

# ASSESSMENT OF THE NEW ORGANIC REGULATIONS

## The IFOAM EU Group's initial Assessment of the new EU organic regulations

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WORKING FOR ORGANIC FOOD  
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## Introduction

With the application on January 1<sup>st</sup> 2009 of the new regulation on organic production and labelling (EC Regulation 834/2007<sup>1</sup>), and the implementation rules (EC Regulation 889/2008<sup>2</sup>), the organic sector in Europe knows the framework for the new regulatory playing field. These regulations<sup>3</sup> repealed the organic regulation 2092/91<sup>4</sup> after 17 years of service.

The new regulations have been revised even before they have come into force and further revision is already planned. Nonetheless, since all future revision and adaptation will take place within the new regulatory framework, the IFOAM EU Group considers it important to assess the situation as it currently stands. What new potential is there to strengthen the organic sector further? Which weaknesses in the new regulation must be dealt with? And how can the sector ensure that strengths are optimised and weaknesses minimised?

A huge amount of effort has been put into the revision process over the past three years. The IFOAM EU Group proposed and supported planned changes which matched the needs and wishes of organic producers and processors. Where necessary it voiced criticism and put forward alternatives. This proactive approach clearly contributed to improvements in the new regulation. Many of the remaining weaknesses could have been avoided had more structured stakeholder involvement been sought by the Commission<sup>5</sup> and sufficient time allowed for proper reflection and formulation. By assessing the new regulation at the dawn of its implementation, the IFOAM EU Group continues to offer a model of collaboration that can lead to significantly improved regulation in the future.

Since the introduction of the old regulation in 1991 the value of having common standards that guarantee the quality and integrity of organic production and processing has been enormous. The new regulations continue to provide that much needed bottom line; they guarantee that everyone in the organic sector works to at least the same minimum standards and that consumers can trust what they purchase.

At the same time, private standards have and will continue to play a critical role. Private standards keep raising requirements which drive continual improvement and development. Private standards for new activities allow the organic sector to expand its scope. Stakeholder involvement in private standard development is strong, thereby building trust, being responsive to local and regional needs, and securing consumer commitment.

Just as the regulation itself is on-going, so too this assessment is a momentary picture. As this is being written, Member States are working hard to understand and implement the changes in the new regulation and where necessary come up with their interpretation of unclear and open points. Producers and processors must then understand the new rules and interpretations and figure out how to comply with them. This will take much effort throughout 2009. All these processes will lead to a new body of thought and experience on the strengths and weaknesses of the new organic regulation. A future re-assessment will no doubt become necessary.

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1 referred to by “834”  
 2 referred to by “NIROF”  
 3 “Regulations” in this text refers to the new regulations  
 4 referred to by “old regulation”  
 5 “Commission” in this text this refers to the European Commission.

### **Assessment: purpose and structure**

This assessment identifies what the IFOAM EU Group considers to be key strengths and weaknesses of the new regulations. Particular attention is given to new aspects of the NIROF, especially points that are unclear, as the sector is learning how to cope with them. Where the organic sector has a common position on how to deal with unclear points, these are suggested for adoption by the Commission, Member States and/or the sector itself. The assessment identifies what regulatory topics need to be addressed in the short and long run: an agenda for the future.

The assessment points out key new potential strengths of the new regulation. These are generally seen as “potential” strengths since they will only achieve their potential if specific conditions are met; those conditions are explained. Subsequently, the assessment points out new weaknesses which the sector must learn to cope with. Key weaknesses which were present in the old regulations are pointed out as a reminder to continue to bear them in mind. It is pointed out where the European Commission is expected to commence initiatives and where the organic sector has a common position on how to cope with weaknesses, this is put forward as a recommendation for action from the European Commission and/or the organic sector. Finally, the assessment highlights on-going work of the IFOAM EU Group in addressing regulatory issues.

## **STRENGTHS AND OPPORTUNITIES**

The new regulation has several strengths. These give the organic sector opportunities to further develop best practices, assure reliability and integrity throughout the supply chain and further create a level playing field. This section points out key strengths identified by the IFOAM EU Group and which opportunities these offer. Only those strengths that are new in the regulation are mentioned here. Existing strengths have long been recognised and built on by the organic sector, these need no further attention. A number of potential strengths will only create real opportunities provided conditions are met in how the rules are interpreted or put into practice. These ‘conditions’ are mentioned where appropriate.

