

Questions to be addressed regarding the new draft proposal for a new Council regulation for organic food and farming

27th March 2006

Introduction

The IFOAM EU Group has some grave concerns about the draft proposals for a new Council regulation for organic food and farming. In wishing to react positively to these proposals and to interact constructively in the process, we have outlined some key questions and urge the EU authorities to answer these. They concern particularly the intent of the proposals, the expected impact on the various actors, and the planned next steps and timetable for the process.

The numerous reactions and concerns that have come in the last few weeks have shown the grave concerns of the many stakeholders concerned for this important sector of agriculture. The IFOAM EU Group has compiled the most crucial questions that need answering.

1. General questions on process

Stakeholder participation

The strong reactions from stakeholders have shown that they need to be involved, not only in the elaboration of priority areas for the European Action plan, but also in the elaboration of the detailed regulation (at both Council and Commission level).

- *What possibilities and formal mechanisms and structures are foreseen for an active stakeholder involvement in the process of further elaboration of the Council regulation as well as the revision of the Annexes at Commission level?*

The Standing/Management Committee on organic farming sets its own rules of procedure.

- *How can the Committee include representation of the European private and professional sector of organic farming or how otherwise can stakeholder involvement be assured in the future process of making amendments to the finalised regulation?*

The Commission has invited representatives of the European private professional sector to participate in working groups of the Standing Committee.

- *What possibilities are there to make this a regular occurrence?*

Time scale

The proposed objective of finalising the discussion by 1st July does not allow for several rounds of in-depth national consultation and adaptation which is a prerequisite for a sound

new regulation. A clarification is needed about the future time-scale.

- *What time-scale is seen as realistic to allow sufficient evaluation and discussion, together with consultation of stakeholders in order to produce a clear, well written and widely accepted regulation?*
- *The proposal for the Revision of the Regulation means a "total revision". There was not enough time to examine the legal and practical implications of this total revision. How can it be ensured that actors of the organic sector will not have to take the risk of unintended legal consequences?*
- *Bearing in mind that the Organic Revision Project was set up and financed by the EU to feed into the revision of the regulation, how best can the revision process take into account the outcome of this project?*

2. General questions on content

Content of the council proposal and the detailed standards to be decided later

In the Action plan, the intention was to integrate basic principles and to improve accessibility to the text, not to make new rules or even to completely change the content of the regulation. It is necessary to have confirmation that this is still valid. A clarification about the annexes and their future structure is urgently needed.

- *Does the Commission intend to have detailed rules laid down in annexes, comparable to 2092/91? If so, why is there no reference to these annexes in the text proposal?*
- *How does the Council want to deal with the split of the Revision proposal into framework and annexes and ensure that the two different parts fit together?*

There is concern about discussing and agreeing the detail of the proposed regulation in the absence of any outline of the future annexes, especially when there are no references to specific annexes in the existing text.

- *In order to inform the discussion, what areas of the existing annexes will be revised and which ones will remain and on what criteria?*
- *How and by whom will the elaboration and later amendments of the annexes be managed and with what timescale?*

TITLE I - SUBJECT MATTER, SCOPE AND DEFINITIONS

It is necessary to have confirmation that there is no intention to narrow or weaken the protection of the term organic.

- *Why has the text in the old regulation that protects the term "organic" and its derivatives and diminutives, which has proven legally very effective, not been used?*

- *If there is no intention to narrow or weaken the protection of the term organic what advantage then has the proposed new formulation?*

In some areas it is not clear which products are covered or not covered and for what reasons.

- *The proposal excludes catering and restaurants yet their inclusion is demanded by the sector and would stimulate the further development of organic farming - how can the Council address this need?*
- *How can the proposal protect the term "organic" for non-food products of organic agriculture, such as textiles, cosmetics, building materials etc, as these are growing sectors and need protection?*
- *There is a concern that the proposed definition of GMO (Art 2(q and r) can be interpreted in different ways that would be confusing and would differ from the terms used in the current regulation - what is the intention of such a change? Is there an explanation and clarification of how to exclude products that are both produced using GM and also contain GM material?*

TITLE II - OBJECTIVES AND PRINCIPLES of ORGANIC PRODUCTION

The objectives and principles seem to be a mixture of aspirations, objectives of the regulation, objectives of organic farming and specific rules.

- *What is the structure that frames the objectives and principles and for whom are they primarily written - for the Commission to further develop the rules and annexes, for the operators, for the inspection bodies or for the consumers?*
- *If the principles have to be considered as "rules" what do the principles legally mean for farming practice and the inspection system*

The objectives and principles seem to lack some essential elements compared to those that the international organic sector (IFOAM) has worked out over the last two years.

- *How will these gaps be reconciled, particularly in the context of the aims of the Organic Action Plan concerning international harmonisation?*
- *Neither human nor animal health, nor agro-ecosystem health, are part of the articles. Furthermore the important contribution of organic production for the natural environment and for society is missing. What is the reason for not including it?*
- *Why is the system approach of organic agriculture through the whole food chain not mentioned in first priority instead of the use of inputs?*

TITLE III - PRODUCTION RULES

The newly formulated production rules are often not consistent or too general.

