

# The New EU Regulation for Organic Food and Farming:

(EC) No 834/2007

BACKGROUND, ASSESSMENT, INTERPRETATION

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# The New EU Regulation for Organic Food and Farming: (EC) No 834/2007

## BACKGROUND, ASSESSMENT, INTERPRETATION



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## Foreword

It is my great pleasure to introduce to you the IFOAM EU Group dossier on the new EU Regulation on organic food and farming (EC 834/2007) which came into force on 1<sup>st</sup> January 2009. The efforts of the EU institutions and the organic sector who both devoted so much time to working on this regulation over the last several years have reached its initial conclusion.

This dossier is, as far as we know, the first EU wide attempt to assess the new regulation, the changes it contains and the challenges ahead. We are proud to present what we hope will be a valuable resource to the organic sector, our members, the authorities, NGOs, journalists and other interested parties. The dossier represents the highlight of several communication tools we provide, and adds naturally to our extra newsletters and the info webpage on the new regulation.

You will find a wide range of information in the dossier which I am sure will prove both interesting and useful. We have chosen only very experienced authors to maintain the highest quality of analysis and perspective.

To help with your orientation, we have divided the dossier into three major parts:

1. a summary of the history of the organic regulations and of the political processes involved in developing the new organic regulation
2. an overview of the new organic regulation by the EU Commission and a general assessment by the sector
3. more detailed interpretation of the regulation, with a range of authors highlighting different aspects.

The dossier has taken many people much time to produce, and I would like to thank them all for their valuable contribution and the efforts they made. I thank in particular, the various authors of the different parts, the sponsors without whom this dossier would not have been possible, our Brussels office for editing and coordinating it, and the proof readers and all the volunteer people helping to bring this important project to fruition.

However, this dossier is just the first step – only with practical implementation of the new regulation will we be able to make a deeper analysis of its impact, its ongoing (and new) challenges, and therefore the further potential for improvement. The IFOAM EU Group will continue to make the sector's voice heard in this process, to ensure that this regulation supports the development of a vibrant organic sector.

I wish you an enjoyable reading.

February, 2009



Francis Blake  
President IFOAM EU Group

## Welcome note by the Commissioner for Agriculture and Rural development

It's a great pleasure to introduce this dossier prepared by the IFOAM EU Group on the new regulation on organic farming.

It has been a very busy year for organic farming. The implementing rules for the new EU regulation were adopted, as were the new rules on organic imports. January 1 sees the entry into force of the new Regulation, which I believe will provide an additional boost to the sector. This dossier helps in understanding the legislation and showing where further improvements can be made.

I also look forward to the results of the competition we have launched to design a new EU organic logo, which will apply from the middle of 2010.

There is a lot of creativity out there. I want our logo to reflect that and jump out at people when they do their shopping!

And 2009 promises intensive debate about new rules for organic aquaculture and wine.

Of course, we should never forget that agriculture is just one part of the society we live in – albeit a very important part. And that society is increasingly looking at how different products and activities contribute to climate change and at how we can reduce its effects.

In 2009, the European Commission will be launching a debate on how we can adapt to the impacts of climate change. We will also look at the role farming can play in this battle and how to protect our agriculture from its more serious effects.

In all this, organic farming has much to offer in terms of lessons to be learnt and good practice to be shared.

Of course, our society has also been hit hard recently by the effects of the financial crisis.

I have seen that, in some countries, organic food sales appear to have been affected too.

But I truly believe that this will be just a temporary blip.

The organic sector is robust and provides products which consumers will continue to want.

Organic production fits well with the world we live in and will continue to prosper.

I hope that the improved rules we have agreed will make life easier for the sector and that it will continue to go from strength to strength.

I, for one, am very optimistic.



A handwritten signature in black ink, appearing to read 'Mariann Fischer Boel'.

Mariann Fischer Boel  
*Commissioner for Agriculture and  
Rural Development*



## 1 | HISTORY OF THE EU ORGANIC REGULATION AND ITS RECENT REVISION

[Marco Schlüter, Francis Blake]

On January 1<sup>st</sup>, 2009 the new EU Regulation for organic food and farming (no. 834/2007) replaced the former EEC Regulation 2092/91 (with parts of the labeling regime/mandatory logo from July 1<sup>st</sup>, 2010). It represents a milestone in the development of organic production. This chapter provides an historical overview of the creation of the new organic regulation, starting with the old regulation, and then focusing on the political process that shaped and directed the new regulation.

### a. Historical background for the revision of the Organic Regulation (1987-2004)

The mid 80s saw a burgeoning of organic food and farming in Europe which brought it to the attention of the authorities. With premium prices being paid and so many benefits being claimed, the European Commission felt it needed to consider what controls were necessary to ensure consumers were protected and what recognition these benefits might deserve.

The initial proposal was to introduce a directive which each member state could apply as they thought fit. However, after several years of gestation, the final proposal was for a full-blown EU Regulation, which was applicable as law in each member state.

Naturally, the Commission turned to IFOAM as the primary source of organic expertise. In response, IFOAM formed the IFOAM EC Delegation as negotiating partner. However, there was considerable unease within the organic movement about the attentions of the authorities. Recognition potentially could bring financial support, but control meant losing control. However, the die was already cast - it was an almost inevitable consequence of success.

Date	Milestones towards the first EU Regulation on organic farming
Late 1980s	European Commission considered drafting a directive to define and control organic food and farming
1987	IFOAM formed the IFOAM EC Delegation to advise and negotiate with the European Commission
June 1990	IFOAM EU Working Group formed at the Budapest IFOAM conference, with the aim of developing a representative structure for IFOAM organisations in the EU
June 1991	Council Regulation (EEC 2092/91) on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs is published
January 1993	Regulation 2092/91 came into force, for the first time in the world making organic food and farming subject to legal definition and control
February 1993	Regulation 207/93 defined the additives, processing aids and non-organic agricultural ingredients allowed in processed organic foods
July 1999	Commission Regulation 1804/1999 set requirements for organic animal production, defining common rules for organic livestock husbandry for the first time
February 2000	Founding assembly of the IFOAM EU Regional Group held in Nuremberg, Germany, transforming the old EU Working Group into a fully fledged regional group of IFOAM
May 2001	Joint Danish Government and IFOAM EU Group conference held in Elsinor, Denmark, the declaration called for the development of a European organic action plan
December 2002	European Council under the Danish Presidency called on the Commission to develop a European organic action plan
January 2004	Commission held a Hearing on the organic action plan
February 2004	Commission launched an internet consultation on the European organic action plan
June 2004	Commission published the European action plan for organic food and farming



So on January 1<sup>st</sup>, 1993, everything changed in the organic world, as the 'organic' Regulation no. (EEC) 2092/91 came into force. It changed more in some countries than others, depending on the nature of the control system that each member state decided to employ. The complete range emerged, from state certification of a single standard all the way through to many private and long standing bodies with their own individual standards. The diversity that is an essential characteristic of organic farming shone through, and this remains the case today.

It changed outside Europe too. Imports from outside the EU constituted a significant part of the market and these had to conform to the Regulation as well. Thus the Regulation became the benchmark for organic farming around the world.

Right from those early years, IFOAM has continued to be actively involved. The IFOAM EC Delegation handed over to the IFOAM EU Working Group, ensuring representation from each member state (and EFTA country). This became the IFOAM EU Regional Group in 2000 when its democratic structure was formalised. These groups have held regular, official meetings with the Commission every year since the early 90s, to review progress with the Regulation and discuss upcoming issues. In addition there have been many informal meetings, including several with various Commissioners.

At all times, the IFOAM EU Group aims to reach consensus positions to present to the authorities, a process that is often complex and sometimes extremely delicate. With an average of almost three amending regulations per year, it is also very time-consuming. Some of those amending regulations were milestones in themselves, the key one being in 1999 when the requirements for livestock and livestock products were defined.

By 2000, pressure was beginning to build that organic farming needed more than just Regulation 2092/91 and haphazard support through the rural development provisions, if it was to really achieve its potential. Several countries had successfully introduced organic action plans to develop and expand

their organic farming sectors. The IFOAM EU Group called for the same at European level. Eventually, at the initiative of the Danish Presidency, the European Council called on the Commission to draw up an organic action plan. This was published in June 2004. Eight of the 21 actions were to do with changes to the Regulation. None of these mentioned wholesale replacement, but, it was the initial step for the revision of the Regulation EEC 2092/91.

### **b. Political process of the revision (2004 - 2008)**

The revision of the organic regulation (EEC) 2092/91 was a process that lasted nearly three years after the EU Commission published its proposal in December 2005. If you take the Commission's EU action plan on organic food and farming, published in 2004, as the starting point the process took more than four years in total. Furthermore, the detailed implementing rules for the new areas of aquaculture and wine processing still have to be finalised in the course of 2009.

The Commission proposed the new regulation in two different legislative parts and steps:

- a) A framework regulation (Council regulation EC 834/2007 approved in July 2007 by the Council) and
- b) accompanying implementing rules (Commission Regulation EC 889/2008 adopted July 2008 by the Standing Committee on Organic Farming (SCOF)) setting the detailed rules for operators.

#### **The Commission proposal for a Council Regulation**

After the publication of the European Action Plan for Organic Food and Farming in June 2004 the EU Commission was asked by the Council to provide a detailed concept by the end of 2005. The Commission sent a general outline to member states and stakeholders in September 2005 asking for comments within three weeks. Although this short consultation period for such a fundamental revision raised criticism among the sector and member states, the Commission followed its time frame and published its proposal for a "COUNCIL REGULATION on organic production and labelling of organic products" on December 21, 2005.



## Council and Parliament

Once the Commission has published its proposal, it officially hands it to the EU Council and the EU Parliament. Whilst the Parliament has currently only an advising role on agricultural issues, but no power of ‘co-decision’, the Council (composed of member state ministers) has to adopt the proposal or any compromise paper with a qualified majority. As the Commission has to agree on any change to its proposal (or being unanimously overruled) it remains a powerful player throughout all the negotiations.

The decision making process for the new regulation was both long and at times fraught, as some member states, the European Parliament and IFOAM EU Group and other stakeholders were critical of the Commission proposal. The sector criticized in particular the poor degree of stakeholder involvement. Originally it was foreseen that the Council would adopt the Regulation under the Austrian Presidency (January to June 2006), i.e. within only six months. However, this proved to be impossible and finally the process lasted eighteen months. Throughout this time, the IFOAM EU Group worked hard to get the sector amendments into the regulation proposal.

Aiming to reach agreement, the Austrian Presidency produced two compromise papers, in April 2006 and in June 2006. Following some criticism and to facilitate the decision making process, the EU Commission provided in June 2006 an outline for how it intended to transform the annexes of Regulation 2092/91 into the implementing rules.

The Finnish Presidency (July to December 2006) launched a third compromise paper in October 2006 and declared the end of the technical discussion. It forwarded the file to the political level (Special Committee on Agriculture & EU Council) with the aim of finalising negotiations by the end of the year. A French and German initiative for amending the last compromise paper led to a new paper in November. This deleted the articles concerning the restrictions on private standards, but did include a mandatory EU logo. On 19th December the Council reached a political agreement (general approach), but could not approve the text as the opinion of the EU Parliament was still outstanding.

Date	Political Process in the EU Institutions
June 2004	Commission published the European action plan for organic food and farming
October 2004	Council asked Commission to come up with detailed proposal
September 2005	Commission launched working paper on the revision to member states and stakeholders asking for comments within three weeks
December 21, 2005	Commission published its revision proposal for Council regulation
January – June 2006	European Council working group discussing revision proposal of Commission and drafted two compromise papers under Austrian Presidency
June 8, 2006	European Parliament launched work document in its agriculture committee
June 16, 2006	Commission provides outline how to transform annex of 2092/91 to new implementing rules
July 1, 2006 – December 31, 2006	Finnish Council Presidency takes over from the Austrian Presidency- intensive negotiation in the Council working group and the Special Committee on Agriculture with new compromise papers
December 21, 2006	Council decided on “general approach” on the new organic regulation and approved new import regulation
May 2007	European Parliament adopted its report on the revision of the organic regulation
June 28, 2007	Council adopted the new Council Regulation EC 834/2007 on organic production and labelling of organic products (published in EU official journal on 20 July 2007)
July 2007	Commission started working on detailed implementing rules
September 2007	Commission launched stakeholder consultation on technical aspects of the implementing rules with a six week response period
January 2008	Commission issued work document for general implementing rules and imports
February/ March 2008	Commission collected comments from member states and stakeholders on the implementing rules
March 25, 2008/April 10, 2008	Commission launched proposal on imports/general proposal for implementing rules to member states for discussion in the SCOF



Date	Political Process in the EU Institutions
September 18, 2008	The general implementing rules (EC) No 889/2008 published in the official journal of the European Union after being approved by the SCOF in July
September, 29, 2008	Council Regulation 967/2008 published, amending Regulation 834/2007 to delay the introduction of the EU logo
December 2008	Commission Regulation 1254/2008 published, the first amendment to Regulation 889/2008 allowing use of 100% own-farm conversion feed and festive colouring of eggs and adding standards for yeast
December 12, 2008	Commission Regulation 1235/2008 published, establishing under Regulation 834/2007 the implementing rules for imports from third countries
November 2007 until January 2009	Aquaculture: Commission organised expert meetings and submitted four working papers outlining organic aquaculture implementing rules. To be finalised in 2009
December 2008/ 2009	Presentation to the SCOF of first results of ORWINE research project on defining implementing rules for organic wine processing. Rules to be worked out 2009
January 1, 2009	Regulation 834/2007 came into force, together with the implementing rules, regulations 889/2008 and 1235/2009

The European Parliament played a special role as it was blocking the political process by not providing its opinion. Although the Parliament has no co-decision power, the Council cannot decide formally on the proposal before the Parliament officially delivers its report. The Parliament tried to make the new organic regulation a co-decision issue, with the intention of extending its powers, but eventually relented and submitted its report (by rapporteur Marie-Hélène Aubert, Greens) in May 2007.

The Council finally adopted the new organic regulation on 28 June 2007. The final version was a result of several further amendments.

### Setting up the implementing rules

With the new Council Regulation EC 834/2007 adopted, the Commission started to work on the implementing rules to lay down the exact requirements for organic operators, for imports and for inspection and certification. After heavy criticism from the sector about insufficient stakeholder involvement in devel-

oping the framework regulation, the EU Commission put more effort into this issue for the implementing rules. In September 2007, the European Commission launched a consultation round for stakeholders and member states by circulating a comparative analysis table and questionnaire.

The Commission released a first working paper of the implementing rules in January 2008. This was followed by its official proposals for the implementing rules in March 2008. These were discussed and amended in different SCOF meetings (the Council regulation was more on the political level, whereas the implementing rules were more technical in nature). The Commission's intention was to transpose the relevant aspects of Regulation 2092/91 into the new implementing rules more or less exactly.

However, many aspects are interpreted differently in different countries (e.g. even what may seem to be clear rules, such as the limit of 170 Kg N / ha / year), and they wanted to resolve these.

In the end the SCOF approved the text of the implementing rules on July 2, 2008. Following the Commission's internal approval process, Regulation 889/2008 was published in the Official Journal on September 18, 2008. Further the implementing rules for imports were published in the official journal in December 2008.

### Implementing rules for new areas

The implementing rules for the new areas have had to follow a different timescale as they require the introduction of complete new rules (rather than a transfer of current ones). At the SCOF meeting in November 2008 the new production rules for organic yeast were approved.

In the area of aquaculture, the DG MARE, rather than DG Agriculture, took the lead. They organized three expert meetings between 2007 and 2008 in which the sector and the IFOAM EU Group experts participated. After the last expert meeting on May 28-29 the Commission communicated to the member states its first detailed proposal (working document). In the beginning of December 2008 a 3rd revision of this document was made available and the aquaculture



implementing rules will probably be decided by the summer of 2009.

Regarding the rules for processing of organic wine, the Commission is waiting for the results of the EU funded ORWINE project, which will be presenting its recommendations in the spring of 2009. It is expected the Commission will develop the rules for wine later in 2009.

### **New organic logo and postponed labeling rules**

Trouble with drafting the new and mandatory organic EU logo was the reason that the Commission decided to postpone this part of the new regulation. By amending Council regulation 834/2007 in September 2008 the use of a mandatory logo (including other labelling requirements) was postponed to July 1, 2010.

Taking the consequences of the criticism of the current voluntary EU logo, Agriculture Commissioner Fischer Boel announced at Biofach 2007 that the Commission will develop a new and better EU logo for organic products. Thus, by the end of 2007 a new organic logo was submitted to and approved by the SCOF. However, not long after, it became evident that this logo was too similar to that used by the German discount supermarket ALDI on their organic private label products. This caused problems with the property rights, so the Commission withdrew it and planned to launch a new tendering process. Because of this delay the Commission decided on the above mentioned postponement.

### **The contribution of EU funded research projects**

During the period 2003 to 2009, four EU research projects were directly or indirectly related to the revision process of the new organic regulation and thus gave input to it. All these were financed by the EU Commission, and the IFOAM EU Group has been involved in all of them as partner or participant:

- EEC 2092/91 REVISION - "Research to support revision of the EU Regulation on organic agriculture" (2004-2007) ([www.organic-revision.org](http://www.organic-revision.org))
- ORGAP "Action Plan for Organic Agriculture" (2006-2008) ([www.orgap.org](http://www.orgap.org))

- ORWINE - "Organic viticulture and wine processing" (2007 - 2009) ([www.orwine.org](http://www.orwine.org))
- ORGIN - "Organic inputs evaluation project" (2003-2006) ([www.organicinputs.org](http://www.organicinputs.org))

The project EEC 2092/91 REVISION was directly linked to the revision process. It proposed how to integrate ethical values in the new principles of the EU Council Regulation (EC) 834/2007, developed a database to compare the former EEC Regulation with national governmental and private standards and worked out recommendations how to reduce conventional inputs (seed/feed). However, as the EU Commission started the revision already in 2005 it could only partly profit from the research results – this highlights a general problem to streamline policy making with respective research.

The ORGIN project fed into the revision process by developing criteria for the evaluation of new inputs (fertilizers, soil conditioners, plant protection products) to be authorized for the use in organic farming.

Contrary to that experience, the EU Commission and stakeholders will be able to make full use of the results of the ORWINE project as the Commission decided to wait for developing wine processing rules until the project end. The project focused to provide scientific background for the development of EU legislative framework and code of best practice for organic wine production and labeling (see also the article on new wine processing rules).

The ORGAP project was developing criteria for the evaluation of the European Action Plan for Organic farming. Although the project did not directly focus on the revision process it contributed to a higher awareness of the necessity for better stakeholder integration in the revision process. The main recommendations can be found in a manual for development and evaluation of organic action plans.

### **The role of the IFOAM EU Group**

As main representation of the organic sector, the IFOAM EU Group was following intensively the revision process and submitted numerous comments to the EU institutions. Various high level meetings with the EU Commission, Council and Parliament

have been held, and there were discussions with the Agriculture Commissioner Marian Fischer Boel and the Finnish Minister of agriculture (EU Council Presidency).

The IFOAM EU Group response to the Commission proposal published in February 2006 was the start of a series of comments on the revision process. The IFOAM EU Group held a hearing on the new regulation together with Marie-Hélène Aubert, the rapporteur in the European Parliament, in March 2006. It also included the new regulation as one major topic in its European Organic Congress in Brussels. Through its involvement, the IFOAM EU Group was able to secure significant improvements compared

to the Commission proposal in 2005 (see also general analysis in the next chapter).

Further, with this dossier, but also with the revision info pages (see IFOAM EU website) and in total three extra editions of our newsletter, the IFOAM EU Group has kept the sector permanently informed.

However, the wine and aquaculture areas need still to be finalised and, with experiencing the implementation of the new regulation in practice, there will soon be the potential to identify further needed improvements. In this context the IFOAM EU Group will continue to put all its efforts towards ensuring the best for a growing organic sector.



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## 2 | OVERVIEW OF THE NEW REGULATIONS – AND THE IMPLICATIONS FOR ORGANIC FOOD AND FARMING

### 2.1 The new legislative framework for organic farming

[Maria Fladl, Jean-Francois Hulot,  
Organic Farming unit DG Agri]

The major part of the revision of the EU regulatory framework for organic farming is now finished. The agreement reached in the Council in 2007 led to the publication of Council Regulation (EC) No 834/2007<sup>1</sup> in the Official Journal of July 20, 2007. Since then, it has been completed with two sets of implementing rules in 2008:

- Commission Regulation (EC) No 889/2008<sup>2</sup> on detailed production rules for plants, livestock and processed products including yeast, and their labelling and control, and
- Commission Regulation (EC) No 1235/2008<sup>3</sup> on detailed rules for imports.

These new Regulations replace the previous organic rules known as the Regulation (EEC) No 2092/91<sup>4</sup> as from January 2009 onwards.

