



Munich, 28 April 2014

Addressees:

- The European Commission
- The EU Council of Agricultural Ministers
- The European Parliament
- The German Federal Government
- The Bavarian State Ministry for Food, Agriculture and Forestry (BayStmELF)

Europe Needs More Organic Production – Not Less!

The European Commission's proposed review of the EU's Organic Regulation is hindering the development of organic farming in Europe.

Demands

**of the Bavarian Organic Farming Association
(LVÖ Bayern)**

concerning the publication of the proposal for a regulation of the European Parliament and of the Council on organic production and labelling of organic products, amending Regulation (EU) No XXX/XXX of the European Parliament and of the Council [Official controls Regulation] and repealing Council Regulation (EC) No 834/2007 from 24 March 2014



Legal Information

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As the umbrella organisation of the organic associations Bioland, Naturland, Biokreis, and Demeter, **the Bavarian Organic Farming Association (LVÖ Bayern)** represents the interests of some 5,000 organic production operations and organic farming in general in Bavaria.



On 24 March 2014, the European Commission presented a proposal for a new EU Organic Regulation to the EU Council of Agricultural Ministers. It did so in the face of opposition from a considerable majority of experts and organic associations. The proposal submitted would amount to a fundamental review of EU Regulation (EC) No. 834/2007.

What would this proposed regulation mean for the future development of organic farming in Europe?

In the revised version advocated by the European Commission, this regulation constitutes an all-out assault on the advancement of organic farming. Its implementation would severely erode the economic foundation of organic farming and lead to a massive reduction in related operations and business in Germany and Europe at large (the European Commission itself describes this as a consequence of the proposal!) – not to the increased organic production consumers and policy makers alike hope to see.

In other words, the proposal in question is not in the interest of a society in which a majority of citizens are calling for more ecological farming practices. Should the review be implemented as planned, the industrialisation of agriculture and food production in Europe will continue, forcing ethical animal husbandry and farming methods that preserve resources, climates, and the environment further into the background. For Europe, this would mean less organic farming, and thus fewer environmental benefits. If the European Commission truly wants to promote organic farming in Europe, it should do so by making targeted improvements to and optimising its implementation of the EU's existing Organic Regulation in its member states.

The European Commission must retract its regulation proposal!

We call upon the European Parliament, the EU Council of Agricultural Ministers, and its operational groups to reject this proposal following critical examination and demand that the European Commission submit a new regulation proposal!



Impetus for review of the EU's Organic Regulation, criticism of the approach followed and the legislative procedure initiated by the European Commission

The EU's Organic Regulation was originally designated for review due to an appraisal by the European Court of Auditors, which pointedly criticised the European Commission and the inspection authorities of its member states for failing to fulfil their respective monitoring responsibilities. The European Commission thus began deliberating a further revision of the Organic Regulation approximately two years ago. It then authorised a corresponding impact assessment, which identified three possible actions; the European Commission selected the "principle-driven" option. It is difficult to understand why the "improved status quo" option, which would have involved making incremental improvements to the EU's existing Organic Regulation, was rejected. This was the option advocated by the organic sector.

Parallel to these events, an external scientific evaluation of the Organic Regulation in place was ordered. Unfortunately, however, its findings and conclusions were not awaited. Instead, the results of a general online survey on Europe's organic farming policies were cited as the basis for a comprehensive review. Many of the questions posed by said survey appeared to favour a tightening of the existing rules, which revealed the European Commission's true intentions. The survey was designed to ascertain the opinions of consumers in particular and prove that there is demand for stricter guidelines on organic farming, as well as for organic foods that are completely free of residue.

The survey received around 45,000 responses, the majority of which were submitted by consumers in France. It failed to meet recognised standards of empirical social research in terms of both its methodology (the type of questions asked) and representative quality (it allowed random participation by anonymous online users). Its results are nonetheless being presented as a key basis for an extensive review of the EU's Organic Regulation; the German Federal Government, meanwhile, has announced plans to thoroughly examine the accuracy of the EU's impact assessment.

