



FACULTY OF LAW  
Lund University

Malin Lindeberg

# The EU regulation on organic production and labelling

- development and future of the organic framework

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Supervisor: Annika Nilsson

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# Contents

<b>ABSTRACT</b>	<b>1</b>
<b>SAMMANFATTNING</b>	<b>2</b>
<b>ABBREVIATIONS</b>	<b>3</b>
<b>1 INTRODUCTION</b>	<b>5</b>
1.1 Background	5
1.2 Aim and Research Questions	7
1.3 Delimitations	8
1.4 Method and Materials	9
1.5 Outline	11
<b>2 THE ORGANIC MOVEMENT</b>	<b>12</b>
2.1 Introduction	12
2.2 The international organic movement	13
2.3 EU organic regulatory background and development	16
<b>3 THE EU ORGANIC REGULATION ON ORGANIC PRODUCTION AND LABELLING</b>	<b>19</b>
3.1 The objectives of the EU agricultural policy schemes and regulations	19
3.2 Grounds and objectives of the Organic regulations	20
3.3 Production rules	21
3.4 Labelling rules	24
3.5 Control rules	24
3.5.1 <i>Food Safety and Official Control regulations</i>	24
3.5.2 <i>Control rules of the organic regulations</i>	27
3.6 Rules on imports of organic products from third countries	29
3.6.1 <i>Codex Alimentarius</i>	33
<b>4 FUTURE OUTLOOK ON THE ORGANIC MOVEMENT</b>	<b>35</b>
4.1 The future of the international organic movement	35
4.2 The future of the EU agricultural policy schemes	37
4.2.1 <i>Common Agricultural Policy scheme amendments</i>	41
4.3 The Proposal for amending the EU organic regulations	42
<b>5 DISCUSSION ON THE CHALLENGES AND OPPORTUNITIES OF THE REVIEW OF THE ORGANIC REGULATION</b>	<b>50</b>

<b>5.1</b>	<b>Cooperation, flexibility and innovation</b>	<b>50</b>
<b>5.2</b>	<b>Simplification, harmonisation and clarification</b>	<b>54</b>
<b>6</b>	<b>CONCLUSION</b>	<b>57</b>

# Abstract

This thesis paper studies the organic legislative framework in the European Union. It describes how the EU organic regulation has developed and discusses the future trends, issues and opportunities of the organic movement. It researches how organic is regulated in the EU today, what its' objectives and aims are, what issues and improvement exist and how the organic movement will develop in the future. The focus is on the organic regulation in the EU and the method used is a discussion paper on legal reform, *de lege ferenda*. The facts will be presented chronologically and end in a discussion and conclusion.

Organic agriculture is a holistic production management system that promotes sustainable production methods. The organic label is a market tool that informs consumers about the production of the product, such as environmental performance and impact. Organic seeks to protect natural resources, ecosystems and biodiversity and restricts the use of chemicals and pesticides. It protects rural development, fair competition, the stability of the organic market. It is a market tool that aims at resolving the market failures that are a consequence of information asymmetries regarding products environmental costs.

The first EU regulation on organic production was established in 1991, and the current regulation was adopted in 2007. In 2014 the regulation was proposed to be reviewed and a preliminary agreement was reached in 2017. The organic agriculture and frameworks have developed rapidly in recent years and new organic concepts on how to regulate organic production are being formed in the international organisations. It is unclear if the EU will follow this international development of more flexible regulations in the future. The EU organic regulation have been stuck on arguments on detailed rules and consensus was hard to reach. The EU have a good opportunity to be a leader in the field of organic production and labelling however the long review process might have made the EU regulation become out-of-date too quickly.

# Sammanfattning

Den här examensuppsatsen utreder ekologisk märkning i Europeiska Unionen. Den beskriver hur förordningen om ekologisk produktion och märkning har utvecklats till idag och om hur regleringen kommer se ut i framtiden. Den utreder framtida trender, problemområden och utvecklingsmöjligheter ekologisk märkning har i Europa. Metoden till grund för utredningen är en diskursiv utredning om de lege ferenda. Innehållet presenteras kronologiskt och resulterar i en diskussion och sammanfattning.

Ekologisk produktion är ett holistiskt jordbruks system som främjar hållbar utveckling. Märkningen talar om för konsumenten om hur produkten har blivit producerad, vilken miljöpåverkan produkten har under produktionen. Ekologisk produktion skyddar ekosystemet, naturens resurser och begränsar användandet av kemikalier. Den EU ekologiska märkningen gynnar och skyddar landsbygdsutvecklingen och skapar en stabil marknad för ekologiska produkter. Marknaden skyddas från att kollaps som kommer ur informationsasymmetri på grund av dolda miljökostnader.

Den första EU ekologiska märkningen kom år 1991 och efterföljdes av den nu gällande förordningen år 2007. 2014 föreslogs en reform av förordningen. 2017 kom ett preliminärt beslut om att anta den föreslagna regleringen. Den ekologiska marknaden har utvecklats snabbt de senaste åren. Nya metoder om mer flexibla reglerings system och lagar har utvecklats av de internationella organisationerna. Det är än så länge oklart om EU kommer att följa den internationella organisationen i att skapa mer flexibla regleringar. Reformen av dagens förordning har tagit mycket längre tid än planerat, då parterna diskuterade länge om detaljerna av regleringen. EU har en god möjlighet att vara ledande inom ekologisk märkning internationellt, men den långsamma reformprocessen kan skapa problem då regleringen kan redan tidigt vara föråldrad.

# Abbreviations

## **1991 Regulation on organic production**

Regulation (EEC) 2092/91 of 24 June on organic production of agricultural products and indications referring thereto on agricultural products and foodstuff

## **2007 Regulation on organic production**

Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91

## **CAP**

Common Agricultural Policy

## **CBTF**

the UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development

## **EAP**

the European Action Plan for Organic Food and Farming

## **ECOSOC**

United Nations Economic and Social Council

## **Europe 2020 strategy**

Europe 2020 – a European strategy for smart, sustainable and inclusive growth

## **FAO**

Food and Agriculture Organisation of the United Nations

## **IFAD**

The International Fund for Agricultural Development

## **IFOAM**

The International Federation of Organic Agriculture Movements

## **Implementing regulation on organic production**

Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control

## **Implementing regulation on imports of organic products**

Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries

## **ISO**

International Organization for Standardization

**PGS**

Participatory Guarantee Systems

**PPM**

the Process and Production Methods

**SOAAN**

the Sustainable Organic Agriculture Action Network

**TBT**

Technical Barrier to Trade

**TFEU**

the Treaty of the Functioning of the European Union

**UNCCD**

United Nations Convention to Combat Desertification

**UNCTAD**

United Nations Conference on Trade and Development

**UNEP**

United Nations Environment Programme

**UNFCCC**

United Nations Framework Convention on Climate Change

**WHO**

the World Health Organization

**WTO**

the World Trade Organisation

# 1 Introduction

## 1.1 Background

In 1991 the European Council introduced a regulation on organic production of agricultural products, with the aims of ensuring fair competition and to protect the definition of and term organic farming.<sup>1</sup> The EU-wide definition of organic farming protected the terms organic, biological, and ecological. This was to ensure fair competition, increase transparency and facilitate trade both within the EU internal market and outside the EU.<sup>2</sup>

The regulation was revised and repealed in 2007.<sup>3</sup> Following this regulation two implementing regulations were adopted in 2008. These provide the detailed rules on production, labelling, control, and arrangements for imports from third countries.<sup>4</sup>

The 2007 revision of the 1991 regulation was spurred on by the strong growth and development of the organic sector during the first decade of the EU organic regulations. The growth trend in the organic sector is still ongoing. In the most recent report on facts and figures on organic farming in the EU, up to 2015, the increase can be seen in several areas. Both land cultivated as organic farming and land in-conversion to become organic have increased. There has also been growth in retail sales that reflect the increasing consumer demand. This growth has again spurred a revision of the organic framework. In 2014, it was proposed that the 2007 regulation on organic production was revised so as to adjust to the development within the sector and further secure the consumer confidence in the label.<sup>5</sup>

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<sup>1</sup> Council Regulation (EEC) No 2092/91 of 24 June on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs [1991] OJ L198/1 (1991 Regulation on organic production).

<sup>2</sup> Jörn Sanders, *Evaluation of the EU legislation on organic farming – An introduction*, in the Report Jörn Sanders (ed.), *Evaluation of the EU legislation on organic farming*, Study Report financed by the European Commission, (Braunschweig: Thünen Institute of Farm Economics, 2013) at 3.

<sup>3</sup> Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 [2007] OJ L189/1 (2007 Regulation on organic production).

<sup>4</sup> Sanders, *Evaluation of the EU legislation on organic farming – An introduction*, Sanders (ed.), *Evaluation of the EU legislation on organic farming*, (n 2) at 3-4.