#### Context of the revision

The revision exercise was initiated by the European Action Plan for Organic Farming in 2004, when the EU Agriculture Ministers agreed to several actions aimed at the simplification and improvement of the existing organic farming legislation. Since 1991, when the first harmonised EU rules were adopted, the organic sector has grown tremendously. The mainly market-driven policy encouraged farmers to convert to organic production and existing organic farmers to improve their organic production techniques. New developments and technical progress triggered the need for adjustments to the legal framework and the extension of the legislation's scope. At the same time the overall EU policy focussed on simplification of the entire Community legislation – another reason to simplify the organic farming legislation – which was constructed differently from other Community legislation, mixing Council and Commission competences within one single Regulation.

### What is new in organic production, labelling and control after the revision process?

- Improvements and main novelties in a nutshell: Clearer structure and simpler wording.
- Objectives and principles are laid down for the first time.
- No substantial changes in production rules.
- A risk-based control approach, although the obligatory on-the-spot control each year remains.
- The scope of the regulation to be extended: standards for organic yeast have been formulated.
- Clearer labelling rules to apply from July 1, 2010.
- The import scheme has been rationalised.

**The new structure follows the general structure of Community legislation, laying down clear competences:** Sensitive issues and fundamentals are basically laid down in the Council Regulation (EC) No 834/2007, meaning that changes are possible only within an agreement reached in the Council. This goes for the conceptual orientation of the organic farming sector laying down objectives and principles, general production rules and basic control and labelling rules. The Council adoption procedures require agreement at Minister level. The process is chaired by the Council Presidency.

Technical rules for organic production and processing, detailed rules for labelling and control, which may vary over the years and would need continuous adjustments, are laid down in the two Commission Regulations. This also applies to the restrictive lists of substances and products allowed in organic production, which need regular update and revision. Changing and amending a Commission Regulation can be done more easily due to simpler adoption procedures. However, Member States, represented at official level, need to agree by a qualified majority in a Regulatory committee called the SCOF (Standing Committee for Organic Farming). The SCOF is chaired by the Commission, gathers representatives from national administrations and meets several

times a year in Brussels. SCOF positive opinion is required before the Commission can adopt a regulation or an amendment to existing implementing rules.

**The wording was simplified, where possible.** The old regulation had been continually amended over the last 17 years – on average 3 times a year – that despite all caution taken for the sake of consistency and easy access it sometimes led to repeating and lengthy parts causing difficulties in understanding and reading the text. Where possible, in the new Regulation the sentences are short and clear, repetition is avoided and the text is clearly structured into Articles, Sections, Chapters and Titles. The Commission committed itself to transposing the main part of the production rules from the old Regulation without substantial changes. However, a few adjustments in the implementing rules were made where required by Council Regulation or where reasonable solutions to problems could be identified. For example:

- New definitions are introduced as to gain more legal clarity: e.g. holding, production unit, veterinary treatment, and some new provisions are taken up like the prohibition of hydroponic and landless production.
- The application of the use of slow growing poultry strains is improved and more transparent by the new obligation to notify national criteria or lists to other Member States and the Commission.
- Numerous derogations and exceptions in the old rules were examined and transferred either into permanent rules or into flexible rules to the chapter of exceptional production rules, which allows the competent authority of the Member State to give their permission under certain conditions, such as for geographical, structural constraints, or catastrophic circumstances.

**The entire organic control system is explicitly placed under the roof of the Official Food and Feed Control (OFFC)** and the supervisory role of the Member States is enforced. Accreditation to either the international certification norms EN 45011 or ISO 65 is now obligatory for all control bodies in the EU. The competence to grant permissions on the restricted use of inputs is now transferred to the competent authorities of the Member States. Furthermore,

standardised models for documentary evidence and for a vendor declaration are provided. These new elements in the control system are considered as an important step towards a more harmonized control system. The new risk based approach of the control system under OFFC allows reducing the control frequency in low risk production, but obliges to intensify control in high risk production. Nevertheless there was a consensus to keep the obligatory annual physical on-the-spot control as a central element in organic control from farm to fork, where the controls cover the whole production chain.

**Animal health and welfare provisions are further enforced,** which is of particular consumer interest. The main improvement is the obligatory use of analgesia or anaesthesia in the case of dehorning and similar operations. Tethering of cattle will only be allowed under certain additional conditions, for instance when grazing during the summer period is guaranteed. The final indoor fattening of sheep and pigs is banned.

**New labelling rules as of July 1<sup>st</sup>, 2010:** Only products containing more than 95% organic agriculture ingredients may be labelled as organic. The use of the EU logo will become mandatory on pre-packaged products from 1<sup>st</sup> July 2010, when the new organic EU logo will be decided. Organic ingredients in a non-organic product can be labelled organic, if the whole list of ingredients is provided. More detailed labelling rules such as code number, place of origin and clear rules for the calculation of organic ingredients are also laid down.

**Imports:** The system of third countries recognised for having equivalent provisions will continue. However, the system of import authorisations given by Member States for imports from non-recognised third countries will progressively be replaced by a new system of equivalency where a community list of control bodies and control authorities in third countries is to be set up. Both import regimes under equivalency require an import certificate to accompany each lot of imported goods. In addition, a new system of compliant imported products has been created by the Council Regulation. Such products will have direct access to the EU - i.e. no



import certificate will be required - on the basis of full compliance with the EU standards certified by a control body listed for that purpose. Direct access is a new possibility fully in line with the WTO rules and trade principles. The Commission will establish the relevant list for equivalency and compliance in the next years. In general, the competence of the Commission is enforced regarding the management of imports, but Member States will be more systematically involved in the evaluation and assessment procedure of control bodies and the third country lists. The new Commission Regulation (EC) No 1235/2008 will be accompanied by a guidance document regarding technical details for a harmonized implementation.

A number of transition rules in particular for the labelling and packaging of organic products, but also for certain changes in the production, processing and the import scheme should ease a smooth introduction of the new rules.

#### Widening the scope of organic production

The implementing rules contain already new production rules for **organic yeast and yeast** confections. The rules are based on the technical expertise of an ad-hoc group, composed of independent experts, who evaluated whether the use of certain substances is in line with the new objectives and principles on organic production, as now set out in the Regulation (EC) No 834/2007.

In a next step new rules for organic aquaculture and wine will be elaborated. These are new fields. It is planned to conclude the new rules as amending regulations to Commission Regulation (EC) No 889/2008 in the course of 2009, subject to SCOF timely opinion. However, there is no binding legal deadline.

A working paper on **organic aquaculture** rules was drawn up on the basis of works held in 2008 with the help of experts in the sector. It is currently discussed with Member States in the Regulatory committee (SCOF). National or private rules will apply until Community rules are in place.

The organic aquaculture sector is a very new sector compared to organic agriculture, where one can rely on well established production methods. In recent years several private and national organic aquaculture rules were developed in Member States. These are the rules on which the harmonized Community rules will be build on. This will be achieved with a view to establish a high quality Community standard in full respect of organic production objectives and principles.

In Council Regulation (EC) No 834/2007 Member States agreed on developing Community rules for **organic wine**. Before that, the winemaking was explicitly excluded from the old regulation. As a consequence, only “wine made of organic grapes” could be labelled, and will continue to be until the new detailed rules will be adopted.

An EU-wide research project on organic wine (known as ORWINE) was launched in 2006 with a view to provide technical expertise and help designing the new rules. Final results are expected in March 2009. They will serve to built on the new organic wine rules, which of course will also respect the basic oenological practices of the Common Market Organisation for wine.

**Not yet covered by the new legislative framework:** EU-wide rules for restaurants and other mass caterers have not been included in the Council Regulation as this was judged to be premature. However, it was made clear that Member States can regulate the sector if they wish and that the situation will be revised by the end of 2011.

Cosmetics and textiles are not in the scope of the EU organic regulation. They can however be regulated at national level.

#### How to read the new Regulations

In general, both Council Regulation and Commission Regulation have to be read together. Firstly the Council Regulation lays down the general rules, secondly the detailed provisions are laid down in the so-called implementing rules in the Commission Regulation. The implementing rules are always based on the Council Regulation and do not repeat provisions already fixed by the Council text. A Commission regu-



lation is a legal tool to provide for more technical details (e.g. a poultry house contain maximum 4800 chicken, ...), set out certain conditions (e.g. non-organic adult mammals can be brought on a holding for renewal of a herd up to a maximum of 10%, ...), draw up certain provisions to complete the Council rules (e.g. under the exceptional production rules related to catastrophic circumstances Member states may authorise on a temporary basis the renewal of a herd with non-organic animals/ bees, or the use

of non-organic feedstuff, ...), establishes lists of substances to be used for certain product specifications (Annex VIII – food additives and processing aids, ...), or shows the design details (e.g. Annex XI on the Community logo, ...).

A full example is given below:

**Provision on stocking densities of livestock reared according to the organic farming legislation:**

Legal basis	Legal text	Comments	
Council Regulation (EC) No 834/2007, Article 14(1)(b) (iv)	In addition to the general farm production rules laid down in Article 11 with regard to husbandry practices and housing conditions, <u>the number of livestock shall be limited</u> with a view to minimising overgrazing, poaching the soil, erosion, or pollution caused by animals or spreading their manure	fundamental production rules for livestock production as regards organic husbandry practices	
Commission Regulation (EC) No 889/2008, Article 15 - stocking density	1. The <u>total stocking density shall be such as not to exceed the limit of 170 kg of nitrogen per year and hectare of agricultural area as referred to in Article 3(2)</u> 2. To determine the appropriate density of livestock the competent authority shall set out the <u>livestock units equivalent to the above limit</u> , taking as a guideline the figures laid down in Annex IV or the relevant national provisions adopted pursuant to Directive 91/676/EC	detailed instruction on the limitation	
Commission Regulation (EC) No 889/2008 Annex IV	Maximum number of animals per ha Class or species	Maximum number of animals per ha equivalent to 170 kg N/ha/year	recommended list of the 170kg - equivalent of 20 different animal categories
	Equines over six months old	2	
	Calves for fattening	2	
	etc	etc	



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### Conclusion:

Enormous work was done by all concerned parties, stakeholders, Member States and the Commission in the recent years. The revision of the legislation now makes rules and competence repartition simpler and clearer. The substance of production rules valid until 2008 was maintained with only few adjustments to the requirements of the new Council Regulation. Everything was ready in good time. Legal security and continuity for operators is ensured.

The new implementing rules are as complete as possible although a number of questions were left out on purpose. It is recognised that progress for better harmonisation must be made on a number of these questions. However, their controversial nature means that more time for discussion and knowledge building will be needed before a consensus is found and included in the EU standard.

The EU legislation provides legal security and defines the framework for better living/working together to the benefit of all operators and consumers. However, nothing is written in stone and if technical development, progress and market situation necessitate changes, the legislation will be adjusted accordingly.

The Commission will continue to work with stakeholders and national administrations to develop the EU standard. Before 1<sup>st</sup> July 2010 a new logo for organic products will be put in place. The whole process of the revision of the legislation will be the subject of a report to be presented by the Commission to the Council before the end of 2011.

## 2.2 General analysis of the new Regulation

*[Francis Blake, President IFOAM EU Group]*

A significant event for the organic sector happened on 1<sup>st</sup> January 2009. The new Council Regulation (EC) No 834/2007 “on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91” came into force. Together with Commission Regulation (EC) No 889/2008 “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”, the organic sector has a new legal framework.

The intention with these new regulations was to simplify, streamline, rationalise and update the old legislation which, having been amended over 40 times in its 18-year history (the last in autumn of 2008), had become cumbersome and inconsistent. Also important was that this new legal framework should enable organic food and farming to fulfil its potential as a key element of EU agricultural and rural policy and to grow and flourish into the future. How does it fare in relation to these intentions?

The regulation starts with objectives and principles which establish at the outset the baseline and define the nature of organic food and farming. Included for the first time are criteria for assessing inputs, criteria for food processing and a consistent approach to exceptions. It also properly integrates coverage of other areas such as livestock feed and the new areas such as aquaculture and yeast.

The IFOAM EU Group had called for these aspects, it contributed proposals and amendments to improve what was originally written and lobbied extensively for them. Although the process was sometimes cumbersome and not all results were to our satisfaction, the IFOAM EU Group achieved huge improvements on the original Commission’s revision proposal from December 2005 , e.g.:

- The new regulation will continue to protect against claims that imply a product is organic when it is not (the first proposal was very weak on this point, compared with the old regulation 2092/91),
- additional bureaucracy for the sector was prevented, and
- private standards can still communicate their added value and advantages.

Further, the defining of objectives and principles in official EU legislation will help to highlight the benefits of organic production when it comes to general political discussions at the EU level, e.g. the role of



organic production within the CAP (Common Agricultural Policy) or in defining environmental legislation. The end result demonstrates much of the progress we were aiming to achieve.

However, the two new regulations together are over one-third longer. Also, with two regulations to consult instead of one, and having to reference four or sometimes even five separate places to get the whole picture (principles, general rules, specific rules, exceptional production rules, transitional measures – not to mention the annexes), it can hardly claim to be simpler, at least for the operators. That is one reason for producing this dossier.

#### **Legal context and scope**

In terms of legal context, the scope has been increased in line with the IFOAM EU Group's requests to include aquaculture, seaweed, yeast and wine. However, the EU Group feels there needs to be an even wider scope, to cover at least the manufacture of textiles and cosmetics. The regulation anticipates a review of the scope in 2011 and we are already pressing to at least extend protection of the word 'organic' to these burgeoning new markets.

Of broader significance is the systematic transfer of control upwards, from control bodies to member states and to the Commission. This is partly the result of organic farming coming under the auspices of the Official Food and Feed Controls (regulation 882/2004), designed to protect the consumer from food safety crises. However, it was also a specific intention of this revision. One reason given was to prevent competition between control bodies in how they applied the regulation. The IFOAM EU Group has consistently argued that it is the role of the competent authorities, overseen by the Commission, to ensure control bodies operate properly and fairly. It is clear that this system does not work as it should – there is huge variation in the competence of competent authorities and we welcome the fact that the Commission will now have greater powers to oversee them. We will continue to monitor this to ensure that the Commission does indeed exercise that power, in order to uphold the integrity of organic food and farming.

#### **Private standards and the EU logo**

An intention of the new regulation was to curb the influence of those control bodies operating to private standards. After sustained lobbying, the key parts of the draft legislation aimed at this were withdrawn. In their place, a mandatory EU logo was introduced. This has been ill-fated from the beginning and it remains to be seen how it will eventually settle down.

It is necessary to state again the important role that organisations with private standards play. They lead the way as sources of innovation, local identity, producer and consumer education, improved public trust and market development. All these are central to the continuing vibrant expansion of organic food and farming. They are an integral part of 'the goose that lays the golden egg'. The regulation performs the essential function of providing a baseline that guarantees the quality and integrity of all organic production and processing. However, private standards keep driving continual improvement and allow the organic sector to expand its scope. Stakeholder involvement in private standards development is strong, thereby building trust, being responsive to local and regional needs, and securing consumer commitment.

#### **Stakeholder involvement, consultation and deadlines**

Throughout the discussions on both regulations, the Commission imposed unnecessary and damaging time limits and therefore allowed only limited stakeholder involvement. This was all the more surprising as the regulation arose originally out of the organic sector offering its own voluntary environment and food quality scheme as the basis for the legislation. The IFOAM EU Group consistently argued for more time and stakeholder involvement, insisting that "quality is more important than speed", knowing that the eventual regulation would be better for improved consultation and less pressurised deadlines.

The official consultation on the framework regulation was a woeful three weeks. Learning from that experience, the amount of consultation and stakeholder involvement improved considerably and could even be regarded as ground-breaking in the context of the norm for such Commission legislation. There were formal consultations, hearings and a number of official and unofficial stakeholder meetings. The IFOAM EU Group



acknowledges this significant progress and indeed was heavily involved in helping to push these boundaries.

However, the process still fell well short of what would be expected by modern standards of governance and accountability. It is recognised that part of this is due to the unique structure of the European Union and the sometimes complex roles assumed by the Council, the member states and the Commission, not to mention the Parliament which currently only has the right of ‘opinion’ on agriculture matters. The Commission is therefore limited in what it can do, and has found creative ways to work within those limits, such as releasing ‘non-papers’. However, the IFOAM EU Group will continue to press in future for more time and more involvement of directly affected stakeholders, not just the official (and often conventional) stakeholder groups.

Once published, the Commission hoped to complete the framework regulation in six months. However, after the outcry from the IFOAM EU Group and member states, and as vindication of our concerns, in the end it took 18 months. During that time, an IFOAM EU Group delegation held a series of high-level meetings with Commission officials and we were able to make positive progress in a way that was not possible during the official, but very bland, stakeholder consultation process.

We had also argued that the implementing rules needed to be finished well over six months before the implementation date. Even six months would put huge pressure on the farmers, processors and certifiers who have to implement these new rules. Although the intention was to ensure only minimal change in content, nevertheless there were many changes between the old and the new. This means that member states had to carry out a detailed evaluation of the whole regulation to assess the implications of the changes and how they were going to deal with them. They then had to inform control bodies which had to change any necessary documentation, inform their operators and train their inspectors.

As it has turned out, all this had to happen within the space of three months, since the implementing rules were finally published in September. Since then, both they and the framework regulation have already been amended, introducing a two-stage implemen-

tation. Far better would have been to recognise and respect the needs of the sector by setting a single, postponed start date. This would have given the sector both sufficient time to prepare themselves and a significantly simpler introduction.

### Content

It was the intention of this revision not to change anything at the production level. Needless to say, this proved impossible, and there have in fact been many changes. These are generally covered in the other chapters of this dossier. Some are improvements that the IFOAM EU Group and others had called for, for instance:

- Exceptional production rules, allowing flexibility for climatic, structural and developmental reasons;
- A new calculation system to label processed products (‘organic’ for 95%+, an ingredient panel only for less than 95%, ‘made with’ for products with wild fish or game);
- Ingredients calculation including those additives of agricultural origin;
- Risk-based inspections to help target inspection capacity where there is greatest need (but there is concern that the very smallest and lowest risk operators still have to bear the costs of annual visits which is already creating a two-tier market);
- A more flexible approach to imports and equivalence (though it will be important for the assessments to go beyond paper comparison and consider control practice on the ground, using expert and qualified personnel).

Others are completely unknown quantities, for example the replacement of ‘need recognised by inspection body or authority’ by ‘operators shall keep documentary evidence of the need to use’, and the new mandatory labelling requirements, including the EU logo.

The IFOAM EU Group has also identified some defects which they are already working on proposals to rectify, for instance:

- How to label seed mixtures that are made up of different species, some organic and some not – without clear labelling, it is difficult to market such mixtures and so no incentives to increase the organic proportion in mixtures;

- It is unclear how to deal with processing methods that may or may not be permitted, depending on national interpretation, for example ion exchange;
- 'Organic' feed may contain up to 5% non-organic ingredients – this conflicts with the requirement for ruminants to have 100% organic feed and may lead to producers being misled as to the acceptability of the feeds they purchase..

Whilst the main bulk of the new regulations more or less reflect the old, the final analysis will have to wait until it all settles down. It can be concluded also that

the new regulation ensures that organic remains organic, that private standards play an important role and that the new regulation brings some improvements. On the other hand it can be stated that there are also some birth defects and the implementing rules of the new areas – aquaculture and wine – have not been decided yet. Therefore the IFOAM EU Group will be assessing how the new regulatory environment works in practice, and how it therefore must be improved in the future to secure a growing organic market and maintain a vibrant organic movement.



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## 2.3 Overview: The Organic Regulations

[Beate Huber, Bernhard Speiser]

**Illustration 1:** Regulations for production and processing of organic food and feed in (EC) 834/2007 and in (EC) 889/2008. The table has been simplified for better readability.