The European Commission has also failed to recognise that organic farming is not the result of governmental action or legislative effort. The advancement of organic food and farming is being shaped primarily by the investments of operators in the organic market and by consumers' growing willingness to purchase such products. The legislators in question have an obligation to provide for fair and reliable competitive conditions – and to take the expertise of all market operators into account in formulating the legal guidelines that govern



them. The general evolution this sector needs will not be achieved through one-sided interpretations and favouritism for special interests.

While the European Commission's stated goals for the review may sound appealing – "maintaining consumer confidence, maintaining producer confidence and making it easier for farmers to switch to organics" (as stated in the EC press release from 25 March 2014) – the rules it has proposed would do nothing to achieve them.

For these reasons, we unequivocally reject the approach followed thus far and the legislative procedure initiated by the European Commission!

1. The organic sector must be included in every aspect of the Organic Regulation's ongoing development.

Since the very beginning (Regulation 2092/91 from 1991), the EU's Organic Regulation has been designed to promote the development of the European organic sector by providing clear, practical definitions of the different links in the organic value chain. Fundamental revisions were already made to these provisions (with the involvement of organic market operators) in 1999 and 2007. The organic sector's success in recent years has been rooted in the principle of a process-oriented approach and the definition of regulations along the entire organic value chain, all the way from the farm to the table.

The current language of the EU's Organic Regulation is based on many years of experience in the organic sector. Qualified market operators, including the organic farming and organic food sector associations, have provided the EU's panels and the member states' national authorities with more than two decades of advisory support during the formation and ongoing evolution of Europe's corresponding legal framework. Even as their applicability has grown broader in scope, the rules contained therein have been improved and made successively more detailed as a result. This system of continuous and constructive updates has stood the test of time and should be maintained.



It is imperative that experts and stakeholders from throughout Europe's organic sector be incorporated more closely into deliberations on the European Commission's proposal and the general development of the EU's Organic Regulation!

2. To be sustainable, the organic sector needs legal certainty and reliability.

In the interest of sustainability, the organic sector requires laws and administrative policies that are predictable and dependable. This is a basic necessity of ensuring the confidence of affected companies and their willingness to make investments, which in turn is fundamental to consumer confidence in the organic sector.

To this day, a number of implementing regulations from the previous review have still not been fully enacted (in areas of poultry farming and greenhouse production, for example).

Meanwhile, specific rules to implement the Organic Regulation's previous review (from 2007) for companies and farms have just about been realized by the end of the transitional period in 2013." In taking decisions and planning investments that are often based on periods of 20 years or more, organic sector stakeholders count on the corresponding framework conditions remaining stable for the long term. Introducing an all-new system of rules just a few years after the comprehensive review of 2007/08 – again, the provisions of which have not yet all been implemented – would violate and undermine this trust.

The regulation proposed by the European Commission calls for a series of rules that would stretch legal certainty and reliability to the point of absurdity and make organic farming an impossible endeavour.

Consider the following examples: At the producer level, the European Commission suggests ending all "exemption rules" and in some cases requiring 100% organic seeds, breeding animals, and protein feed – effective immediately. Abolishing the rules in place so abruptly would severely endanger the further development of the organic sector, in particular the production of fruits, vegetables, and livestock. These rules often are mistakenly declared as "exemption rules". Strictly speaking, however, such transitional rules regulate temporary restrictions that are still necessary in order to conduct sensible organic farming in the first place.



The proposed regulation does include transitional periods for the use of conventional plant- and animal-propagating material until 2021 (Article 40), but it remains unclear how the necessary breeding and propagation infrastructure could be established within this timeframe.

With its sweeping revocation of these transitional rules and its attempt to treat organic farming equally across all regions of Europe, the European Commission is failing to account for the realities of the continent's diverse natural landscape.

The transitional rules that have been in place thus far should be phased out gradually according to a binding schedule. In the opinion of LVÖ Bayern, the European Commission has an obligation to provide scientific support to this process – particularly in the areas of organic feed, young animals, and seeds – and aid its development.