### **Principles introduced (834: Title II)**

The new regulation introduces overall and sector specific principles. This is the first time principles for organic processing has been formulated on a legal basis. The principles provide a consistent conceptual framework that can be used to reflect on emerging and possible organic practices. Which developments are in keeping with the principles – and are therefore welcomed – and which do not comply and therefore should be rejected? Harmonising the principles supports future harmonisation of new practices.

**Condition:** Guidelines need to be developed for the application of the new principles to assess future regulatory topics.

### **Criteria for assessing inputs introduced (834: Art 4c, Art. 16 and Art. 21)**

The new regulation introduces explicit criteria for assessing inputs used in farming and processing. As new inputs are continuously being developed, these criteria make it possible to benefit from new learning in a manner consistent with organic principles. The Commission will authorise new inputs, which will ensure harmonisation of practices in Member States.

**Condition:** The recommendations of the Organic Inputs Evaluation Project must be implemented. The provisions laid down in Art. 4c which allows for the input of chemically synthesised inputs should be applied in a very restrictive manner. The provisions laid down in Art. 16.5 allows for use of substances are not covered in the regulation should be applied in a very restrictive manner.

### **Scope expanded**

The scope of the new regulation has been extended to include a number of new areas: aquaculture, wine, yeast and seaweed. All of these are areas where there have been extensive development undertaken by private bodies. Incorporating them in the new regulation would allow them to benefit from the widespread consumer recognition of and value given to the term 'organic' which would in turn benefit the growth of these new areas.

**Condition:** By spring 2009 the aquaculture and wine standards are still under development. Full participation of the IFOAM EU Group is needed to ensure that standards meet the principles laid down in (EC) 834/2007 and the possibilities and ambitions of the organic sector.

### **Exceptional production rules (834: Art. 22 and NIROF: Title II Ch 6)**

Article 22 provides the framework for exceptional production rules which continues to allow specific flexibility in organic production and processing and makes it possible for consideration to be given to the regional differences that occur within the EU.

**Condition:** Application of these exceptional production rules by competent authorities must be transparent. Further extension of flexibility under 834: Art. 22.2.a, may be necessary.

### **Risk-based inspection possible (NIROF Art. 65)**

The new regulation recognises risk assessment as being a legitimate approach to determine how annual physical inspection and random control visits are carried out. The sector will be able to target greatest weaknesses in the supply chain to maximise integrity. Operators who comply well with the regulation and are therefore less risk might be subject to reduced inspection time and costs.

**Condition:** Common criteria for assessing risk and deciding on matching inspection levels must be in place to ensure harmonisation in control practices. The IFOAM EU-Group has developed such criteria and recommends these be adopted by all Member States (see: position paper; "[Risk based inspections, August 2007](#)").

### **Imports and equivalent certification easier (834: Title VI and NIROF: Art. 81-85)**

The new regulation has taken a step forward in making imports into the EU more possible. Allowing for direct equivalency in production and processing standards and inspection makes it possible for exporters to work with recognised national or regional standards, thus encouraging the growth of the global organic sector. It also makes it more transparent and easier to import the produce required to meet the continued growing demand for organic products.

**Condition:** The Commission's pending detailed implementation rules for NIROF must put the objective of opening the EU market to equivalent certified organic product into practice. Harmonised import procedures and certification are needed to remove differences between Member States in import conditions. Assessment of equivalency must go beyond paper comparison and consider control practice on the ground. This will require adequate re-sourcing and expert and qualified personnel, for example accreditation bodies with specific organic expertise (e.g. IOAS).

## **Processing**

### **New calculation system for ingredients (NIROF Art. 27.2)**

The new calculation system for ingredients is the basis for more authentic organic products. This legal tool will help to develop the organic product quality further.

### **Technical ingredients of agricultural origin can be certified as organic**

The old regulation's term "ingredient of non agricultural origin" is no longer in the new regulation. This enables

technical ingredients, such as additives and flavours, to be certified organic if they are of agricultural origin and produced in accordance with the requirements of this regulation.

**Identification of critical processing steps required (NIROF Art 26.2)**

The new regulation also requires the food (as well as feed) processing sector to systematically identify critical processing steps, which will improve reliability and support risk identification.

## WEAKNESSES

In this section the weaknesses of the new regulation are discussed. Some of these weaknesses have appeared in the new regulation, in which case relevant articles of the regulation are noted. Some are old weaknesses already present in the last regulation and which were not dealt with in the revision process. In all cases the organic sector must find ways of ensuring that the weaknesses do not lead to lowered standards of operation or threaten the integrity of production and processing. In the end, it is the practitioners who are responsible for ensuring that the principles of organic agriculture are lived up to and put into reliable practice.

