

## Organic Farming in Proposed Future European Regulation – a Way to Develop or to Impede the Sector

### Introduction

Organic farming is a way of producing food that respects natural life cycles. It minimises the human impact on the environment and operates as naturally as possible, in accordance with objectives and principles including the following: crops are rotated so that on-site resources are used efficiently; chemical pesticides, synthetic fertilisers, antibiotics and other substances are severely restricted; genetically modified organisms (GMOs) are prohibited; on-site resources are put to good use, such as manure for fertiliser or feed produced on the farm; disease-resistant plant and animal species adapted to the local environment are used; livestock are raised in a free-range, open-air environment and are fed on organic fodder; animal husbandry practices are tailored to the various livestock species<sup>1</sup>. Organic farming is part of an extensive supply chain, which also includes food processing, distribution and retailing. Each link in this chain aims to deliver the benefits of organic food production in terms of: consumer confidence, environmental protection, food quality and

animal welfare. Currently the European requirements for organic production are set by Council Regulation (EC) No 834/2007<sup>2</sup> defining the official EU aims, objectives and principles of organic farming and production, and by two implementing regulations (No 889/2008<sup>3</sup> and No 1235/2008<sup>4</sup>) detailing the organic production, labelling and import rules. It seems however that existing legislation is not sufficient to ensure significant growth in organic sector. Despite the fact that organic market has constantly expanded, the EU's organic land area still represents less than 6% of the total agricultural area and the difference between EU demand and production is covered by growing imports. To overcome the regulatory obstacles to

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<sup>1</sup> [http://ec.europa.eu/agriculture/organic/organic-farming/what-is-organic-farming/producing-organic/index\\_en.htm](http://ec.europa.eu/agriculture/organic/organic-farming/what-is-organic-farming/producing-organic/index_en.htm).

<sup>2</sup> 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 (O. J. of the EU 2007, L189/1).

<sup>3</sup> 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 (O. J. of the EU 2008, L 250/1).

<sup>4</sup> 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.

the development of the sector and increase consumer confidence in the EU organic logo, the European Commission adopted in March 2014 a proposal for a Regulation on organic production and labelling of organic products which seems to revolutionize the organic production sector<sup>1</sup>.

The aim of the paper is to analyze and assess future regulation and to attempt to answer the question if the proposed future legislation is a way to effective development of organic production sector or, on the contrary, it is supposed to create additional obstacles to organic farmers.

### The Commission's proposal

Compared to the existing legislation, the Commission proposal intends to:

1. harmonise production rules by removing some exceptions such as use of non-organic seed when organic is not available, introduction of non-organic young poultry, exceptions for beekeeping, etc.), except where temporary measures are necessary in order to allow organic production to continue or restart in the case of catastrophic circumstances;

2. reduce the allowance to mixed farming (organic and conventional production) involving different varieties that can be easily differentiated to the conversion period. After the conversion period, organic agricultural holdings have to be managed entirely in compliance with the requirements applicable to organic production and the possible retroactive acknowledgement

of the conversion period would be limited only when fallow land is involved;

3. to address the issue of clarity and readability, specific production rules are brought together in Annex II of the proposed regulation;

4. organic operators other than farmers or operators producing seaweed or aquaculture animals would be required to develop a system for improving their environmental performance, with the exceptions of micro-enterprises;

5. the control system provisions would be integrated into a single legislative text under the Commission proposal for a regulation on official controls and other official activities in food and feed;

6. the risk-based approach to official controls would be reinforced by removing the requirement for mandatory annual verification of compliance of all operators provided for in Regulation (EC) No 834/2007;

7. for small-scale farmers, a system of group certification is introduced with a view to reducing inspection and certification costs and the associated administrative burden, strengthening local networks, contributing to better market outlets, and ensuring a level playing field with operators in third countries;

8. specific provisions are also introduced to harmonise action to be taken when non-authorized products or substances are detected. In this context, there may be instances where farmers are prevented from marketing their products as organic due to the unintentional presence of non-authorized products or substances. Member States may be authorized by the Commission to grant national payments to compensate for the losses incurred in such

<sup>1</sup> Proposal for a Regulation of the European Parliament and of the Council on organic production and labelling of organic products, amending Regulation (EU) No XXX/XXX of the European Parliament and of the Council [Official controls Regulation] and repealing Council Regulation (EC) No 834/2007.

instances. In addition, Member States may use the instruments of the Common Agricultural Policy to cover, totally or partially, such losses;

9. the trade regime is adapted to harmonise the rules to be applied in the EU and in the third countries and to better ensure consumer confidence. The possibility of equivalence agreements with third countries remains, while the system of unilateral equivalency is phased out. The recognition of control bodies is proposed to be shifted to a compliance instead of equivalence regime<sup>1</sup>.

