



EUROPEAN PARLIAMENT

2014 - 2019

Committee on Legal Affairs

27.5.2014

NOTICE TO MEMBERS

(15/2014)

Subject: Reasoned opinion from the Luxembourg Chamber of Deputies on 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 (COM(2014)0180 – C7-0109/2014 – 2014/0100(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, any national parliament may, within eight weeks from the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.

Please find attached, for information, a reasoned opinion from the Luxembourg Chamber of Deputies on the above proposal.

COM(2014)0180

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

Reasoned opinion

General remarks

The Chamber of Deputies Committee on Agriculture, Wine-growing, Rural Development and Consumer Protection considered 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 (hereinafter ‘proposal COM(2014)0180’) at its meeting of 12 May 2014.

The proposal was referred to the committee in order for it to ascertain whether it complied with the subsidiarity and proportionality principles.

The eight-week time limit for national parliaments to consider such proposals commenced on 25 March 2014 and ended on 20 May 2014.

Before going into the merits of the proposal, it would be worthwhile to take a closer look at the above principles, as set out in Article 5 of the Treaty on European Union.

With regard to the subsidiarity principle, paragraph 3 of that article states that ‘in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level’, while in respect of proportionality, paragraph 4 of the article stipulates that ‘the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties’.

The committee would also point out that, under Article 290 of the Treaty on the Functioning of the European Union (TFEU), the use of delegated acts is reserved exclusively for cases in which it is necessary to supplement or amend ‘certain non-essential elements of the [underlying] legislative act’.

Any decision to make use of delegated acts must therefore be taken with due circumspection and such use must be made only in specific and limited circumstances.

Compliance with subsidiarity and proportionality principles

Firstly, the committee is opposed to the option chosen by the Commission after having carried out an impact assessment in response to the report from the Court of Auditors. The decision not to use the first option ('improved status quo') in combination with the relevant aspects of the third option ('principle-driven option' – hereinafter 'option 3') is extremely difficult to understand.

The current legal framework already provides a sufficiently robust basis for such an approach, and improvements could subsequently be made to that basis without there being a need for the legislation in this area to be totally overhauled. Furthermore, the ex post study of Regulation No 834/2007 conducted by the Thünen-Institut (Sanders, J. (ed.) 2013: *Evaluation of the EU legislation on organic farming*. Braunschweig: *Thünen Institute of Farm Economics*) came down in favour of such an approach.

Were this approach to be used, the new objectives could be achieved earlier than in 2017.

The choice of option 3 gives the impression that, on the pretext of enhancing consumer protection, the desired outcome had already been agreed on before the impact assessment was made.

Although at first glance the arguments put forward by the Commission in relation to the subsidiarity principle appear to be sound, there are serious doubts about whether the stated aims, such as maintaining producer confidence and simplifying the process of converting to organic farming, are achievable under the new rules that are being put forward.

What the new rules will in fact do is to raise new barriers to the sustainable development of organic farming and create further red tape. Rather than increasing, EU organic output is likely to fall, to the benefit third-country producers, who will not necessarily be subject to the same degree of supervision as our own farmers are. As a result, consumer confidence in organic products will not increase, and the sector as a whole will be badly damaged. The current EU regulation on organic farming is the product of a process of continual improvement based on experience gained in the sector. We should continue to follow this approach of gradual improvement in the future, rather than embarking on a radical overhaul of the current legislation.

The new proposal seeks to simplify the rules, using a less complex and more standard wording. Despite this, it still contains forty or so instances in which the Commission is empowered to adopt more detailed rules. This makes the proposal very far from clear.

What is more, a number of important annexes are missing (positive lists of fertilisers, plant protection products, additives and processing aids and permitted wine-making processes), and the proposal thus fails to cover all the relevant areas and provide the necessary degree of certainty. There is also no mention of how such lists are to be adjusted in future to take account of developments in knowledge, research and practice in the field.

The proposal also makes excessive use of delegated acts. Articles 2(5), 7(2), 8(6), 10 to 33, 41, 42(2) and Article 44 of the proposal provide for a total of 30 delegated acts and 12

implementing acts empowering the Commission to lay down detailed rules in a wide range of areas. This approach makes it difficult to say exactly how important parts of this regulation will actually be implemented, and gives the Commission too much leeway in the matter. This causes a great deal of uncertainty, given that the regulation's full impact will not be apparent until the relevant production and control rules are adopted.

