

CONTRIBUTION FIT4FUTURE PLATFORM

Regulation (EU) 2018/848
on organic production and labelling of organic products

BACKGROUND

OPTA Europe (www.opta-eu.org) is the membership organization representing the interest of European Organic Processing and Trade companies. Its members account for a large share of total EU trade and processing of organic products and play an essential role in an efficient supply chain.

In 2022, the EU accounted for¹:

- 10,631 importers and exporters of organic products;
- 85,956 organic processing companies, mostly located in Italy, Germany, France and Spain.

The organic food and drinks industry is overwhelmingly composed by SMEs. They buy and transform some 70% of all agricultural commodities produced in the EU² and are thus vital to the growth of the sector.

DETAILED COMMENTS



A simpler and clearer regulatory framework, accessible to all

Suggestion 1

¹ Willer, Helga Jan Trávníček and Bernhard Schlatter (Eds.) (2024): The World of Organic Agriculture. Statistics and Emerging Trends 2024. Research Institute of Organic Agriculture FiBL, Frick, and IFOAM – Organics International, Bonn.

² https://single-market-economy.ec.europa.eu/sectors/agri-food-industrial-ecosystem/trade-processed-agricultural-products/what-are-processed-agricultural-products_en

The new organic regulation (EU) 2018/848 applies since 1 January 2022. The Basic Act has been supplemented by 18 Delegated Regulations and 7 Implementing Regulations, which have been themselves corrected or amended several times. More secondary legislation is on the way. This legal labyrinth represents a significant barrier for operators, in particular the smaller ones, who are less efficient in screening the regulatory environment and dealing with norms. It increases the risk of non-compliance because operators have difficulties to understand the rules.

Furthermore, upon private operators' or national authorities' request, the Commission issues interpretative letters to provide answers to questions concerning the application of the organic rules, in collaboration with the Committee on Organic Production (COP). Only some of these interpretations are included in the Q&A document which is regularly updated and publicly available in the Commission's website. Some Member States make available the most relevant interpretative notes to their national stakeholders, in a partial manner. This results in a patchy and uneven dissemination of a resource which might be of great value for all players in the organic production and certification chain to better understand and correctly apply the provisions.

- Streamline regulations to ensure accessibility and readability;
- Issue guides and tools to swiftly respond to operators' questions;
- Grant public access via the Commission's website to all interpretative letters related to the provisions of Regulation (EU) 2018/848 and its secondary legislation.

Suggestion 2

Excessive regulation and unnecessary detailed rules are a major limiting factor for companies in the organic sector. As way of example:

- Too detailed requirement on animal husbandry do not partially fit the geographical and climatic realities of organic farmers in all EU countries;
- EGTOP is about to launch the evaluation of 1,295 substances to feed upcoming secondary legislation setting up a positive list of substances authorized for cleaning and disinfection along the organic food chain. A positive list of substances will add burden and hamper innovation for an unclear benefit, as these substances are already submitted to the authorization procedures and restrictions set up by the REACH Regulation, the CLP Regulation (Reg 1272/2008 on the classification, labelling and packaging of

substances and mixtures) and the BRP Regulation (Biocidal Products Regulation Regulation (EU) 528/2012);

- Implementing Regulation 2021/1165 lays down the requirements for the use of additives and processing aids in organic processed food, going down to individual product categories. These restrictive conditions and limits apply in addition to the ones in the horizontal Regulation (EC) No 1333/2008, which have been set up after a rigorous EFSA's assessment of the technological need and the conditions of use for each food product category. The added value and the technical substantiation of the supplementary conditions and limits for individual organic products can be put into question.

A regulatory simplification program to remove unnecessarily detailed rules, such as the ones above mentioned.

Suggestion 3

The comprehensive legislative basic act Regulation 2018/848 gives mandate to the Commission to introduce multiple implementing and delegated acts, today accounting for 25, with more on the way. While the basic act was submitted to an impact assessment that considers the negative impacts on small business of all possible alternatives, this is not the case for secondary legislation. Consequently, the initial assessment has been diluted, as the proportion of implementing and delegated acts has hugely expanded.

Considering the already considerable number of secondary acts impacting organic operators, we suggest that no further implementing or delegated act that may entail significant cost or burden for businesses be adopted without thoroughly assessing the additional and cumulative impacts for SMEs.

Refrain from adopting more secondary legislation that entails cost or burden for companies up and down the supply chain (i.e. the upcoming rules for cleaning and disinfection products) without properly assessing the additional and cumulative impacts for SMEs.

▶ Overcoming implementation challenges

Suggestion 4

The considerable number of legal acts issued in a short period of time has led to bottlenecks and too short transitional periods for adaption to the new requirements, preventing companies from anticipating changes, making informed decisions and organizing the necessary adjustments. This shortcoming has also been highlighted by Member States in the letter '[prospects of organic farming](#)' addressed to the Commission.

