminary positioning** on the freshly published legislative proposal has been made for this document.

However, now with the legislative proposal of the Commission the organic movement must build its opinion on how to assess this proposal. Therefore IFOAM EU members are invited to actively participate and to contact their national delegate in the IFOAM EU Council with comments on the regulation proposal and on the provisional position, as outlined in the introduction on page 1.

IFOAM EU in general shares with the Commission the common objective to develop organic production based on its principles and improve harmonised implementation of the organic regulations. Therefore, IFOAM EU intensively contributed to the review process outlining many suggestions as to how organic can be made fit for the next decade. While IFOAM EU clearly supports the Commission intention, it disagrees with many parts in its implementation, such as the speed of reducing exceptional rules.

However, IFOAM EU was strictly opposing to introduce a new organic regulation with a new structure from the beginning, as a new regulation came just into force in 2009. A new regulation means the need for new legal interpretation, extra costs for the sector and the risk of technical shortcomings in the new text – which indeed became reality.

IFOAM EU and many other stakeholders were and still are in favour of a focused improvement of the current legislation instead of a complete legal overhaul and a new regulation. Anyway, political reality is different, forcing stakeholders including IFOAM EU to deal with the draft presented by the Commission.

The Commission proposal – what is in?

A first Commission proposal was leaked to public in January 2014, allowing preliminary analysis. Previous analysis has been now updated in the light of the Commissions legislative proposal. Slight improvements compared to the first draft can be noted. Anyway, the main concerns as outlined above are still relevant.

Structure

The proposed structure is totally different from the current one. In 2007 the structure of the stand- alone Regulation (EEC) No 2092/91 was changed in favour of a system of three regulations: one basic regulation which sets the main and fundamental principles and requirements (EC No 834/2007) and two implementing Regulations (EC No 889/2008 and No 1235/2008) that set out the implementing rules and which have been subsequently amended several times. The current proposition would come back to a single regulation, complemented with annexes detailing the production rules. It will again take a lot of efforts and extra costs by the organic stakeholders to adapt to such large structural changes. As we have seen with the former revision, changes like that create inconsistencies and/or mistakes.

Most of the production requirements are moved to annexes and annexes can be amended or supplemented by adopting

- [Delegated](#) acts (where the basic legal act refers to article 36, e.g. for conversion rules) or
- [Implementing](#) acts (where the basic legal act refers to article 37, e.g. technical details for establishing a database for plant reproductive material).

Delegated and implementing acts haven been introduced in EU legislation under the EU Lisbon treaty und replace the former „regulatory procedures“.

A **delegated act** can be adopted by the Commission without formally involving the Standing Committee on Organic Farming ("SCOF", which is a body representing all member states and where decisions are made regarding the current regulation) and if the European Parliament and the Council don't react within 2 months, it will be published.

An **implementing act** is adopted with formal involvement of the Standing Committee (=member state representatives), but without any veto right from the Parliament.

Regulation (EC) No 834/2007 represents today a solid pillar and a stable reference point. In contrast the new structure will enable changes to be made to important parts by the Commission alone.

IFOAM EU preliminary position

- IFOAM EU proposes to keep major issues in the general part of the regulation that can only be amended with approval of the European Parliament and the Council.

Scope

The proposed scope is much less clear than before, it refers to [Annex I](#) of Treaty of functioning of the European Union and can create misinterpretations. There is no clear distinction between primary products and processed products, even if the regulation sets specific rules for each of the two categories.

It is unclear if the possibility to establish national rules for out-of-scope animal species remains. In this case it won't be possible to have e.g. organic certified deer or rabbits.

Being minor on the first glance but can turn out to be very critical as setting a precedent is the case of sea salt. It is not to understand how sea salt made its way into the scope of the draft regulation. As sea salt is in no way connected to agricultural or aquaculture production it is not covered by any of the principles given in the regulation. It is therefore unclear what would be the guiding principles when the Commission will draft detailed rules for production of organically certified sea salt.

IFOAM EU preliminary position

- IFOAM EU proposes to keep the scope as it is in the current regulation and to add an annex of products not covered by Annex I of the Treaty of functioning of the European Union.
- IFOAM EU proposes to keep the possibility to produce organic species not covered by the regulation on the basis of national rules.
- IFOAM EU proposes to keep the scope connected to agricultural or aquaculture production to prevent consumer confusion.