<sup>5</sup> Commission, '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' (The proposal on Organic production regulation) COM (2014) 180 final, at Explanatory Memorandum 1.1; European Commission, Agriculture and Rural Development, DG Agriculture and Rural Development, Unit Economic Analysis of EU Agriculture, *Facts and figures on organic agriculture in the European Union*, Copywrite European Union, 2016, December 2016 at 5-20, 41; Helga Willer and Stephen Meredith, *Organic Farming in Europe*, Europe: Current Statistics, Key indicator statistics from FiBL-AMI survey 2016, in the book Helga Willer and Julia Lernoud

The EU is the second largest market in the world with the United States of America being the largest single market with retail sales of 38.5 billion euros. The EU retail sales have increased from 23.9 billion euros in 2014 to 27.1 billion euros in 2015. The year-on year growth in organic foods in the market is outperforming any other food and drink market segment. The increase in retail sales is starting to show examples of organic consumer behaviour moving from being a trend in a part of the population towards a permanent shift in consumer behaviour. Big retail chains are predicting continued growth in the organic market and are concerned that the supply might not be enough to meet the increased demand. The restriction of the organic market growth for the retailers is not consumer demand. It is how retailers can secure future access to raw materials and products, to meet the demand. The consumer behaviour has become a way of living and the demand for organic products are in many countries growing faster than what the domestic production and supply can meet.<sup>6</sup>

The total area of cultivated organic land has gone up from 10.3 million hectares in 2014, to 11.1 million hectares in 2015. In 2002, there were only 5.0 million hectares' organic farmland in the EU, this is an average increase of about 500 000 hectares per year in the last decade. This significant increase of farmland area still only represents in total 6.2 % of the total utilised agricultural area in Europe in 2015, compared to 5.7 % in 2014. This must be seen in the context of the fact that only 1 % of the world's farmland is organic and only eleven countries have 10 % or more of their agricultural land utilised by organic farming. Of these eleven countries<sup>7</sup>, seven are member states of the EU.<sup>8</sup>

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(ed.), *The World of Organic Agriculture. Statistics and Emerging Trends 2016*, Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM – Organics International, Bonn, 2016 at page 198; Contact Helga Willer and Julia Lernoud, *Media kit The world of Organic Agriculture 2017 February 9, 2017*, Research Institute of Organic Agriculture (FiBL), BIOFACH and VIVANESS press conference 2017, 9 February 2017.

<sup>6</sup>European Commission, DG Agriculture and Rural Development, *Facts and figures on organic agriculture in the European Union*, (n 5) at 5-20, 41; Willer, Meredith, *Organic Farming in Europe*, Key indicator statistics from FiBL-AMI survey 2016, Willer, Lernoud (ed.), *The World of Organic Agriculture. Statistics and Emerging Trends 2016* (n 5) at page 198; Willer, Schaack, *Organic Farming and Market Development in Europe*, in the book Willer, Lernoud (ed.), *The World of Organic Agriculture. Statistics and Emerging Trends 2016*, (n 5) at 219; Cejic, *Organic Boom in Sweden in 2014 and 2015*, in the book Willer, Lernoud (ed.), *The World of Organic Agriculture. Statistics and Emerging Trends 2016*, (n 5) at 226-229; Eduardo Cuoco, IFOAM EU Director, *RE: The organic regulation review has reached a dead end – we need to turn around*, International Federation of Organic Agriculture Movements EU Regional Group, Open Letter, Brussels 7 December 2016; Willer, Lernoud, *Media kit The world of Organic Agriculture 2017 February 9* (n 5).

<sup>7</sup> The eleven countries are: Liechtenstein 30.2 %, Austria 21.3 %, Sweden 16.9 %, Estonia 16.5 %, Sao Tome and Principe 13.8 %, Switzerland 13.1 %, Latvia 12.8 %, Falkland Islands (Malvinas) 12.5%, Italy 11.7 %, Czech Republic 11.3 %, Finland 10.0% according to FiBL survey 2017 figure *Countries with an organic share of 10 percent and more of the total agricultural land 2015*, Willer, Lernoud, *Media kit The world of Organic Agriculture 2017 February 9, 2017*, (n 5).

<sup>8</sup> Sanders, Willer, *Development of the EU organic sector and the world market in organic products* in the Report Sanders (ed.), *Evaluation of the EU legislation on organic farming*, (n 2) at 16; European Commission, DG Agriculture and Rural Development, *Facts and*

The share of utilised agricultural area as organic differs substantially between the member states. Even though there is harmonisation through the European Union's agricultural policy schemes, there is "strong heterogeneity among and within most Member States regarding the weight of the organic sector."<sup>9</sup> There can be several factors for the differing development in the region such as the support of the organic farming practices with market development and environmental advocacy; the type of farming maintained in the region; the amount of land in conversion as well as, the institutions and agricultural policy. The common vision of the European organic sector in 2030, seeks to have more than half of Europe's agricultural land farmed according to the organic principles by 2030. It also wants the European organic farming system to continue its leadership in promoting change in farming systems and to interact and cooperate with like-minded initiatives both within Europe and internationally.<sup>10</sup>

The European Commission discusses Europe's leadership role in global challenges and further international cooperation in the *Reflection Paper on Harnessing Globalisation*<sup>11</sup> from 10<sup>th</sup> of May 2017. The Paper contributes to the discussion on Europe in 2025, that the European Commission started by the *White Paper on the Future of Europe*<sup>12</sup>. To meet the challenges of a globalised world the effective measures need to go beyond aid and instead promote trade, good governance, rule of law, and bring together private sector, international organisations, and national investments.<sup>13</sup> The Commission states in the reflection paper that; "The EU could continue taking the lead, projecting its values and interests and promoting a 'race-to-the-top'."<sup>14</sup>

## 1.2 Aim and Research Questions

The increase in availability and visibility of organic produce on the market, in advertisements and in new coverage sparked my interest in the EU

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*figures on organic agriculture in the European Union*, (n 5) at 5-20, 41; Willer, Meredith, *Organic Farming in Europe*, in the book Willer, Lernoud (ed.), *The World of Organic Agriculture. Statistics and Emerging Trends 2016*, (n 5) at page 194, 198; Willer, Lernoud, *Media kit The world of Organic Agriculture 2017 February 9*, (n 5).

<sup>9</sup> European Commission, DG Agriculture and Rural Development, *Facts and figures on organic agriculture in the European Union*, (n 5) at 13.

<sup>10</sup> The proposal on Organic production regulation (n 5) at preamble point 2; Willer, Meredith, *Organic Farming in Europe*, in the book Willer, Lernoud (ed.), *The World of Organic Agriculture. Statistics and Emerging Trends 2016*, (n 5) at page 194,198; Sanders, Willer, *Development of the EU organic sector and the world market in organic products* in the Report Sanders (ed.), *Evaluation of the EU legislation on organic farming*, (n 2) at 16; European Commission, DG Agriculture and Rural Development, (n 5) at 5-20, 41; Willer, Lernoud, *Media kit The world of Organic Agriculture 2017 February 9* (n 5).

<sup>11</sup> Reflection Paper on Harnessing Globalisation, COM(2017)0240 final, 10-05-17.

<sup>12</sup> White Paper on the Future of Europe – Reflections and scenarios for the EU27 by 2025, COM(2017)2025 final, 01-03-17.

<sup>13</sup> Reflection Paper on Harnessing Globalisation, (n 11) at point 3.2.

<sup>14</sup> Ibid.

regulation on Organic production. I would like to get more insight in how the organic production and market sector is currently regulated in the EU and how it is changing to meet future demands.

The aim of this thesis paper is therefore to study the organic legislative framework in the European Union. I will study the current EU regulations and policies that are affecting the organic production in the EU. International organisations and standards of the organic movement that are connected to the EU regulation on the organic regulation will be examined briefly, with focus on the control and import of products. To further understand the future of the organic market sector, this paper will analyse the future trends of the organic movement; the EU organic regulation's revision; future aims of the EU policies. The analysis will describe how the current organic framework will develop and what rules will be amended and added to the EU and international organic regulations and standards in the future. The analysis will point out the problems of the current organic legislative system and what regulatory opportunities exist to create a better and more efficient organic regulatory system.

This thesis papers research questions are:

- How is the organic production regulated in the European Union?
- What are the objectives and aims of the organic production?
- Are there issues with the organic regulation and how can these be improved?
- How will the organic movement and regulation develop to meet future demands on the organic production sector?

## **1.3 Delimitations**

The thesis will focus on the EU regulatory system on organic production and labelling within the Union. Herein the EU will be treated as a Union, legislation in individual member states will not be discussed. Only EU policies and regulations with a significant influence on the organic regulation and the future amendments thereof will be shown and analysed, herein I will only discuss the EU organic label leaving out other private organic labels. Due to the focus on the EU organic regulatory system in general, the economic aspects of the organic regulation as a market tool and its following legal aspects of public procurement and state aid will not be discussed. The social, health or environmental impact of the label will be mentioned, but not discussed. The regulations future revisions will be discussed on a general level, but crop or animal specific sections amendments will be excluded.

International agreements and policies that overlap and are included in the EU regulation will also be described in this paper. Globalisation is an important factor in the organic sector, the regulations and policies need therefore to be analysed in a global context. The international movement's views on the

future of the global organic sector will be used as a tool to discuss future trends of the sector in a global and European context.

In this paper I will use the perspective that sustainable instruments that incentivise environmentally friendly behaviour is beneficial for the society. I hereby presume that methods that are specifically designed to protect the environment are favourable for humans and nature. Debates on the effectiveness of organic labelling as a tool to benefit the environment positively and if other legal systems can be more efficient are not discussed.

Economical instruments such as taxes or subsidises will not be discussed, the thesis does not focus on the question if organic label as a market tool is the best way to regulate environmental impact. Greenwashing, fraud and green claim issues will be shortly touched upon, but the impact thereof will not be discussed.

General regulation systems and amendments thereof over time will be, here I will address general rule areas and policies that I found the most important and influential in the development of the organic sector.

The paper is aimed at readers that have or are currently studying law at a University. It is written presuming the reader has basic knowledge of international and environmental law. Therefore, some legal concepts and terms will not be explained.