### European Parliament's statement

On the European Parliament side, Martin Häusling (Greens/EFA, Germany) presented his draft report to the AGRI committee on 7 May 2015<sup>2</sup>. The draft report consists of 353 amendments to the Commission proposal, and brings back a number of provisions of the current regulation, including mandatory annual inspection and some derogations so as to take into account the lack of organic seeds, young

animals, feed and other organic inputs which impede the development of the sector, which are behind some exceptions to organic production rules. It reduces the number of implementing and delegated acts and revises the import system from third countries. On mixed farms, it proposes a transitional period of 10 years provided that there is a clear separation of conventional and organic production units and a conversion plan into organic production for the entire holding. It indicates also the need for deletion of introduction of a threshold for decertification of organic products in case of the presence of non-authorised substances or pesticides. The draft proposes also some new elements as the obligatory certification of restaurants and canteens as organic food retailers and the establishment of an EU organic farming agency to improve the implementation of the regulation and to be responsible for better implementation of control and import requirements.

The AGRI committee of European Parliament decided that the mixed farming in the EU producing both conventional and organic food should be still allowed, on condition that their conventional farming activities are clearly separated and differentiated from organic farming ones. Moreover, it rejected the threshold of 0.01 milligrams per kilogram as far as non-authorised substances are concerned and introduced instead some precautionary measures, which would aim to increase the accountability of operators throughout the organic supply chain and avoid the use of non-authorised techniques, as well as more harmonised investigation procedures in cases of contamination. On the import of organic products into the EU, the Commit-

<sup>1</sup> Proposal for a Regulation of the European Parliament and of the Council on organic production and labelling of organic products, amending Regulation (EU) No XXX/XXX of the European Parliament and of the Council [Official controls Regulation] and repealing Council Regulation (EC) No 834/2007, p. 4–5; F. Tropea, Organic farming legislation Revision of Regulation on organic production and labelling of organic products, Briefing EU Legislation in Progress 20 October 2015, PE 569.036, p. 5–6.

<sup>2</sup> Draft report of 7<sup>th</sup> of May 2016 on proposal for a regulation of the European Parliament and of the Council on organic production and labelling of organic products, amending Regulation (EU) No XXX/XXX of the European Parliament and of the Council [Official controls Regulation] and repealing Council Regulation (EC) No 834/2007 (COM(2014)0180 – C7 0109/2014 – 2014/0100(COD)).

tee supported the Commission proposal to ensure that all imported products will comply with the EU organic farming rules. The current equivalence regimes, which require third countries to comply with similar but not identical standards, should be phased out within the next five years, with some derogations<sup>1</sup>.

### The Council's statement

On 16 June 2015 the Council of Agriculture Ministers agreed on a general direction regarding the EU Commission proposal on the EU Organic Farming Regulation which provides a solid basis for achieving a modernisation of the European organic farming regulations in negotiations with the European Parliament. However, the Council did not support specific residue thresholds for organic products to be introduced at EU level. National threshold values would only be continued until the end of 2020. The specific regulations on organic controls and production standards would be still separated. Organic enterprises would also continue to undergo an annual inspection, generally involving a physical on-site inspection. The compromise text additionally included regulations which support EU-wide harmonisation of inspection procedure implementation, in particular regarding the

<sup>1</sup> Report on the proposal for a regulation of the European Parliament and of the Council on organic production and labelling of organic products, amending Regulation (EU) No XXX/XXX of the European Parliament and of the Council [Official controls Regulation] and repealing Council Regulation (EC) No 834/2007 (COM(2014)0180 – C7-0109/2014 – 2014/0100(COD)); F. Tropea, Organic farming legislation Revision of Regulation on organic production and labelling of organic products, Briefing EU Legislation in Progress 20 October 2015, PE 569.036, p. 11.

question of legal consequences in cases where residues are found. The number of delegated acts proposed by the Commission was greatly reduced. A significant issue is that both the European Parliament and the Council basically agree on the most critical points: both institutions clearly rejected the concept of a threshold for unauthorised substances and both agree on keeping the specific organic control requirements in the organic regulation rather than moving them to the horizontal 'official controls' legislation<sup>2</sup>.

### Assessment of the proposed legislation

As for the environmental performance rules for processors and traders, in the proposal it was foreseen that processors and traders (excluding micro-enterprises) have to ensure environmental management system with a view of improving their performance. The current legislation has not made any requirements for environmental performance for processors and traders. Therefore the idea of imposing duties to measure and to improve their environmental performance should be assessed positively. However these measures should be clear enough and do not create bureaucratic burden on operators. To avoid unnecessary duplication of the control process, these criteria should be checked within the organic control procedure.