Area	General provisions in (EC) 834/2007	Detailed regulation in (EC) 889/2008	Positive lists in Reg. (EC) 889/2008, Annexes
<b>Scope, principles and definitions</b>	Title I - III (Art. 1 - 11)		
<b>Plant production</b>	Titel III  Art. 12 - 13	Art. 3 - 6, 40 (General requirements)  Art. 45, 48 - 56 (Seed and propagating material)	An. I (Fertilisers and soil conditioners)  An. II (Pesticides)  An. X (Seed)  Planned: Desinfection agents
<b>Livestock production</b>	Art. 14 - 15	Art. 7 - 26 (General requirements)  Art. 39 - 44, 46 - 47 (Exceptional production rules)	An. III (Housing)  An. IV (Stocking densities)  An. V (Feed)  An. VI (Feed additives)  An. VII (Cleaning and desinfection)
<b>Food and feed processing</b>	Art. 18 - 21	Art. 27- 29	An. VIII (Substances allowed for processing)  An. IX (Allowed non-organic ingredients)
<b>Control</b>	Titel V (Art. 27 - 31)	63 - 69, 91 - 92 (General)  70 - 73 (Plant production)  74 - 79 (Livestock production)  80, 86 - 90 (Processing)	An. XII (Operator certificate)  An. XIII (Vendor declaration)
<b>Labelling and transport</b>	Titel IV & VI (Art. 23 - 26)	Art. 30 - 35  Art. 57 - 62	An. XI (Logo)

**Illustration 2:** Regulation for imports of organic products from Third Countries in (EC) No 834/2007 and the implementing rules (EC) No 1235/2008. *The table has been simplified for better readability.*

Area	Framework regulation (EC) No 834/2007	Implementing Rules	Annexes to Reg. (EC) No 1235/2008
<b>Import of compliant products</b>	Art. 32	1235/2008: Art. 3 - 6	An. I (List of Control Bodies)
		889:/2008: Art. 81 - 85	An. II (Certificate for documentary evidence)
<b>Import of equivalent products</b>	Art. 33	1235/2008: Art. 7 - 13	An. III (List of Third Countries)
			An. IV (List of Control bodies)
		889/2008: Art. 81 - 85 (Controls)	An. V & VI (Certificate for inspections)



## BIO AUSTRIA – Austria's Organic Farmers

BIO AUSTRIA is a community of approximately 13.000 Austrian organic farmers, who have united in order to farm according to BIO AUSTRIA's philosophy and strict regulations.

They represent 70 % of Austrian organic farmers and are thus Europe's biggest Organic Association.

**Our society asks for far more than just the production of food, and BIO AUSTRIA's organic farmers have decided for an agriculture meeting as many social demands as possible:**

1. High food quality and fair income
2. Creation of an environment worth living in
3. Protecting the climate by diminishing the greenhouse gases
4. Building up fertile soil
5. Protection of drinking water
6. Forwarding biodiversity
7. Appropriate animal husbandry
8. GMO-free food production
9. Healthy animals and plants for healthy food
10. Organic Certification Systems for guaranteed organic food

**BIO AUSTRIA's core competencies are:**

1. Advisory and training competence
2. Safety due to the BIO AUSTRIA quality standard
3. Representation of interests of organic farmers and farming
4. Public relations



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## 3 | INTERPRETATION AND EVALUATION OF THE NEW REGULATION AND ITS IMPACT ON SPECIFIC AREAS OF THE SECTOR

### 3.1 LEGAL ASPECTS

#### Some Legal Aspects of the Regulations (EC) No. 834/2007 and 889/2008

[Hanspeter Schmidt]

**It is not easy to explain why Regulation (EEC) No. 2092/91 has been fully repealed and replaced by three different Regulations<sup>1</sup> while the texts of the Annexes of Regulation (EEC) No. 2092/91 have been re-used and re-published practically unchanged in these new Regulations. What were the reasons given for this effort?**

“**Legislation by derogation**” was named as the No. 1 problem of Regulation (EEC) No. 2092/91. 66 “derogations” were described as a major deficiency of Regulation (EEC) No. 2092/91.<sup>2</sup> Some referred by this term to “too complex and multiple derogations” concerning, for example, non-organic breeding animals and conventional feed.<sup>3</sup> Others used the term “derogations” to refer, for example, to non-organic farm inputs which were only be used in organic farming under the condition “**need recognised by the inspection body**”, Annex I 2.1. of Regulation (EC) No. 2092/91 permitted these inputs, such as slurry from conventional animal husbandry, only exceptionally and only as a complement.

When member states asked in the Standing Committee on Organic Farming (SCOF) on May 26, 2008 to leave the system of need recognition intact, the Commission refused to do so. It argued that this could not be done, since this was not foreseen by Regulation (EC) No. 834/2007. In this way it became obvious, that a major reason for repealing Regulation (EEC) No. 2092/91 was where the inspection bodies had to assess the need for external inputs and decide on it. The intention of the revision process was thus to weaken the expert decision-making role and responsibility of organic certifiers.

However, this explanation given in the SCOF-meeting was incorrect, since there was nothing in Regulation (EC) No. 834/2007 which required or made it even

plausible to replace the prior system of *need recognition*. The Council Regulation transferred to the Commission broad law-making powers to determine whether to change the need recognition system or not. The Commission obviously considered it necessary to limit the role of organic certifiers in the shaping of organic management plans.

In order to decide on this need organic inspection bodies had to enter into an analytical exchange on the organic plan of the farm. This professional discourse resulted in a reliable, mutually agreed management basis for the organic farmer. The revised law still permits non-organic fertilisers only where the nutritional needs of plants cannot be met by organic management measures. It did not change the management rules. However, now farmers act on their own risk. They recognise a need and then they use positive-listed substances on their land. The control body reviews this practise. If it does not agree in its post factum review, it reports an infringement. The German “Land” Baden-Württemberg requires organic farmers to pay back organic conversion subsidies for five years in cases where an infringement has been reported by the organic inspection body. Thus organic farmers risk their farms when they are forced to act on their own risk with no ex ante review by their organic control body.

#### Readability

The new Regulations are referred to as “simpler, clearer and more transparent”. For most readers the new texts require mind-boggling efforts **in ZICK-ZACK-reading**. Many complain that it is very hard to understand what the law is, since this requires having the texts of Regulation (EC) No. 834/2007 and 889/2008 in mind.

There will be numerous mistakes in practise by those who do not read the text in parallel with an understanding, that Article 8 of the Regulations requires operators only to observe the rules of Title III with the “Production Rules”, and consequently not the rules of Title II with the “Objectives and Principles for Organic Production”. These are to guide the Commis-

<sup>1</sup> Regulation (EC) No. 834/2007 (by the Council), 889/2008 (by the Commission) and 1235/2008 (by the Commission) on third country imports. There are first amendments to Regulation (EC) No. 889/2008 by Regulations (EC) No. 967/2008 and 1254/2008. <sup>2</sup> [http://www.organic-revision.org/dissim/con06/Standards\\_variation\\_Kim\\_Boesen\\_Odense\\_D3.pdf](http://www.organic-revision.org/dissim/con06/Standards_variation_Kim_Boesen_Odense_D3.pdf), ppt 4 | <sup>3</sup> [http://www.pro-bio.cz/bioakademie2007/materials/prezentace/ple/Peutz\\_Reform\\_Policy\\_BA\\_Lednice\\_270607\\_plenar.pdf](http://www.pro-bio.cz/bioakademie2007/materials/prezentace/ple/Peutz_Reform_Policy_BA_Lednice_270607_plenar.pdf)



sion in the use of its law-making powers, which have been delegated from the Council to the Commission. Regulation (EC) No. 834/2007 sets the frame in which the Commission makes use of its secondary law-making power in Regulation (EC) No. 889/2008. The parallelism of these two regulations follows from the new powers delegated from the Council to the Commission and the consequential splitting of the law. The splitting practically documents the new powers of the Commission.

### GMO

Most actors in the revision process are, for example, likely to have never understood, what it meant to refer to the rules for mandatory GM labelling in order to determine the exclusion of traces of genetic engineering from organic products. The exclusion of **genetically modified organisms (GMO)** from organic production has been connected with the EU scheme on mandatory GM labelling.<sup>4</sup>

This GM labelling scheme provides for numerous loopholes which allow for the presence of genetically modified materials beyond 0,9% in organic products: Unwanted components, for example, such as those introduced by dust in grain elevators or mills are believed not to trigger mandatory GM labelling in accordance to Regulation (EC) No. 1829/2003. This is supposed to apply regardless of whether the 0,9 per cent limit is exceeded or not, since the labelling requirement does not apply at all.<sup>5</sup>

The same is correct with respect to substances which are present in organic food products, but which are not covered by the term “ingredient”.<sup>6</sup> Not in the scope of the term “ingredient” are for example, the constituents of an ingredient which have been temporarily separated during the manufacturing process and later reintroduced but not in excess of their original proportions; additives: - whose presence in a given foodstuff is solely due to the fact that they were contained in one or more ingredients of that foodstuff, provided that they serve no technological function in the finished product, - which are used as

processing aids; substances used in the quantities strictly necessary as solvents or media for additives or flavouring. In addition, exempt from GM labelling requirements are “substances which are not additives but are used in the same way and with the same purpose as processing aids and are still present in the finished product, even if in altered form.”<sup>7</sup>

The reference to EU mandatory GM labelling as a sufficiently reliable indication for organic farmers and processors to exclude genetic engineering from their practices opens numerous loopholes through which GM traces may be introduced into the organic products.

### GMO contamination thresholds

The term “**technically unavoidable**” was thought to provide for safe distances in coexistence schemes for the separation of GM and organic cultures. This has no basis in EU practises. Mandatory GM labelling is not to be applied to foods containing a portion of genetically engineered ingredients no higher than 0,9 per cent of the food ingredients, but only provided that this presence is adventitious or technically unavoidable.<sup>8</sup> Technically unavoidable is not any level of GM presence below the 0,9 per cent level which may be achieved by separation distances, such as 800 meters between GM and organic maize fields. Rather, coexistence schemes are supposed to deliver no more than levels not higher than 0,9 per cent. Thus this level became a GM target level.

### Identification codes

The EU Commission considers a common organic label identification as essential. However, it refused to harmonise the identification codes of the organic inspection bodies, which have been a mandatory labelling requirement for more than ten years. These codes never developed into common EU-wide markers for organic food products, since the codes were developed by each of the member states separately in such an extremely divergent manner, that even organic marketing experts would not necessarily recognise organic inspection IDs on food labels as

<sup>4</sup> Article 9 of Regulation (EC) No. 834/2007 | <sup>5</sup> (CIAA (EU Food and Drink Confederation), GUIDELINES FOR THE EUROPEAN FOOD AND DRINK INDUSTRIES, New EU regulations on GMOs EU Regulations on Genetically Modified Food and Feed ((EC) No 1829/2003) & Traceability and Labelling of GMO and of Food and Feed Products produced from GMO ((EC) No 1830/2003), Brussels 2005; <http://www.ciaa.be/documents/brochures/GM%20guidelines.pdf> | <sup>6</sup> Article 2 Number 13 of Regulation (EC) No. 1829/2003; Article 6 (4) of Directive 2000/13/EC | <sup>7</sup> Article 1c of Directive 2003/89/EC | <sup>8</sup> Article 12 (29 of Regulation (EC) No. 1829/2003



such. In the IDs no indication of a reference to organic products was required. This has been changed. Now the structure of the IDs have been harmonised: An explicit reference to organic production is mandatory. These IDs will work as a clear indication to consumers, that the food product is subject to the EU organic inspection scheme. The Commission thus violated the principle of subsidiarity, which requires, that the European Community abstains from regulating a field or prescribing measures to remedy a problem which are not required since others, which impose less burden, are available. The principle of subsidiarity is defined in Article 5 of the Treaty establishing the European Community. It is closely bound up with the principles of proportionality and necessity, which require that any action by the Union should not go beyond what is necessary to achieve the objectives of the Treaty. To harmonise the IDs of organic certifiers on food labels and to introduce a clear reference to organic production offered a less burdensome choice to make a uniform organic identifier for food products available, that the introduction of a mandatory EU logo.

### **Mandatory EU logo**

However, a EU organic logo was introduced as mandatory. This violated the principle of subsidiarity and proportionality. The first logo draft of December 2007, prepared by an external contractor was very close to the ALDI logo, a large German food chain. Now the Commission plans a competition for young design and art students. Five logo drafts from this competition are to be submitted to European citizens for a vote. The Commission plans to present the best one in a proposal for an amendment to the Regulation (EC) No. 889/2008 to the member states. No professional expertise in trademark development and communication psychology is likely to play a role in this process. The second effort to develop a EU organic logo might thus fail as well. If the selection process should result in a logo, which might again make consumers think of an organic competitor or if a logo should be chosen for mandatory use, which does not transport the organic message in all of the languages and cultures of the member states, the principle of proportionality would be violated in

even more depth, since the imposition of a mandatory measure, which does not achieve its purpose, violates the constitutional rights of citizens and enterprises, thus, per se.

### **The role of inspection bodies**

The question, of whether organic control bodies operate as private expert bodies after having been admitted to practise by an official act and under governmental oversight or whether they act as agents of government fully integrated into the public administration of the respective member state or whether their position is somewhere in between, remains for many member states unclear. The system of organic controls is to be set up in conformity with Regulation (EC) No. 882/2004. This is a Regulation which refers to the official implementation of food law by the administrations of the member states. Some observers believe that this reference to Regulation (EC) No. 882/2004 renders all aspects of what organic certifiers do in the EU organic inspection scheme official acts.

This is probably not the case. In an opinion of Advocate General Sharpston delivered on July 12, 2007, she emphasised with respect to the rules set up in Regulation (EEC) No. 2092/91 the fact, that organic inspection bodies have to comply with EN 45011, which covers requirements for bodies operating product certification systems: “That said, the system put in place by the Regulation is one in which, essentially, the inspection bodies operate a product certification system under the supervision of the competent authority”. And: “The nearest the approved private inspection bodies come to performing an official act is issuing certificates. In my view, such activity does not constitute the exercise of official authority for the purposes of Article 45 EC”. The European Court of Justice had to decide whether a member state which requires private inspection bodies of organically farmed products approved in another Member State to maintain an establishment in national territory in order to be able to provide inspection services there, fails to fulfil its obligations under Article 49 EC.<sup>9</sup> It ruled that private bodies cannot be regarded as to exercise official authority for

<sup>9</sup> European Court of Justice, Judgement of 29.11.2007, Case C-393/05, Commission of the European Communities versus Republic of Austria

the purposes of Article 55 EC read in conjunction with the first paragraph of Article 45 EC.

Whether the legislative basis for this judgement has been changed by Regulation (EC) No. 834/2007, the answer is to my opinion, no: The German Council Presidency in the first half of the year 2007 pushed hard to introduce language into Article 27 which extensively, but selectively, uses the words of Regulation (EC) No. 882/2004 to set up a specific framework for organic certification by private bodies, to make clear that the private character of organic certification is not to be changed. This is referred to as a priority framework for organic food law implementation. The German government emphasised after the Council decision that it had succeeded its request for amendments to prevent a conquest of the well established private organic certification structure by government authorities.

What follows is that the member states are free to set up fully governmental or vastly private organic certification schemes while implementing Regulations (EC) No. 834/2007 and 889/2008 or any concept in between. However, if private bodies are permitted to practise as organic control bodies, it is not EU law that would render their performance an exercise of public authority, but it is rather each national law maker who may prescribe private organic control bodies to operate rules in the structure of the public administration and not outside.

### **The system of positive lists**

The most important instrument to distinguish organic from conventional production in setting up a legal norm and to enforce this norm is the system of positive lists. Positive lists for inputs means, that the use of inputs is prohibited with the exception of those explicitly listed in positive lists. While the first drafts presented by the Commission for the total revision of Regulation (EEC) No. 2092/91 on December 21, 2005 did not even mention the system of positive lists this is now again installed. The positive lists of the Annexes of Regulation (EEC) No. 2092/91 are now in the Annexes of Commission Regulation (EC) No. 889/2008. Some observers are puzzled about what it means when Article 16 (4) delegates a law-making power to member states to regulate the use

of substances “for purposes different than those mentioned” in the first subchapter of this article. And they ask, why Article 16 (5) refers to substances neither covered by Article 16 (1) nor (4).

The positive listing requirement is a prohibition to use a substance if it is not included in the positive lists of the annexes. However, this is not a general principle in organic farming, but to be applied only to the use of substances for specific purposes enumerated in Article 16 (1) of Regulation (EC) No. 834/2007. A substance, which is not used in organic farming as a “plant protection product”, a “fertiliser”, “soil conditioner”, as a “non-organic feed materials from plant origin, feed material from animal and mineral origin”, a “certain substance used in animal nutrition”, as a “feed additive” or “processing aid”, as a “product for cleaning and disinfection of ponds, cages, buildings and installations for animal production” or as a “product for cleaning and disinfection of buildings and installations used for plant production, including storage on an agricultural holding” is not covered by the organic positive listing requirement.

What is the practical consequence? A substance which is used to trigger the self-defence system of a plant against fungal attack is considered a plant strengthener and not a plant protection product. A plant strengthener may, as is the practice in some member states, be used freely in organic farming with no need of positive listing. In wine growing K-phosphite is used in the member states to regulate *plasmopora viticola* as a plant strengthener under the assumption that it does not attack the fungus but triggers the plant's defences against it. K-phosphite causes phosphonate residues in the leaves and, depending on the period of use, in the wine.

Article 16 (4) permits member states to introduce a positive listing requirement nationally. This responds to concerns raised by some of the member states in the drafting process that such inputs should be subject to legislative scrutiny. Since there was no expectation to reach a majority for the regulation of a positive listing requirement for plant strengtheners on the community level, national law makers were (re-) delegated the power to deal with this aspect nationally.



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If a member state does not do so, every operator and every control body must check the use of, for example, plant strengtheners in organic wine growing against the principles of organic production laid down in Chapter II. This is what Article 16 (5) orders them to do. In practice this requirement is likely to be (mis-)understood, to mean that each of the several hundred plant strengtheners listed in Germany by the Federal Agency for Biology (BBA) may be used in organic wine growing with no restrictions. The requirement of Article 16 (5), however, obliges farmers and certifiers to carefully document their assessment that the intended use of a plant strengthener is in line with the “objection and principles” of Chapter II. This is one of the rare instances where there is directly applicable law.

Biocides used to kill insects in empty transport vehicles or grain elevators in mills are neither covered by the term “plant protection product”, nor by the term “product for cleaning and disinfection”. So they are perceived as not in the scope of any positive listing requirement. The use of pirimiphosmethyl in this manner, not subject to any organic positive listing requirement is frequently given in practise to explain the persistent presence of slight traces of pirimiphosmethyl in organic durum pasta, which have been observed in the organic for many years.

Article 16 (4) and (5) delegates solving this problem back to the member states, the individual organic farm and her or his organic certifier.

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### 3.2 | PRODUCTION ASPECTS

#### The Implementing rules of the new Organic Agriculture Regulation - Few changes in production rules

[Gerhard Plakolm]

**Many indeed were the changes that were requested in the Implementing Rules. In order to ensure prompt publication, any changes were largely avoided but the structure of Regulation 889/2008 is new. This article surveys what changes it implies for farming practice.**

#### Clearer structure – multiple Regulations

As in the Council regulation 834/07, these implementing rules are arranged hierarchically in five titles, 20 chapters, 97 articles and 14 annexes. This clearer framework makes it easier to use. It does however split up some hitherto linked areas into separate articles. The most obvious case is in beekeeping. This poses a challenge to those who, for years, worked with Regulation 2092/91 and are fully adapted to it.

Apart from that, not all the rules that need to be kept can now be found in one single regulation. Such as:

- | Regulation 834/2007 Framework regulation: to which reference is constantly made. The result is that the information may be scattered. Some basic standards are already contained in the production rules of this framework.
- | Regulation 889/2008 Implementing rules for Production, Labelling & Certification. In 2009, the rules for Aquaculture and Winemaking are to be incorporated.
- | Regulation 1236/2008 covers Imports.

The text of the old Regulation 2092/91 is largely located within the implementing rules; only a few points are new. In some points, considerable improvements were obtained after difficult negotiations, compared with the Commission's original proposal of January 2008. Many of the improvements requested by practitioners were nonetheless ignored. The Commission has however given assurances that discussions on these will be resumed in the foreseeable future. Of the original aims of the revision (simplification, tight-

ening), essentially only the better structure has resulted.

#### The biggest changes affecting agricultural practice Some exceptions prolonged until 2013

The most significant practical changes were final concessions made by the Commission with a view to a high proportion of consent from member states. For animal production, the following two points [from Annex I.B of the old Regulation 2092/91] were extended beyond 2010 till the end of 2013, on condition that there were two inspections per year:

- | Tethering on farms that are too large for the rules applying to smallholdings [6.1.5.];
- | Exceptions [under 8.5.1.] for poultry production and requirements for stables needing rebuilding, such as access to grassland or exercise, or the minimum surfaces for stables and exercise yards.

Extending until 2013 relates to the timespan of the Agro-environmental programme of Rural Development. For cases of hardship, this can provide help. Any abandonment of the organic method by producers would thus not be linked to retrospective financial claims.

#### No more discretionary approvals from certification bodies; documentary evidence must instead be recorded by the operator.

One remarkable change is the loss by certifiers of any discretion in the sanctioning (i.e. approval) of practices, such as when buying production inputs. According to the terms of Regulation 834/2007, this is no longer possible. (Certification bodies may not exercise discretion, they must only inspect. They must stop competing to grant sanctions.) Instead there is an obligation to notify the certifier of certain things, and be available for inspection. This is a significant simplification, which satisfies the producer's desire for more autonomy. It brings the producer an increased load of paperwork and responsibility. Remaining sanctions are to be granted by competent authorities only. According to Regulation 889/2008, only the sanctioning (i.e. approval) of the use of conventional seed can be delegated to certifiers.