## **1.4 Method and Materials**

This thesis is a discussion paper based on legal reform, *de lege ferenda*. The legal reform method is used to best evaluate how the organic legislation is changing and will be regulated in the future. Discussion based on legal reform is used to comment on “recent changes in the law or to the property of and need for changes in the future.”<sup>15</sup> Answering legal reform questions requires basic knowledge on the legal theory in question, based on this knowledge the question of why there is a need to change the law can be answered. Additionally, legal reform requires in addition an evaluation and description on the black-letter-law. The black-letter-law illustrates what the law used to be, how the law is amended and what the law has or will become after the law has been changed. When answering questions on possible future reform, the policy reasons for the law and the amendments need to be evaluated. Problems and issues with statutes that come forward in case studies on the subject are also of great value in the evaluation. The first step in the process of legal reform is to assess and describe what the law is on the area of focus., creating an overview of the related law areas and regulations that affect the regulation in question. This will show what policies and underlying reasons affect the regulation in question. If applicable it is of interest to look into regulations that are applied in other countries. For a more informative

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<sup>15</sup> Strong S.I., *How to write law essays and exams* (4<sup>th</sup> edition, Oxford University press, Oxford, 2014) at 117.

discussion, in addition to the black-letter-law, academic articles, judicial opinions and legislative papers are a good source of information on arguments and reasoning. Not only legal resources will be of interest to form an opinion on the subject area, the societal and economic context of the law is necessary to show how well the law is adapted to be accepted by the public. How stakeholders and the public regard the law is valuable information, which can be found in non-legal sources and statistics.<sup>16</sup>

The organic movement and its legal aspects have been researched and written about by many legal and economic scholars. The organic movement is established in the 1980s and is internationally well known. Throughout its lifetime the organic movement has been analysed from a wide range of perspectives, aspects and areas of interest. The organic label as well as other eco-labels has been discussed frequently in legal papers as well as in public media. Both critical and praising papers that have discussed legal, economic or social aspects of the organic movement are circulating. During the last years the organic legislation has been in an interesting development phase. The EU legislation has been and is currently under review to find a better fit in the rapidly growing global market. The EU review of the organic legislation has therefore been an interesting subject to follow during the process of writing this paper, as it is a highly debated and developing subject. This thesis has a big focus on recent developments in the organic regulation, during the writing process an agreement has been made on the review of the regulation new policy changes have been published. Even though many academic papers have been published on the organic legislations and policies in the EU and internationally, few papers are out there that cover the finalised review of the organic regulation that was presented during 2017. Due to the novelty of the information on the new organic regulation in the EU and analysis of the agreement process it has great research significance. Additionally, the paper will give the reader insight in how developing international standards and policies can affect the EU regulation. In the discussion I will cover the new Green and White paper reflections from the EU which describe future policies that can affect future amendments to the organic regulation.

This thesis paper is based on published opinions and conclusions by academics that have covered the organic movement. The materials include books, articles, press releases, reports, evaluations, guidelines, policies, standards, reflection papers, statistics, and agreements. The articles are primarily law and social science papers but for a better overview of the field and its affects some economic, statistic and science papers have been used. Legal documents from the EU that I have used are: regulations; proposals, communications; evaluations; reflection papers; white papers; green papers; press releases; committee reports; and, working documents. This paper will mainly cover reviewing processes of current regulation. It will however include the *Commission Proposal for a Regulation of the European*

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<sup>16</sup> Lehrberg B, *Praktisk juridisk metod* (8th edition, Iusté Aktiebolag, Uppsala, 2015) at 269-273; Strong S.I., *How to write law essays and exams* (4<sup>th</sup> edition, Oxford University press, Oxford, 2014) at 117-118.

*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 from 2014 and the press releases on amendments to it before publication.*

## **1.5 Outline**

The text in this thesis paper is divided into six chapters. There is a general chronological structure to the chapters. I choose to present the facts chronologically and keep related material together to make it easier for the reader to follow the development of the organic regulation.<sup>17</sup> The chronology follows the different stages of the organic regulation in its' review processes. The chapter following this chapter is an introduction on the organic movement. It gives a background on the ideas behind the organic movement internationally and in Europe. It also presents some statistics and numbers on organic farming and production in the EU and globally. The third chapter presents the EU organic regulation on organic production and labelling as it is regulated today. It describes the aims and objectives of the organic regulation in the EU. Chapter three also describes the rules production, labelling, the control system and how products can be imported and exported to and from the EU. The fourth chapter looks to the future of the organic movement internationally and within the EU. The review of the organic regulation in the EU will be presented in chapter four, so to answer the research questions of the issues, possibilities, and future of the regulation. The future visions that are the most interesting to follow in connection to the EU organic framework and its' future is presented in a discussion in chapter five. The thesis paper will end with a summary in chapter six, which provide the conclusion to the research questions and text.

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<sup>17</sup> Garner B. A. *Legal writing in plain English* (a text with exercises, second edition, the University of Chicago press, Chicago and London, 2013) at page 16.

# 2 The Organic movement

## 2.1 Introduction

Organic agriculture is a holistic production management system that promotes production methods that are socially, ecologically, and economically sustainable. Organic is a protected product labelling term for goods produced and certified in accordance with organic standards and regulations. Labelling and certification are regulatory market tools to convey information to the consumers about the products desirable attributes, such as the environmental performance and impact of the goods.<sup>18</sup>

The organic label informs the consumer that the product has been produced using farming methods that are sustainable and based on natural processes. Organic agriculture supports both environmental and social aspects. Environmental aspects include protection of natural resources (especially soil quality), protection of ecosystems and biodiversity and restriction of external inputs of chemicals and pesticides. Social aspects include increasing profitability, market access, rural development, and protection of human health.<sup>19</sup>

The environmental impact of the production of the good is information that the consumer could not assess themselves by consuming the product. The sustainable and environmentally friendly production methods is the goods credence attributes. The organic label helps solve the problem of information asymmetry of credence goods by creating a market mechanism that distinguishes these environmental credence attributes to the consumer. Eco-labelling aims to resolve market failures that are a consequence of information asymmetries regarding the products environmental costs. It makes the information public and internalises the negative environmental externalities. The label guarantees that the goods have been produced according to the criteria of the mark and certified by controls having fulfilled the requirements. The idea is that consumers will reward voluntary pro-environmental behaviour in companies with their willingness to pay for the more environmental friendly product. The end goal of eco-labelling is to

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<sup>18</sup> Codex Alimentarius, International Food Standards, World Health Organization and Food and Agriculture Organization of the United Nations, *Guidelines for the production, processing, labelling and marketing of organically produces foods*, GL 32-1999, Adopted 1999, Revisions 2001,2003,2004 and 2007, Amendments 2008,2009,2010,2012 and 2013, available at <http://www.fao.org/fao-who-codexalimentarius/standards/list-standards/en/>, at foreword; Alejandra Martínez Gándara, *The Law and Economics of Eco-Labels*, Doctor thesis, Erasmus Universiteit Rotterdam, 25 April 2013 at 2, 13.

<sup>19</sup> CBTF (UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development), *Best Practices for Organic Policy: What developing countries can do to promote the organic agriculture sector*, 2008, United Nations Conference on Trade and Development, United Nations Environment Programme, United Nations, New York and Geneva, Available at [http://unep.ch/etb/publications/UNCTAD\\_DITC\\_TED\\_2007\\_3.pdf](http://unep.ch/etb/publications/UNCTAD_DITC_TED_2007_3.pdf), visited 09-05-2017, at xi, 3-5.

influence all actors and consumers in the market to produce and buy more sustainable products.<sup>20</sup>

The organic movement started from non-governmental organisations and private sector organisations by creating voluntary organic agriculture standards. The involvement of the government began with the recognition of the relevance of the developing organic sector. In the 1980s, many eco-label initiatives were created, causing the consumer awareness on the environmental impact and attributes of products to increase. This trend encouraged governments to encompass these soft policy market governance instruments as a complement to the traditional command-and-control type environmental regulations. At the United Nations Conference on Environment and Development at Rio de Janeiro in 1992 (the Rio Earth Summit) the focus was on sustainability, which is the relationship between the economy and social development and environmental degradation. The resulting agreement Agenda 21, is an international action plan programme for sustainable development. Agenda 21 identifies environmental product labelling as a method for sustainable consumption that governments should support the expansion of.<sup>21</sup>

## 2.2 The international organic movement

The EU organic framework is part of the international umbrella network for organic agriculture, *The International Federation of Organic Agriculture Movements* (IFOAM). IFOAM – Organics international was established in 1972 to help unite, lead, and assist the organic movements around the world. The vision of the IFOAM is to mainstream and spread the agricultural practices and principles of the organic sector. The umbrella network wants to get worldwide adoption of organic agriculture by creating a common organic identity, harmonising standards and institution building. The organisation has affiliates in more than 100 countries that are divided into IFOAM regional bodies.<sup>22</sup>

The scope of the IFOAM organic agriculture system is wider than the EU regulation. It includes both certified and non-certified organic agriculture schemes that uses agriculture methods based on the principles of organic agriculture. The principles of organic agriculture are principle of health, ecology, fairness, and care.<sup>23</sup>

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<sup>20</sup> Martínez Gándara, *The Law and Economics of Eco-Labels*, (n 18) at 13, 20, 25, 50-51, 76, 133, 258-259.

<sup>21</sup> CBTF, *Best Practices for Organic Policy: What developing countries can do to promote the organic agriculture sector*, (n 19) at xi.; Martínez Gándara, *The Law and Economics of Eco-Labels*, (n 18) at 16-17.