As way of example, on 1st January 2025 a new import regime for organic products will apply. While it is common commercial practice to conclude several months in advance the contracts with suppliers of raw materials in third countries, the list of control entities recognized for certifying such suppliers under the new import regime will be only published in the second half of 2024 and regularly updated as appropriate until November 2024, in a way that does not take into consideration the real market situation and its dynamics and creates uncertainty for EU-based processing companies sourcing in third countries the raw materials needed for their production processes. For the sake of business predictability, we suggest a reasonable transitional period of at least 12 months for all new requirements affecting organic businesses.

Appropriate transitional periods of at least 12 months for organic businesses to adapt to new requirements.

Suggestion 5

When it comes to imports of organic products into the EU, relevant legislation (EU) 2021/2306 stipulates that a Certificate of Inspection (COI) with all the necessary information to track the shipment must be issued before it leaves the third country of origin. Administrative mismatches in the COI beyond the operator responsibility and not affecting the organic integrity may occur occasionally.

Once the shipment arrives in EU port, those mistakes cannot be corrected anymore. This entails the risk of the organic status being questioned or lost, with the subsequent financial loss for the EU importer. In certain cases, the only way forward for companies consists of returning the

goods to the country of origin to reinitiate the shipment, which proves to be a costly and unsustainable alternative.

One typical example is when due to port congestion shipping dates are different from that stated in the COI. For such cases, we suggest to effectively and efficiently proceed, as foreseen by Regulation (EU) 2021/2306, to allow the control authority or control body that has issued the Certificate of Inspection to update the information in the TRACES system.

Efficient implementation of the provisions in the Regulation to address administrative rigidities regarding the organic certification.

Suggestion 6

The presence of non-authorized substances and products in organic products and the distortion on the market due to divergent approaches by Member States, control bodies or third countries is a longstanding issue, well identified in the Impact Assessment that preceded Regulation 2018/848.

As stated in the IA, these residues "can result either from the illegal use of these substances or from accidental or technically unavoidable presence; more often such substances are found in organic products due to spray-drifts originating from neighbouring non organic production fields, mixing during the transport and storage or other factors, because of coexistence between organic and conventional crop production".

The organic regulation 2018/848 addresses the problem in Arts 27-29, clarifying the obligations and actions for organic operators, competent authorities and control bodies. However, the interpretation and implementation of these articles remain the object of intense discussions and divergent approaches by Member States, operators and control bodies.

The migration of phytosanitary products used in conventional farming into the organic food chain is well substantiated by EFSA and exists within a context where no progress has been recorded in the last years towards reducing pesticide use and risk level in the environment. Despite that evidence, according to Reg 2018/848 the organic operator –who faces the challenges associated with producing food without pesticides and other chemicals– is not only tasked to put in place measures to prevent contamination with chemicals used in conventional farming, but also bears the burden of proof when such substances are found in

the organic product. This results in multiple laboratory analyses and lengthy investigations, during which the entire organic production is put on hold. The burden and cost placed on the shoulders of the organic operator for substances he is actually not using represents a deviation from the polluter-pays-principle and has the perverse effect of discouraging companies from taking the path of non-chemical food and farming practices.

One related problem is the disproportionate duration of official investigations in cases of findings of non-authorized substances or products. While Art 29 states that the investigation shall be completed within a "reasonable period" and shall take into account the "durability of the product and the complexity of the case", in practice they last 60-90 days average, during which the entire lot is blocked. This represents delays in the supply chain and economic burden for the operator whose product is blocked, irrespective of who is at fault. Pending the results of lengthy investigations, companies are often constrained to market perishable products as conventional to minimize the economic damage.

Another related problem is the opacity of the investigation process. While Art 29 states that the operator concerned shall be "given an opportunity to comment on the results of the investigation", in practice the management of the investigation through the OFIS platform does not allow for a transparent and open exchange between control entities, the competent authority and the operator, which makes the process unnecessarily longer and rigid. A fluid exchange should be made possible, without compromising the integrity of the investigation.

In conclusion, Regulation 2018/848 has not resulted in an improved situation but has rather contributed to the stagnation of the market for organic products in certain Member States. The stronger focus put on the presence of non-authorized substances without granting an harmonized and balanced implementation of the stricter provisions is a major source of legal uncertainty and market distortion that hinders organic companies.

- A proportional and sensible procedure based on the polluter-pays-principle and consistent with the process-based organic certification;
- That covers the handling of all types of non-compliances;
- Based on efficient and transparent cooperation between companies, control entities and competent authorities;
- In an appropriate timeframe which cannot exceed 6 weeks.

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