### Mutilations

Operations such as dehorning may not be done routinely; the competent authority may however allow them for reasons of health or security, case by case. In every such case (from January 1, 2012 also for operative castration), the suffering of the animal is to be lessened by henceforth accompanying every intervention with adequate anaesthesia and/or analgesia and by intervening at the appropriate age.

### Exceptions

Changes here only affect the structure of the text (see also **the article “Exceptions – unpopular but necessary”**):

- | The permanent exception for the buying in of conventionally raised animals for breeding purposes (including bees) has been retained as a new rule.
- | Remaining exceptions are included in the chapter on flexibility (Article 39-47).
- | Provisions with an expiry date are to be found in the Transitional Rules (Article 95).

### Improvements for practitioners of poultry and cattle breeding

- | For waterfowl, water basins are henceforth allowed. It should therefore be easier to ensure hygiene by changing the water.
- | Slow-growing poultry strains can be defined by member states. This can be done via the setting of criteria, such as maximum growth rates.
- | The lowest age for slaughter of female turkeys has been lowered to 100 days, so as to avoid the build-up of fat.
- | In cattle breeding, the smallholder rules can now apply to new farmers.
- | For the calculation of maximum stocking densities per hectare, there is now some national discretion, albeit only small.

### A tightening up of farming practice

This is hidden in the detail. Besides the already cited examples, there is for poultry, for example, the stricter requirement of access to free range during one-third of their lifespan. The obligation of providing cattle with adequate grazing has been more clearly formulated. Even the feeding of sucklings is more strictly formulated: mother’s milk is to be preferred over natural milk. Dried or skimmed milk now also counts as ‘natural milk’. Milk components may be extracted but not substituted. For sheep and pigs, finishing in closed sheds is allowed only until December 12, 2010.

### Obscure new formulations

Newly introduced changes will be brought in over time, possibly with wide national discrepancies, such as with the prohibition of “factory farming”, and sources of bought-in manure.

### Conclusion

The requirements from Regulation 2092/91 have mostly been transferred unchanged to the implementing rules; a clearer structure makes it easier for the new reader to find what he seeks, although the information may be scattered. The most important changes affecting agriculture are the prolonging of certain exceptions until the end of 2013, and an end to approvals being granted by certification bodies. Operations on animals are henceforth allowed only with adequate anaesthesia and/or analgesia.

## Crop production and crop production inputs

[Bernhard Speiser]

**Crop production is the sector with the longest tradition in organic farming. The production rules were established in the old regulation and have undergone comparatively little change during the revision. This is particularly true for the rules on crop rotation, soil management and seeds. The most important change is that the lists of allowed inputs can be adapted more easily in the future, due to more sophisticated evaluation criteria. A few plant protection products have already been evaluated with the new criteria, and have recently been authorised.**

### Scope of the regulation in crop production

The scope of the new organic regulation is very similar to that of the old regulation and covers horticulture (including ornamentals), arable crops, fodder crops, mushroom production, and the collection of wild plants. Hydroponic production has never been allowed. Under the new regulation, however, it is now clearly defined and explicitly prohibited (NIROF, Article 2(g), Article 4). The major change is the inclusion of seaweed production. At present, detailed production rules for seaweed have not yet evolved (NIROF, recital 2), so that organic seaweed production cannot be practised yet.

### Soil and crop management, seed

The rules for crop rotation, soil and crop management and seed have undergone very little change. Seed and vegetative propagation material from farms in conversion may be used without restriction (NIROF, Article 45(1)(a)).

Inputs are only one aspect of crop management. Because this area has undergone the most important changes during the revision, the largest part of this chapter is dedicated to this subject.

### Range of allowed inputs

Under the new as well as under the old regulation, fertilisers, soil conditioners, plant protection products and other inputs can only be used if they are explicitly listed in one of the annexes. Authorisation of new inputs is a very sensitive topic in organic farming, which sometimes leads to prolonged, intensive

discussions. To avoid such discussions delaying the adoption of the NIROF, the lists of permitted substances were transferred from the old regulation to the NIROF without major changes. Revision of these lists is to be carried out in the future (implementing rules, recital 7).

### Conditions for the use of inputs

The principles of organic production state that the use of off-farm inputs should be minimised (834, Article 4(b), Article 5(b)). Under the NIROF, operators shall keep documentary evidence of the need to use fertilisers, soil conditioners and plant protection products (NIROF, Article 3(1), Article 5(1)). This replaces the condition 'need recognised by the inspection body or inspection authority'. In practice, this condition was difficult to enforce and was unequally implemented in different EU member states. This condition was therefore not transferred to the NIROF, but replaced by the obligation to keep documentary evidence of the need.

### Authorisation of new inputs

The criteria for authorisation of new inputs are now more detailed and comprehensive (834, Article 16). At present, under the old regulation, the authorisation criteria required that substances had to be essential and their use must not result in unacceptable effects on the environment. In addition, it is now required that they must be consistent with the objectives and principles of organic farming, and that they must be of plant, animal, microbial or mineral origin (exceptions are described in the section on plant protection).

In 2008, the Commission for the first time invited an ad-hoc expert group to provide recommendations on the authorisation of new inputs (Regulation 404/2008, 'recital' 2 and 3). This procedure clarified open questions within a short time period, and led to rapid decision-making. It is therefore planned to involve an expert panel in such decisions in the future.

### Fertilisation

Organically grown plants have always been fed mainly through the soil eco-system and not through soluble fertilisers, and the non-use of highly soluble nitrogen fertilisers is one of the main characteristics



of organic farming. To reflect this, the overall principles now clarify that only mineral fertilisers with low solubility may be used (834, Article 4(b)(iii)). A consequence of this principle is that Chilean nitrate cannot be authorised. This terminates the pressure for its authorisation in Europe, which was initiated by the manufacturing countries but not supported by the European organic sector.

Manure from conventional farms is only permitted when it does not originate from factory farming, but a definition of factory farming is missing (NIROF, Annex I).

### Plant protection

In the area of plant protection, the old regulation was strongly influenced by the traditions of the European organic sector, and progress was almost impossible. On the one hand, all substances which had been in common use before the adoption of the old regulation were authorised (2092/91, Article 7(1a)). On the other hand, the so-called 'non-contact clause' (2092/91, Article 7(1)(a)) was so restrictive that almost no new plant protection products could be authorised under the old regulation. Under the new Regulation 834/2007, authorisation of new plant protection products is possible, if they fulfil all evaluation criteria. Products and substances of plant, animal, microbial or mineral origin are eligible for authorisation as plant protection products. If these substances are not available from natural sources, the same substances from synthetic sources can also be used (Regulation 834, Article 16(2)(b)).

According to 834/2007, Article 16(2)(c)(ii), products which are not identical to natural substances may be authorised under certain, limited conditions. This clause was introduced into the 834/2007 to facilitate the authorisation of pheromones, which are amongst the preferred methods of plant protection in organic farming. Pheromones are highly target-specific and therefore environmentally friendly; they are used in very small amounts and they are not applied directly onto crops; in addition, their mode of action is non-toxic and relies purely on their influence on pest behaviour. However, all pheromones used in plant protection are synthetically manufactured, and many are not identical to the natural form. In the case of phe-

romones, the advantages described above outweigh the disadvantage of synthetic origin. This explains the existence of the above-mentioned clause: that products not identical to natural substances may be authorised under certain, limited conditions.

Concerns have been raised that this clause could open the door for unwanted, synthetic pesticides such as glyphosate. In our opinion, these concerns are not justified, because the use of such pesticides is not consistent with the objectives and principles of organic farming. Finally, the complicated structure of Regulation 834, Article 16(2) fosters diverging interpretations, which may lead to such concerns.

The substances spinosad, potassium bicarbonate and copper octanoate are newly authorised from May 2008 (Regulation 404/2008). Their authorisation was only possible after revision of the organic regulation, with the new evaluation criteria. Spinosad is an insecticide of microbial origin. When it was authorised, the Commission clarified that substances produced by micro-organisms need to be authorised individually (Regulation 404/2008, 'recital' 5). Potassium bicarbonate is comparable with baking powder, which has been used traditionally in organic farming. It is effective against various fungal diseases. Copper octanoate is a new formulation of copper. It was authorised because the total amount of copper applied per season is lower for copper octanoate than for the copper compounds authorised previously. In the same regulation, the uses of ethylene were extended.

### Cleaning and disinfection

For cleaning and disinfection in livestock husbandry, only substances authorised explicitly could be used under the old regulation. Under Regulation 834, this obligation is also extended to cleaning and disinfection in crop production (834/2007, Article 12(1)(j)). However, it has not yet been possible to elaborate such a list for crop production at Community level. As a transitional measure, only products authorised by the competent member state authorities may be used (NIROF, Article 95(6)).



## Animal production

[*Otto Schmid*]

**The biggest change, compared with the old Regulation 2092/91, is that member states can no longer have stricter animal production rules (apart from private standards). Further changes concern animal feed, pasture, indoor tethering, castration of pigs and the postponement of time limits for tethering in larger farms and in older stables.**

### Scope of the regulation for animal production

Article 7 of the implementing rules 889/08 allows for some important domestic species, covering: “bovine including bubalus and bison, equidae, porcine, ovine, caprine, poultry (species as mentioned in Annex III) and bees.” Aquaculture will also be included, though wild fish are excluded. Transition deadlines are given in Article 38.

Pet food is covered in the regulations for the first time, and details will be formulated later (Article 95).

### Origin of animals

As in the old regulation, animals are to be born and raised on organic farms. Where such animals are not available in sufficient numbers, animals of conventional origin may be bought without needing exceptional permission, under certain conditions which vary according to the species (Article 14.1 (a) of 834/07, Articles 8 and 9 of 889/08). For these cases there are differing conversion periods (Article 38). For expanding or renewing livestock numbers, as also in cases of catastrophe, there are special rules for buying in conventional animals.

### Stables and animal husbandry practices

The principles of appropriate breeds and links to the land are kept, as in the old regulation. The principles are however better formulated in Regulation 834/07 and require, amongst other things, the following: the conditions must respect the developmental, physiological and ethological needs of the animals (Article 14 (b) (ii) of 834/07); animals are to have access to open spaces, and pasture whenever possible, weather and soil conditions permitting (Article 14 (b) (iii) of 834/07); stocking density should be low

enough to prevent overgrazing, erosion or pollution (Article 14 (b) (iv) of 834/07).

With a view to satisfying these principles, most of the rules in the old regulation have been retained. They include, among other things, indoor accommodation (Article 11 of 889/08); open range (Article 14.1 (a) (ii) in 834/07, Article 14 in 889/08 and Annex III), stocking density indoors (Annex IV of 889/08) and on the farm (Article 15 of 889/08), inter alia.

For particular animal species, the detailed rules are given in separate sub-chapters: cattle and pigs (Article 11 in 889/08), poultry (Article 12) and beekeeping (Article 13).

For older stables, transition periods are allowed on a case by case basis until the end of 2013, on condition that there are two inspections per year (Article 95.2. in 889/08).

In smallholdings, as defined by member states, indoor tethering is temporarily permitted (Article 39 of 889/08) on condition, for example, that there is twice-weekly outdoor exercise.

Individual boxes are forbidden for calves over the age of one week (Article 11.3 of 889/08). Indoor finishing for beef is still allowed (max. three months), but from 2011 it is no longer allowed for sheep and pigs. Herbivores must have access to free range and to grazing when possible (Article 14.2-4 of 889/08).

Physical operations on animals are now more strictly limited. Interventions such as dehorning may no longer “be carried out routinely”, though the competent authority may in certain cases permit them for reasons of health or security (Article 18.1 of 889/08). The suffering of the animals must be reduced to a minimum in future by operating only under anaesthetic and/or analgesic, and doing so at the appropriate age. Castration without anaesthetic must cease by the end of 2011 (Article 18.2 of 889/08). It is hoped that researchers will by then have found a practical way of castrating piglets, thus lessening their suffering and satisfying expectations regarding meat quality, both practically and economically.



For poultry breeding, the existing rules have also been retained. Amongst other things, these include buildings, population density and minimum age of slaughter. Free range is more precisely defined: poultry must be allowed free range for at least one-third of their lifespan (Article 14.5 of 889/08). The definition of approved slow growing strains of table poultry has been left to member states (Article 12.5 of 889/08).

For beekeeping, the existing rules are largely retained (Articles 9.5, 13, 19.3, 25 and 44 of 889/08).

#### **Feed & feeding**

An important principle in the framework regulation stipulates, among other things: “primarily obtaining feed for livestock from the holding where the animals are kept or from other organic holdings in the same region” (Article 14 (d) (i) in 834/07) as well as that livestock shall be fed with organic feed that meets the animal’s nutritional requirements at the various stages of its development. A part of the ration may contain feed from holdings which are in conversion to organic farming” (Article 14 (d) (ii)).

For animal feed, stricter provisions now apply which, after a transition period, will by 2011 allow 100% organic feed for monogastrics and ruminants (Article 43 of 889/08). In catastrophic cases it will be possible to purchase a higher proportion of conventional feed. In-conversion feed from the same farm can henceforth be calculated as entirely within the feed ration (Article 21 of 889/08).

Time-limited exceptions in feed and feeding are possible under the flexibility rules, in member states where sufficient quantities of organic feed are not yet available (Article 43), and also where catastrophes have caused feed losses (Article 47 (c) of 889/08).

Annex V (of 889/08) carries positive lists of feedstuffs and Annex VI carries lists of feedstuff substitutes, all retained from the old regulation. They are thus easy to read and can be periodically updated. In the newly introduced category of pet foods, national or private rules shall apply for a transitional period (Article 95.5).

#### **Preventative veterinary medicine and treatment**

As a principle, the framework regulation stipulates that veterinary prevention “shall be based on breed and strain selection, husbandry management practices, high quality feed and exercise, appropriate stocking density and adequate and appropriate housing maintained in hygienic conditions” (Article 14 (e) (i) of 834/07). Animals must be treated without delay, so as to allay suffering (Article 14 (e) (ii)).

It is forbidden, as in the old regulation, to make preventative use of antibiotics in feed, as it is also with growth promoters and hormones (Articles 23.1 and 23.2. of 889/08).

In veterinary treatment, natural means and methods must, as before, be used rather than chemical allopathic means and antibiotics (Article 14 (e) (ii) of 834/07, and Article 23 and 24 of 889/08). Should these last-mentioned methods be used, there must then be a double withdrawal period before animals, or products thereof, can again be sold as organic. Vaccinations and anti-parasite treatments are not counted in this.

#### **Cleaning and disinfecting of livestock units**

The use of cleaning agents and disinfectants in livestock production is governed in the same way as in the old regulation (Article 23.4 of 889/08). The permitted substances are listed in Annex VII.

## Exceptions – unpopular but necessary

[Gerhard Plakolm]

**Exceptions do not sound good but they are necessary. In a Europe of such enormous natural diversity, of geographical and climatic conditions, of cultural traditions, it is impossible for legislation to provide for all practical situations, much less describe them. The shorter and sharper, clearer and simpler the rules are and, especially, the more official their character, then all the more necessary it is for them to allow for exceptions or a certain flexibility.**

It is easier to be flexible about private standards or agreements, when necessary, when there is mutual understanding. This is much more difficult with legislation or regulations, especially when conformity with them is regularly inspected by accredited certifiers. When environmental programmes are wound up, any minor irregularities can have unpleasant consequences, involving even repayment of several years' worth of subsidies. This can threaten the very existence of a farm.

In the old organic agriculture Regulation 2092/91, there were many derogations. This led its detractors to claim that organic agriculture defines itself by the exceptions to the rules. When it came to revising these rules therefore, one of the aims was to shed light more precisely on these exceptions and structure them anew. The following changes occur in the new Regulation 834/2007 and in its implementing rules 889/2008:

- | permanent “derogations” for buying in conventionally raised animals for breeding purposes were carried over to the new regulation;
- | remaining derogations are compiled in the chapter “Flexibility”;
- | Expiring derogations are to be found in the transitional rules.

### Controversial “Flexibility”

During the discussions about the revision of the organic agriculture regulation, strong objections were raised as well as much support. It was feared that too much flexibility could leave too much leeway for na-

tional or regional differences, leading to distortions of competition.

With this flexibility, the supporters wanted to achieve a loosening of the tight regulatory corset imposed by the regulation in certain practical aspects, so as to relieve cases of hardship. The Commission has however only compiled a part of the existing derogations under the title of Flexibility, and sometimes more stringently.

### The exceptions in the Flexibility chapter

The framework Regulation 834/2007, in the Flexibility chapter, sets the limits for granting exceptions to production rules:

- | They must respect the aims and principles.
- | There must be clear implementing rules, issued by the Commission and supervised by a regulatory Committee.
- | They are only possible within the following conditions (as indicated by subtitles). In the text that follows, the rules are summarised, with reference to the Articles of the EU Directive 889/08 which contains the implementing rules.

### Climatic, geographical and structural limits

Under Tethering of cattle on small farms (Article 39), it is presupposed that not enough animals are present within each age group for the forming of groups. As has long been expected, the definition of a small farm is not to be made at EU level but at national level. Only when this has been nationally defined can the exception be considered. The animals must however “have access to pastures during the grazing period according to Article 14 (2), and at least twice a week access to open air areas when grazing is not possible.”

Parallel production (Article 40) is almost identical to the old Regulation. What is new is that the purposes of agricultural research and formal education are equally recognised. Also, data is required from certification bodies:

- | on separation measures,
- | on yields, in the case of plant production,
- | on every delivery or sale, in advance, in the case of animal production.

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Conventional and organic beekeeping in parallel, for purposes of pollination is possible, assuming there is compliance with all conditions except location.

### Non-availability of production inputs

These exceptions concern the buying in of conventional production inputs, when not available as certified organic:

- | For chicks less than three days old or pullets up to 18 weeks, previous permission from the competent authority is required (Article 42).
- | For the purchase of feed (and now only for monogastrics), explanations of the necessity must be recorded (Article 43).
- | For beeswax it is newly required there be no detectable contamination from forbidden substances (Article 44).
- | For seed and plant material, these may be obtained from operators in conversion. Should even these not be available, then inputs of conventional origin are allowed, under the same conditions as hitherto prevailed. This approval can be delegated by the member state, including to certification bodies (Article 45).

### Specific problems of animal production

Indoor finishing is henceforth only permitted for fully grown beef cattle (Article 46). [For sheep and pigs, this will be possible until the end of 2010, if inspected twice yearly (Article 95).]

### Catastrophic circumstances

These can, under the same conditions as hitherto, be temporarily sanctioned by competent authorities (Article 47).

### Exceptions with time limits

Exceptions with a time limit have, in 889/2008, not been listed under Flexibility but under Transitional measures (Article 95). Among other things, they concern:

- | Tethering on farms that are too large for the rules applying to smallholdings;
- | The exceptions associated with adaptation of buildings.

Both of these have been prolonged until the end of 2013. A more detailed description is to be found in the article on **changes in production rules**.

## 3.3 PROCESSING ASPECTS

### The impact of the new organic regulation on processors of organic food

[Alexander Beck]

**The scope and complexity of the implementing rules and the consequences that organic processors need to observe from January 1<sup>st</sup> 2009 have surprised many. This article highlights the main changes for processors of organic food and the deadlines for the new requirements to come into force.**

#### Changes in the production and storage of organically produced food

All companies, which are involved in the production, processing, transportation and distribution of organic food, are subject to the new regulation. However, “mass catering operations” are not in the scope of the new regulation but can be regulated on national level. Furthermore yeast, wine and aquaculture are now in the scope of the new EC organic regulation, while the products derived from hunting and fishing are specifically excluded, and the labelling regulations have been amended in line with these changes.

The new regulation includes for the first time a legal text governing the aims and principles for organic food processing. For example, the term “for specific nutritional purposes” has been included, to facilitate the inclusion of nutritional supplements used for dietetic products. Previously, supplements were permitted if there was a legal requirement. The implementing rules have adopted this for the time being, therefore at present there is very little change here.

The detailed requirements for the processing of food can be found in Articles 19 and 23 of Regulation 834/2007 and in Articles 26, 27, 31 and 35, as well as in Annex XIII of the implementing rules (Regulation 889/2008), and some examples are shown below.

Under the new regulation, organic products must be produced “predominantly from ingredients of agricultural origin”, with the exception of water and salt.

In Article 19 (3) the following substances or techniques may be prohibited in organic processing (reservation of prohibition), in circumstances where they:

- reconstitute properties that are lost during processing and storage
- correct the results of negligence
- may otherwise give misleading information as to the true nature of the product.

#### **Additives and processing aids**

In Article 27 (1) of the implementing rules the **permitted additives and processing aids** are listed. Here it is essential that the term “non agricultural ingredients” is not used anymore. This enables the organic certification of ingredients mentioned in Article 27 and coming from agricultural origin as organic products. This requires a new calculation system for ingredients as established in the implementing rules Article 27 (2). This Article clarifies which ingredients have to be calculated as ingredients of agricultural origin or not.

