

Extract from: Issue 57/January 2006

## New EU Regulation *Will it be simpler?*

*On 21 December 2005, the European Commission adopted a proposal for a new regulation on organic production. The new rules are intended to be simpler, and to allow a certain amount of flexibility that will take account of regional differences in climate and conditions. The import regime will now be amended to allow certification bodies outside the EU to be recognised by the Commission.*

The current EU Regulation 2092/91 has been amended many times, resulting in a text that has become somewhat convoluted. It has recently been subjected to a complete review, leading to a proposal for a new regulation. On presenting the proposal, Mariann Fischer Boel, Commissioner for Agriculture and Rural Development, said: 'It will become much easier now for consumers to recognise organic products and understand their environmental and animal welfare benefits. The current rules will be replaced by simpler, more transparent ones. They will define objectives and principles for organic production, clarify labelling rules and regulate imports, to guarantee that consumers know what they are buying and that farmers know precisely what rules to follow.'

It is proposed that the new regulation will apply from 1 January 2009, but that the new rules on imports will come into force on 1 January 2007. The proposal will go through the normal consultative procedures and possible revisions before adoption by the Council. The process, which will include the EU Parliament making a report on it, will be concluded when the Council makes its decision, probably within 6-12 months.

### **A lot simpler – but the devil is in the details**

The proposed new regulation is a framework document and does not contain the type of detail found in the current regulation. For instance, there are no lists of approved inputs and, except for wild products, there are no specific conversion periods (these will be set later on). Although there are requirements for the use of organic feed and seeds, a whole chapter (chapter 4), is devoted to 'flexibility', and it states that exceptions can be made to the feed and seed requirements. Other rules mentioned that can be flexible include the use of non-organic ingredients, production of traditional food, and those for farms situated in parts of Europe that are still in the early stages of developing an organic sector. Greater detail will be introduced by the Commission. At this juncture it is hard to know if the final rules indeed will be simpler and more flexible; indeed 'the devil is in the detail'.

The document is, as a whole, a lot easier to read than the existing regulation. However, there are some new elements that will inevitably invite challenges and misunderstandings, especially the rules that deal with private standard setters and certification bodies (see comments further on).

The main features of the regulation, compared to the existing one are outlined in the rest of the article.

## Scope

The scope of the existing regulation has some grey areas, and interpretation of what is and is not within its scope can vary considerably. In comparison, the new regulation clearly states its scope and what is outside the scope. The following products are part of the scope of the new regulation:

- Unprocessed plant and livestock products and livestock.
- Processed plant and livestock products that are intended for human consumption.
- Live or unprocessed aquaculture products.
- Processed aquaculture products that are intended for human consumption.
- Feed stuffs.

Hunting and fishing (of wild fish) are not covered. Also non-food processed agricultural products such as cosmetics and textiles are outside the scope.

Exports will now fall under the scope of the regulation. Catering operations, factory canteens, institutional catering, restaurants or other similar food service operations are *clearly outside* the scope.

For retailers the situation is less clear: They are covered by the regulation, but the regulation gives Member States the right to exempt them from being subject to the control system.

## Objective and principles

The regulation establishes some objectives (see box on page 3) and defines four overall principles:

- The use of living organisms and mechanical production methods is preferable to the use of synthetic materials.
- Natural substances shall be used in preference to chemically synthesised substances, which may be used only where natural substances are not commercially available.
- GMOs and products produced from or by GMOs may not be used, with the exception of veterinary medicinal products.
- Rules of organic production shall be adapted to local conditions, stages of development and specific husbandry practices, while maintaining the common concept of organic production.

Based on these overall principles 16 further principles are listed for farming and another three for processing.

## GMOs

The proposed regulation attempts to regulate the GMO issue in a clearer way than it has been.

Operators (farmers and processors) shall not use any GMOs, products that contain GMOs or products produced by GMOs in any situation where they should be able to get information on their presence. Operators will be required to seek confirmation from suppliers that the products are not GMOs or produced by GMOs. One notable exception is that GMOs will not be prohibited in veterinary products, a recognition of the current place GMOs have in veterinary science.

The regulation does not set any thresholds for GMO contamination, but prohibits labelling a product as organic if its GMO content is high enough to trigger the mandatory labelling in the EU (0.9%), a ruling that clarifies the ambiguous situation in the current regulation. It is likely that special thresholds for GMO contamination, *e.g.* for seeds, may be developed in the future.

## Aquaculture

The rules for aquaculture have not been developed yet. Pending their development Member States can adopt national rules or recognise private standards.

## Labelling and advertising

The current category of products containing between 70% and 95% organic ingredients has been scrapped, i.e. those products can not be sold with any indication of being organic or 'made with organic ingredients'. All products produced within the EU must carry the code of the control body. They must also carry either the EU organic logo or the indication 'EU-Organic' (in any of the 21 languages of the EU). Imported products, however, do not have to carry these indications, although they can do so if so desired.