Each topic is dealt with in the following way:

- Firstly, weaknesses are explained and where that could lead.
- Then, if there is a common EU sector position on how to deal with the shortcoming, this is put forward as a proposal for the responsible party to follow.

### **Excessive time pressure to implement the new regulation**

The NIROF were published 3 ½ months before the January 1, 2009 deadline by which the new regulation had to be implemented. In that time the following had to be achieved by actors in the organic field: analysis of the NIROF, identification of changes, clarification of unclear points, decision on the consequences of changes, explanation of changes and consequences to the sector and have the sector comply – in total an impossible expectation.

The rushed implementing of the NIROF led to confusion and caused temporary measures with unnecessary investments and changes to be made, e.g. the new role of competent authorities (see extra headline), implementation of article 16.5/834, unclear scope of inspection (eg animal welfare rules, national implementations of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources – part of organic inspection?), several MS had not enough time to compile the list of cleaning product according to 889/A95.6., or clarify the term “factory farming” according to 889/Annex I.

### **No formal stakeholder involvement**

The new regulation does not foresee transparent, formal stakeholder involvement in shaping future regulation. The history of the old and new organic regulation demonstrates how critical proper stakeholder involvement is to ensure an ambitious, implementable regulation that supports a dynamic, growing and reliable sector. It also demonstrates how willing the sector is to engage constructively if given the opportunity. Without proper stakeholder involvement, the regulation risks becoming a static, bureaucratic burden removed from the development and energy of the sector.

**Recommendation:** The IFOAM EU Group recommends that the Commission and Member States follow the suggestions put forward in the IFOAM EU Group’s position paper on “Stakeholder involvement and transparency in the EU regulation of organic food and farming” ([see Position paper on stakeholder involvement, September 2006](#)). Furthermore, the Group recommends that the Commission make known publicly all plans for future revisions, additions and adaptations of the new regulation.

### **Jumbled structure**

The new regulation is still structurally jumbled as it is split over several key documents, all of which must be referred to simultaneously to fully understand the new regulation. A number of topics are also referred to in multiple locations; an example is the topic of tethering, which has relevant articles in five places. All together, the new regulations are over one-third longer. With several 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, and the risk of confusion and mistakes in reading the text is

evident.

**Recommendation:** The IFOAM EU Group recommends that the Commission draws up a reader bringing the regulation documents together.

**No full transparency required on the working of “competent authority”**

The regulations confer significant powers to the ‘competent authority’. However, there are still no requirements for full transparency on how the ‘competent authority’ exercises its powers.

**Recommendation:** The IFOAM EU Group recommends that the European Commission requires ‘competent authorities’ to be transparent about how they make decisions and that this will be made publicly available.

**Competent authorities’ responsibilities on implementation of derogations**

Competent authorities are not(yet)necessary competent to deal with this new duty – that means that e.g. the CB’s are left with the responsibility, the process takes too long, or high fees are charged by the authorities, causing problems for operators as well as for CB’s.

**Recommendation:** IFOAM EU recommends that the commission clarifies the responsibility of the competent authorities in the Member States and asks for reports about the state of play for implementing the new way of handling derogations by mid 2009.

**882 (NIROF: preamble and 834: preamble no 31 and Art. 27)**

The new regulation refers to the general EU regulation on food and feed controls, regulation 882/2004. 882 stipulate the need to formulate additional, specific control measures related to organic products. There is a risk that Member States will interpret this to mean that not only must the organic sector abide by the new organic regulations, it must also adhere to general stipulations in 882. This would greatly complicate certification processes. The Commission has verbally indicated that it welcomes input from the sector. It expects this to be decided by Member States.

**Recommendation:** The IFOAM EU Group recommends that the European Commission incites Member States to interpret 882/2004 to mean that the new regulation fulfils the requirement for specific organic control processes. Therefore inspection bodies need only comply with the regulations laid down in 834/2007 and the NIROF in relation to organic production and processing.

**Scope does not cover all organic produce (834: Art. 1)**

While the scope of the regulation has been expanded to new areas, not all products that are based on or use organic ingredients are covered by the new regulation. In particular catering, textiles, cosmetics and managed wild animals are not covered by the new regulation. This leaves room for claims about ‘organic’ products to be made which do not need to be backed up with common standards and a reliable control system. Doubt about the organic sourcing of such products can also lead to doubt about certified organic produce. There is also no way for sectors currently not foreseen to be included in the scope in the future. This could limit the expansion of organic production and processing into new areas.