#### **Use of conventional ingredients**

The generally permitted **ingredients of agricultural origin** which may be used **conventionally** are now listed in Annex IX. The implementing rules define new procedures for the permitting of ingredients of agricultural origin, which are unavailable in organic form. Derogations for ingredients of agricultural origin in conventional form can then be granted for 12 months. A derogation may be extended twice. After that time, the derogation runs out. If the substance is needed further on in conventional quality it has to be permitted in Annex IX.

(The new labelling requirements are presented separately in this dossier)

#### **Changes in quality assurance**

Article 26 of the implementing rules indicates the procedures that processors must follow to ensure that organic production complies with the standards, using the phrase “good production practice”,

and using risk analysis to identify critical areas, define necessary actions and monitor results. Record keeping should be used and companies are individually responsible for following the procedures.

The new rules update the exclusion of GMOs that was introduced in the old regulation. The old rules are specified and adapted to the current regulations. However, the EU now prescribes a standard declaration of confirmation, which is not binding.

#### **Transport**

New rules have been formulated for packaging and transport between companies according to Article 31, including Paragraph (2) which concerns exceptional cases for sealing. The sealing is not mandatory if both operations are affiliated to the control procedure: an accompanying document with the necessary information is enclosed. The required information is: name and address of the company or owner of the produce, name of the produce with indication of the organic status, name and/or code number of the certifying body as well as identification of the lot.

#### **Code number**

The code number will be used Europe-wide (Article 58) allowing an easier identification of goods from other EU states in the future. Henceforth the code number will look as follows “XY - 000XX - “organic””. It consists of a country code (XY), a reference number and the denomination for “organic” in an official EU language (defined in the annex of Regulation 834/2007). It has to be located underneath the logo if the logo is used.

#### **Electronic certificates**

The new organic regulation introduces a standardised certificate and mentions explicitly the possibility of electronic certificates. The requirements for the design of the certificate are described in Annex XII of the implementing rules.

#### **Who are subject to controls?**

The requirements in Articles 1, 27 and 28 of Regulation 834/2007 result in some changes concerning the obligation of control and type of involvement. It is clarified that gastronomy does not come under EU control



unless this is decided nationally. Wholesalers are always bound by EU control, although they can be relieved from this if they move only packed goods.

Operators who sell products direct to the final consumer can also be relieved from this nationally. It is new, too, that transport (forwarder) are in the scope of the regulation (Article 1 (3) and Article 2 b) Regulation 834/2007). But in compliance with Article 28 (1) they are not part of the control system. .

### Further Rules

Article 21 names the criteria which govern the evaluation of additives. However, the actual new thing of the evaluation criteria is that beside the already known criteria it is referred to the adding of the criteria defined in heading II “Principles and aims”. For this reason, these have to be fulfilled in addition to the criteria given in article 21.

The new regulation includes a **flexibility rule** in Article 22 (Regulation 834/2007). This means that all derogations are ruled in a harmonised procedure. These procedures arrange that exceptions can be permitted for the existing regulation on the level of EU. The derogation will then become part of the implementation rules. Some of the exceptions are of special relevance for processors;

- | where it is necessary in order to ensure access to ingredients of agricultural origin, where such ingredients are not available in organic form
- | in order to ensure production of well-established food products in organic form
- | where it is necessary to use food additives and other substances or feed additives and such substances are not available on the market other than produced by GMOs.

## Overview: Labelling requirements in the new organic regulation

[Alexander Beck]

**The new organic regulation (EC) No 834/2007 and its implementing rules (EC) 889/2008 introduced new requirements for labelling and packaging. They will be implemented in different steps: Some are introduced from January 1, 2009 while others will apply from July 1, 2010. The following gives an overview of key changes and deadlines and explains briefly what to observe.**

### New Labelling elements

#### List of ingredients

The indication of organic ingredients in the ingredients list becomes mandatory. This can be carried out by using the term “organic” or by another appropriate means of identification of a single ingredient as organic. (Article 23 (4) 834/2007)

#### New code number

Use of the new EU-standardised code number will become mandatory as from 01.07.2010 and will replace the previous code number. The new code number will be designed as follows:

- | it will start with the code of the member state or the third country (e.g. DE)
- | it will contain a term to indicate organic production
- | it will comprise a reference number which will be contracted out by the responsible board
- | In cases where the community logo is used the code number has to appear directly beneath the community logo.

#### New mandatory EU logo

*Effective from 01.07.2010*

The use of the community logo will become mandatory from 01.07.2010. It must appear in a clearly visible place, be legible and smudge-proof (Article 24 (2)).

The community logo **has to** be used

- | on pre-packaged food in the labelling, (Article 24 (1) b) and may be used in advertising of organic produce (Article 25 (1)).

The community logo **may** be used

- for imported goods from a third country

The community logo may **not** be used

- for produce in conversion
- for products which contain less than 95% organic ingredients
- for products derived from hunting and fishing with organic ingredients

### Labelling of origin

The labelling of origin will become mandatory from 01.07.2010. The labelling is linked with the logo. With the use of the EU logo, the labelling of origin has to appear in the same field of vision as the logo (Article 24 (1) (c) Regulation 834/2007) directly beneath the code number (Article 58 (2)).

The labelling of origin may not appear in a more distinctive colour, size and character style than the sales description. Labels must be fixed in a clearly visible place, be legible and smudge-proof (Article 24 (2)).

The labelling should be either

- “EU-agriculture” or
- “non-EU-agriculture” or
- “EU-/non-EU-agriculture”.
- “Deutsche - Landwirtschaft” (or indication of any other country)

The wording “EU-agriculture” or “nation-agriculture” can only be used if 98% of the ingredients from agriculture origin are sourced from that area. Only 2% of materials from agricultural origin can be sourced from another area.

Label example with indication of origin, control body code and EU logo



Label courtesy of HiPP

### Labelling requirements

“EU-agriculture”: 98% of the material from agricultural origin derived from the EU.

“EU-/non-EU-agriculture”: the materials from agricultural origin derive partly from EU-countries and partly from non-EU-countries.

Instead of “EU-agriculture” or “non-EU-agriculture” the name of the country may appear if 98% of the agricultural raw material derive from one country. “Deutsche-Landwirtschaft” indicates that 98% of the material from agricultural origin derives from Germany.

### Types of labelling requirements

The 70% labelling rule is deleted. Remainders may be sold until 31.12.2011.

### Organic Food – the “95% rule”

Effective from 01.01.2009, binding for all products from 01.07.2010

The existing labelling requirements will remain largely unchanged. Products must consist of at least 95% organic ingredients of agricultural origin. But the new labelling elements must be used. This includes the new logo, the new code number, the new labelling of origin and at least an indication of the organic ingredients in the ingredients list.

#### Sample label:

#### Organic fennel salami

#### Ingredients:

pork\*, seeds of fennel complete (1%)\*, spices\*, sea salt, sugar\*, garlic\*

\*organic agriculture

EU logo (voluntarily to use the present EU logo until 30.06.10)

UK - 000XX - organic (the code number must be placed directly after the EU logo)

### Labelling of products with less than 95% organic ingredients

“ingredients rule” effective from 01.01.2009

This labelling regulation is **new**. In products with less than 95% of organic ingredients, organic ingredients



may be indicated only in the list of ingredients. In terms of additives and processing aids and other requirements the products have to comply with the requirements of the organic regulation.

In this case the code number has to be used. In the ingredient list the percentage of the organic ingredient relative to all agricultural ingredients has to be indicated. The logo and the indication of origin must not be used.

#### Sample label:

Oat cakes unsweetened

#### Ingredients:

Organic oat flakes\* (29%), palm fat, whole-wheat flour, whole milk powder, maize starch, malt extract, sea salt, baking agent (bicarbonate of soda), spices

\*29.6% of agricultural ingredients derive from organic agriculture

UK - 000XX - organic (code number has to be placed in a clearly visible place)

#### Labelling of products derived from hunting and fishing Effective from 01.01.2009

The new organic regulation has established specific labelling requirements for products derived from hunting and fishing when these are mixed with organic foods. Products derived from hunting or fishing may be labelled with organic ingredients **in the same field of vision as the product name related to the organic ingredient and in the ingredient list**, provided that game or fish is the main ingredient and the other ingredients of agricultural origin are organic.

In terms of additives and processing aids and other requirements, products have to fulfil the requirements of organic regulation.

In this case the code number has to be used. In the ingredient list the percentage of the organic ingredients, which have to be identified, has to be mentioned. It is not allowed to use the logo and the indication of origin.

#### Sample label:

Cured wild salmon wrapped in organic dill

#### Ingredients:

Wild salmon<sup>1</sup>, dill\* (1%), vegetable oil\*, salt, smoke, \*15% of the agricultural ingredients derive from organic cultivation

UK - 000XX - organic (the code number has to be placed in a clearly visible place)

#### Additional information

##### New calculation system for agricultural ingredients

Effective from 01.01.2009 for all new products and from 01.07.2010 for all products

The new organic regulation requires a new calculation system for the percentage of agricultural ingredients. The additives which are shown with an asterisk in Annex VIII in the column "code" must be calculated as ingredients of agricultural origin.

#### Example of calculation:

Organic whole-wheat flour 60%\*

Water 32%

Organic sunflower seeds 3%\*

Yeast 2%

Salt 2%

Lecithin 0.8%

Ascorbic acid 0.2%

Enzymes

#### Calculation:

\*95% of the agricultural ingredients have to be organic (Article 23 (4) (a) (ii) 834/2007)

\*Ingredients which have to be calculated are: whole-wheat flour, sunflower seeds, lecithin (Article 27 (2) (a))

\*Ingredients which do not have to be calculated are: water, yeast, salt, ascorbic acid (Article 27 (2) (b))

\*Non-ingredients (processing aids): enzymes are not considered.

1. Of the total ingredients, those which have to be included in the calculation (whole-wheat flour, sunflower seeds, lecithin), whole-wheat flour and sunflower seeds are contained in organic quality and lecithin in conventional quality.

<sup>1</sup> fish has to be counted as an agricultural ingredient



2. For this reason 98.7% of the agricultural ingredients are organic.
3. The recipe conforms to the other requirements of the Regulation and can be marketed as an organic product.

#### Packaging material

Packaging material printed according to the requirements of Regulation 2092/91 may be used but not later than **01.01.2012** if the product is to conform to the requirements of Regulation 834/2007.

From **01.07.2010** further labelling elements will be required (EU logo, code number, labelling of origin). Packaging material should be amended to conform to the new requirements. Old packaging material may be used up to but not later than 01.01.2012.

#### Summary of various deadlines

##### **01.01.2009** New labels for products:

- | with only some organic ingredients
- | derived from hunting and fishing and with organic ingredients

The 70% labelling rule is deleted. Clearance sale of remaining products is allowed until **31.12.2011**.

There are no changes in the labelling for existing 95% organic products until 30.06.2010 provided that these products otherwise meet the requirements of Regulation 834/2007.

##### **01.07.2010** The start of changing to new labels for all organic products including:

- | labelling (asterisk-rule) of organic ingredients in the list of ingredients
- | **new** code number
- | EU logo
- | labelling of origin
- | calculation base of organic proportions

**01.01.2012** Discontinuation of the use of old packaging material labelled according to Regulation (EEC) 2092/91

### 3.4 IMPORTS AND FAIR TRADE ASPECTS

#### The new import regulation; More reliability for imported organic products?

*[Jochen Neuendorff, Beate Huber]*

**The European market for organic products is growing at a dynamic pace. Increasingly, processing and marketing companies are entering this market, which has a very promising future. However, organic farm production at the inter-European level has not increased at the same rate as the market for organic products.**

For that reason, an increasing volume of organic products consumed in Europe are imported from non-EU countries ("third countries") into the EU. In 2008, in Germany alone nearly 1800 import authorisations were granted for imports of organic products.

With the new Council Regulation (EC) No 834/2007 and the provisions concerning the arrangements for imports from third countries (the so-called implementing rules: Regulation (EC) No 1235/2008) approved in December 2008, the framework conditions for imports from third countries will change considerably. The implementation of the new import regulations will affect consumer confidence in organic products for a long time to come as well as the competitiveness of European organic farmers in the coming years. These two factors will be decisive in the future success of organic products.

#### The regulation for third countries from 2009 forward

For the importing of organic products from third countries to the EU, there will be three options in the future:

1. The EU Regulation on Organic Agriculture is applied in the third country exactly as in the EU member states, i.e. the products are "compliant". In co-operation with the EU member states, the European Commission will establish a list of recognised "compliant" control bodies authorised to carry out inspections and issue certificates in the third countries.



2. The third country applies production standards and control measures that are equivalent to the EU Regulation on Organic Agriculture, thereby producing “equivalent” products. In this case, the EU recognition can be obtained if either
  - a. the third country in question has been included in the European Commission’s list of recognised third countries, or
  - b. the control body operating in the third country has been included by the European Commission in its list of “equivalent” control bodies.
3. The operators in the third country apply production standards and control measures equivalent to the EU Regulation on Organic Agriculture, and the EU’s competent authority grants an import authorisation to the EU importer. These authorisations may be granted by an EU member state until 12 months after the Commission publishes the first list of control bodies recognised as “equivalent”. The authorisations are valid for up to 24 months after the publication of the list of “equivalent” control bodies of third countries.

Although the new rules are already in force there will be no changes yet in the applied import procedures in 2009. The list of recognised third countries (Argentina, Australia, Costa Rica, India, Israel, New Zealand and Switzerland) has been transferred to the new regulation and remains valid. Also, the procedure for import authorisations issued by the competent authorities of the EU member states will be applied until the European Commission publishes the first list of recognised control bodies in third countries.

The procedure for recognition of control bodies operating in third countries will be initiated in 2009 by the European Commission. The provisions of Regulation (EC) No 1235/2008 stipulate that the register of control bodies operating in third countries using standards equivalent to the EU Regulations on Organic Agriculture will be published. The first deadline for applications to be received from certification bodies is October 31, 2009. The publication of the list of “equivalent” control bodies operating in third countries is not expected before the middle or end of 2010.

The procedure for approving control bodies with a compliant control system (point-by-point implementation of the EU Regulations on Organic Agriculture) has been postponed. The Commission anticipates an exhaustive evaluation process to assess compliance with the EU Regulation. This is to prevent distortions in market competition that would endanger the competitiveness of European organic producers and to ensure consumer protection. The first application deadline for inclusion is in October 2011. The publication of the list of “compliant” control bodies operating in third countries is not expected before 2012.

#### **Application requirements for certification bodies**

The detailed requirements for the application dossiers, i.e. criteria for the assessment bodies, the assessment reports and other documents which must be provided, are partly described in the basic rules (EU Regulation 834/2007) and the implementing rules (EU Regulation 1235/2008), and partly in so-called guidelines which can be more easily adapted and thus be more descriptive.

Control bodies who want to apply for inclusion on the lists must present an assessment report drawn up by an independent third party that complies with ISO 17011, an international standard for accreditation bodies. This assessment report must include information on document reviews, and office and witness audits conducted in third countries. In this context, a pool of experts with international experience in organic certification is needed for the on-the-spot audits by the accreditation body.

The applying control bodies must further present a detailed description of the organic standards which constitute the basis for their certification of organic farm production, processing and export operations.

The EU has already indicated in the import guidelines that the “compliant” procedure will require the full application of the EU regulation, e.g. the publication of a database on the availability of organic seeds. Also group certification, a system which is of great importance from the point of view of development policies, does not comply with the EU regulation and

will not be accepted under the compliant procedure. It might well be that very few inspection systems will be deemed to be compliant.

To satisfy the application requirements, the control bodies will have to develop and apply clear, comprehensive and verifiable standards. Transparent standards are an important pillar for market transparency and thus for fair competition.

### **Supervision of certification bodies**

For the first time the requirements for supervision of the control bodies operating in third countries are laid out. For example, the accreditation body must conduct document reviews, office audits and witness audits in representative third countries. “Critical locations” i.e. the offices of control bodies in third countries where relevant management and certification decisions are taken, must be included in the audits and witness audits must be done more frequently. Up to now, random witness audits in third countries have not been very frequent.

Most imported organic products enter the European market through import authorisations. Under that procedure, for each consignment the competent EU authorities verify compliance with the requirements of the Regulation on Organic Agriculture, based on the inspection reports and assessment reports drawn up by the accreditation bodies when they evaluate the certification body. Whereas this system requires an additional assessment of the documents by an external party, it is a big disadvantage that EU authorities cannot supervise any activities of the certification bodies or travel to third countries to directly assess the situation on the spot.

The new provisions will lead to improvements in the monitoring of the activities of control bodies in third countries, particularly where problems occur.

### **Impacts for the trade**

The new import procedures will considerably reduce the bureaucratic workload for imports. Once the lists of approved certification bodies are published the only bureaucratic burden for traders will be the request for control certificates which have to accompany each consignment in the case of “equivalent”

products. In future the importer can check in a second whether a certification body is recognised by the EU, and there is no longer the burden of applying for an import authorisation, nor the risk that the approval will be delayed or denied.

### **Impacts for Third Countries**

Up to now, it has been very difficult for certification bodies located outside of the EU to gain access to the European market. The vast majority of imports are certified by certification bodies from the EU and very few import authorisations are issued on the basis of a certificate from a non-European certification body. European traders prefer co-operating with European certification bodies with whom they are familiar and who often inspect their EU operations. EU certification bodies also usually have direct access to the authorities and know their expectations. This is quite an asset in a situation where the control bodies, the exporters and the EU’s competent authorities negotiate on a case-by-case basis regarding the “permitted” deviations from the EU Regulation on Organic Agriculture. With the new rules the same conditions apply for EU and non-EU certification bodies operating in third countries. Non-EU certification bodies can prove their equal qualification and the risk for traders co-operating with a local certification body is no different from the cooperation with a European certification body.

Also producers’ access to European markets will be easier since they will already know whether their certification will be recognised in the European market. Variations on standards possible under the equivalence scheme have to be approved along with the recognition of the certification body, and will not only be assessed by an authority when the import authorisation is requested. Therefore, the new system will provide more transparency and reliability for producers, certifiers and traders.

### **Implementation of the new system**

The new import system provides good opportunities for more efficient and less bureaucratic procedures. However its effectiveness depends very much on its implementation. The conditions for the production and processing of organic food in third countries are often quite different from Western Europe.



The current practice of inspection and certification by control bodies in third countries does not adequately deal with the different risks in third countries. For example, conventional farm units adjacent to the organic unit and owned by the same owner are often not properly inspected, and the calculations regarding the flow of products from the stages of farming through processing and exporting are imprecise. Only in a few cases do additional risk-oriented inspections, additional inspections and chemical analysis take place. If a control body becomes too demanding and applies sanctions, the exporter tends to switch to another control body. Laxity in certification is facilitated by the fact that when an exporter switches from one control body to another, the documentation from the previous certification (or attempted certification) and the records of any sanctions are seldom available to the newly contracted control body. It is highly recommended that these problems are improved by, for example, making certification transfer mandatory.

Another problem is a tendency among traders and organisations to select certification bodies on their willingness to reduce or even cut the conversion period. Whereas retrospective recognition of the conversion period is at present strictly regulated by the EU, the equivalent approach and lack of harmonised interpretation of the EU rules within an equivalent approach may lead to a situation where often no conversion period has been applied. Again, those certification bodies which insist on application of the whole conversion period have a competitive disadvantage.

Only rarely do the control bodies publish the names of the companies certified in the third countries, as well as the names of those whose certification has been suspended or withdrawn. While this kind of official listing is common in the case of certification according to the National Organic Standards of the US, this practice still is not routine for exports of organic products to the EU.

In third countries, small producers are often certified as a group. In this certification system, all of the farmers are first evaluated by internal inspectors from their cooperative or by the export company.

The inspectors from the control bodies therefore do not visit each of the production units, but rather evaluate the effectiveness of the internal control system and then a representative sample of the production units. These systems are cost-saving for the smallholders involved and are highly effective if they are adequately implemented. However, there is also the possibility that they will function ineffectively, for example if non-compliances are not sanctioned through the internal control system.

To ensure the integrity of organic imports and fair competition, it is necessary to address the different conditions in third countries and to come to a common interpretation of the EU rules for an equivalent approach. It needs to be considered that there is intense competition among certification bodies. Any additional control measures increase the costs of inspections and the cost factor is important for companies when selecting certification bodies. It is therefore necessary that there is debate among the EU and Member States regarding assessment of the applications of certification bodies, and also with the supervisory bodies, to ensure a level playing field for certification bodies, the trading companies and the exporting companies. Another important tool would be to increase transparency and publish the applied standards to allow for a harmonised interpretation of equivalency.