Exceptional rules

It is proposed to delete many exceptional production rules. Only those related to catastrophic circumstances will stay permanently. This would in particular affect the primary production.

The following are highlighted:

- Exceptional use of non-organic seeds & propagating material , introduction of non-organic animals for breeding purpose and young aquaculture stock has been converted to a transitional rule with deadline set in end of 2021 after which all of these inputs need to be certified organic;
- Exceptional rules for sourcing of young animals in poultry production; for use of a small percentage (5%) of non-organic protein feed; for parallel production for research & educational aims and parallel production of seeds & propagating material; for bee-keeping units for the purpose of pollination have been all deleted without transitional rules;
- Temporary tethering of animals for small farmers has been converted to permanent rule and it will be only applicable only for small farms (in the text "micro-enterprises") and only if pasture is provided.

IFOAM EU preliminary position

- IFOAM EU supports the idea of the gradual reduction of the exceptional rules by:
 - Deleting the ones that are not needed anymore(e.g. use of non-organic yeast extract);
 - Converting them to transitional rules (use of non-organic animals; use of non-organic protein feed of plant and animal origin for livestock; specific management problems in organic livestock), combined with a sound evaluation before setting a final dead line;
 - Transparently converting them to permanent rules (temporary tethering of animals on small holdings; parallel production; management of beekeeping units for the purpose of pollination; use of non-organic beeswax).
- The exceptions on use of seed or vegetative propagating material not obtained by the organic production method is a particular case and the situation should be regularly evaluated and the regulation amended accordingly. According to the Commission's proposal, in 2021 the Commission shall prepare a report on the availability of seed and propagating material and accompany this with a proposal to finance a harmonisation of the seed databases under the programme "TRACES" (Trade Control and Expert System). It is not determined if further prolongations could be decided after 2021.

It is not clear yet if the current exceptional rules could be re-included into the legislative framework through future delegated acts.

Conversion rules

The proposed possibility to certify groups of operators also within the EU is welcome and supported by IFOAM EU.

The obligation to convert all the agriculture (or aquaculture) holding into organic has been introduced. Only “during the conversion period”, the holding can be split into clearly separated units not all organically managed.

IFOAM EU preliminary position

- Even if having the entire holding organic should be the aim, unfortunately it is not always possible (e.g. horse farms managing the land organically, but the horses cannot be organic as special feed required is not available in organic quality and animal input cannot be organic as well). Many times farmers want to try a step-by-step conversion because changing the agricultural management of their farms can be considered risky. This requirement would both discourage conventional farmers to convert and many already partially organic farms could give up. Additionally the wording in the proposal that mixed production should be allowed “during the conversion period” is very unclear and does not reveal what is intended by this wording.
- IFOAM EU recommends to keep the possibility for farmers to split their holding into differently managed units, of course under strict rules and precautionary measures as given in the current rule.

Livestock and Feeding rules

- a) The current rule, for bringing onto the organic holding a small percentage of non organic animals for breeding purpose, has been converted to a temporary rule which will end in 2021. By the end of 2021 the Commission shall prepare a report on the availability of organic animals.
- b) It has been deleted the possibility to introduce less than 3 days old non-organically reared poultry into an organic poultry production unit (for egg and meat production).
- c) It would no longer be possible for organic farmers to put their animals on common high mountain pastures over summer, which is an enormous contribution to animal welfare and very common in the mountainous and upland regions of EU.
- d) Mutilations are prohibited. Only physical castration is allowed for keeping the quality of products. Operations like dehorning, elastic bands, tail docking, cutting of teeth, trimming of beaks, toe clipping, spur removal, are no more allowed. The current possibility for member states to allow such operations in defined and special cases is deleted.
- e) There would be further restrictions for the use of in-conversion feedingstuffs and on the origin of the feedingstuffs. E.g. Livestock farms at their first year of conversion can only use 15% of their production. The other part of the feed must be bought in organic quality.
About the origin, 90% of feed for herbivores and 60% of feed for non-herbivores has to come from the same farm or region (currently it's 60% for herbivores and 20% for non-herbivores).

IFOAM EU preliminary position

- IFOAM EU proposes to keep the rules as they are in the current regulation for a) to c) as even in very highly developed organic sectors in a few member states it is not possible to obtain the suitable animals for breeding in certified organic quality.
- It must be considered that certain mutilations, e.g. dehorning of cows, are a special case. Stables are built for animals without horns since decades. If dehorning would be forbidden there will be security problems for persons taking care of these animals, during the transition period mixed herds will face animal welfare problems.

