

Organic production and labelling of organic products

Impact Assessment (SWD (2014) 65; SWD (2014) 66 (summary)) of a Commission proposal for a Regulation of the European Parliament and the Council on organic production and labelling of organic products (COM (2014) 180)

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's Impact Assessment (IA) accompanying the above proposal which was adopted on 24 March 2014.

The first EU legislation on organic farming was adopted in 1991¹ and substantially revised in 2007². Amongst other things, this revision introduced the possibility of exceptions, under the responsibilities of Member States, to the organic production rules; linked the organic control system to the official food and feed controls system; made the accreditation of private control bodies obligatory, and restructured the import regime. When the 2007 Regulation was adopted, a number of issues were identified on which the Commission was required to submit a report to Parliament and Council after having reviewed the experience gained. This report was adopted in May 2012. The Council adopted its conclusions on the report in May 2013, calling for a review of the current legal framework with a view to developing the organic farming sector at an ambitious level and aiming at further clarification and simplification. The review is also an opportunity to align the current Commission implementing powers with the delegated and implementing powers introduced by the Lisbon Treaty. A previous proposal on this aspect failed to find agreement between Parliament and Council and was withdrawn.

Problem definition

The general problem identified is that the overall objective of the current EU political and legislative framework to ensure the sustainable development of organic production, is not being met. Over the last ten years, the organic market has been characterised by dynamic development driven by strong growth in demand. The global market for organic food expanded fourfold between 1999 and 2011, yet the area under organic production in the EU only doubled in the decade 2000-2010. According to the IA, neither internal supply, nor the legislative framework, has kept up with this market expansion, resulting in lost opportunities for EU producers. Moreover, the IA considers that the continued growth of the organic market might itself be at threat from possible erosion of consumer confidence, due to the watering down of some EU organic production rules, with excessive use of exceptions, and cases of fraud in the control system and the import regime. In addition, the development of private schemes has led to confusion, with a multiplication of logos competing with the EU organic logo. The entire regulatory framework is extremely complex and difficult to understand for operators, producers, consumers and public authorities, and will become more so with the foreseen implementation of a compliance regime for control bodies in non-recognised third countries from 2014. There is significant administrative burden linked notably to the management of the exceptions by national administrations and to the control of business operators.

¹ Council Regulation (EEC) No 2092/91

² Council Regulation (EC) 834/2007

Objectives of the legislative proposal

The *general* objective remains the same as that of the current Regulation, i.e. to provide 'the basis for the sustainable development of organic production while ensuring the effective functioning of the internal market, guaranteeing fair competition, ensuring consumer confidence and protecting consumer interests'³, although the IA does not explicitly state it as such. It does however clearly identify four *specific* objectives of the revision, namely to remove obstacles to the sustainable development of organic production in the EU; to guarantee fair competition for farmers and operators, allowing the internal market to function more efficiently; to maintain and increase consumer confidence in organic products, and to reduce the administrative burden through simplification. This latter aim is not explicitly included, however, in the explanatory memorandum of the proposal itself. The IA also lists nine further *operational* objectives.

Range of options considered

The baseline scenario (i.e. how the problem would evolve without a change in policy) is presented in section 2.6 of the IA. In addition, the IA examines three options based on three different long-term visions of the organic sector. Measures that are not essential for the consistency of the options are presented as sub-options.

Option 1 (improved status quo) is based on the approach that has been followed for the last twenty years. It proposes improvements and better enforcement of the current legislation but no significant change in policy orientation. It includes legislative measures to clarify the scope and some production rules; to simplify labelling rules slightly; to reinforce the control system, and to remove the import compliance regime. According to the IA, these measures are seen as a minimum response to the identified issues and are thus also included under all other options. In addition, **sub-option 1A** addresses the issue of incomplete coverage of the control system, with a removal of the possible exemption for retailers from the control system.

Option 2 (market-driven option) aims at providing the conditions that are needed to respond dynamically to further market developments thanks to less stringent rules. It includes legislative measures to *integrate* in the Regulation current long-standing exceptions granted by Member States, and to provide more readable production rules in a stand-alone document. It also provides for an Action Plan defining a strategy for the rapid development of the organic sector. **Sub-option 2A** adds a requirement for the systematic testing of organic products for the accidental presence of non-authorised substance residues.