### What will the new Organic Regulation bring for the Fair trade sector?

[Nabs Suma]

**Fair trade products certified also as organic are a combination many fair trade producers choose as it opens market opportunities and goes hand in hand with their philosophy.**

From this perspective the development of the new regulation (EC) No 834/2007 was followed with interest by the fair trade sector and I was myself involved as a stakeholder giving input to the decision-making process. Currently, approximately 55% of fair trade products are labelled as organic. The interesting question is: To what extent does the new regulation motivate the fair trade sector?

Generally I can see a lot of improvements in the new regulation. However, as with other regulations it too has its weaknesses. One obstacle for the fair trade sector is that the new regulation comes in different documents which means that operators/certifiers will have to read through them all: Regulation (EC) 834/2007 itself, two different implementing rules (EC 889/2008 and 1235/2008), plus the guidance document for the Import implementing rules. Taking into account also the cross references such as those to regulation 882/2004 (food and feed control), it becomes evident that the objective of simplification is open to question.

One subject that was heavily discussed is the area of GMOs, where the Commission has clarified the position regarding GMOs – some in the organic sector had been hoping for a stronger position that would have been much clearer about the unacceptability of GMOs in organic products (adventitiously or not). The fair trade sector considers GMOs an important topic. The risk of GMOs getting into fair trade products has always been a concern and it is likely that more will be done on a voluntary standard basis.

However, for the fair trade sector the parts with the most important impact are:

- | Imports
- | Guidance Document for imports/Grower Group Certification
- | EU logo and labelling
- | Risk assessment

### Imports

The new import regulation (working under 834/2007) is a massive step forward towards easing the process of importing products from third countries into the EU. For fair-traders and indeed for all organic importers, this change in the import process will make trade much easier and takes away the need to gain annual import approvals for individual sources of organic products destined for individual member states in the EU. By taking away this layer of bureaucracy, the Commission has gone a long way towards answering the prayers of many traders who have often been trapped by the detailed requirements of approval, and which have sometimes ended in disaster.

I remember back in 1998/99 working for a trade company in London, looking to import some organic products into the EU via the UK only to be told after the consignment had been shipped and afloat, that the certifier involved (from the US) had been removed from the approved list because they had not been able to maintain their accreditation status. What a shock that was! All sorts of solutions were sought but ultimately I quickly learned the importance of regulation when trading in a certified system.

The import process had always been rather complicated in those days with all sorts of problems having to be managed and negotiated by the importer, on behalf of the producer exporter, with the authorities and/or the “home Certification Body” of the importer. The new regulation is easier with three main parts: a third country list, a list of Compliant certifiers and a list of Equivalent certifiers.

Apart from the initial approval of certifiers (where member state expertise may be used), the process will no longer require the annual process of requesting import approval from member states. Instead, certifiers will be approved by the European Commission and once approved, products certified by that body can be imported into the EU. They will still have to use the Certificate of Inspection (for the equivalent process) but there will be no link with individual member state approval.

### Guidance document for imports and grower group certification

The Guidance document for Imports by the Commission seeks to give further clarity to some of the difficult areas related to the import regulation and implementing rules. The principle used here by the Commission is one of “less regulation”. For the fair trade sector there are some very important components in this document:

1. It gives guidance on what details are required and how the Certification Body application form should be formatted to cover the required information.
2. It gives guidance on who can write an “assessment report” of the applicant Certification Body, as well as the necessary competence requirements that must be demonstrated by accreditation and supervisory bodies.



3. It gives clear guidance on the distinctions between the operation of the “Compliant list” and the “Equivalent list”.

Perhaps the most important element in the guidance note (particularly for thousands of smallholder producers from whom many fair-traders purchase organic products) is the inclusion of the **“Guidelines for the evaluation of the equivalence of organic producer Group Certification schemes applied in developing countries”**. Group certification using Internal Control Systems has to be one of the major successes from the early part of this decade, when hundreds of participants from all stakeholder sections were able to come together to agree on the credibility of this type of certification and how it should be applied. From the point of view of fair-traders, it was of the utmost importance that the Commission had made some reference to group certification in its guidance document, and it has!

### EU logo and labelling

Similarly the move towards a single European organic logo is a large leap forward, as it will enhance the possibilities of fair trade producers entering the European organic market. It makes them less dependent on those certifiers who work through “private logos”. On a practical level, some private labels caused problems for trade through what certifiers called their process of analysing “equivalence” of other standards against their own.

Whilst private standards and logos have their role and value, their focus on market differentiation and growth can sometimes become an unfair barrier to trade. Where a certifier uses their private standards to make it difficult for the local (third country) certifier’s standards to be viewed as “equivalent”, or even worse when trade begins to get hampered, then fair-traders become disadvantaged. Further, it is important that producer operators are not forced to depend on international certifiers but can rely on a local certification body that is closer to the operator, speaks the local language, understands the political situation on the ground and the cost of certification is lower,

In this context, access to the EU logo by third country certifiers is a positive step forward and helps the

process of organic development in third countries. For tropical products, this will allow the producer to get closer to the consumer and gives the consumer some confidence in the organic integrity of products imported from third countries. One added bonus is that it will give the European consumer a harmonised label across the EU member states and that will make recognition much easier.

I draw from a number of years’ experience in the fair trade sector where (for food products at least) we have benefitted from a move towards a single fair trade Logo, which is now recognisable across the globe. Although with a much younger history, statistics in the UK clearly show that the fair trade label has better recognition (with UK consumers) than the different organic logos.

### Risk assessment

One other positive has to be the greater importance placed on risk assessment in the regulation. The principles of the use of risk assessment have been further elaborated in this new regulation.

That said, I suspect that some will be disappointed with the scope of the principles set down for the use of risk in this regulation, and as an advocate of the use of risk assessment I would tend to agree. Yes, there is progress here, but it has not gone far enough. To some extent I can understand the reason why not. The use of risk assessment is one of the more complex tools which, if used wrongly, could be disastrous for this sector. I’ll give you two examples with contrasting outcomes.

Take the use of risk assessment as proposed in the EU’s guidance document for Grower Group Certification using Internal Control Systems. I understand the application of risk assessment in this case well, partly because it is clearly documented but I also know that it took over three years to develop the system of harmonising the use of risk assessment in this context, with some of the best organic minds working together to develop this into a credible working process. The Commission lent its expertise, with representatives from other member states also taking part. This process meant that both certifiers and operators could expect to be operating on a level

playing field, and this is one of the best topics that IFOAM funded from 2001.

On the other side, you have work developed by individual certifiers on the use of risk assessment in other areas. Where detailed work on a harmonised approach is not undertaken, then the system could be at risk from the “discretionary” definitions and protocols of individual certifiers. This may not necessarily be a problem. However, the competitive nature in which the “business” of certification is carried out could push some certifiers to find some interesting “subjective” interpretations of risk with which to manage costs in the (inspection/certification function). If left unharmonised, you could get a situation where two certifiers have different approaches to the same non-compliance and ultimately one operator might get a much stricter interpretation from one certifier while another might get a lighter interpretation from their certifier. Consistency would go “out of the window” and the credibility of the system could come into question. It is clearly of benefit to move more in this direction, but if done in an inconsistent way then it would serve only to devalue the credibility of the sector.

When all is said and done, the Commission has made it possible for certifiers to now make an assessment of risk of non-compliance by an operator and decide if they want to inspect all areas of organic activity during the annual audit or to simply choose to inspect the specific areas which they have assessed as being of the highest risk.

### Conclusion

As a member of the fair trade sector, I believe that this regulation has made some good progress from its predecessor. It will make imports and trade easier and will also allow better access to market through the EU logo. Other areas still need work but this is a good step forward.

## 3.5 NEW AREAS UNDER THE ORGANIC REGULATION

### Yeast/ Introduction of a legal definition of organic yeast

[Alexander Beck]

Yeast and yeast products are explicitly mentioned in the new organic regulation: (EC) Regulation 834/2007 Article 1. With the EC Regulation. 1254/2008 the EC Regulation 889/2008 was the first time amended with the detailed implementation rules for production of yeast and yeast products in organic quality.

From January 1, 2009, there is an organic standard which regulates the production of organic yeast and yeast products.

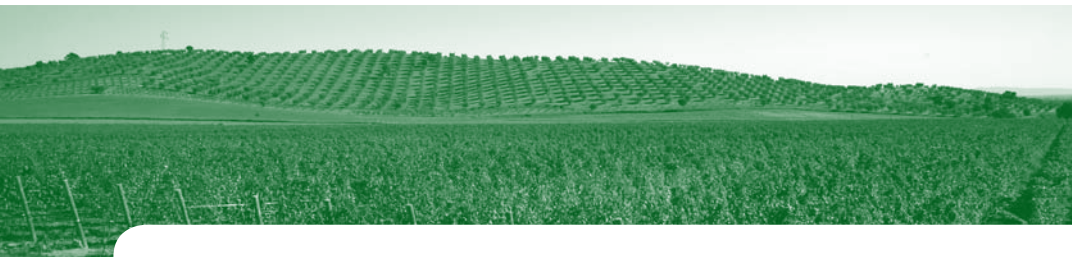
During the discussions on the new requirements for organic yeast, the most difficult task was to decide what could be used for the substrates which form the basis for organic yeast. It was discussed vigorously whether synthetic nitrogen and phosphorus sources should be allowed but it was finally decided that only natural organic raw materials should be accepted as substrates.

The new regulation states that organic yeast must be produced using organic raw materials. Until December 31, 2013, 5 percent of conventional yeast extract may be added to the substrate for organic yeast.

Standards were also set for the processing aids which can be used during the production of primary yeast and their further processing to create yeast products such as yeast extracts, yeast flacks and dry yeast. The agreed processing aids are calcium chloride, carbon dioxide, citric acid, lactic acid, nitrogen, sodium carbonate, potato starch, vegetable oils and oxygen.

Yeast and yeast products have to be calculated from January 1, 2014 as ingredients of agricultural origin and will therefore be part of the 95% requirement for organic raw material in products composed of different ingredients.

The new regulation for yeast and yeast products will contribute positively to the further development of



organic food products. Large amounts of conventional yeast and yeast products in organic foods will be replaced in time with organic yeast products. This will add to the authenticity of organic products. Organic yeast fits the perceptions of the organic consumer and can therefore be seen as an investment in the trust of the organic consumer. It will inspire the yeast industry to seek innovative technologies, and the result will be new sustainable yeast products produced in accordance with the organic regulation.

### Common Rules for Organic Aquaculture Production in (EC) 889/2008

*[Andreas Stamer, Stefan Bergleiter]*

**While the old regulation (EEC) 2092/91 permitted private organisations or individual member states to develop their own individual organic aquaculture standards (leading to a booming development of the organic aquaculture sector since the 1990s), the new organic regulation has established in Chapter 2 (a) the basis for consistent and binding rules for this sector.**

#### Introduction

Council Regulation (EC) 834/2007 extends the scope of organic farming to aquaculture and therefore there is a need for the adoption of implementing rules for aquaculture. The Commission decided to add the implementing rules on aquaculture to the general implementing rules (Commission Regulation (EC) 889/2008) that were voted by the SCOF (Standing Committee on Organic Farming) on July 2, 2008. This will be done by amending the implementing rules introducing specific chapters on aquaculture.

Whilst the Directorate General (DG) for Agriculture of the European Commission is responsible for the organic regulation, the DG MARE is the leading Commission body on setting up the implementing rules for aquaculture. However, an interservice consultation between various DGs of the Commission will be held before the final proposal is forwarded to member states. Thereafter, the document will be subject to a vote in the SCOF.

Since the end of 2007, various meetings of experts have been organised by DG MARE in order to feed into the draft proposals. These meetings have been marked by discussions between the “hardliner” po-

sition of private certification programmes, and the more “industry friendly” public bodies of the member states and – to a lesser degree – of the aquaculture industry itself. There was very little, if any, input from environmental NGOs which usually are rather critical about the development of the aquaculture sector worldwide. Furthermore, there was little input from organic aquaculture operations which were already certified, even though they were the most affected stakeholders.

The original plan of the Commission to adapt the aquaculture implementing rules in 2008 was withdrawn as member states and the sector intimated that the proposals were not developed enough, and the decision was postponed until summer 2009. Three subsequent “working document” drafts for implementing rules have been produced as a result of this lengthy process, the first one having been produced in July 2008. Nevertheless, the participating experts had – generally speaking – difficulties in seeing the relationship between what had been discussed and submitted outside and inside the meetings, and the content of the drafts that emerged. Furthermore, each draft differed significantly from the previous version.

#### The current content and its implications for the sector

As the aquaculture implementing rules have not been adopted up to now and until the final version of these is agreed on, it will be impossible to know the true impact they will have on existing and potential organic aquaculture producers and processors. Therefore the following outline is based on the current state of play (January 2009) of the Commission working paper and can hence only provide a first indication.

In contrast to the agriculture rules, relevant national authorities are able to specify sites, areas or regions in which they will not allow (organic) aquaculture production to take place. The new rules will stipulate an environmental (impact) analysis and management plan including waste reduction strategies (although maximum values for environmental contaminants in feed or organic food are not given). This requirement, and requirements for separation distances between farms in open water and rivers, remain controversial and will have an impact on some organic producers in its current form.



### Production of freshwater and marine algae (Chapter 1 (a))

The chapter on seaweeds covers aquatic plants and plankton (also for feeds) and distinguishes between wild harvest and culture systems. Suitable and sustainable harvesting techniques are defined for wild harvest, along with site suitability and fertilisation for cultured algae. Authorities can again decide on site aspects. The current version of the implementing rules should not restrict the activities of existing seaweed harvesters and farmers. The ability to certify their products as organic in Europe has the potential to cause significant changes, such as to the availability of certified organic food processing ingredients and cosmetics.

### Production of fish and other water-bound animals (Chapter 2 (a))

There are many similarities between the production rules for terrestrial and aquatic livestock, but because of the early stage of development of organic aquaculture, there are allowances, for example to deal with the unavailability of organic animals. Stocks and breeding stocks for organic aquaculture farming must be of certified organic origin, although it is possible to use wild or conventional stocks in certain circumstances. The portion of conventional or wild juveniles that are used on a certified farm must be reduced by at least 10% from year to year, and this is only allowed in the first one-third of the production cycle. These instructions will take the pressure off wild stocks and have particular relevance for some tropical shrimp species. This is intended to encourage hatcheries to create closed production cycles for those and other species. This may not be possible for all species currently under organic production. This regulation is limited to revision in 2013.

Basic conditions for the husbandry of aquatic animals under organic management are formulated broadly in the style of principles (Article 25 (g)). There are no specific requirements for the design of ponds and cages apart from pond bottom structures (sand, gravel, natural earth). Escapes must be prevented by suitable measures (although in practice this is difficult if not impossible) and measures must be taken to minimise negative effects on the local eco-systems. Species-specific stocking densities are given in the species annexes.

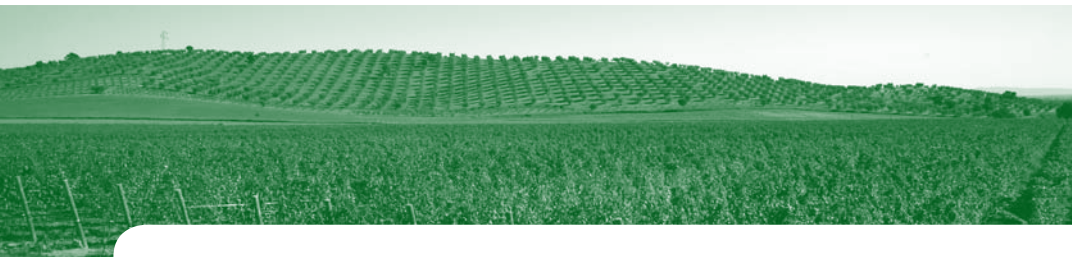
Additionally more detailed specifications on holding systems are given. Closed systems in which the animals are kept for their whole life-cycle indoors are prohibited. Only hatcheries and weaning stations keeping the fry until the stage of fingerlings or post-larvae are permitted to produce indoors. Although some aquaculture producers consider these closed systems to be more sustainable than open systems, this aspect of the regulation indicates the distinction between natural and close-to-nature systems, and purely technical systems with a completely artificial environment for the animals. Land-based ponds must allow for the control of the water flow and quality in influent and effluent waters, respectively. At least 5 percent of the entire farm area must be left as undisturbed natural area, although it is not clear how this should be defined and what action is necessary by organic producers.

### Animal management and welfare

The specifications on the handling of the animals are similar to the guidelines of “good aquaculture practices” from conventional handbooks for aquaculture farms. Stocking densities in the annexes are confused and remain controversial. The final decision will have an impact on some organic producers. The use of artificial light is restricted to 16 hours a day except “for duly justified circumstances”. This enables the organic certification of cod in sea-cages using 24-hour light, and is controversial amongst some animal welfare experts.

Permanent aeration of ponds is not permitted. Aeration is allowed in the case of emergencies or special stress situations such as grading or harvesting only. The use of liquid oxygen is allowed only for transport and animal health requirements. These specifications are in clear contrast to some private and national aquaculture standards and will lead to intensification e.g. in the organic trout farming sector. They also contradict the maximum stocking densities given in the annexes for the different species which could only be managed without permanent aeration in reality by the use of very high flow-rates of water.

The specifications on slaughtering refer to starvation periods prior to harvest and the methods of stunning and killing. Killing with ice-water is allowed for Medi-



terrestrial and warm-water species and also for tropical invertebrates (shrimps, etc.). The last could also be killed with carbon dioxide. Although this will allow Mediterranean producers of organic bass and bream to continue, and others to convert, substantial scientific evidence concludes that this is an unacceptable practice and it is certain that this should/will be prohibited in future revisions of the regulation.

The use of hormones is prohibited in general. This will affect the certification of some species which are difficult to reproduce, depending on the regional location, without hormonal injections, e.g. carp in central Europe.

#### **Rules on feeds and feeding**

With the exception of fishmeal and fish oil, feeds must be formulated from certified organic raw materials except for those substances listed in annex VI of the regulation (EC) 889/2008 (vitamins, binders, etc.). Fishmeal and oil shall be made from trimmings of fish caught by sustainable fisheries for human consumption. If such trimmings are not available, meal and oil from sustainable fisheries could be used, but according to regulation (EC) 834/2007 and (EC) 2371/2002 these include European fisheries defined as sustainable in the framework of the Common Fisheries Policy. This definition of a sustainable fishery is not without controversy.

Also, material from cultured fish could be used provided that it is not fed to the same species. Until 2014, fishmeal and fish oil made out of trimmings is allowed to constitute up to 30 percent of the daily ration. The use of fishmeal and fish oil in organic feeds, whether it be from trimmings, wastes or dedicated reduction fisheries remains highly controversial. The implications for European organic producers will not be clear until the final version of the rules is determined. With regard to the use of natural carotenoids, see annex VI of the regulation (EC) 889/2008. This use of natural carotenoids remains a matter of controversy among the different member states of the European Union.

#### **Mussels and other shellfish**

The rules for shellfish production refer to site selection, existing regulations on European shellfish, water qual-

ity and the origin of wild and hatchery raised stocks. The present draft rules are limited and would not significantly restrict the practices of most commercial shellfish growers. The availability of organic shellfish on the market in Europe alongside similar, but uncertified non-organic shellfish has the potential for consumer confusion, but demonstrates the natural organic nature of shellfish growing.

#### **Disease prevention and treatment**

The guidelines on maintaining the health of the stocks again are similar to those given in the “good aquaculture practices”. They are confined to general inputs on husbandry and intensity and require a veterinary management plan, following periods and hygienic measurements. Vaccination is allowed, referring to Article 48 of Council directive 2006/88/EC. The use of UV-light and ozone is also permitted in hatcheries, although ongoing pressure is likely to result in this being extended to other areas of aquaculture production.

Apart from the use of alternative medicines, immunostimulants, probiotics and homoeopathic treatments, a maximum of two allopathic treatments per year is allowed (in crustaceans, only one) with the exception of vaccination, treatment of parasites and compulsory eradication schemes. The withdrawal periods in general have to be doubled. Existing organic standards are in many cases tougher than these restrictions, resulting in the potential marketing of organic products which have been treated many more times than other organic aquaculture products. These rules are likely to be different from those in other major markets such as the US, with implications for export.

#### **Comments and conclusions**

It must be stressed again that the aquaculture implementing rules have not yet been finalised and some points raised here remain under discussion. However it is clear that the current version has some general and specific weaknesses which will impact on existing and potential future organic aquaculture producers. Although on the issues of site selection and farm management the regulation is quite restrictive, in general the present implementing rules are not particularly strict and therefore could be adhered

to quite easily by many existing farmers. Whilst this would allow the organic market to expand, it threatens the market of existing producers, and has the potential to weaken consumer trust and support for organic aquaculture.