- IFOAM EU agrees with the objective to increase the use of regional feedingstuffs, but unfortunately it will not be possible all over Europe to achieve 90% of feedingstuffs for herbivores or 60 % for non-herbivores from the same farm or region. Further the term 'region' is not defined and it could be interpreted in different ways in different member states. IFOAM EU is strictly against the proposed restrictions on feed during the conversion period as this will make it simply impossible to convert.

Food and Labelling

The proposed introduction of requirements which oblige all the operators - except farmers and micro-enterprises - to measure their environmental performance is welcome. It comes from an IFOAM EU position. In the proposal the list of allowed non-organic ingredients has been cut by half, completely as recommended by IFOAM EU. However, the possibility for Member States to temporarily authorize specific non-organic ingredients has been removed.

IFOAM EU preliminary position

- A more frequently updated and flexible system for temporary exceptional permissions is needed. Flexible but strictly market-driven requirements for transitional permissions of non-organic ingredients currently not available in organic quality are needed. There should be a measure in the Action Plan to identify this system. In the meantime, whilst such system is developed, a procedure similar to arts. 28 and 29 of Reg. (EC) No 889 (= procedure for member states to allow temporarily non-organic ingredients if not available on the market) should be retained as transitional rules.

Control system

In the draft proposal, the organic control system is completely integrated into the [ongoing revision](#) of the regulation on official controls on food and feed to replace the current Regulation (EC) 882/2004 on [official controls](#). There are no more control provisions in the organic regulation for organic production within the EU. Legal acts regarding organic control provisions will follow under a regulation for which DG SANCO is responsible.

Standing Committee on Organic Farming will be still involved. (This is new compared to the January leaked draft.)

The annual inspection concept could be abandoned.

IFOAM EU preliminary position

- IFOAM EU proposes that specific control requirements related to organic farming and production are kept under the competence of DG AGRI to avoid split of competence and to guarantee the process-based approach for organic inspection and certification.
- IFOAM EU proposes to keep the minimum annual inspection, which is one of the main drivers of consumer confidence.

Thresholds for non-allowed substances and products

In the proposal, a de-certification threshold for non-allowed products and substances is introduced. The level above which the product cannot be sold as organic will be established taking in account the baby food directive (0.010 mg/kg).

Compensation measures can be established by member states for farmers which have been contaminated. This measure would be only for farmers, not for other kind of operators, such as processors.

IFOAM EU preliminary position

- IFOAM EU is against a de-certification threshold for organic products. Organic products are not simply pesticide-free products. They are characterised by the process approach and offer many more quality and environmental features than simply the absence of residues. Further, organic operators cannot be made responsible for e.g. pesticide contamination or activities of operators beyond their control. For details see [IFOAM EU position paper](#) on this topic.

Organic International Trade

Only equivalence trade arrangements and list of equivalent third countries are kept. List of equivalent control bodies will be brought to an end through a gradual shift into 'compliance' concept.

Accreditation of control bodies in third countries will be only granted either by European national accreditation bodies or by non-EU accreditation bodies within the International Accreditation Forum (IAF).

IFOAM EU preliminary position

- IFOAM EU proposes that the equivalence concept is not weakened in favour of compliance. In the past, the Commission has correctly reasoned that full compliance is virtually impossible for most products originating and certified outside the European Union. Removing provisions for equivalence will mean a significant move backward for
 - enabling European consumers to have a diverse choice of organic products, especially those coming from tropical regions, and
 - for developing country organic producers to retain access to their markets.
 - for producers to be certified to standards meeting EU objectives while respecting and taking into account their region-specific conditions and organic production systems.
- IFOAM EU proposes to add a third option for non-EU accreditation bodies which are supervised by a government against ISO/IEC 17011 with a scope of organic agriculture. In fact, as of December 2012, the list of signatories to the MLA for ISO 65 lists only 12 national accreditation bodies outside the EU. Therefore, there should be a third option for recognition of accreditation. Without such an option, most of the control in third countries will be done by certification bodies accredited by EU-based national accreditation bodies. This situation will limit access of goods to EU markets due to high transaction costs in developing countries thus reducing EU consumer choice and increasing cost. Without the addition of a third option these qualification requirements may be seen as technical barriers to trade.