Option 3 (principle-driven option) aims at re-focusing organic farming on its principles. It includes legislative measures to strengthen the rules, notably by *removing* the exceptions which option 2 proposes to integrate; to reinforce the risk-based approach of the control system by removing the annual mandatory inspection, and to replace equivalence with compliance in the Control Body (CB) import regime. It also includes an Action Plan defining a strategy for organic farming in the EU, with actions to overcome technical production concerns as well as a specific export policy. **Sub-option 3A** proposes, in addition, to introduce an obligation for processors and traders to improve their environmental performance. **Sub-option 3B** introduces the idea of group certification aimed at helping small farmers. It should be noted that 'the details for the measures proposed as sub-options will be provided in delegated and/or implementing Acts' (IA, p. 44). The IA Board's opinion calls for the IA to clarify whether such measures would be accompanied by separate impact assessments, but this does not appear to have been explicitly mentioned. Concerns have been expressed by a number of national parliaments about the use of delegated acts in this proposal (see 'subsidiarity' section below).

Based on a comparison in terms of effectiveness, efficiency and coherence with EU objectives, **the preferred option is option 3**, including measures proposed in option 1 and in sub-options 1A, 3A and 3B.

³ Council Regulation (EC) 834/2007, Article 1

Discarded options

The IA explains that a number of other options, such as the use of a framework directive, the introduction of 'organic farming' as an optional reserved term under the existing Regulation on quality schemes for agricultural products and foodstuffs⁴, co-regulation, self-regulation and 'no-EU action' options, were all discarded at an early stage and received no support among stakeholders and Member States. Finally, although presented as options, but in fact related rather to the scope of the legislation, the harmonisation of organic production rules for textiles and cosmetics and the inclusion of catering were both considered but rejected because the need for EU action was not demonstrated.

On the face of it, apart from the improved status quo option, the choice between a market-driven approach on the one hand and a diametrically opposed 'principled' approach on the other, seems a little extreme, and one might have expected more variations to have been considered under each of the two possible approaches. The presentation of the options gives the impression that option 2 was never a serious contender. For example, given that one of the drivers of the problem identified relating to the potential erosion of consumer confidence was the dilution of some EU organic production rules and excessive use of exceptions, it seems rather implausible that one of the two options (option 2) considered to remedy that problem should be centred on less stringent rules and the integration of exceptions as the norm.

Scope of the Impact Assessment

The IA provides a summary, qualitative assessment of each option for its impact on supply and demand, socio-economic and environmental impacts, animal welfare and international impacts respectively. More detailed background information on the various issues is to be found in the Annexes, although some additional cross-referencing between these and the main text would have been helpful in some cases. Some specific aspects, such as employment implications, might have benefitted from more detailed attention. There is no explicit assessment of potential health impacts. Nor does there appear to be any consideration of the potential environmental implications linked to the transport of goods, which might be considered relevant, particularly in the context of trade with third countries. The section, 'Assessment of Administrative Costs' and the corresponding Annex 16, provide a useful and detailed presentation of the number and types of information obligations (IOs) applying to operators. However, the analysis is restricted to a qualitative assessment of the potential burden reduction, with no attempt to quantify the cost implications of any changes to the system. Although Annex 10 does contain some examples of control-related costs in Member States, the IA states that 'it has not been possible to monetarise the administrative costs and the expected savings under the preferred option, because of the large number of IOs involved and incomplete data' (IA, p. 57). Overall, the assessments of the various impacts of option 3 are slightly more developed than those for options 1 and 2.

Subsidiarity / proportionality

The IA points out that production and trade of agricultural products and foodstuffs on the internal market, and ensuring the integrity of the internal market, are matters of EU competence. The proposal, which is an updating of an existing scheme within the CAP, is based on Articles 42 and 43(2) of the TFEU. The subject matter is a shared competence as defined in the Treaty. The action in the area is considered justified in terms of unfair competition and the ineffective functioning of the internal market.

The Austrian and Luxembourg Parliaments have submitted Reasoned Opinions. Both raise concerns about a number of issues, in particular lack of flexibility for Member States and the extent of the use of delegated acts. The Luxembourg Parliament's opinion also questions the coherence of the IA's conclusion in favour of the preferred option. The second chamber of the Dutch Parliament has indicated concerns over

⁴ Regulation (EU) No 1151/2012 of 21 November 2012

proportionality which it has communicated in the form of political dialogue. The deadline for submission of opinions was 20 May 2014.

Budgetary or public finance implications

The IA does not address this issue in any quantitative way, limiting itself to references to simplification and reduction in administrative costs, and stating simply that relevant information obligations will be reduced by 20 out of the existing 41.