Ever-expanding delegated acts beginning to resemble a black box

Furthermore, the European Commission is proposing that 29 important points of detail be established in delegated acts at a later point in time. These delegated acts would lay down all of the requirements in plant and animal production (Articles 10 and 11) and nearly all other articles without the concurrence of the European Parliament or the affected member states! It is impossible to predict the consequences of proceeding in this fashion.

We vehemently object to the broad definition of many crucial detailed provisions in delegated acts without the involvement of experts from the organic sector! Allowing this to stand would make the European Commission the predominant authority in defining rules for the production and processing of organic products.

At their conference on 4 April 2014, Germany's State Ministers of Agriculture also rejected this procedural approach on principle.

The proposed regulation and general approach of the European Commission have already caused tremendous concerns among organic sector stakeholders, who now fear that a phase of legal uncertainty is in the offing. The considerable business risk this uncertainty presents is causing a decline in investment and the number of entrepreneurs considering a switch to organic farming. Further consequences include the significant efforts required within the process of implementation and problems involved in the corresponding



realisation. Ultimately, this will result in less organic farming, fewer key environmental benefits for society, and fewer organic food products for consumers all over Europe.

3. The proven system of process-oriented controls and self-regulation by the organic food sector must be maintained and made universal.

By abandoning process-oriented controls and separating the corresponding requirements from the purview of DG AGRI, the European Commission is placing the organic sector's advancement in further peril. The application of stricter limits in the derogations stipulated by law for finished food products is no substitute for process monitoring across all levels of production.

Thanks to this process orientation, the rules established for each production step – from farming practices and the use of inputs to animal husbandry and processing – safeguard the various benefits organic production provides to society and the high-quality organic products that reach consumers in their natural state.

The European Commission's proposal of special limits, such as on residues from plant protection products in organic products (Article 20), represents a departure from a process-based approach toward product controls, which would have severe consequences for organic farming and food production. Extensive laboratory testing would be necessary at every level of the value chain, entailing massive costs and considerable trade delays.

According to the Commission's proposal, DG AGRI would be tasked with defining and establishing thresholds for organic products by means of delegated acts. Along with the general residue limits that apply to all foods, this would introduce a number of additional limits specific to organic products based on those in place on baby food. Communicating this to consumers in an understandable fashion would be virtually impossible.

Moreover, the European Commission seems to assume that organic farmers go about their work in a vacuum, unaffected by what takes place on the remaining 90 percent of conventionally farmed land and in the food market at large. By threatening – under the pretence of consumer protection – to deny the “organic” label to products that exceed special, very low classification thresholds instead of requiring compliance with the limits that apply to all other foods in every phase of production, the Commission would make organic farmers liable for something over which they have no influence: contamination from conventional farming or food production.



Specifically, the proposed regulation would compel farmers to take measures designed to prevent contaminations of unauthorised substances (Recital 51 and Article 3, no. 4). This would turn the "polluter-pays" principle on its head: Organic farmers are to be made responsible for ensuring that their products are uncontaminated, which would reverse the burden of proof. The farmers would also be required to prove that they have taken all of the measures prescribed, while the task of resolving contentious cases would ultimately fall to the courts. This in turn would lead to an increase in legal disputes between organic and conventional farming operations and potentially cause social discord at the local level.

In addition to all these concerns, the European Commission's actions suggest that organic products are defined by laboratory testing, not by the important, socially desirable effects organic production has on climates, the environment, and animal welfare. Meanwhile, informed consumers know that eliminating residue completely would be impossible under the aforementioned conditions. (Here, it bears mentioning that public funds should be used to educate other consumers about the actual conditions in which conventional food production takes place!)

Imposing even more residue controls on organic products based on the additional limits proposed would not offer consumers any greater food safety. The Commission should instead make a committed effort to enforce the "polluter-pays" principle in cases in which conventional farms systematically deploy pesticides that often exceed the limits currently in place.