<sup>22</sup> IFOAM – Organics International, *Summary Strategic Plan*, IFOAM – Organics International 2015, available at the IFOAM internationals official website, [http://www.ifoam.bio/sites/default/files/strategic\\_plan\\_summary\\_2011\\_web.pdf](http://www.ifoam.bio/sites/default/files/strategic_plan_summary_2011_web.pdf), visited 28-05-17.

<sup>23</sup> *Ibid* at 6.

The IFOAM defines organic agriculture as:

*“...a production system that sustains the health of soils, ecosystems and people. It relies on ecological processes, biodiversity and cycles adapted to local conditions, rather than the use of inputs with adverse effects. Organic Agriculture combines tradition, innovation and science to benefit the shared environment and promote fair relationships and good quality of life for all involved.”<sup>24</sup>*

The IFOAM courses of action to reach the goals, are divided into five strategic pillars; “Uniting the Organic Movement” as an umbrella network and organizing the *Organic World Congress* in which the IFOAM general assembly meets every three years; “Facilitating Production & Trade” in the value chain; “Promoting Sustainability in Agriculture” by international advocacy; “Assisting Organic Development” in programs; “Building Organic Leaders’ Capacity” in educational courses in an organic academy.<sup>25</sup>

As the IFOAM is the unchallenged international umbrella organisation for organic agriculture it can be the common voice of the members. The IFOAM advocates and promotes the interests of the organic movement and address challenges and opportunities. Additionally, it has observer status and is accredited by FAO<sup>26</sup>, IFAD<sup>27</sup>, UNCTAD<sup>28</sup>, Codex Alimentarius<sup>29</sup>, UNEP<sup>30</sup>, UNFCCC<sup>31</sup>, ECOSOC<sup>32</sup>, UNCCD<sup>33</sup> and ISO<sup>34</sup>. IFOAM is currently presenting their most recent project, the Organic 3.0. It stems from a global consultation on the future of the organic movement. I will in chapter four present the Organic 3.0’s view on the future if the Organic movement.<sup>35</sup>

As well as advocating and promoting organic agriculture, the IFOAM assists the international organic movement by drawing the line between what are organic and non-organic methods of farming. It does this in the *IFOAM Family of Standards* that officially endorses those standards and regulations that pass the IFOAM equivalence assessment. It assesses the standard or regulation’s equivalence to the common objectives and requirements of the IFOAM standard of organic agriculture.<sup>36</sup>

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<sup>24</sup> IFOAM – Organics International, *Summary Strategic Plan* (n 22) at 6.

<sup>25</sup> All quotes are from the same source; IFOAM – Organics International, *Summary Strategic Plan*, (n 22) at 5.

<sup>26</sup> Food and Agriculture Organisation of the United Nations (FAO).

<sup>27</sup> The International Fund for Agricultural Development (IFAD).

<sup>28</sup> United Nations Conference on Trade and Development (UNCTAD).

<sup>29</sup> Codex Alimentarius, International Food Standards.

<sup>30</sup> The United Nations Environment Programme (UNEP).

<sup>31</sup> United Nations Framework Convention on Climate Change (UNFCCC).

<sup>32</sup> United Nations Economic and Social Council (ECOSOC).

<sup>33</sup> United Nations Convention to Combat Desertification (UNCCD).

<sup>34</sup> International Organization for Standardization (ISO).

<sup>35</sup> IFOAM – Organics International, *Summary Strategic Plan* (n 22); Markus Arbenz, David Gould and Christopher Stopes, *Organic 3.0 – for truly sustainable farming and consumption*, 2nd updated edition 2016, IFOAM Organics International, Bonn and SOAAN, Bonn, at 1-3.

<sup>36</sup> IFOAM – Organics International, *Summary Strategic Plan* (n 22) at 6.

In addition to the IFOAM standard, there is the international standard the Codex Alimentarius. The Codex Alimentarius Commission is an intergovernmental body established by the FAO and the WHO<sup>37</sup> within the framework of the *Joint Food Standards Programme*. The purpose of this commission is to protect consumers' health and ensure fair practices in the food trade. It collects and coordinates all international food standards, guidelines, and recommendations. In 1999, the Codex Alimentarius *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* was adopted. It facilitates international harmonisation of the requirements of organic agriculture.<sup>38</sup>

The Codex Alimentarius guidelines of organic production provides internationally agreed upon requirements that shall underpin the production and labelling of organically produced foods. According to the Codex, Organic labelling is a term specifying products produced and certified according to the organic standard. The standard is based on minimizing external inputs such as pesticides and minimizing of air, soil, and water pollution. It aims to protect biodiversity and ecosystems while managing production sustainably.<sup>39</sup>

The codex also aims to protect consumers from misleading claims and fraud and to protect producers by ensuring fair practices, harmonise the provisions on production and certification and importantly it aims to facilitate trade. The codex facilitates export and import by providing international guidelines for control systems and the recognition of national systems as equivalent. Article 33 on *Import of products providing equivalent guarantees* of the 2007 Regulation on organic production refers to the guidelines. It states that the equivalence assessment of products from third countries shall take into account the *Codex Alimentarius guidelines GL 32*.<sup>40</sup>

Since 2004, UNEP and UNCTAD selected organic agriculture as a priority issue to be addressed by the UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development (CBTF). Based on in-depth analysis of country case studies, the CBTF released in 2008 a study report that give recommendation on best practices for the policies of the organic sector. Although the focus is on guidance for the developing countries organic sector, it is also valuable guidance for developed countries best practises of how to regulate organic agriculture. The main reasons to support organic agriculture are the same for both developing and developed countries, namely; protection of natural resources and biodiversity, improved quality of

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<sup>37</sup> The World Health Organization (WHO)

<sup>38</sup> Codex Alimentarius, *Guidelines for the production, processing, labelling and marketing of organically produces foods*, GL 32-1999 (n18) at preface.

<sup>39</sup> Codex Alimentarius, *Guidelines for the production, processing, labelling and marketing of organically produces foods*, GL 32-1999, (n 18) at foreword, section 2.

<sup>40</sup> Codex Alimentarius, *Guidelines for the production, processing, labelling and marketing of organically produces foods*, GL 32-1999 (n 18) at foreword, section 2; 2007 Regulation on organic production (n 3) at paragraph 33.

soils, enhanced market access and profitability as well as, protection of health for farmers and consumers.<sup>41</sup>

The best practises recommend governments to work in close cooperation with organic sector organisations and to participate and conform to international standards and forums such as IFOAM and the Codex Alimentarius. It is recommended that governments encourage involvement of the organic sector and that they have a facilitating role rather than a controlling one. The regulations should stimulate the market and remove rules that might stifle the development. Mandatory certification and requirements should be avoided, since it can create barriers to trade and hinder market access. Mandatory requirements can lead to a violation of international trade rules of the WTO. The policy process should be participatory for all stakeholders and the government involvement in the organic sector needs to be clarified before developing policies. The organic policy should be integrated into the agricultural policies and programmes, and make them mutually supportive. The general policy objectives that are contributed to by the organic sector need to be highlighted and the objectives of the organic policy should be clearly stated.<sup>42</sup>

## 2.3 EU organic regulatory background and development

The organic sector with organic labels began in Europe as a system of voluntary private standards and third-party inspection. In the 1980s European governments started to create national legislation on organic farming. The aims of these national legal frameworks on organic farming were to protect consumers from misleading claims and to create a fair competition between the organic producers.<sup>43</sup>

In 1991, the European Council introduced a regulation on organic production of agricultural products, with the aims of ensuring fair competition and protecting the definition and term organic farming.<sup>44</sup> The first decade since the introduction of the 1991 regulation on organic production the organic sector in member states experienced strong growth. In 2001, the European council invited the European Commission<sup>45</sup> to formulate an action plan on the policy developments and strategic vision for the organic farming in the thereafter-coming years. This invitation led to the commission proposing the European Action Plan for Organic Food and Farming (EAP) and a review of the organic farming framework. Based on the experience from the

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<sup>41</sup> CBTF, *Best Practices for Organic Policy: What developing countries can do to promote the organic agriculture sector* (n 19) at iii, xi.

<sup>42</sup> CBTF, *Best Practices for Organic Policy: What developing countries can do to promote the organic agriculture* (n 19) at iii, xi-xiv, 36.

<sup>43</sup> Sanders, *Evaluation of the EU legislation on organic farming – An introduction*, in the Report Sanders (ed.), *Evaluation of the EU legislation on organic farming*, (n 2) at 3.

<sup>44</sup> 1991 Regulation on organic production (n 1).

<sup>45</sup> The European Commission will hereinafter be called the Commission.

development already seen in the sector, and consultations with experts, stakeholders, and the public, the EAP put forward 21 actions to develop the EU organic sector.<sup>46</sup>

The EAP concluded that the 1991 Regulation on organic farming needed to be amended to: "... lay down more explicitly the principles and objectives of organic farming, the importance of safeguarding the integrity of the inspection system, the need to overcome dysfunctions of the internal market caused by national and private logo's and standards, the need to compete and improve standards and the need to make import provisions more efficient."<sup>47</sup>

In 2004, the European Commission proposed a review of the 1991 Regulation on organic production. The regulation was, as seen in the EAP, not adequate in creating harmonisation in the implementation of national standards, which hindered trade within the EU. The view was that the regulation should be reviewed "to ensure simplification and overall coherence and in particular to establish principles encouraging harmonisation of standards and, where possible, to reduce the level of detail."<sup>48</sup> There was a need to define common objectives and concepts for the equivalence and transparency of the organic production and to reinforce the organic farming standards and the import, control and inspection requirements.<sup>49</sup>

This revision resulted in the repeal of the 1991 Regulation on organic production. In its place three new regulations were adopted; the Council Regulation (EC) No 834/2007 of 28 June 2007 *on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91*<sup>50</sup>; the Commission Regulation (EC) No 889/2008 of 5 September 2008 *laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control*<sup>51</sup>; the Commission Regulation (EC) No 1235/2008 of 8 December 2008 *laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries*<sup>52, 53</sup>

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<sup>46</sup> Proposal for a Council Regulation on organic production and labelling of organic products Proposal for a Council Regulation amending Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto in agricultural products and foodstuffs COM/2005/0671 final (2005 proposal on Organic production regulation) at explanatory memorandum 1-7.