SME test / Competitiveness

Group certification, implying more proportionate inspection and record-keeping requirements, appears to be seen as the main means of simplifying procedures for small farms. The IA also points out in this context that the preferred option entails 'much simplification and a reduction in the administrative costs. The number of information obligations for operators will be reduced by 17 out of the existing 80' (Executive Summary sheet, p. v). This nevertheless leaves a total of 63 information obligations for operators, which seems substantial, particularly for smaller concerns. Finally, the IA indicates that micro-enterprises will be exempt from the requirement to apply an environmental management system (EMS) and this is reflected in Article 7d of the legislative proposal. Paragraph 2 of that article goes on to state that the criteria for the EMS, which are to be defined by delegated acts, 'shall take into account the specificities of small and medium sized enterprises'⁵. The IA considers that harmonisation of measures applying in case of presence of non-authorized substance residues in organic products would 'improve the level playing field, notably to the benefit of SMEs of the sector' (IA, p. 47), although why SMEs in particular should benefit from this harmonisation is not immediately apparent. No other significant simplification measures appear to have been considered explicitly in favour of SMEs.

Simplification and other regulatory implications

The review of the organic production legislation is part of the Commission's Regulatory Fitness and Performance Programme, with one of its aims being to simplify legislative burdens. The Explanatory Memorandum of the proposal claims that it is intended 'to make the legislation more user-friendly', notably with the presentation of the specific organic production rules in a separate annex to the proposed regulation. Whether this presentational effort is sufficient to guarantee simplification of the rules themselves is doubtful. Apart from the parallel proposal for amendment of the official controls regulation, the IA refers to a number of other policy areas and issues which need to be taken into account in the context of the review in order to ensure coherence and consistency. These include quality schemes developed under the CAP, the on-going review of the promotion and information policy for EU agricultural products, horizontal rules on food and feed safety and labelling, as well as international agreements and EU development policy.

Relations with third countries

The operational objectives of the revision include the aim to implement a single and reliable system of recognition of Control Bodies in third countries, and to establish a balanced trade regime to ensure optimal access for EU producers to third country markets. The IA questions the interest of having two parallel systems of recognition for imports: one based on compliance and the other on equivalence. An overview of the two is provided at Annex 12. As far as exports are concerned, the IA refers to recurrent issues leading to increased administrative burden and costs resulting in economic disadvantages on many third country markets. It states that 'the extent of the issue is difficult to assess [and] would require detailed investigations on the import regimes for organic products put in place in third countries and the way they implement them' (IA, p. 29). The preparation of the IA, or at least of the ex-post evaluation of existing legislation, might have been an appropriate framework in which to undertake such an analysis. The description of the

⁵ COM (2014)180, article 7 (2).

implications of the preferred option in this area is not entirely clear, but it would seem that the result would be a compliance regime for imports and an equivalence regime for exports in the context of a specific export policy (IA, p. 41). The argument that developing countries might be negatively affected is not supported by the IA, provided that the move to the compliance regime is accompanied by authorisation of group certification (IA, p. 53).

Quality of data, research and analysis

The IA and its annexes contain a wealth of information drawn from a wide variety of sources. The consultation process appears to have been extensive and the analysis of the information available reasonable. The IA nevertheless suffers from a lack of quantified data which it openly recognises. There are repeated references throughout the text to inadequate or non-existent data and much reliance on reference to private sources and external findings, which might not always be representative or objective. A number of assumptions made leave open questions. For example, the suggestion that national organic labelling schemes will disappear as the EU scheme is reinforced, seems not to be supported by any concrete evidence. Nor is there any suggestion of an alternative plan should this not prove to be the case, even though the confusion caused by the proliferation of labels is recognised to be a problem. Similarly, the assumption that the initial contraction of the organic market as a result of the introduction of the principle based approach will be short-lived, and will not discourage consumers in the longer term, appears to be rather speculative. Both of these points were highlighted by the IA Board opinion as requiring further assessment.