There is considerable commercial pressure to allow the development of organic aquaculture for many species, production systems and geographical regions. The use of more flexible rules with time-frame limitations has been used in several areas to overcome current difficulties in satisfying organic principles. In some cases these rules or time-frames are not realistic and there could be difficulties following revision of the regulation once larger numbers of

producers are certified to the easier rules. The production of tiger shrimp in Asia is an example here.

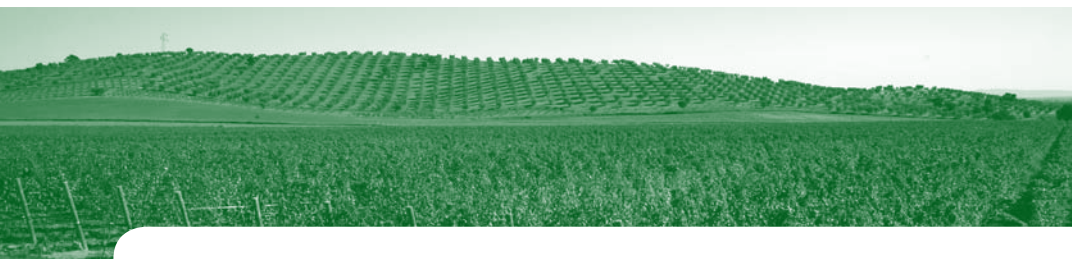
However, there are many advantages to a common European regulation, provided it is robust. Consumers can familiarise themselves with one common EU organic logo for fish and fish products, but as the private and national logos continue to appear in the market there will effectively be a two-class certification system with some producers certifying to the baseline regulation, and some certifying to the additional requirements of a private or member state-specific standard. This is already the case for organic food in general since the commencement of the Regulation (EEC) 2092/91.



# GIMEL

**ORGANIC**

**BfO**vegetables with clean **BfO**graphy



## ORWINE: a further step towards an EU regulation on organic wine-making

[Cristina Micheloni]

**ORWINE is an EU-funded research project that aims to provide technical expertise for the development of the EU legislative framework for organic wine-making and to work out a code of good practice for organic viticulture and wine-making.** The ORWINE project ends in spring 2009 after three years of research conducted on several aspects of organic wine-making. The recommendations will be fine-tuned in the coming months after the third-year experimental results have been completed. However, some important questions of a political nature remain open.

### Background

Up to now, organic wine-making has never been regulated within the organic EU regulation (EEC) No 2092/91 but the new organic regulation (EC) No 834/2007 includes wine processing as a new area. On the other hand, the lack of EU regulation did not prevent wine producers from going organic, nor consumers from buying “organic wines”. In the last few years the market for “wine made from organic grapes” and for “organic wine” produced according to private standards has grown steadily. The new organic EU regulation should close this legal gap and define at EU level what an organic wine is.

In this context the ORWINE project provides scientific support towards the decision-making process. The project used different tools such as a broad status quo analysis (including a producer survey, consumer survey, market study, analysis of existing private standards and the tuning of an environmental assessment tool for organic viticulture), wide-ranging research on oenological practices and their combined use, and the evaluation of oenological techniques in a pilot farms network. All the scientific work was accompanied from the beginning by a broad stakeholder involvement through national and EU meetings, direct consultation, web-based surveys and several dissemination activities.

### Where and what to regulate at European level

The proposal to regulate organic wine-making at EU level and not to limit the regulatory process to grape

production received a large consensus amongst all consulted stakeholders. It was decided by the EU Commission to regulate the new area within the new organic regulation and not within the Common Market Organisation (CMO), as demanded by some major stakeholders of the wine sector.

The stakeholders significantly agreed to regulate both additives (and processing aids) and physical techniques under the new organic regulation (Articles 6 and 19 “Substances and techniques”). The majority of stakeholders was against national or regional adaptation (except in the case of exceptional climatic conditions or “special” wines) and preferred to regulate all issues at EU level and possibly harmonised with other international organic regulations.

### Additives and processing aids

As a result of the ORWINE experimental work, the analysis of private standards and the needs expressed by producers, it can be clearly stated that a “0 input” organic wine can be produced only in very limited cases and seasons. Therefore, it was important to identify additives and processing aids which are not potentially harmful to the environment or to human health and which are essential for the production of “good” organic wine. Those substances belong to three categories:

- a) substances already allowed in organic processing;
- b) micro-organisms and derivatives, normally allowed in organic processing with no specification;
- c) substances not allowed so far in organic processing but commonly allowed by private standards on organic wine-making.

All three categories were evaluated against the general principles of organic processing (Articles 19 and 21 of Regulation (EC) 834/2007).

There are already more than twenty additives and processing aids allowed for use in organic processing and commonly used in wine making.

Concerning microbiological products under the generic term of “micro-organisms and derivatives” allowed by Regulation EEC 2092/91 the substances commonly used in wine making were to a great extent positively evaluated by ORWINE experts for use in organic farming. For some of them (Yeast man-

noproteins, Lysozyme) concerns were expressed and as a consequence it was decided to submit them to a broader evaluation by external experts.

### What to think over

To evaluate the acceptability of substances currently not allowed in organic processing but often by private standards, a consultation through external experts and a broad web survey were implemented. The results show that the substances largely rejected were sorbic acid, PVPP, ammonium bisulphite and copper sulphate.

A negative evaluation was expressed for Sorbic acid, PVPP, Lysozyme (mainly negatively evaluated by experts from Germany, where grape characteristics normally don't require its use) and ammonium bisulfite. An almost balanced opinion was expressed on wood chips and metatartaric acid while for all other substances there was a general positive evaluation.

### What about techniques?

In wine-making, several traditional and modern physical techniques are commonly used and in general preferred to additive use. As for the substances, a selected list of practices were evaluated by the project team using the criteria for organic processing reported in the new organic EU regulation and a broad evaluation through web survey. It should be noted that the evolution of techniques is very rapid and it could be useful to include the evaluation of techniques actually not allowed in the European Union if already positively evaluated by the International Organisation of Vine and Wine and if already allowed in other countries such as the USA, Chile or South Africa.

The techniques that resulted in more controversial evaluation (often because they were not really known) are: Physical acidification of musts (Bipolar ElectroDialysis), Physical must concentration or partial dehydration of musts (thermal under partial vacuum or normal pressure, or by inverse osmosis-membranes), Tartaric stabilization by ElectroDialysis, Physical acidification (Bipolar ElectroDialysis), normal and Flash pasteurisation, Flash-release treatment of grapes, Wine or must fractionating: reverse osmosis coupled to other physical treatments and spinning cone column.

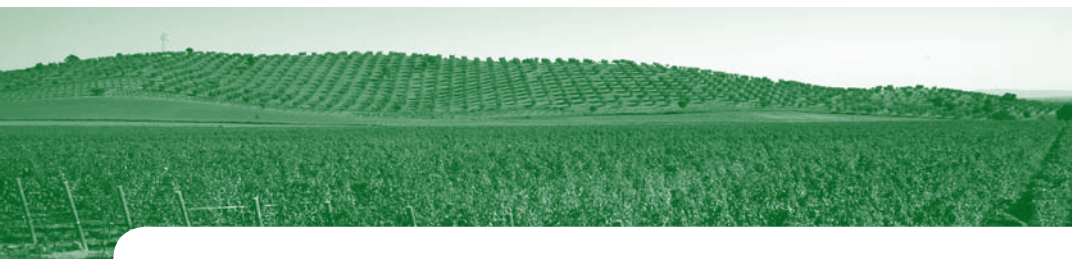
### The real hot issue: SO<sub>2</sub> use and limitations

It is a common understanding that in organic wine-making, the use of SO<sub>2</sub> (sulphur dioxide) and other substances potentially dangerous to human health should in principle be avoided. At the same time, there is scientific evidence and experience from common producers that at present it is impossible to produce "good" organic wine in a large range of qualities and cellar systems without its addition. On the other hand it is clearly possible, and ORWINE experimental work attests that, to limit SO<sub>2</sub> use. The majority of private standards on organic wine-making allow the use of SO<sub>2</sub> at significantly lower levels than the CMO limitations - demonstrating the willingness of organic wine producers to reduce as much as possible the sulphite content in organic wines. The web survey among 900 organic wine producers which took place last December shows a clear will from the production side to significantly reduce its use, with the result that a large majority of producers do already use quite low doses. The present SO<sub>2</sub> limitations under the CMO are listed in the table in the first column.

The CMO also states that: *"Where climatic conditions have made this necessary it may be decided that the member states concerned may, in certain wine growing zones of the Community, authorise, for wines produced within their territory, the maximum total sulphur dioxide levels of less than 300 milligrams per litre referred to in this point to be increased by a maximum of 40 milligrams per litre."*

During the discussion and based on ORWINE scientific work the following "SO<sub>2</sub> scenarios" were proposed:

- **Scenario 1:** not to allow SO<sub>2</sub> in organic wine-making
- **Scenario 2:** no specific limitation on SO<sub>2</sub> use in organic wine-making (limits as from the CMO for conventional wines)
- **Scenario 3:** Step-wise limitations of SO<sub>2</sub> use that must be significant compared with conventional wine-making and must allow the sustainable production of "good" organic wine. Furthermore the progressive decrease should be based on yearly monitoring run by member states.



The third scenario with step-wise limitations of SO<sub>2</sub> use was developed further (see table). It was agreed to consider at the moment ONLY main wine categories (red and white wines with less than 5g/l of residual sugar and red, white and rosé wines with more than 5g/l of residual sugar) while “special wines” are proposed to be regulated in a later stage and/or at member state level.

There was no opposition to accepting enrichment in organic wine-making as long as it is implemented with organic ingredients. There is a potential problem: in the areas where sugar addition is allowed it can be easily done using organic sugar, but in areas where sugar is not allowed, organic rectified must (already available) should be considered but it is not allowed by the Commission because of the use of ion exchange resins.

Table: Different scenarios for reduction of SO <sub>2</sub> in mg/l		20% reduction	30% reduction	40% reduction	50% reduction
	Actual CMO	Scenario 3.1	Scenario 3.2	Scenario 3.3	Scenario 3.4
Red < 5mg/l sugar	160	128	112	96	80
White < 5mg/l sugar	210	168	147	126	105
Red > 5mg/l sugar	210	168	147	126	105
White and rosé > 5mg/l sugar	260	208	182	156	130

An ORWINE survey of organic wines entered for national and international competitions found SO<sub>2</sub> levels were 20-30 percent lower in almost all of them. Similar results came from the producers’ survey as well as from the analysis of actual private standards and from the recent web survey. Despite national and regional differences, a step-wise decrease of SO<sub>2</sub> use for the main wine categories starting from 20 or even 30 percent in the following years seems reasonable and acceptable by a large majority of producers (with some producers favouring even up to 50%). It should be followed by a close monitoring of wine quality with a possible derogation to be required by member states in case of adverse weather conditions.

### Enrichment

The CMO states that in cases of adverse climatic conditions, alcohol content may be increased by the use of sugar, concentrated must, rectified concentrated must and self-enrichment by reverse osmosis. The ingredient/tool for enrichment and its level (expressed in percentage by volume) is different in the three wine areas (3% in zone A; 2% in zone B; 1.5% in zone C).

Concerning organic wine-making two issues should be considered:

- | whether to allow, forbid or limit enrichment
- | where enrichment is allowed, with which ingredients/tools it should be allowed

### Next steps

In the coming months the final decisions on the ORWINE recommendation will be fine-tuned taking into account the final scientific results and the outcome of the on-line survey. The project was presented to the Standing Committee on Organic Farming in December 2008. The EU Commission plans to work on the implementing rules for wine processing in early 2009 in order to adopt them by the end of 2009.

All information about the project contents, deliverables, publications and partnership composition can be downloaded from [www.orwine.org](http://www.orwine.org)

### Food service and catering in Europe and future perspectives for European regulation

*[Carola Strassner]*

**In the past decade we have witnessed an organic boom in Europe and elsewhere. At the same time the foodservice market has steadily grown in these countries and its percentage of the consumer’s food Euro is forecast to increase further over the next few years.**

Both markets have meanwhile discovered each other and foodservice is becoming a recognised channel for organic produce. So much so that today there are not only significant volumes of organic produce entering this diverse sector but

also a number of interesting developments taking place, such as school meals and public procurement. Concomitant with the boom (in some countries) of organic sales, consumers have contributed by demanding organic produce not just in their retail purchases but also slowly and steadily in their foodservice purchases.

Before discussing the revised organic regulation, which took effect from January 1<sup>st</sup> 2009, a quick reminder of the depth and breadth of this market: The Out Of Home market is notoriously difficult to define and especially to quantify. This is evident alone by the variety of terminology used: Out Of Home, Foodservice, HoReCa – Hotels, Restaurants, Catering are all over-arching terms used somewhat interchangeably to cover the sale of food and/or beverages for immediate consumption, on or off the premises. Vending may or may not be included. This sector covers both the public sector such as education, welfare and military, and the private sector such as catering companies, chains, leisure, travel – both voluntary purchases such as take-aways and coffee shops, and involuntary “captive” purchases such as day care centres and schools, as well as subsidised (usually work-place locations, and institutions such as hospitals and care homes) and non-subsidised conditions.

#### **Impact of the new regulation on foodservice**

With the new regulation (EC) No 834/2007, for the first time explicit mention is made of catering. In this respect it is significantly different from Council Regulation (EC) No 2092/91 and its amendments in that it specifically excludes “mass catering operations” in Article 1 § 3. Member States may apply national rules or, in the absence thereof, private standards, on labelling and control of products originating from mass catering operations, insofar as the said rules comply with Community Law. Article 2 § (aa) defines “mass catering operations” to mean “the preparation of organic products in restaurants, hospitals, canteens and other similar food business at the point of sale or delivery to the final consumer”. There is no further mention made of mass catering in the implementing rules (EC) No 889/2008.

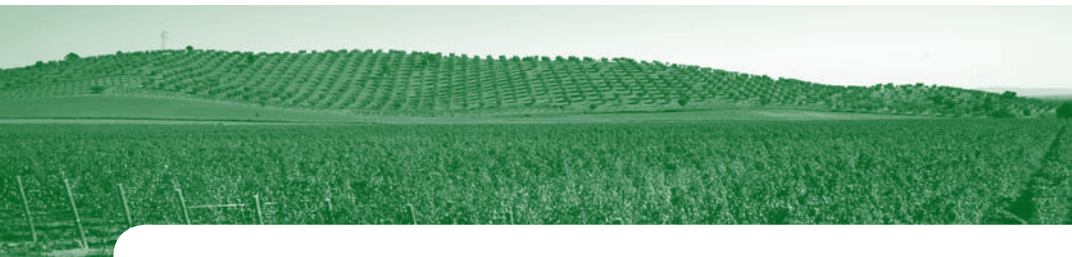
On the one hand the situation with respect to catering is now apparently clearer than it was in the repealed Council Regulation 2092/91, insofar as the new regulation clearly excludes mass catering and legally allows all members to choose their individual approach. In the past there has been some discussion among member states and various stakeholders as to whether 2092/91 covers catering or not (i.e. the UK’s Defra enquiry to the EC; Germany’s use of legal expertise on the Council regulation 2092/91 with respect to catering). On the other hand, for the practitioner the situation at ground level has not changed. It remains a question of how the member states decide to proceed. In theory and a couple of years hence we may have at least 27 versions of how to deal with organic catering, not counting any private regulations.

Should member states choose not to apply national rules or private standards to this field, some other private body could devise its own rules and labels for “organic mass catering” that do not concur with the spirit of the old or the new regulation. Could we in theory see an organic coffee shop label that means something entirely different to the agreed Community definitions?

The new EU regulation allows caterers to be treated differently to any of the groups identified so far, for example processors. This is a chance to take into account the special conditions found in parts of the foodservice sector such as very fast ingredient turnover, daily changing menus, supply bottlenecks for seasonal produce and lack of recipe use. It is also an excellent opportunity for differentiation in statistical data, so that in future data on organic might be collected more easily.

At least no negative impact on sales channel development is to be expected as a direct consequence of the new regulation. The inclusion of aquaculture in agriculture (Article 1 § 2) and the forthcoming Community production rules will be welcome progress especially for this market.

In Article 27 § 3 a new risk-based approach to controls is laid out: “the nature and frequency of the controls shall be determined on the basis of an as-



assessment of the risk of occurrence of irregularities and infringements as regards compliance with the requirements laid down in this Regulation”. While there is not much more detail about this in the implementing rules, it might provide later solutions for issues such as control of the individual local restaurant outlet versus the international restaurant chain.

Further ramifications from changes in the revised organic regulation will depend on the approach of the Community Members. They may include especially labelling issues such as the compulsory use of the pending new Community organic production logo, the new code-number format, indication of origin and also asterisk labelling, most of which will come into effect after various transition periods. The regulation does guarantee the option of continued use of private or national logos.

#### **The status quo in selected Member States**

At the present time there is quite a variety of ways of dealing with organic foodservice amongst the 27 Community Members. These include national law, national recommendations and private standards.

Germany is the first Member State to adopt a standard organic certification programme for the out of home sector at the national level and to anchor this in its laws. The instrument of the Organic Farming Act (Öko-Landbaugesetz - ÖLG), which pools specific executive functions in organic farming in Germany, whilst increasing the effective implementation of the EU Regulation, is used to provide the rules for organic foodservice. The underlying principles of consumer protection concerning fraud and deception, equal market opportunities and transparency from farm to fork and beyond, contributed to the development of such a programme for foodservice enterprises with guidelines for operators. Due to Germany's federal structure, 16 supervisory authorities within the “Länder” (federal states) are responsible for 23 approved inspection bodies currently operating in the market. The private inspection bodies control and monitor compliance with the Organic Regulation. Under certain conditions, menu items may be labelled with the German state eco-label known as the “Bio-Siegel”. There are also private concepts, rules and labels for foodservice such as those of the

Organic Agriculture Associations - Bioland and Biokreis.

In the past, control bodies in Austria had developed rules for the foodservice sector which had a variety of operators, including restaurants, hospitals, homes and catering companies, under inspection. For the last few years, Austria has also been working on a set of binding standards at national level, finalised in June 2008, and valid from July 2009. This set of rules is included in Chapter A8 of its Lebensmittelbuch (Codex Alimentarius Austriacus), as are all other national organic provisions.

The Danish Food Authority has recently developed a proposal to allow restaurants and caterers to market themselves as bronze, silver or gold organic, where each level signals a certain proportion of the purchased raw materials to be organic. For bronze, 20-40% of the raw materials should be organic, for silver, 50-95%, and gold where more than 95% of the raw materials are organic. The Danish experience to date has found that the food processing rules as applied to processors did not work very well for restaurants, especially regarding the documentary requirements.

Possibly thanks to Nordic networking, many of the Scandinavian or Nordic countries have concepts for organic foodservice. In Finland, professional kitchens serving organic meals or portions or claiming that meal ingredients are organic, are obliged to register with Evira, the Finnish Food Safety Authority. However, if the kitchen informs about the use of organic ingredients but does not present literal claims about organic meals, it is not included in Evira's register for organic businesses. This “information gap” is filled by the semi-official introductory scheme for organic food called ‘Steps to Organic’, organised by EkoCentria, a promotional body funded by the Ministry of Agriculture and Forestry through the Finnish Food Information Service (Finfood).

The Norwegian Food Safety Authority, Mattilsynet, has delegated the certification of production, processing and distribution of organic food to the private organisation Debio. Foodservice operators wishing to market organic ingredients and/or proc-



essed foods need to be certified by Debio. This includes institutions, schools, hotels, restaurants, cafés and cafeterias, catering services, fast-food joints etc.

According to the Soil Association in the UK, restaurants and other caterers do not have to be certified in the same way as organic production and processing organisations. This organisation for organic food and farming has its own standards for restaurants, bars and cafes. Three types of certification are offered by Soil Association Certification Ltd: (1) 100% organic restaurant, (2) organic dish, (3) organic menu item. In recent times the Soil Association has devoted itself especially to the issue of (organic) school meals, supported by the so-called “Jamie Oliver effect”.

Considered the unequivocal leader in Europe with respect to organic school meals, Italy does not appear to be focusing on the verification of organic quality in public catering at the moment. The recent national and regional laws about catering systems, promotion, quality and organic foods are more of a patchwork of general rules and principles, generally without a sanction system.

Some of the oldest private standards for foodservice in Europe are those of KRAV, a private sector certification body in Sweden, which has certified restaurants since 1996 and has hundreds of operators in its programme, including all types of industrial kitchens, restaurants and cafes. Smaller production units such as sheltered housing and preschools are also included.

While not a member of the EC, Switzerland should be mentioned, as, along with Sweden, its organisation Bio Suisse has one of the oldest systems of standards for organic foodservice in Europe. There are two models: (1) Bud Component or Menu (Knospe-Komponenten-Küche), (2) a Bud Operation (Knospe-Küche). Many of the later versions took account of the Swiss experiences.