<sup>47</sup> 2005 Proposal on Organic production regulation (n 46) at explanatory memorandum point 5.

<sup>48</sup> 2007 Regulation on organic production (n 3) at preamble 4.

<sup>49</sup> Sanders, *Evaluation of the EU legislation on organic farming – An introduction*, in the Report Sanders (ed.), *Evaluation of the EU legislation on organic farming*, (n 2) at 3-4.

<sup>50</sup> hereinafter called 2007 Regulation on organic production.

<sup>51</sup> hereinafter called Implementing regulation on organic production

<sup>52</sup> hereinafter called Implementing regulation on imports of organic products.

<sup>53</sup> Ibid.

Since these regulations came into force 1 January 2009 there have been several amendments to the three regulations.<sup>54</sup> The Commission proposed a complete revision of the EU organic regulation in 2014; *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*<sup>55</sup>. This proposal will be described in more detail in chapter four.

Since the regulations came into force 1 January 2009 there have been several amendments to the three regulations. The latest amendments were made to the Implementing regulation on imports of organic products and were published as late as October and December 2016. Some of these amendments have even only just become applicable, from the 19<sup>th</sup> of April and 7<sup>th</sup> of May 2017.<sup>56</sup>

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<sup>54</sup> Commission Implementing Regulation (EU) 2016/1842 of 14 October 2016 amending Regulation (EC) No 1235/2008 as regards the electronic certificate of inspection for imported organic products and certain other elements, and Regulation (EC) No 889/2008 as regards the requirements for preserved or processed organic products and the transmission of information, C/2016/6502, [2016] OJ L282/19; Commission Implementing Regulation (EU) 2016/2259 of 15 December 2016 amending Regulation (EC) No 1235/2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries, C/2016/8351 [2016] OJ L342/4.

<sup>55</sup> hereinafter called The Proposal; The proposal on Organic production regulation (n 5).

<sup>56</sup> Commission Implementing Regulation (EU) 2016/1842 (n 54); Commission Implementing Regulation (EU) 2016/2259 (n 54).

# 3 The EU organic regulation on organic production and labelling

## 3.1 The objectives of the EU agricultural policy schemes and regulations

The 1991 Regulation was not adequate and needed to be amended. The objectives and principles that should lead the organic sector were not included in the articles of the 1991 Regulation on organic production. It only stated in the preamble that the purpose of regulating organic production was to meet the increasing consumer demand and to ensure fair competition and protection of the credibility and distinction of the label on the market. It was proposed that objectives and principles should be defined, and that the legal framework should be made simpler, clearer, and more transparent. Clear stated aims and objectives help unify the different stakeholders support for the organic sector, and reduce and reconcile potential conflicts.<sup>57</sup>

The proposal to review the regulation was in line with many other simplification initiatives of the commission at the time. Farmers with organic agriculture need not only to relate to the organic regulations provisions, but also adhere to all applicable EU food law requirements. Both EU and national legislation on the production of food, such as rules on animal welfare, worker safety, environmental protection and product hygiene and safety. The simplification of the organic framework was in line with both the changes made to the Treaty of the Functioning of the European Union (TFEU)<sup>58</sup> in Lisbon and to the Common Agricultural Policy (CAP), to which the organic regulation is also an important factor in its policies.<sup>59</sup>

The 2007 Regulation on organic production addressed the problems with the previous 1991 regulation by creating a legal framework. This framework had

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<sup>57</sup> 1991 Regulation on organic production (n 1) at preamble; Commission, 'Proposal for a Council Regulation on organic production and labelling of organic products Proposal for a Council Regulation amending Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto in agricultural products and foodstuffs' (2005 Proposal on Organic Production Regulation) COM (2005) 0671 final at explanatory memorandum point 5, 10-13; CBTF, *Best Practices for Organic Policy: What developing countries can do to promote the organic agriculture sector* (n 19) at 13.

<sup>58</sup> Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47 (TFEU).

<sup>59</sup> 1991 Regulation on organic production (n 1) at preamble; Proposal for amending the 1991 organic regulation (n 57) at explanatory memorandum point 5, 10-13; CBTF, *Best Practices for Organic Policy: What developing countries can do to promote the organic agriculture sector* (n 19) at 13; Commission of the European Communities, *Green Paper on agricultural product quality: product standards, farming requirements and quality schemes*, Brussels 15.10.2008, COM(2008) 641 final at page 6.

general requirements and more clearly stated the objectives and principles that should be achieved with regulations on organic farming. The regulation has been simplified and structured by arranging the framework's articles from general purpose into more specific rules. Starting with the overarching aims followed by the objectives, principles, and definitions. Further on it becomes more detailed on the specific rules in various regulation areas such as production-, control-, labelling- and trade rules with third countries.<sup>60</sup>

### **3.2 Grounds and objectives of the Organic regulations**

The 2007 Regulation on organic production was established on the grounds of article 43 of the Treaty on the Functioning of the European Union (TFEU).<sup>61</sup> Article 43 give authority to the European Parliament and the Council to establish a common organisation of agricultural markets in pursuit of the objectives of the CAP. The objectives of the CAP are set out in article 39 TFEU and article 40 TFEU states what forms a common organisation of agricultural market can take. The market organisation should have common rules on competition, be a compulsory coordination of national market organisations or be a European market organisation. The objectives of the CAP are (a) to increase productivity; (b) to ensure fair standard of living for the agricultural community; (c) to stabilise markets; (d) to assure availability of supplies; and (e) to ensure supplies at reasonable prices for the consumers.<sup>62</sup>

The objectives of article 39 TFEU, and thereby also the CAP, is reflected in the organic regulations. In 2017 CAP will start a reformation process. It is pointed out in the preamble to the 2007 regulation on organic production, that it is meant to play an important role in the agricultural policy framework and especially considers the CAPs focus on market orientation.<sup>63</sup> It should “promote a harmonised concept of organic production”<sup>64</sup>, which it establishes in the aim and scope in article 1 through common objectives and principles underpinning the rules of the regulation. Further, the preamble states that the organic production plays a “dual societal role”, firstly providing a market for organic products in response to consumer demand, and secondly creating “public goods” for the protection of the environment, animal welfare and rural development.<sup>65</sup>

The objectives of article 39 TFEU are increasing productivity, rural development, stabilising the markets and assuring supplies at reasonable

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<sup>60</sup>2007 Regulation on organic production (n 3); Sanders, Schmidt, *EU organic farming legislation and its development* in the Report Sanders (ed.), *Evaluation of the EU legislation on organic farming*, (n 2) at 25-27.

<sup>61</sup> previously article 37 of the Treaty establishing the European Community.

<sup>62</sup> TFEU (n 58) Title III articles 39-43; 2007 Regulation on organic production (n 3) at preamble.

<sup>63</sup> 2007 Regulation on organic production (n 3) at preamble point 2.

<sup>64</sup> Ibid preamble point 28.

<sup>65</sup> Ibid at preamble point 1.

prices. These, can further be seen in the aim and objectives in article 1 and 3 of the 2007 Regulation on organic production. The regulation has a clear emphasis on environmental protection and sustainable development, as well as creating an agricultural market system of a wide variety of quality goods that do not harm the health of humans and nature.<sup>66</sup>

The aim in article 1 point 1 states:

“This Regulation provides 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.”<sup>67</sup>

Article 3 indicates what general objectives the organic production shall pursue. These are; the establishment of a sustainable management system for agriculture that respects the ecosystem cycles and animal welfare, contributes to biodiversity, and makes responsible use of the natural resources; producing high quality products and producing a wide variety of products meeting the consumer demand for goods produced by processes that do not harm the environment, human-, plant- or animal health and welfare.<sup>68</sup>

The principles the organic farming shall adhere to are summarised in articles 4-7. The general principles can be found in article 4, which state that the organic production management system shall be based on risk assessment, precautionary and preventative measures and restrict the use of external inputs. The system shall also adapt to regional and local differences and conditions, where it is necessary and within the framework. The principles shown in articles 4-7 most often contribute to several of the objectives and aims of the regulation. The principles can be categorised into the rule types; obligations, permissions, restrictions, prohibition, and exceptions. The overall principles of article 4 are; appropriate production management based on ecological systems natural resources and methods based on risk management and precautionary and preventative measures, restriction of the use of external inputs and adaptation to local conditions.<sup>69</sup>

### 3.3 Production rules

The EU organic regulation is a market instrument that lays down the definition, minimum production requirements, product categories and scope, labelling and control requirements, certification process and control body

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<sup>66</sup> 2007 Regulation on organic production (n 3) at article 1 and 3.

<sup>67</sup> Ibid at article 1.

<sup>68</sup> Ibid at article 3.