**Recommendation:** We feel that the term ‘organic’ in terms of new areas is not sufficiently protected at the moment – we recommend the European Commission to consider a solution similar to the aquaculture solution in 2092 (art 1,2 2092/91). The establishment of such a protection could spur the development of private standards and stimulate the market.

**Stricter national standards not possible (834: Art. 34)**

The new regulation no longer allows Member States to introduce national organic regulations that are more stringent than the European regulation. Thus, the new regulation structurally shifts from being the minimum standard for organic production to being both lowest and at the same time the highest possible standard for

Member States. Extra care must be taken to ensure the continued improvement of organic practice, which can now only be done by private standards.

**Recommendation:** We urge the European Commission to reconsider reinstating the possibility to have stricter national standards subject to their not being barriers to international trade.

### **Greenhouse production/covered cropping and container raised plants not considered**

The new regulation is still not specific about requirements for covered cropping nor substrates for container raised plants. Questions remain on growing in substrates, required rotation, conversion periods, etc.

**Recommendation:** The IFOAM EU Group recommends that the sector develops proposals.

### **Labelling of seed mixtures (834 Art. 26c)**

The NIROF does not give provisions for how to properly label seed and seed mixtures that may be made up of different species, some organic and some not. Without clear labelling, it is difficult to market such mixtures. Furthermore, there are no incentives to increase the organic proportion in mixtures.

**Recommendation:** The IFOAM EU Group recommends that the Commission takes up the Group's position paper on the labelling of seed mixtures as basis for European guidelines (see [Position paper; Labelling of seed mixtures, October 2007](#) ).

## **Animal production**

### **Poultry topics**

A number of topics related to poultry production must still be decided on. The IFOAM EU Group is aware that the Commission has identified "poultry" as a topic that will be addressed in 2009. As in all organic husbandries, ensuring good animal welfare is a high priority and must be regarded in the regulation for poultry production.

**Recommendation:** The IFOAM EU Group will develop recommendations for the poultry production rules in the near future. We recommend that the Commission uses these as a basis for the revision of the existing rules.

### **More slatted area (NIROF, Art. 11.1)**

The new regulation allows a larger portion of housing to be covered with slatted floors, contrary to the initial intention to restrict this as much as possible. The Group understands this to be a mistake in wording.

**Recommendation:** The IFOAM EU Group recommends Member States to abide by the meaning of the old regulation's text and that the Commission correct the wording accordingly with the first revision of 889.

### **Anaesthetised castration (NIROF, Art. 95.4)**

We appreciate the approach to set an end to castration of pigs without anaesthesia. It is questioned, though whether anaesthetised castration improves animal welfare the added stress involved with anaesthetisation considered.

**Recommendation:** The IFOAM EU Group recommends the European Commission to take further research into consideration about the pros and cons of castration from an animal welfare point of view. We recommend looking closer at alternatives such as breeding, slaughter age, and housing systems as means to make castration superfluous. We recommend working towards a ban of castration over time, rather than demanding anaesthesia.

## Processing

### **Permitted methods not dealt with (834: Art. 19.3 and NIROF Annex VIII)**

In this article, criteria for the banning of processing methods are defined. It is still unclear how the sector should deal with differences in interpretation about permitted processing methods and techniques. The IFOAM EU-Group understands the second paragraph of 19 (3) in a way that only methods explicitly excluded by the NIROF are not allowed. Additionally, methods which are explicitly forbidden in the EC Reg. 834/2007 (as GMO and radiation) are not allowed to be used in organic processing either.

**Recommendation:** The IFOAM EU Group recommends the Commission to clarify the understanding of 19 (3) and to evaluate processing methods like ion exchange techniques against the new principles and common interpretations in due course.

### **Additives for all foodstuffs (834: Art. 19.2. b)**

This article on production of processed food says “only [authorised] additives [etc.] in foodstuffs for particular nutritional uses may be used...” There is the risk this may be interpreted as only “dietary” or other “functional foods” need to limit themselves to authorised additives, while it is expected that this restriction applies to all organic foodstuffs.

**Recommendation:** The IFOAM EU Group presumes this is a syntax error, which the Commission can clarify with a formal statement. (A question has been put to the Commission, which will look into this.)

### **Liquid smoke (Annex VIII)**

No mention is made in Annex VIII of pure liquid smoke as a possible additive, while there is interest and health-based incentives to use it and organically acceptable possibilities exist.