We reject both the proposed departure from process-oriented monitoring and the introduction of specific limits for organic products, including the corresponding residue controls. We call upon the European Commission to maintain the process-based nature of its organic inspections!



We support suggestions capable of achieving further improvements in the twofold governmental system of inspecting organic products. After all, it is not the legal framework in question (read: the EU's Organic Regulation) that is flawed, but the individual ways in which it is implemented in the EU's member states.

The dual monitoring system involving governmental inspection authorities and governmentally approved inspection companies (in Germany, for example) has proven effective in principle. The rules that currently govern the approval of third-country imports, meanwhile, should be refined in an appropriate, practical manner – not inflated into an opaque system of contracts among nations!

To provide for more efficient implementation of controls and better identification of violations and fraud, closer collaboration must be established between governmental inspection systems and government-monitored inspection facilities, along with a transparent flow of information across the EU's borders. The number of annual inspections must also be balanced against the risks they present. To this end, corresponding legal requirements and efficient systems of sanctions, fines, and other penalties must be put in place in all of the EU member states and in recognised third countries.

The planned coupling of individual levels of the organic value chain to other legal contexts within the purview of the Directorate-General for Health and Consumers would lead to further indeterminable risks for producers. Meanwhile, experience has shown that additional legal requirements result in tremendous cost increases and bureaucratic sprawl. The integration of control requirements for organic food and feed into the regulation governing governmental inspections of food and feed (*Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health, and animal welfare rules*) must be stopped. The current system of self-regulation in the organic sector has proven effective in practice.

Production rules and corresponding monitoring constitute a single entity. They represent part of the laws stipulated by the Organic Regulation and must remain within the purview of DG AGRI. We renounce any shifting of organic controls from the Organic Regulation to Regulation 882/2004! The EU Organic Regulation must be left in the hands of DG AGRI and not transferred to DG SANCO.



4. Transitional rules should remain an option in order to enable organic production and to enable further operators to enter the organic sector!

The organic sector needs clear rules that reflect the current state of development in organic farming and the organic sector at large. These rules must be handled with an eye toward further advancement and adjusted continuously to ensure that this occurs. Otherwise, attempts to switch from conventional farming to organic production could fail due to a lack of ability to converse. This also means that rules should be flexible enough to adjust to the varying availability of seed and planting material, livestock, and propagating material over realistic transitional periods in a transparent manner. The deadlines specified in the proposed regulation – along with its immediate repeal of proven rules – would serve to stifle organic farming and production.

Appropriate transitional arrangements must be possible going forward!

According to the Commission's proposal, farms in conversion to organic should no longer be allowed to sell their goods as conversion goods (Article 8). The Commission's plans would also forbid farms in conversion from acquiring more than 15 percent of the feed they use from their own operations during the conversion period (Annex II, no. 1.4.3.1). As a result, these farms would be forced to purchase 85 percent of the feed they need from organic sources and sell their own feed as conventional. These requirements would make converting to organic production impossible under normal circumstances. During the conversion period, a farm would no longer be able to use all of the feed produced by its own land! Products cultivated during conversion must remain tradable and marketable, particularly as feed.

The rules that currently govern conversion and the labelling of these products during conversion have proven adequate and should be retained! It will otherwise be virtually impossible for normal farms to switch completely to organic production.

Efforts to strengthen circular economies at the regional level should generally be embraced. According to the European Commission's plans, farms should use as much organic feed as possible from their own operations or the surrounding region. The massive increase in regional feed proportions as called for in the review proposal would lend this rule tremendous economic importance from the operator perspective. However, it would also require a clear and uniform definition of the term "region" throughout the EU.



The rules stipulated by the EU's Organic Regulation should continue to be improved based on the current developmental state of organic farming and food production, the principles of circular economies, and the involvement of the organic sector!