<sup>69</sup> 2007 Regulation on organic production (n 3) at article 4-7; Padel, Viehweger, Sanders, *Intervention logic of the EU legislation on organic farming* in the Report Sanders (ed.), *Evaluation of the EU legislation on organic farming*, (n 2) at 48-49.

authorisation and trade rules with third countries.<sup>70</sup> The regulation applies to all stages of production and processing of organic products and all use of indications in labelling and advertising referring to organic production. It includes unprocessed and processed agricultural products intended to be placed on the market.<sup>71</sup>

The general production and labelling rules are positioned into title III and IV of the 2007 Regulation on Organic production and labelling. These principles and requirements on organic farming are later on specified in the implementing regulations. Article 38 of the 2007 Regulation on organic production lays down the foundation for the implementing regulations that were adopted in 2008. Operators must both comply with the production rules in the 2007 regulation and the implementing regulations. The implementing regulations have detailed rules on the application of certain areas of the organic framework, such as plant production, livestock production, Aquaculture production and processed products. They also include detailed rules on labelling, control and trade with third countries.<sup>72</sup>

The production rules of the 2007 regulation on organic production and labelling establish how to sustainably manage agriculture. The farming methods shall respect the local ecosystem balance and contribute to biodiversity. Use energy and natural resources responsibly and enhance the health of soil, water, plants, and animals. The regulation prohibits the use of GMOs and restricts the products and substances that may be used in production and processing. The Commission authorises what substances and products may be used in a restricted list. Organic plant production shall use farming methods that prevent soil degradation and erosion and the use of fertilisers is restricted. The “production techniques used shall prevent or minimise any contribution to the contamination of the environment”<sup>73</sup>. The livestock production has high animal welfare standards in addition to the farm production rules.<sup>74</sup>

The entire farm shall be managed according to the organic regulation and may only under specific conditions have clearly separated units not managed according to organic production. When an operator enters into the organic agriculture system the farm is first in a conversion period, during which the farm need to comply to the organic production rules but may not label and market the products as organic. How long the conversion period depends on the type of good produced, for plant production the conversion period is at least two years.<sup>75</sup>

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<sup>70</sup> Commission of the European Communities, *Green Paper on agricultural product quality: product standards, farming requirements and quality schemes* (n 59) at page 7.

<sup>71</sup> 2007 Regulation on organic production (n 3) at article 1.

<sup>72</sup> 2007 Regulation on organic production (n 3) at title III, IV, art 38; Implementing regulation on organic production (n 54).

<sup>73</sup> 2007 Regulation on organic production (n 3) at art 12 paragraph 1(f).

<sup>74</sup> Ibid at art 3, 5, title III,

<sup>75</sup> Ibid at art 11, 17; Implementing regulation on organic production (n 54) at art 36.

Processed organic food shall be produced from organic agricultural ingredients. At least 95 % of the dry ingredients need to come from organic products. The processing methods and substances used in the process and as ingredients in the product are restricted. Only where an ingredient is not available on the organic market and food additives can only be added if it is essential to the process or nutritional value.<sup>76</sup>

The Commission may provide conditions for when exceptions from the production rules may be granted. The exceptions shall only be granted during a limited time and kept to a minimum. The scenarios when an exception can be made are when it is necessary for ensuring the production because of for instance climatic or geographical constraints, shortage in availability of feed, seed or ingredients, temporary measures to alleviate catastrophic circumstances. It can also be exempted to use additives and other substances in processed products that are required by community or national law. The restricted list of products and substances may only be authorised to use in exceptional cases by the Member States in certain circumstances. The national provision shall be evaluated according to specific criteria and the commission may put limits and conditions on the method and the usage of the substance.<sup>77</sup>

Member States may not only authorise exceptions to the production rules. In conformity with the Community law, the Member states may also regulate national provisions that are stricter than the Union regulation. The organic regulation provides the minimum and national rules can restrict the use of substances or products further than the EU regulation. Stricter rules may only apply within the Member States territory, without restricting products produced outside of the territory. The national rules also need to apply equally to non-organic production and be in conformity to community law.<sup>78</sup>

The reasoning behind allowing exceptions under certain conditions is to ensure the development of organic agriculture and to smoothen the adaptation to changed provisions in the regulation during a time-period. Exceptions are for instance allowed to the help operators convert to organic production in regions where conversion might be hindered by climatic, structural, and geographical constraints or give operators a time to adapt the production to new provisions or to allow non-organic seeds and species where these are not yet available as organic.<sup>79</sup>

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<sup>76</sup> 2007 Regulation on organic production (n 3) at article 6; Implementing regulation on organic production (n 54) at art 60.

<sup>77</sup> 2007 Regulation on organic production (n 3) at art 16, 19, 21, 22.

<sup>78</sup> 2007 Regulation on organic production (n 3) at art 16, 19, 21, 22, 34 and preamble point 29.

<sup>79</sup> Implementing regulation on organic production (n 54) at art 39-47 and preamble point 20-32.

## 3.4 Labelling rules

The labelling rules are positioned in title IV of the regulation. Article 23 prescribes when the organic term and label can be used on a product. The label and term can only be put on products if they have been produced in accordance with the rules of the organic regulations. The Member States shall make the necessary measures to ensure compliance with the labelling rules. The Community organic production logo may be used if the products satisfy the organic regulation. However national and private labelling marks may also be used.<sup>80</sup>

The definitions in article 2 of the term organic and organic production are reserved terms to ensure a proper functioning of the internal market. Reserved terms are terms defined by law and inform of a method or characteristic of a product. The definition of organic protects against misleading and false organic claims with clear and transparent conditions on when products can be labelled organic. Consequently, consumer confidence in the organic label is increased.<sup>81</sup>

Harmonised definitions on terms and concept of principles and objectives are a key part of the EU organic regulations. It creates a good basis on which the regulation can ensure to carry out its dual societal role of creating an organic market meeting consumer demand and delivering public goods while respecting the environment. It is key for ensuring an effective functioning of the market and guaranteeing fair competition as well as ensuring consumer confidence and protection. The use of the term organic production, and derivatives thereof, are protected for use within the framework. Using terms on or to market an uncertified product suggesting that it has been produced in accordance to the 2007 Regulation are prohibited. This prohibition and the definitions of the requirements of organic production is important for consumer trust. Defining organic production hinders fraud and greenwashing by creating distinction and separating EU organic farming from other eco-labels and non-organic farming.<sup>82</sup>

## 3.5 Control rules

### 3.5.1 Food Safety and Official Control regulations

EU farmers produce food according to the EU standards on hygiene, safety, environment, and ethical and social concerns. There is general EU regulation on official control activities and food law that create the baseline

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<sup>80</sup> 2007 Regulation on organic production (n 3) at title IV.

<sup>81</sup> Ibid at preamble at point 1,3,5, 23 and art 1, 23; Commission of the European Communities, *Green Paper on agricultural product quality: product standards, farming requirements and quality schemes*, (n 59) at 6.

<sup>82</sup> 2007 Regulation on organic production (n 3) at preamble point 1,3,5, 23 and art 1, 23.

requirements for the products and the authorities. On top of this baseline the specific voluntary certification schemes can operate and regulate control activities and responsibilities. The general EU Regulation on production accreditation and market surveillance<sup>83</sup> is a complement to existing legislation and thereby only applicable as *lex generalis*. The food safety law regulation<sup>84</sup>, the regulation on official food law controls<sup>85</sup> and the organic regulations are *lex specialis*. The new regulation on official controls from 2017 calls the application of the set of European Union rules on food safety and control for the “Union agri-food chain legislation”<sup>86</sup>. This set of rules contribute to the functioning of the internal market, protection of consumers interests and high level of human, animal and plant health.<sup>87</sup>

The Food Safety Regulation provides the basis for assuring a high level of protection of human health and consumer interests and in ensuring an effective functioning of the internal market. In similarity to the organic regulations it applies to all stages of production, processing, and distribution of food products. It sets out the general objectives, principles, and definitions of food law. Article 2(j) of the 2007 Regulation on organic production refers in its definition of “food”, “feed” and “placing on the market” to the definition in the abovementioned food safety law regulation. In the control title of the 2007 Regulation on organic production, article 27 section 13 states that the control system as set up by the Member States shall follow article 18 on traceability of products of the Food Safety Regulation. This rule on traceability help ensure that each product, at all stages of production, can be

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<sup>83</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 [2008] OJ L218/30.

<sup>84</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [2002] OJ L031/1 (Food Safety Regulation).

<sup>85</sup> Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules [2004] OJ L165/1 (2004 Official controls regulation); Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC [2017] OJ L95/1 (2017 Official Controls Regulation).

<sup>86</sup> 2017 Official Controls Regulation (n 85) at preamble point 3.