This is true in particular of the new areas covered by the proposal, such as the environmental management systems some operators are required to introduce (Article 7(1)(d)), the introduction of group certification (Article 26 in connection with Article 3(7)), and the introduction of new thresholds for organic produce (Article 20), which go against the very idea of organic farming. Key issues such as these should not be dealt with by means of delegated acts, with all the uncertainty that attaches thereto, but should be addressed clearly and in detail from the outset.

Even the proposal's actual scope is not sufficiently clearly spelled out, giving rise to doubts as to whether or not certain products are included and thus resulting in a lack of legal certainty that belies the Commission's primary aim of making the rules clearer.

In connection with official controls (Article 44), fundamentally important issues such as risk assessment, control intervals, control methods and the action to be taken if irregularities are detected will be dealt with only at a later stage, by means of delegated acts.

Bringing all organic farming controls under the general food and feed controls regulation (Regulation (EC) No 882/2004), as the Commission is proposing to do, will cause difficulties and uncertainty in the organic farming sector, since the controls will no longer be sector-specific as they are under the current regulation.

What is more, given that both regulations are currently being revised, it is impossible to know at this stage exactly what the outcome of this transfer will be, and there is no evidence to suggest that it will result in better protection against fraud or closer cooperation between the various bodies involved in the official controls system. Instead, what it will do is substantially increase the workload for public bodies without improving the control system.

As regards the accidental and/or unavoidable contamination of organic products, the proposal to use the contamination thresholds provided for in Directive 2006/125/EC (on baby foods for infants and young children) for organic products, instead of the customary thresholds, will mean that the principle of taking the entire production chain into account will no longer apply (see Article 20). This is a long-standing and particularly important principle for the organic farming sector, and moving away from it will mean that organic certification will henceforth be based solely on whether or not various thresholds are met.

This regulatory approach will give rise to additional test costs, which will have the knock-on effect of raising the price of organic products and thus placing them in a weaker position on the market. The additional costs will not be offset by the compensation measures provided for in the proposal, as these are aimed solely at producers and do not cover the other entities, such as processing firms, involved in the production chain.

Another feature of the proposal that is clearly at odds with the subsidiarity principle is the

discontinuation of a whole series of derogations and exemptions that Member States have been able to make use of in certain situations. It is essential for a degree of flexibility to be preserved in this area. Member States should continue to be able to grant derogations in response to local conditions.

In particular:

- in Articles 10, 11 and 17, in connection with Annex II, parts I, II, V and VI, the option of granting national derogations has been removed;
- Article 22 of the current regulation (834/2007), which sets out the exceptions available under the flexibility rules, has not been included in the new proposal.

The desire to secure more uniform implementation of the rules is, in principle, commendable, as this helps to guard against distortions of competition and improve the way in which the EU market operates. However, organic farming should be a viable proposition everywhere in Europe, which means that allowances must be made for socio-cultural, economic, climatic and environmental differences. Suitable transitional arrangements should therefore be introduced in order to avoid a situation in which organic farming or certain types of organic farming are no longer viable in some regions. The measures set out in Article 40 will not be enough to ensure that there is an adequate supply of products such as protein feed for monogastric animals (Annex II, Part II, 1.4.1(b)), animals raised on organic farms (Annex II, Part II, 1.3) and organically produced plant reproductive material (Annex II, Part I, 1.4.1. and 1.4.2).

As regards the preparation of organic foods, in addition to failing to include the positive lists referred to earlier in this opinion, the proposal creates additional difficulties in connection with the rules on listing organic ingredients on labels and, in particular, will make it more complicated to apply for authorisation to use the European organic farming label, without making the system any more trustworthy.

A number of the other proposed changes will also give rise to difficulties or are unsatisfactory. They include the new rules on imports of organic products from third countries and controls on those products, the rules to be followed during the conversion period, which are at odds with the need to preserve nutrient cycles on organic farms, some of the plant production provisions and the failure to take account of the possibility of using biodynamic preparations and the new rules applying to young poultry.

Conclusion

Proposal COM(2014)0180 contains a number of provisions that comply neither with the subsidiarity principle nor with the proportionality principle.

The proposal notably gives the Commission the power to adopt essential elements of the

underlying legislative act by means of delegated acts, something that is at odds with Article 290 of the TFEU and in breach of the principle of subsidiarity.

Yours sincerely,

Mars Di Bartolomeo

President of the Chamber of Deputies