## **Reining in private standards**

The Commission has long expressed frustration with private standard-setters and as it states in the explanatory note to the proposal: *'One of the main purposes of the reform of the organic regulatory framework is to reduce the trade-hampering impact on the internal market of multiple public and private certification'*.

Claims that a particular set of standards is stricter, more organic or in any way superior will simply be prohibited (Art 20.1). This goes even further than the US regulation, which restricts the right of the certification bodies to make such claims, but not the right of the producers to make such claims. Realising the possible conflict with fundamental rights, the Commission weakens this rule in the next paragraph by stating that it is allowed to refer to specific elements of the production method provided the statements are truthful. Not only will private bodies not be allowed to make claims about their standards in the market place, they will also have to grant certification or the right to use their logo to any producers certified by another body that has certified to 'equivalent' standards. This also applies to governmental schemes such as in Denmark or France. Major debates around this rule are likely, first of all on whether it should be adopted and secondly if adopted, on how it will be applied in practice.

## **More risk-based control systems – will annual inspections be dropped?**

The term 'inspection body' is to be replaced with 'control body', meaning certification body. The regulation makes explicit references to the Official Food and Feed Control regulation 882/2004 (OFFC) when it refers to the role of competent authorities and control bodies. This means that the control system for the organic sector will follow the same rules as other food controls, provided there are no special provisions in the organic regulation.

The current control options available to Member States will remain; these are to either have direct government control, a system of approved private bodies or a combination. Compulsory accreditation of control bodies according to ISO 65 (EN 45011) is expected. Organic certification bodies will act more as agents of the government than they do under the current regulation. Action on non-conformity by operators will not be under the mandate of private bodies (OFFC article 5.1). The Commission will, through reference to the OFFC, get greater control over the Member States. Member States will have to submit control plans to the Commission and the Commission shall carry out audits in Member States.

Article 22.2 makes an explicit reference to risk analysis to determine the nature and frequency of controls. There is no explicit requirement for annual inspections as is currently required. It will be interesting to see if any Member State will embark on a less intensive system of control than currently practiced.

## **Imports**

The current rules for imports are due to expire on 31 December 2006, but the new regulation is not planned to come into force until 1 January 2009. To ensure the two year period is covered, the Commission proposes to introduce an amendment to the current Regulation 2092/91 that will be in force from January 2007 until the new rules start on 1 January 2009.

The new regulation on imports will rest on two pillars:

- Recognition of *countries* that *'have production standards and control arrangements equivalent to those applied in the Community [EU], or in accordance with the internationally recognised standards set out in the Codex Alimentarius guidelines'*. The commission will establish a list of these countries.
- Direct recognition of certification bodies in third countries, also either certifying to equivalent standards and controls or standards and controls as set out in the Codex Alimentarius. This means that certification bodies outside the EU will in future be able to apply directly to the Commission for approval, an option that Japan has also recently introduced.

The transitional rules of the amended Reg. 2092/91 introduce a clear provision that allows approved certification bodies based in the EU to certify production outside the EU. They also introduce the two options above, as well as the possibility of a similar derogation as the current derogation under article 11.6, *i.e.* that Member States can approve imports. This derogation will expire when the list of approved

foreign certification bodies is established.

### **More power to the Commission**

The proposed regulation expands the power of the Commission to set detailed rules compared to the current situation. It assigns more clear duties to the Member States and gives the Commission a clear authority to audit the implementation by the Member States.

### **What is not there?**

The regulation does not set any threshold levels for pesticides content in organic products (this was pushed earlier by the Commission) nor any other rules on contamination. The objective relating to bio-diversity does not seem to be matched by any applicable rule.

Any other comments will have to wait for the details to be worked out.

### **Feedback**

As the proposal only became public at Christmas time, there have not been many formal responses yet. However, the IFOAM EU group made a statement that in general was positive, with the chair of the regulation committee, Sabine Eigenschink, saying, *'We are happy to see that many of our core suggestions can be found in the Commission's current proposal'*.

'Of course this is just the beginning', said President Francis Blake. 'Much thought and discussion is still needed to create an ambitious and implementable new organic regulation'.

Friends of the Earth objected to the fact that organic products can contain some GMOs. Helen Holder, at Friends of the Earth Europe, said: *'Genetic contamination of organic food is completely unacceptable to consumers throughout the EU. ... If the biotech industry can't prevent contamination, then GMOs shouldn't be grown in the EU.'*

A Commission official told Reuters that: *'There is some pressure to make the threshold the level of detection at 0.1 percent. But to have it at zero is impossible.'*

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### ***Objectives of the new rules***

The organic production system shall pursue the following objectives:

(a) It shall establish, in a practical, economically viable management system for agriculture, a production of a wide variety of products by methods that:

- minimise the negative effects on the environment;
- maintain and enhance a high level of biological diversity on farms and their surrounding areas;
- preserve as far as possible the natural resources, such as water, soil, organic matter and air;
- respect high animal welfare standards and in particular meet animals' species-specific behavioural needs.

(b) It shall establish a production of food and other agricultural products that responds to a consumer demand for goods produced by use of natural processes, or processes that are comparable to natural processes, and naturally occurring substances.

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