**Recommendation:** The IFOAM EU Group recommends adding liquid smoke to Annex VIII in line to its proposal. We recommend introducing a mandatory indication of the origin of the smoke on the product).

### **Ingredients of agricultural origin (article 27 of 889/2008 and Annex VIII)**

Some countries have (again) started to interpret the new regulation in a way which excludes ingredients of agricultural origin with mainly technical and sensorial functions (listed in article 27 and annex VIII of EC No 889/2008) from the scope of the Regulation EC No 834/2007.

**Recommendation:** IFOAM EU recommends that the Commission clarifies that ingredients of agricultural origin can be certified in accordance with the requirements of regulation EC 834/2007. (See: letter; [“Organic additives” May 2009](#)).

## Labelling

### Logo

The new mandatory logo has been underway for a long time.

**Recommendation:** The new logo must be introduced on time – latest by February 2010, as promised by the Commission. This is essential to enable organic operators to have packaging ready in time.

### Labelling of origin

The requirements in article 24 of ECC Regulation 834/2007 for indication of the place of origin will in practice result in that a substantially large part of products produced in the EU will be labelled as EU/Non EU agriculture. Information on the reasoning of this conclusion can be found in our letter on [“Labelling of origin”](#) of May 8<sup>th</sup>, 2009

**Recommendation:** In the EU regulation 834/2007 the requirements toward labelling of origin **for pre-packed organic food** should be changed to an **‘optional obligatory concept’**. This means the labelling of origin should be voluntary **for pre-packed organic foods**. In case an operator decides to label the place of origin he has to fulfil given basic criteria.

The (actual) established percentage of 98% should be adapted to the percentage of regional organic labelling concepts as they are adopted under the ECC Reg. 510/2006 in order to harmonise information on labelling of origin and to avoid misleading information for the consumers. (For more elaborated details see IFOAM EU Group’s letter mentioned above.

### Labelling of feed (NIROF Title III, Ch. 2)

The special labelling requirements for feed allow up to 5% non-organic ingredients. At the same time, feed requirements in animal production demand the use of 100% organic feed for ruminants, for others after 2011. This contradiction may lead to animal producers using labelled organic feed which may include 5% non-organic and therefore not permitted ingredients.

**Recommendation:** The IFOAM EU Group supports the requirement for 100% organic ingredients for ruminants. It therefore recommends that member states interpret this to mean that feed manufacturers must use 100% organic ingredients for ruminant feed, thus ensuring that ruminants are fed according to the regulation.

### Use of logo for feed and seed (834: Art 24)


Requirements for how the EU logo can and must be used refer to its use for organic food. It remains unclear whether the logo may be used for feed and seed.

**Recommendation:** The IFOAM EU Group recommends that the Commission clarifies this point.

## Inspection/Certification

### Risk assessment: criteria unclear and annual visits still required (NIROF: Art. 65)

It is now stipulated that control visits (inspections) shall be carried out on the basis of risk assessment, which in principle is welcomed. However, it neither is unclear how risk should be assessed nor is it clear what kind of inspection should apply to what level of risk. If these are not defined at a common EU level, there is a risk that current national differences in inspection practices will continue and with it on-going debate about perceived differences in the reliability of organic certification. The obligation of annual physical inspection is seen as being at odds with risk-based control. The Commission verbally clarified that the nature of physical inspections are no longer specified. Therefore it is possible to choose how comprehensive the physical inspection must be on the basis of risk assessment.



**Recommendation:** The IFOAM EU Group recommends that its position paper on implementing rules for risk-based inspection is used by the Commission as the basis for defining guidelines for inspection (see: [Risk based inspections, August 2007](#))

**Statistical data requirements unclear (NIROF, Art. 93)**

For the sector it is unclear how much statistical information must be provided to the Commission and how this must be gathered. Differences in approach may make it difficult to compare data or build up the reliable databases needed to help the sector monitor changes in production, sales, etc. It may also lead to a large bureaucratic burden on control bodies if national authorities shift their responsibility to control bodies.

The Commission has verbally clarified that the new regulation deliberately does not specify who must collect organic data and with what system, in order to avoid generating extra costs for member states. The Commission expects all national data collection processes to be able to easily incorporate the minimum set of specified questions. There is no intention to generate extensive data sets for scientific research.

**Recommendations:** The IFOAM EU Group recommends that member states use the data generated by national agricultural data collection systems to meet the statistical organic data requirements.

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