As for the possibility to certify groups of operators, such solution is welcome. The proposal limits the possibility of being part of the group to the farmers with less than 5 ha agriculture land. It could be problem-

<sup>2</sup> <http://www.ifoam-eu.org/en/news/2016/05/23/press-release-constructive-approach-needed-organic-regulation-negotiations>.

atic if such limitation is properly indicated. Such solution could be based on different criteria such turnover.

As for simplified structure, the proposed document resign from the separate regulations and includes the whole legislation in one regulation and its annexes. It seems to be practical solution for the transparency of the organic production rules and their specification.

As for including organic control system in general food control system, it seems to be improper solution. As it was said by IFOAM EU, organic quality is essentially defined by a process-driven approach, which is a core value of organic production and part of its identity. Most of process criteria as they are established within organic regulations worldwide are guaranteed by checking the practical implementation in annual audits. Therefore, organic controls cannot be inspections to check the safety of the final products but are rather quality audits of the system as a whole. Organic products, like other food products, are subject to all other horizontal legislation. The annual inspection is an essential element to maintain consumer trust in organic produce. Furthermore, it gives the

operator the opportunity to get clarification on how to stay in line with the organic rules<sup>1</sup>.

As for risk-based approach to the control, control bodies have the obligation to operate risk-based inspection systems. However there are clear differences in the ways that this provision is implemented at the Member State level, meaning that the

<sup>1</sup> Position on the Commission proposal for a new organic regulation. A roadmap towards sustainable growth of the EU organic sector, IFOAM EU, 6 November 2014, p. 10.

system is well adopted and working in some Member States, but in others the system is rudimentary and inconsistent. Strengthening of risk based inspections and more harmonization of the risk based concept should be a cornerstone of the new regulation. The concept of risk based inspection is already in, but should be broadened and harmonised<sup>2</sup>.

As for import regime, the compliance is virtually impossible for most products originating outside the EU. Therefore, it seems that removing provisions for equivalent control bodies could radically alter the variety and affordability of organic products in the EU. Such situation occurred in for instance in Japan and China after tightening import rules. It might lead to import shortages for certain

products on the EU market. Moreover, such solution would create a two-tiered system, which provides trade advantages based on equivalence deals between developed country markets, and constrains other imports by requiring strict compliance<sup>3</sup>.

As for resignation from flexibility rule, such solution seems to be a burden for development of organic sector. It should be noticed that countries that have just started organic production are not able to meet the requirement without exceptions. The same applies to farms located in regions with difficult production environment such as mountain or island areas. Moreover, there are some exceptions crucial for further continuation of organic production in small farms such as the possibility of tethering animals. However, the removal of some exceptions is welcome. It concerns the use of non-or-

<sup>2</sup> Position..., op. cit., p. 11.

<sup>3</sup> Position..., op. cit., p. 12.

ganic animals, protein feed or animal origin for the livestock.

As for introducing a specific legal threshold that makes organic producers liable for pesticide contamination by conventional farmers, such solution seems to be disproportionate, in terms of the burden on the sector, compared to the reality and the size of the issue. In fact, it is demonstrated by several monitoring activities that the presence of contaminants in organic products can be 500 times lower than in conventional products. It is therefore clear that pesticide residues are not a major problem in organic products, even if European organic farmers

work in a context in which 95% of the arable land is treated with a huge amount of pesticide. This is thanks to the serious work of organic stakeholders to avoid contamination or residues. However, introducing such a threshold would significantly increase the costs of organic produce without providing real improvement. Moreover, such solution seems to be contrary to the polluter pays principle as it makes organic farmers responsible and obliged to pay for harm done by the majority of farmers in the EU who are using pesticides. The Commission or Member States should instead consider clear rules for a coexistence regime on pesticide contamination to ensure that organic farmers are protected.

As for rejection of mixed farms, the ban seems not to be proportionate and

could negatively affect organic farming. It is due to the fact that significant number of organic farmers are involved in mixed production. The ideal of conversion of the whole farm is not always possible. Mixed production is often a forced option or the result of market reasons. Moreover, it is easier for the farmers who consider conversion to convert part of the farm is a first step<sup>1</sup>.

### Conclusion

Commission's proposal should be assessed as to demanding for the current situation of organic farming in Europe. Therefore, the amendments proposed by European Parliament and the Council seems to be reasonable in many ways.

The current organic regulation provides a good basis for the development of the organic farming. In many areas of the regulation an improved implementation of the existing provisions is sufficient for the further development of the organic sector. It refers for instance to harmonization of risk-based approach of controls, assuring the traceability and guaranteeing a more efficient cooperation and exchange of information between Commission, Member States, control authorities and operators and for the flexibility rule that addresses the huge range of environment, culture and structural conditions present among the Member States.

<sup>1</sup> Position..., op. cit. p. 17.