<sup>87</sup> 2017 Official Controls Regulation (n 85) at preamble point 3; Commission of the European Communities, *Green Paper on agricultural product quality: product standards, farming requirements and quality schemes*, (n 59) at 6; Commission Communication, *EU best practice guidelines for voluntary certification schemes for agricultural products and foodstuffs*, (2010/C 341/04), OJ C 341/5, 16.12.2010 at 3.3.

identified and labelled correctly. It informs of the substances incorporated in the food and the operators that have been involved.<sup>88</sup>

The organic regulation follows the Food Safety Regulations objectives and principles of protection of human health; protection of the environment and animal welfare; protection of consumer interests; free movement and fair practices of trade; the law shall be based on risk analysis and the precautionary principle; and, public authorities and documents shall be open to the public as of the principle of transparency. There are also general requirements on the import and export of foodstuffs into the community and the promotion of cooperation and consistency to international standards.<sup>89</sup>

The EU regulation on official controls<sup>90</sup>, is the baseline for the control activities. It covers all official food and feed controls, both organic and non-organic. It defines what official controls is and describes in detail how Member States shall implement controls on food and feed. The voluntary certification scheme of the organic regulation operates on top of this as a more specific scheme to a particular production. The organic regulations reference and are in conformity with the 2004 Official Controls Regulation. To be in conformity the organic regulations article 27 repeat the official controls provisions, but goes further in specific detailed organic control rules in both the 2007 Regulation on Organic Production and in the implementing regulations. Following this system, the organic regulation does not exempt from liability to the underling EU food and control laws. Non-compliance to the organic regulation can also mean liability in respect of the official control and food laws.<sup>91</sup>

The Commission proposed a new regulation on official controls on the 6<sup>th</sup> of May of 2013.<sup>92</sup> The purpose of the revision was to simplify and clarify the control system. The new official control system integrates many separate rules into one single framework, creating a uniform approach along the entire

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<sup>88</sup> Food Safety Regulation (n 83) at art 1-18; 2007 Regulation on organic production (n 3) at art 2, 27.

<sup>89</sup> Ibid

<sup>90</sup> hereinafter called 2004 Official Controls Regulation; 2004 Official Controls Regulation (n 85).

<sup>91</sup> Commission, *EU best practice guidelines for voluntary certification schemes for agricultural products and foodstuffs* (n 87) at 3.3; European Commission, Directorate-General for Agriculture and Rural Development, Directorate H, Sustainability and quality of agriculture and rural development, *Working document of the Commission services on official controls in the organic sector*, Version 8 July 2011, at page 5, 8.

<sup>92</sup> Commission, 'Proposal for a Regulation of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health, plant reproductive material, plant protection products and amending Regulations (EC) No 999/2001, 1829/2003, 1831/2003, 1/2005, 396/2005, 834/2007, 1099/2009, 1069/2009, 1107/2009, Regulations (EU) No 1151/2012, [...]2013 [Office of Publications, please insert number of Regulation laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material], and Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC, 2008/120/EC and 2009/128/EC' (Official controls Regulation Proposal 2013) COM (2013) 265 final.

food chain. The harmonisation and unification of the official control framework require that current acts in the area are repealed and replaced by the new regulation. The revision has been completed and the new regulation was published in the Official Journal on the 7<sup>th</sup> of April 2017 (hereinafter called the 2017 Official Controls Regulation).<sup>93</sup> The 2017 Official Controls Regulation entered into force on the 27<sup>th</sup> of April 2017. It will apply from 14<sup>th</sup> of December 2019 with some exceptions for a few articles in the regulation.<sup>94</sup>

### 3.5.2 Control rules of the organic regulations

The control system within the organic regulations consists of two main elements. They consist of on-site controls of organic operators, that occur at least once a year, and a public surveillance system to supervise and monitor the control bodies. The control system of a certification scheme ensures the effective functioning of the label, by enforcing and monitoring compliance. It is an important factor in achieving the objectives of fair competition and consumer confidence. The public surveillance includes not only the rules stemming from the organic regulation, but also the entire EU framework of control activities and the EU rules on official controls on food and feed law.<sup>95</sup>

According to the element of the public surveillance system, the Member States must designate one or more competent authorities to be responsible for the control activities. This can be found in the first section of article 27 of the 2007 Regulation on organic production, which also refer to the 2004 Controls Regulation. The Member State's designated competent authority is also given the opportunity to confer its control competences or delegate control tasks to other control authorities or control bodies.<sup>96</sup>

It is the Member States that shall ensure that any operator that complies with the rules of the organic regulations are entitled to be covered by the control system and thereby sell products as organic. The designated authorities and bodies need to keep an updated list of the operators under their control. They shall be able to provide documentary evidence of the operators who meet the requirements.<sup>97</sup>

Control tasks may under certain conditions be delegated to private control bodies. The controls made by the private body are then still considered as official controls within the 2004 Official Controls Regulation. The conditions are set out in both the official control regulation article 5(2) and section 5 of

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<sup>93</sup> 2017 Official Controls Regulation, (n 85).

<sup>94</sup> Ibid at preamble point 19-20; Official Controls Regulation Proposal 2013 (n 92) at Explanatory Memorandum 1, Context of the Proposal.

<sup>95</sup> Sanders, Schmidt, *EU organic farming legislation and its development*, Stolze, Huber, Neuendorff,, *Adequacy of the overall control system* in the Report Jörn Sanders (ed.), *Evaluation of the EU legislation on organic farming* (n 2) at page 28, 131-132.

<sup>96</sup> 2007 Regulation on organic production (n 3) at art 27; Sanders, Schmidt, *EU organic farming legislation and its development*, in the Report Sanders (ed.), *Evaluation of the EU legislation on organic farming* (n 2) at page 28.

<sup>97</sup> 2007 Regulation on organic production (n 3) at art 28-29.

article 27 of the 2007 Regulation on organic production. For example, these conditions are; impartiality, qualified staff, expertise and infrastructure ability to perform the tasks, effective coordination and communication between the control body and competent delegating authority. The delegated control bodies shall also be inspected and audited by the competent authorities as necessary. The delegation may be withdrawn if it fails inspection.<sup>98</sup>

The certification and control bodies also need to be accredited by the International Standards Organization (ISO) latest standard or the most recently notified version of the European Standard. The new 2017 Official Controls Regulation refers to the EN ISO/IEC 17020:2012 as the standard a delegated body need to comply with.<sup>99</sup>

The other element of on-site controls of the operators is also regulated in article 27 of the 2007 Regulation on organic production. The on-site controls nature and frequency are determined by assessing the risk of non-compliance to the regulations' requirements, stated as the risk of irregularities and infringements. It is up to both the control authorities and control bodies to ensure that "at least the precautionary and control measures"<sup>100</sup> are applied to the control of the operators. As of now, the minimum amount of on-site controls is once a year for all operators. The control system and its requirements of the on-site controls and measures in case of infringements have been debated a lot in the process of reviewing the regulation. The wording and emphasis of precaution will be amended in the future. The following chapter four will discuss amendments further.<sup>101</sup>

Operators need to notify the competent authority and submit to the control system in the organic regulations. This applies to all operators who produce, prepare, stores, imports, or places products on the market as organic. The minimum control requirements on the operators are set out in the Implementing regulation on organic production title IV. Specified product areas have additional specific control requirements for the product group. The control arrangements that the operators need to draw up and maintain are a full description of the unit and activities, all practical measures to be taken to ensure compliance with the organic production rules, precautionary measures

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<sup>98</sup> Ibid at art 27; European Commission, *Working document of the Commission services on official controls in the organic sector* (n 91) at page 6; Sanders, Schmidt, *EU organic farming legislation and its development*, in the Report Sanders (ed.), *Evaluation of the EU legislation on organic farming* (n 2) at page 28.

<sup>99</sup> 2007 Regulation on organic production (n 3) at art 27 section 5(c); Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (n 83) at preamble point 5; 2017 Official Controls Regulation, (n 85) at article 29; Commission, *EU best practice guidelines for voluntary certification schemes for agricultural products and foodstuffs* (n 87) at 3.3; Commission communication in the framework of the implementation of Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008, Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008, Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 - OJ C 076 of 10/03/2017.

<sup>100</sup> 2007 Regulation on organic production (n 3) at art 27 section 12.

<sup>101</sup> Ibid at art 27.

to be taken and the specific characteristics of the production method used. The operators shall be inspected on-site at least once a year. The control authority or body shall, based on an evaluation on risk of non-compliance, do random unannounced additional inspections.<sup>102</sup>

If an irregularity or infringement is found at the operator, the control body or the control authority shall ensure that the products concerned are not sold with an organic label or any reference to organic production. This prohibition of using the organic label for the lot concerned can only be used if it is proportionate to the nature and circumstance of the violation. If the infringement is severe, the operator could be prohibited to market goods produced by the operator for a period set by the competent authority of the Member State. The infringements and irregularities that affect the products status as organic shall be communicated immediately between concerned authorities. According to article 31 of the same regulation, the authorities and bodies shall exchange relevant information about the result of controls.<sup>103</sup>

How the information exchange and notifications on irregularities shall be made are specified in the Implementing regulation on organic production. It is also regulated in the 2004 and 2017 Official controls regulation. The official control regulations state that the control authorities shall operate with a high level of transparency and relevant information shall be available to the public. According to the organic regulations different procedures shall be followed depending on if the product is produced and sold within the same Member State, imported from another Member State or a country outside the European Union. A catalogue of measures in case of irregularities and an updated list of operators shall be available and communicated between the competent authorities. If a Member State finds irregularities or infringements in compliance with the organic regulation in an imported product from outside of the EU, the notification process and exchange of information is specifically regulated in the Implementing regulation on imports of organic products.<sup>104</sup>

### **3.6 Rules on imports of organic products from third countries**

Organic production and trade is becoming more globalised and a large number of the organic products sold on the EU market have been imported from countries outside the European Union. The latest statistics reported that in 2015 there are 179 countries with data on organic agriculture with an approximate market value of 81,6 billion US dollars.<sup>105</sup> 2005 the global market was 33.2 billion US dollars, underlining the rapid growth of the organic market over the last decade. The United States of America has the

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<sup>102</sup> Ibid at art 28; Implementing regulation on organic production (n 54) at article 63-80.

<sup>103</sup> 2007 Regulation on organic production (n 3) at art 30-31.

<sup>104</sup> 2004 Official Controls Regulation (n 85) at art 7; Implementing regulation on organic production (n 54) at article 91-92f; 2017 Official Controls Regulation, (n 85) at art 11.