- *Why are they included in the regulation proposal instead of reference being made to the existing well-known rules in the annexes of the current regulation, indicating clearly which subject areas might have to be considered for review?*

Chapter 1 - Farm Production

- *The bases for animal and plant health are appropriate breeds & varieties. Why is this not noted?*
- *Why is there no reference to organic farming being land-related?*
- *Where in the EU will it still be possible to place the apiaries with these proposed rules?*
- *When is it planned to elaborate the rules on aquaculture and how detailed will they be?*
- *What is the intention of setting these criteria and in what way will the stakeholders be included in this process?*

Chapter 3 - Production of Processed Products

The processing of organic products is becoming an increasingly important part of the production process. Nevertheless the extent of principles on processing is very limited.

- *Does the Council think that the principles of processing in the Revision proposal cover this area sufficiently well?*
- *When is it planned to elaborate the rules on wine-making and how detailed will they be?*

Chapter 4 Flexibility

Regional flexibility is an important tool in allowing organic farming to adapt to developmental or changing needs. However, without careful criteria and implementation, it could also be a recipe for chaos and for trade distortion.

- *What will be the limitations to the provisions that could prevent this? How will stakeholder involvement be used to ensure that specific conditions meet genuine needs?*
- *A detailed procedure for handling flexibility in a transparent and participatory way is missing - will there be specific rules in the amendments?*

TITLE IV - LABELLING

- *Why is it not mentioned that member states should prevent the fraudulent use of the indication referring to "organic" and words of similar intent?*
- *What are the extra benefits of making these special restrictions on private label organisations and their communication when they are already sufficiently covered by general legal framework with regard to misleading claims,*

(Directive on general labelling rules and Directive about unfair commercial practices of operators towards consumers)?

- *The free market, including free labelling and advertising, promotes quality and competition. This is in favour of consumers. To what extent does Article 20 have an impact on the competition and the free market of organic products?*
- *How will the 'EU ORGANIC' text fragment, which can occur in 20 different languages, help to inform consumers? Was this proposal based on any consumer survey ensuring that compulsory labelling would not confuse consumers? Would it not be more recommendable to use a harmonised EU wide code number system?*

TITLE V - CONTROLS

There is uncertainty as to what extent the new proposal would lead to a change in the inspection system for organic farming:

- *To what extent would the change to the system of the 882/2004 lead to an increasing nationalisation of the organic inspection system?*
- *To what extent would the interaction of the specific provisions proposed in Article 22 with the provisions laid down in Regulation (EC) No. 882/2004 change the current system?*
- *How does the Council plan to prevent unintended impact and avoid it colliding with mature current practices of organic inspection?*

The regulation 882/2004 mentions in Article 63.2 the possibility for special rules for inspection and certification of organic food and farming.

- *What specifically are the derogations from and adjustments to 882/2004 for certification of organic farming?*
- *Who will decide these (bearing in mind that regulation 882/2004 gives this responsibility to other committees than the Standing committee on organic farming)?*
- *Where will they be specified?*

The Commission's own findings suggest that it is the national supervision of private inspection bodies, not the private inspection bodies themselves, that lacks consistency and effectiveness.

- *What measures are planned to eliminate major deficiencies, identified in the past, that have been reasons for fraud: falsification of certificates, missing checks of product integrity for cross-border sales, insufficient communication, etc.?*

Article 22.6 - The certification bodies deal with organic farming as daily business and have a good overview about the practical situation in organic production and processing.

- *Why they are not considered competent enough to grant exceptions?*

Articles 23.3 and 24.3 (3rd paragraph) appear to limit the autonomy of inspection/certification bodies to set their own fees.

- *Why should the regulation interfere with what should be a commercial matter that is subject to market forces?*

Article 24.3 appears to prevent a certification body from having the necessary control over its own mark of conformity, in contradiction to the requirements of EN45011 and trade mark law.

- *What is the legal advice about whether the provision made in this article is legally correct and/or legally possible at all?*
- *What is the actual intent of this article?*
- *How could the intent be addressed in a way that respected the rights of a certification body in respect of its own standards (if any) and its mark?*

TITLE VI - TRADE WITH THIRD COUNTRIES

- *How can it be justified to refer so strongly to the Codex Guidelines, which are only a general guidance for governments, have only indicative input lists and do not comprehensively cover organic certification systems?*
- *Why should equivalence not be judged by using the specifically developed and world-wide practiced and recognized private systems of standards and accreditation of certifiers (e.g. IFOAM Guarantee system)?*
- *What would be the specific requirements for the accreditation of certification bodies in third countries and their listing by the EU as conforming to a high standard, thus ensuring that the current mostly private inspection and certification system be not undermined?*
- *The new requirements for third countries shall enter into force on 1/1/2007 through an amendment of Reg. (EEC) No. 2092/91. EU certification bodies would be authorized to operate worldwide thereafter, while non-EU certification bodies would have to apply to the Commission to be included into a list of recognized certification bodies. What is the reason for discriminating against certification bodies with headquarters outside of the European Union?*
- *What type of approval and supervision system of certification bodies is foreseen for their activities in third countries? How are accreditation bodies, such as IOAS, to be involved?*