5. Bureaucratic sprawl must be stopped.

The EU is facing the general threat of significant bureaucratisation and the considerably higher administrative costs this would entail. The EU organic logo, for example, is to take on the character of an official attestation (Article 23). Each individual product would then need to receive specific approval. Monitoring every retailer that deals solely in packaged goods, meanwhile – despite these products having already been inspected at the processor and wholesaler level – would lead to a similarly excessive bureaucratic burden.

Requirements of this kind do not make organic products safer in any way or result in greater value for consumers.

We reject all proposals that would lead to inordinate bureaucracy without offering any advantages to the entities involved!

6. Uniform, but flexible implementation of the Organic Regulation must be achieved in the EU's member states.

The European Commission seeks to implement the provisions of the Organic Regulation in a uniform fashion across all EU nations. In the interest of fair and productive competition, the same rules governing the production of organic food must apply to all producers and processors in the EU. That said, uniform implementation across the wide variety of geographic, climatic, and cultural variables found in the member states requires allowing authorities at the national level a certain amount of room for interpretation. This flexibility must be transparent and in line with the principles of the Organic Regulation throughout the EU.

The EU's directives must accommodate the varying requirements of its different regions. The details of how this is achieved in each region must be left to authorities that are familiar with the local geographic and cultural circumstances at hand with the involvement of the corresponding stakeholders.

The Organic Regulation must be designed to facilitate organic farming in every geographic region of the EU!



7. Recommendations produced through external scientific evaluation must be taken seriously and into account.

In its conclusions and recommendations, the ex post evaluation report on the current EU Regulation (EC) 834/2007 states: "The EU legislation concerning organic farming represents a solid basis for the sustainable development of organic production [...] But while the requirements in place are adequate in many cases, the member states have not interpreted or implemented them in a coordinated fashion." Here, the report is clearly referring to the shortcomings of the 2007 review and the implementation thereof.

As in many other regulatory areas of the EU, the establishment of the legal framework in question is key. With consumers standing to benefit most, the organic sector has consistently pushed for further progress in said implementation. It has also been a constant advocate of continued improvements to the framework itself. This is the faster, safer, and less bureaucratic way to achieve greater utility for the consumer.

The European Commission should take the conclusions and recommendations of scientific evaluations and the entire organic industry seriously in addressing the controls, import rules, and other flawed aspects of the current Organic Regulation.

By updating the existing legal framework, the Commission could achieve more consumer protection more quickly than through comprehensive review!



Summary of Our Positions and Demands

On the approach to revising the EU's Organic Regulation in principle:

1. We unequivocally reject the approach followed thus far and the legislative procedure initiated by the European Commission.
2. We also oppose reviewing EU Regulation (EC) 834/2007 from the ground up, which is an unnecessary measure.
3. With its proposal for a new Organic Regulation, the Commission is endangering the further development of organic farming and food production in Europe – and the advancement of more sustainable farming methods as a result. The proposed review would not lead to the increase in organic products both consumers and policy makers wish to see in Europe.
4. The conclusions and recommendations produced through external scientific evaluation must be taken seriously and into account.
5. The organic sector must be included in every aspect of the Organic Regulation's ongoing development.

On the European Commission's draft proposal for a new Organic Regulation:

6. We reject both the proposed departure from proven process-oriented monitoring and the introduction of specific limits for organic products, including the additional residue controls these limits would entail. We demand that the organic food production sector's system of self-regulation be retained and that organic inspections remain within the purview of the Organic Regulation.
7. We vehemently object to the broad definition of many crucial provisions in delegated acts without the further participation of experts from the organic sector.
8. The transitional rules followed thus far must remain possible. We reject all proposals that would lead to inordinate bureaucracy without offering any advantages to the entities involved. The Organic Regulation must be designed to facilitate organic farming in every geographic region of the EU.
9. The European Commission must retract its regulation proposal. We call upon the European Parliament and the EU Council of Agricultural Ministers to reject this proposal following critical examination and demand that the European Commission submit a new regulation.

- 10. By updating the existing legal framework, the Commission could achieve more consumer protection more quickly than through comprehensive review of the Organic Regulation!**