Stakeholder consultation

Stakeholder consultation appears to have been extensive. Hearings were organised in autumn 2012, involving 72 stakeholders from all relevant areas. Participants were also involved in two enlarged meetings of the Advance Group on Organic Farming (AGOF) devoted to the review. A public consultation through an on-line questionnaire was launched from 15 January to 10 April 2013 and attracted considerable interest, with almost 45 000 replies. 96 per cent of responses to the on-line questionnaire came from citizens. It should be noted, however, that a total of 98 per cent of these declared themselves to be regular (83 per cent) or occasional (15 per cent) consumers of organic produce, which suggests a certain, inevitable bias in the responses received from this sector. This might in turn imply that the extent of consumer support for the preferred option, and the continued loyalty in the medium term, may not be as great as suggested. Of the 1 827 stakeholders who replied, 48 per cent were farmers and 10 per cent represented consumer organisations. Fears were expressed from some quarters that removing the possibility for mixed (conventional/organic) holdings might 'exclude many operators, in particular in new Member States and in disadvantageous areas' (IA, p. 51). However, these fears were considered by the IA to be uncorroborated by data - a criticism which might also be levelled at parts of the IA itself. An overall summary of public and targeted consultations is provided in Annex 2. Throughout the text, the IA is at pains to point out which stakeholders support which option.

Monitoring and evaluation

In June 2012, the Court of Auditors published its Special Report 9/2012, identifying weaknesses in the organic control system. The Commission responded to this by amending the corresponding implementing rules. In September 2012, in preparation for this review, it commissioned an external evaluation report of EU organic farming legislation, published in November 2013, parts of which were used for the IA.⁶

The IA identifies a number of indicators listed in the CAP Monitoring and Evaluation Framework, as well as complementary indicators to be monitored within the context of the Regulation. The IA states that it 'will

⁶ For further information, please see [EU legislation on Organic Production and Labelling: Implementation Appraisal](#) 01/2014 by the EPRS Ex-Post IA Unit

monitor the development of organic production in the EU through data collected by Eurostat' (IA, p. 62). Yet earlier in the document, it refers to Eurostat's own analysis as having found that 'data are substantially incomplete with regard to specific crop production, products of animal origin and processed products' (IA, p. 12). This, together with references to inadequate data in other areas, would suggest that considerably efforts might be required to improve the information base needed to carry out meaningful evaluation in the future. This interpretation appears to be reflected in the external evaluation report which also highlights the consequences of the limited availability of comparable data for impact assessment. Despite this, the IA considers that it would be 'disproportionate to require the collection of public market data' as recommended by the report. Instead, it refers to a new European research project, 'OrganicDataNetwork', which aims to increase the transparency of the European organic food market through better availability of market information about the sector' (IA, p. 62). While this initiative sounds promising, some more immediate measures could perhaps have been expected to be considered by the IA for inclusion in the proposal.

Commission Impact Assessment Board

The IA Board issued a first negative opinion on a draft version of the IA on 8 November 2013. Its second opinion of 20 December 2013, based on a resubmitted draft version of 27 November 2013, was positive. It nevertheless called for a number of further improvements, notably concerning the description of the problem definition, options and impacts; presentation of stakeholder views, and selection of monitoring indicators to focus more on the impact of regulatory changes than on their adoption. Many of these issues appear to have been followed up, to some extent at least, in the final version. However, some points, in particular those concerning implementing measures, elements of uncertainty, and the consumer related points mentioned earlier, might have deserved further analysis.

Coherence between the Commission's legislative proposal and IA

The approach of the legislative proposal appears to follow the recommendations expressed in the IA in that it is based on option 3 (principle driven option), together with the elements of option 1 (improved status quo) and some sub-options. The inclusion of an explicit authorisation of national and private logos in Article 23 might not, however, on the face of it, seem to help the realisation of the conclusion that the preferred option will mean that 'fewer private schemes and logos can compete with the EU organic logo' (IA Executive Summary, p. 8).

Conclusions

The IA provides a largely qualitative overview of the current situation of organic production within the EU and makes a reasonable case for the need for change. It is nevertheless hampered by a lack of appropriate quantitative data which tends to undermine somewhat the credibility of some of the assumptions and predictions made and the conclusions drawn, notably with regard to labelling issues, consumer confidence and long-term growth. The ability to evaluate fully the success of any action taken is also inevitably compromised as a result. While efforts to reduce record-keeping and reporting requirements are clearly positive steps in terms of simplification, efficient collection and use of data in order to evaluate the impact of any action taken, should also be ensured. Against this background, the stated operational objective to improve transparency and information on the sector, would seem to be of particular importance.

This note, prepared by the Ex-Ante Impact Assessment Unit for the Committee on Agriculture and Rural Development (AGRI) of the European Parliament, analyses whether the principal criteria laid down in the Commission's own Impact Assessment Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

This document is also available on the internet at: www.europarl.europa.eu/committees/en/studies.html

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