In the Czech Republic, the organic sector and certification agencies are working on rules for restaurants. Both the Netherlands and Belgium are giving the matter their attention while other member states such as France and Luxembourg are keeping ears

and eyes open too. Generally, the developments Europe-wide are quite dynamic.

### **Outlook on further development**

Two foodservice market developments seem to be especially relevant here. Firstly, whole, natural and fresh food, including organic and ethical, is a major trend in retail and is forecast to reach foodservice with a massive impact. Estimations say between a quarter and a third of consumers in the EU and USA will regularly purchase natural and fresh food per week. Considering these various terms and their products, it seems necessary to try to find an acceptable solution for organic foodservice regulations soon, so that the integrity of organic production and produce does not suffer. Secondly, there used to be a fairly clear distinction between foodservice and retail food purchase. In the last few years this has become more diverse as the retail sector is increasingly offering Fresh Prepared Foods (e.g. heat-and-serve and ready-to-eat). Also, artisan bakeries and/or butcheries, as well as specialist shops (wine shops etc.), are offering meal solutions. It's a moot point whether, from a consumer perspective, there is a difference between buying a ready-to-eat salad in a retail outlet and buying one from a take-away franchise outlet for lunchtime consumption. This implies that it may prove rather difficult to define when the Organic Regulation applies and when not, and that possibly the solution lies in the process itself.

One of the central precepts of Community rules is that they should provide a harmonised concept, in this case, of organic production and processing. Since all member states can proceed as they deem fit, there may be a residual danger of an unchecked proliferation of organic foodservice concepts. However, this needs to be seen against the window of opportunity afforded to all stakeholders. A good working concept needs a good functioning market; if there are not enough suitable foodservice-conform products available, then stipulating certain rules to operators will not work. Furthermore, many involved in organic foodservice have been networking across countries over the past years and continue to exchange information on developments using platforms such as the BioFach Congress in Nuremberg each February. Such



networks are already setting the groundwork for any potential long-term harmonisation endeavours.

Two research projects deserve mention as they are analysing certain aspects pertinent to organic foodservice. One of these is the CORE-Organic project called iPOPY (innovative Public Organic food Procurement for Youth). The aim is to study how increased consumption of organic food may be achieved by the implementation of relevant strategies and instruments linked to food serving outlets for young people in some European countries. Supply chain management, procedures for certification of serving outlets, stakeholders' perceptions

and participation, as well as the potential of organic food in relation to health and obesity risks will be examined. A first analysis has highlighted the organisational and in part cultural variance amongst the participating countries with respect to their management of organic certification and its application to foodservice operations. The other is the FP7 project *CertCost*, whose main objective is to generate research-based knowledge on how to improve the organic food certification system in terms of efficiency, transparency and cost effectiveness. The findings of both projects will no doubt have high relevance to further developments of organic foodservice rules in Europe.

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### 3.6 CONTROL AND CERTIFICATION ASPECTS

#### Overview: The impact of Regulation (EC) No 882/2004 on the organic inspection and control system

[Gerald Altena]

**The new organic Regulations (EC) No 834/2007 refers to Regulation (EC) No 882/2004 on official food and feed control (OFFC regulation) as the framework for the control system for organic production. The analysis of the potential impact on organic control and inspection caused intensively discussion when the new organic regulation was in the decision making process. However, the impact will also depend on national interpretation of Member States.**

Article 63 of the OFFC Regulation on implementing and transitional measures point 2 states:

*“In order to take account of the specificity of Regulations (EEC) No 2092/91 .....specific measures to be adopted in accordance with the procedure referred to in Article 62(3) may provide for the necessary derogations from and adjustments to the rules laid down in this Regulation.”*

This is the equivalent for Regulation (EC) No 882/2004 of the Standing Committee on Organic Farming. However no such measures are adopted. This could be interpreted to mean that organic controls must follow faithfully the requirements in the OFFC Regulation. However, the Regulations (EC) No 834/2007 and 889/2008 (organic regulations) do specify a number of differences. Clearly, these take precedence, since the more specific regulation goes over the less detailed regulation.

In the following we first list the references from the organic regulations to the 882/2004. After this there is a short assessment of areas from the OFFC Regulation that are not referred to in the organic regulations.

**Regulation (EC) No 834/2007** (Title V Articles 27-31). Before investigating these articles in detail, one must be aware of some differences between the

regulations in respect to the definitions: The Regulation (EC) No 882/2004 defines verification, which is mentioned in the 834/2007 Article 27.3, but not otherwise defined. The organic regulation contains more specific definitions of competent authority and control body, and control authority is defined, but not in the OFFC Regulation.

In Article 27 of 834/2007 as a first principle the obligation to establish a control system in conformity with 882/2004 is established. As a second principle it is stated that **detailed provisions in 834/2007 have to be regarded as supplements to the provisions in the Regulation (EC) No 882/2004**. Then there are detailed provisions on the nature and frequency of the controls and a demand to carry out these controls on the basis of an assessment of the risk of occurrence of irregularities and infringements. Here, the content of the organic regulation is much the same as the OFFC Regulation (Article 3). However the latter contains additional requirements, for example that official controls shall be carried out without prior warning, except in special cases, though the implementing rules (889/2008) modifies this (see below).

In Article 27.4 of 834/2007 it is stated that the competent authority may confer control competence to one or more control authorities. The competent authority may in turn delegate control tasks to one or more control bodies. The conditions laid down in the OFFC Regulation shall apply, and 834/2007 lists the applicable requirements in detail with some adjustments (as an example the condition to be accredited to EN 45011 instead of EN 45004). It is again confusing that on the one hand 882/2004 is referenced, but on the other hand 834/2007 lists all detailed provisions.

Where control tasks are delegated to control bodies, the Member State shall designate authorities responsible for the approval and supervision of such bodies. Article 27.5 contains a list of conditions that need to be satisfied when this is the case. Again 882/2004 (Article 5(2)) is referenced, even though 834/2007 included the entire list of applicable conditions.



When control tasks are delegated to control bodies, Article 27.6 defines explicitly two extra criteria in addition to 27.5:

- | the standard control procedure to be followed
- | the measures that the control body intends to apply where irregularities and/or infringements are found.

27.7 points out that the following tasks cannot be delegated to the control bodies:

- | supervision and audit of other control bodies
- | the competence to grant exceptions as referred to in Article 22, unless under specific conditions.

The organic regulation is quite specific here. On the other hand, Article 5.1 of OFFC Regulation identifies the action in case of non-compliance (specified in Article 54) as a task that cannot be delegated to control bodies. It therefore raises the question about the borderlines between irregularities/infringements on the one hand and non-compliances on the other hand.

Article 27.11 describes the obligation for control authorities/bodies to give competent authorities admission to their offices, and in 27.12 the obligation to ensure that all control measures are applied to their operators. Again the level of detail is high, from which it could be concluded that this was done to make cross-referencing to 882/2004 superfluous. Regulation (EC) No 889/2008 (Title IV Chapter 1-8). The minimum control requirements are defined in the implementing rules by a detailed description of the operator's responsibilities regarding the control system by providing necessary information, submitting to control, keep records, etc. These are further elaborated in specific control requirements for different types of production (plant and animal production, processing, feed manufacturing, imports).

Regulation (EC) No 889/2008 also describes in detail the measures and responsibilities in case of suspicion of infringements and irregularities, in respect to the operator, the control body and the control authorities. In addition, the implementing rules foresee the need for the operators to agree in the exchange of information between control bodies and control authorities where the operator and his subcontractors are checked by different control bodies or authorities.

Then Title V, Chapter 1 of 889/2008 deals in detail with the necessary reporting procedures. One can conclude that, even though OFFC Regulation deals with the same matters as mentioned above, it don't need to refer to 882/2004, but only to 889/2008.

#### Regulation (EC) 882/2004

Clearly, it is important to identify additional aspects of 882/2004 that have relevance for the organic control system. One might conclude that it would be peculiar if important areas from it do apply if they are not mentioned in the organic regulations, because so much is indeed mentioned in the organic regulations. Altogether **it is confusing that the organic regulations do not state clearly which articles/areas in OFFC Regulation must be seen as additional to it.**

The preamble of the Regulation (EC) No 882/2004 point (9) says:

*"Council Regulations (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs ..... contain specific measures for the verification of compliance with the requirements contained therein. The requirements of this Regulation should be flexible enough so as to take account of the specificity of these areas."*

*So it is a clear intention to exercise flexibility in respect to how the relations between the regulations should be understood.*

Further study of 882/2004 seems to indicate there are no other areas which are relevant for the organic control system that are not addressed in the organic regulations. As a consequence, there should be no need to read the OFFC Regulation for additional requirements of the organic control system, since all relevant areas are covered in the organic regulations.

### The new EU Regulations on Organic Agriculture: Implications for the Inspection and Certification system in Germany

[Jochen Neuendorff]

**The new EU Regulations on Organic Agriculture establish that the organic inspection system provided for in Regulations (EC) No 834/2007 and 889/2008**

**shall be implemented in accordance with Regulation (EC) No 882/2004 on official food and feed controls (OFFC regulation).**

Under the revised EU Regulations on Organic Agriculture, the competent authorities of the EU member states assume the sole responsibility for ensuring that products marketed as organic are in fact organic products. They “may delegate certain control tasks” to one or more control bodies. These “private” control bodies must be accredited according to EN 45011. The impact of basing organic inspections on official food and feed controls as well as the interaction between the official controls performed by the competent authorities of the EU member states and private certification decided by private control bodies remained largely unclear.

This was the reason to carry out a project in the framework of Germany’s Federal Programme for Organic Agriculture. The project, titled “Adjustment of the inspection and certification system according to the EU Regulation on Organic Agriculture to the requirements of Regulation (EC) No 882/2004”, started mid-2007 and ran until the end of 2008. Its objective was to analyze the interaction between the organic regulations and the OFFC regulation. Possible negative effects on the effectiveness and the efficiency of the organic inspection system were to be identified. Particular relevance is paid to fraud cases. The analysis should facilitate the design of measures to improve the implementation of the organic inspection system in the future.

**Fraud in organics: a risk analysis**

According to legal definitions, the term “fraud” may be used for deliberate criminal acts leading to monetary gains. The producer or exporter’s intent to deceive must be proven in each case. “Accidental” breaches of organic standards thus are not fraud.

The two most common types of fraud in organic agriculture, food processing and trading are:

1. The use of prohibited inputs in organic farms or processing units; and
2. The labeling of conventional products as organic on farms or processing units or during trade.

While organic inspections have proven to be quite effective against the use of prohibited inputs like mineral fertilizers, chemical pesticides and non-authorized food additives, a number of EU member states suffered during the past years from cases where fraudulent trade companies relabeled conventional products as being organic, thereby benefiting from the price difference between the two products. Most of these cases involve a number of EU member states. A recent case in 2008 involved again trade companies from Austria, Germany and Italy. Cross-border sales seem to make fraud easier - inspection tools along the value chain are still inadequate.

**Inspection and certification under the new EU regulations: What will change?**

The new EU regulations on Organic Agriculture are linked with the OFFC regulation. Nevertheless, the requirements of Regulation (EC) No 834/2007 and 889/2008 take primacy over those of Regulation (EC) No 882/2004. Lawyers argue that the new EU requirements for organic agriculture are more specific than the OFFC regulation (“lex specialis”) and that they were published later (“lex posterior”).

Under the new EU regulations, it was made clear that out-of-home operators (e.g. canteens, restaurants) are not subjected to the inspection system, leaving it up to EU member states to, if they so wish, have them covered under the national rules (Article 1 No 2 Regulation (EC) No 834/2007). Germany obliged with the new national law on organic agriculture published in December 2008, under which canteens and restaurants offering organic food are to be inspected and certified to guarantee consumer protection against fraud. In Germany, a well-established inspection and certification system for these operators has been in place since 2005.

The new EU regulations broaden the range of products which must be certified (Article 1 (2) Regulation (EC) No 834/2007 and article 95 (5) Regulation (EC) No 889/2008). Aquaculture operators (farmers, processing companies and traders) as well as pet food processors and traders must be certified according to Regulation (EC) No 834/2007 from January 1, 2009 onwards. This will improve consumer protection.



The OFFC regulation stipulates that in a regional system the implementation of the official controls must be effectively coordinated between the different actors (Article 4 (3) Regulation (EC) No 882/2004). Germany is represented to other EU member states by the Federal Ministry for Agriculture and Consumer Protection. Implementation of the EU regulations on Organic Agriculture is the responsibility of the 15 competent authorities of the different federal states. Furthermore, there are 20 control bodies. Coordination is done through a working group of the competent authorities (“LOEK”) and of the control bodies (“KdK”).

Under the new EU regulations on organic agriculture, inspection measures will essentially remain the same after December 31, 2008. However, a few new elements were integrated into the new EU regulations:

- | in organic farming, the need to obtain prior authorisations from control bodies or control authorities was eliminated for a significant number of less desirable inputs, those exceptionally allowed where the normal organic practice proves insufficient. This will increase the danger that prohibited inputs will be “accidentally” used – simply for lack of knowledge that their use is not generally permitted.
- | the risk-orientation of inspection visits was highlighted. The inspection interval for operators dealing with pre-packaged products can be prolonged beyond a one-year interval (Article 27 (3) Regulation (EC) No 834/2007). For processing units, a system of organic control points (OCP) was introduced (Article 26 (2), (3), (4) of Regulation (EC) No 889/2008). Processing companies will need to identify critical points where organic integrity is at danger and establish precautionary measures to avoid these problems.
- | certificates will be harmonised in the future according to Annex XII of Regulation (EC) No 889/2008.

#### **Effects of the new EU regulations on fraud prevention**

As a general psychological rule, the lower the risk of being detected and the lower the penalties, the higher the willingness to commit a fraud will be. In the past, three major areas for improvement of the old EU Regulation on Organic Farming No 2092/91 were identified:

1. The responsibility of the operators for the integrity of organic production needs to be strengthened;
2. The inspections need to be more strongly oriented to the prevention and detection of risks;
3. Greater transparency in the organic food supply chain is needed.

The new EU Regulations on Organic Agriculture No. 834/2007 and 889/2009 only partially contribute to these objectives:

#### **Responsibility**

Responsibility of all operators in the chain to proactively ensure the integrity of the product.

The requirement of Organic Critical Points was introduced as a internal quality assurance requirement, but only for processing units of organic food and feed products.

#### **Risk-orientation**

Risk orientation of the inspection visits was emphasized, but the manner in which this requirement would be implemented was left up to the member states. Some EU member states, for example Austria, will introduce compulsory inspection report formats and a list of the sanctions to be imposed to deal with non-compliant control bodies. Such measures contradict the philosophy of enhanced risk orientation implemented by control bodies. The more formalized and defined certain documents and procedures are, the less risk orientation of control bodies will be. Fortunately, Germany will not go this way.

#### **Transparency**

In Germany, efforts to achieve an efficient and effective coordination between competent authorities and control bodies still need to be increased. This could ensure a level playing field for all German operators and is as well an effective precautionary measure against fraud.

EU certificates will be standardized, thus enhancing transparency. In Germany, control bodies will be obliged due to the new national law on organic agriculture to publish the names of certified operators on the internet. This will effectively prevent falsification of organic certificates.

Furthermore the new EU requirements do still not stipulate that cross-checks involving different control bodies along the value chain must be conducted.

### **Oversight by the EU Commission of harmonisation between competent authorities - the Polish perspective**

*[Dorota Metera]*

The organic regulation (EEC) No. 2092/91 was implemented in Poland on May 1, 2004 by the Act on Organic Agriculture of April 20, 2004. This introduced the competences of the main authorities: the Minister of Agriculture and Rural Development, who authorises the certification bodies, and the Agricultural and Food Quality Inspection (GIJHARS), which supervises the certification bodies.

Post-January 1, 2009 the certification system remains largely unchanged and may well remain so in the new draft Organic Agriculture Act, which will strengthen the role of GIJHARS – the supervision authority. This is in line with the new Organic EU Regulation 834/2007, which give more power to the competent authorities, for example in the case of permits for derogations such as the purchasing of non-organic animals, especially young hens, tethering of animals, and extension or retrospective recognition of the conversion period. It could be a better solution than in the “old” regulation, when permits were granted by certification bodies and could cause unfair competition between them, and consequently between producers. It is too early at the moment to assess whether it will cause too much paperwork for the authority, with more than 12,000 organic producers in Poland – currently, there is no competent authority appointed for the above-mentioned derogations.

This example shows that even more harmonisation is needed, and not only at the national level by better and unified supervision of the certification bodies. It is also necessary at the European level by the Commission indicating a unified and consistent definition of derogations to the producers from different member states.

Unfair competition in Poland was also a problem because certification is linked with the payment system. The certification bodies reported to the Agency of Restructuring and Modernisation Agency (ARiMR), a payment agency, sending a list of organic producers structured by the acreage of the crop. In cases of discrepancy, for example because of a negative decision by a certification body due to the use of e.g. non-permitted fertilisers, some producers would just change to a more liberal certification body. The unclear legal rules for payment prevented the supervision authority from acting on this.

On the other hand, the new regulation may make it even more difficult, because the need for prior authorisation of fertilisers or plant protection products (i.e. before their use by the farmer) is eliminated. This will increase the danger that prohibited inputs will be used by the farmers, because in Poland so-called “eco-labelling” of fertilisers is used by chemical companies and every year we have cases of the use of prohibited fertilisers by farmers misled by the sign “EKO” on bags of chemical fertiliser. The Commission should investigate the misleading “eco-labelling” of fertilisers and “freedom” of use of inputs by the farmers, to exclude the potential risk to the quality of organic food and fodder.

The “new” regulation will finally unify the certificates. This will stop unfair competition by certification bodies issuing certificates valid for three years at a time and certificates for fertilisers (some of which are not permitted for use in organic agriculture).

Last but not least, a very important new point in the new Organic EU regulation is the enhanced transparency which will stop the present data protection of farmers as producers and beneficiaries of public support. Up until now data protection has counteracted the interests of farmers and processors. Hopefully and finally everything will be available online, using the internet as a common communication system. It will be important for the Commission to ensure that the basic details of organic producers are easily accessible to traders and consumers in all member states.

## Overview of regulations

**Commission Regulation 207/93** of 29 January 1993, defined the additives, processing aids and non-organic agricultural ingredients allowed in processed organic foods.

**Commission Regulation 1804/1999** of 19 July 1999, set requirements for organic animal production, defining common rules for organic livestock husbandry for the first time.

**Council Regulation (EEC) No 2092/91** of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs. Official Journal of the European Communities, L198 (22.7.1991), and subsequent amendments.

**Commission Regulation (EC) No 882/2004** of 29 April 2004 on official food and feed controls performed to ensure the verification of compliance with feed and food law, animal health and welfare rules. Also referred to as the OFFC regulation (Official Food and Feed Control).

**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. Official Journal of the European Communities, L189/1 (20.7.2007), 1-23.

**Commission Regulation (EC) No 404/2008** of 6 May 2008 amending Annex II to Council Regulation (EEC) No 2092/91 on organic production of agricultural products as concerns the authorisation of spinosad, potassium bicarbonate and copper octanoate and the use of ethylene. Official Journal of the European Communities, L120/8 (7.5.2008), 8-10.

**Commission Regulation (EC) No 889/2008** of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control. Official Journal of the European Communities, L250/1 (18.9.2008), 1-84.

Regulation 889/2008 is often referred to as 'NIROF' (New Implementing Rules for Organic Farming).

On 1 January 2009 Regulation 834/2007 came into force, together with the implementing rules, regulations 889/2008 and 1235/2009.

**Council Regulation 967/2008** of 29 September 2008 amending Regulation 834/2007 to delay the introduction of the EU logo.

**Commission Regulation 1235/2008** of 8 December 2008, establishing under Regulation 834/2007 the implementing rules for imports from third countries.

**Commission Regulation 1254/2008** of 15 December 2008, the first amendment to Regulation 889/2008 allowing use of 100% own-farm conversion feed and festive colouring of eggs and adding standards for yeast.

**All regulation texts are available in the official form and in all European languages at:**

**<http://eur-lex.europa.eu>**

**A chronological list can also be found at the IFOAM EU Group info page on the revision of the organic Regulation at: [www.ifoam-eu.org](http://www.ifoam-eu.org)**

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\*)A tree converts 6 kg CO<sup>2</sup> into O<sup>2</sup>. An average car like the Golf produces 141 g CO<sup>2</sup> per km. In total 14.1 kg on 100 km.  
Sources: sdw-Schutzgemeinschaft dt. Wald (Association for protection of the German Forests) and Volkswagen.



The IFOAM EU Group is the European working level within the International Federation of Organic Agriculture Movements. It brings together more than 340 organisations, associations and enterprises from all EU-27, EFTA and candidate countries. IFOAM's goal is the worldwide adoption of ecologically, socially and economically sound systems that are based on the principles of Organic Agriculture.