<sup>105</sup> Approximately 75 billion Euros.

largest single market of organic retail sales. It covers 47 % of the world's distribution of organic retail sales in 2015. At this time point the European Union had the second largest single market in the world, with 36 %. The third largest single market is China with 6 % of the world distribution. The major import markets of organic products are EU, USA, Canada, and Japan.<sup>106</sup>

The implementations of import authorizations, equivalence agreements and a growing EU and international market indicate that import and export in the EU plays an important role in the development of the organic market. Imported goods compete with EU produced goods on the internal market. It is important to oversee that the organic labels reputation in the EU is not harmed by the import of organic goods. The import rules need to be effective in assuring the sustainable development of organic production and the objectives of “ensuring the effective functioning of the internal market, guaranteeing fair competition, ensuring consumer confidence and protecting consumer interests”<sup>107</sup>. The organic label needs to be a protected definition and label on imported and domestic goods. The consumers' confidence in the organic system including the imported products is key for the organic movement's existence. The imported goods should provide the same level of assurance in the quality of the product at the same level as the EU produced goods. Import from third countries is of great value for the continued development of the organic market. Goods that cannot be produced in the EU countries should be available to the consumers to keep the supply up to the demand level.<sup>108</sup>

The EU organic import is also an important element for the fulfilment of the international free-trade agreements of the WTO. The Organic regulation cannot be legislated in a manner that is more trade restrictive than necessary to fulfil the objectives and thereby a possible Technical Barrier to Trade. Additionally, there are international conventions, standards and guidelines that regulate trade between countries and international trade with certified goods. The rules on how goods may be imported into the European Union are similar to the control rules regulated in both general EU food safety and official control regulations and in the EU organic regulations. I will therefore mainly focus on the EU regulations in this section.<sup>109</sup>

The Official Control regulation give the general import conditions for goods imported from out-side the EU community, also called third countries. The

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<sup>106</sup> Contact Helga Willer and Julia Lernoud, *Media kit The world of Organic Agriculture 2017 February 9, 2017*, Research Institute of Organic Agriculture (FiBL), BIOFACH and VIVANESS press conference 2017, 9 February 2017; Huber, Neuendorff, Stolze, *Adequacy of the import regime*, Huber, Schmid, Möller, *Standards and Regulations*, in the Report Sanders (ed.), *Evaluation of the EU legislation on organic farming* (n 2) at 144, 165.

<sup>107</sup> 2007 Regulation on organic production (n 3) at article 1.

<sup>108</sup> Huber, Neuendorff, Stolze, *Adequacy of the import regime* in the Report Sanders (ed.), *Evaluation of the EU legislation on organic farming* (n 2) at 165-168; Willer, Schaack, *Organic Farming and Market Development in Europe*, in the book Willer, Lernoud (ed.), *The World of Organic Agriculture. Statistics and Emerging Trends 2016*, (n 5) at 199; Martínez Gándara, *The Law and Economics of Eco-Labels*, (n 18) at 236-239, 325-326.

<sup>109</sup> Martínez Gándara, *The Law and Economics of Eco-Labels* (n 18) at 236-239, 325-326.

2017 Official control regulation has redrafted the common rules on goods entering the union. The review of the regulation has substantially changed these and other rules. The official control on goods from third countries has been made to be clearer and more uniform, so to create a common set of rules for all controls on goods entering the EU.<sup>110</sup>

Article 46 and 47 of the 2004 Official controls regulation give the basis for the EU community's control and imports from third countries. Through these rules the Commission and Member States can carry out official controls in the third country to verify their legislation systems compliance or equivalence to EU community legislation. Experts are appointed from the Commission or Member States to verify the different requirements stated in these articles. These requirements such as the legislation, organisation and supervision of the responsible authorities, resources and staff competency and assurances of their capacity of compliance and equivalence to the requirements of the EU regulations. The frequency of the controls in the third country is determined in the same way as for the Member States control of operators. However, in addition to risk assessment, previous results and volume, information can also be received from other European and International bodies. Two of the recognised international bodies to exchange information are WHO and the Codex Alimentarius Commission. The Commission's report on the control in the third country and its findings shall be publicly available.<sup>111</sup>

The general import conditions are described in article 47 of the Official controls regulation. It states that the Commission is responsible for requesting information from the third country intending to export goods to the community. Following article 48, detailed procedures and special import conditions can be laid down. These special conditions can be established as a list of third countries, certificates and product specific conditions. It is also possible to import goods into the community according to equivalence agreements. These are described in article 49 and is an agreement recognising the third countries measures equivalent to the measures applied in the EU.<sup>112</sup>

Similar to the import conditions in articles 47 to 49 in the 2004 Official controls regulation, the import conditions of the organic regulations consist of third country lists and equivalent agreements. There are two options to import organic goods into the EU; imports of "compliant" products, and products providing "equivalent guarantees".<sup>113</sup>

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<sup>110</sup> Official Controls Regulation Proposal 2013 (n 92) at Explanatory Memorandum 5, *Optional Elements*, page 9-12.

<sup>111</sup> 2004 Official Controls Regulation (n 85) at art 46-47.

<sup>112</sup> *Ibid* at art 47-49.

<sup>113</sup> Canan Abay, Özlem Karahan Uysal, Bülent Miran and Murat Boyacı, Ege University in Turkey, Beate Huber and Matthias Stolze, Research Institute of Organic Agriculture, FiBL in Switzerland, *Report on evaluation of the revision of Council Regulation (EEC) No 2092/92, import regime in two exporting non-EU countries (TR, CH) and on an international level D19*, Economic Analysis of Certification Systems in Organic Food and Farming, CERTCOST project, 11-10-2011, at page 1-2.

The first option is to import products, which are “compliant” to the EU organic regulations. These rules are set out in article 32 of the 2007 Regulation on organic production and title II of the Implementing regulation on imports of organic products. The Commission has established a list of recognised “compliant” control bodies that operate in third countries to control and certify products that are produced according to the organic EU regulations. The entire chain of producer, exporter, control authorities need to be controlled, accredited, and certified to be in compliance with the EU organic regulations. Operators in the exporting and production chain need to be able to provide the documentary evidence necessary at any time to the importers and national authorities to identify and verify compliance. The Commission re-assess the recognised control bodies and authorities multi-annually based on the assessment reports and risk of occurrence of irregularities and infringements. If a control body or control authority fails to fulfil its obligations and does not send the annual report and requested information to the commission, the commission can withdraw it from the list.<sup>114</sup>

The second option is recognising the third country’s production and control standards as equivalent to the EU standards. The commission includes recognised third countries, control authorities or control bodies on lists equivalency. The list of recognised third countries can be found in Annex III<sup>115</sup> and the control bodies and control authorities can be found in Annex IV of the Implementation regulation on imports of organic products.<sup>116</sup>

Eight<sup>117</sup> of these twelve third countries have also reciprocally recognised the EU as having equivalent organic standards. Before 2009 the equivalence agreements were prominently unilateral recognition agreements, where one country recognised the other country’s organic system as equivalent, but that decision was not reciprocated by the recognised country. Between 2009 and 2012 three major equivalence arrangements were established that shifted the trend towards establishing bilateral agreements instead of unilateral. These major agreements were between Canada and United States, Canada and the European Union and The European Union and the United States. These trade arrangements had a big effect on the global market. It was estimated that the

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<sup>114</sup> 2007 Regulation on organic production (n 3) at art 32; Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries [2008] OJ L334/25 (Implementing regulation on imports of organic products) at title II.

<sup>115</sup> The countries listed in Annex III of Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 as regards the arrangements for imports of organic products from third countries are: Argentina, Australia, Canada, Costa-Rica, India, Israel, Japan, Republic of Korea, Switzerland, Tunisia, United States and New Zealand.

<sup>116</sup> Implementing regulation on imports of organic products (n 114) at Annex III, Annex IV; Abay, Karahan Uysal, Miran, Boyaci, Huber, Stolze, *Report on evaluation of the revision of Council Regulation (EEC) No 2092/92, import regime in two exporting non-EU countries (TR, CH) and on an international level D19* (n 113) at page 1-2.

<sup>117</sup> Canada, Israel, Japan, Republic of Korea, Switzerland, Tunisia, United States and New Zealand.

arrangements covered 90 % of the international market trade of organic products.<sup>118</sup>

The conditions for inclusion on the list of equivalent countries, control authorities or control bodies are set out in article 33 of the 2007 Regulation on organic production and title III of the Implementation regulation on imports of organic products.<sup>119</sup>

The conditions for products to be recognised and imported with equivalent guarantees are that the measures and rules on production and control can be seen as equivalent to the EU organic rules. All stages of the operators have been submitted to equivalent controls and a certificate of inspection that confirms that the product satisfies the conditions must accompany the goods. The control bodies and control authorities that are recognised as equivalent shall regularly be surveyed, evaluated on-the-spot and re-assessed.<sup>120</sup>

If a product imported according to equivalent guarantees is found to not be in conformity with the requirements of the EU organic regulations, the references on the product's label, advertisement and documents of organic production shall be removed. Where there is only suspicion of infringement or irregularity with the compliance, the importer shall withdraw and separate the product, so it is not placed on the market until all doubts are eliminated. Immediately after suspicion of a product is in non-compliance, the importer and control authority or control body shall inform other concerned authorities. If appropriate the Commission shall also be informed. Article 33 also states that the Codex Alimentarius guidelines CAC/GL 32 shall be taken in account when assessing the equivalency<sup>121</sup>

### 3.6.1 Codex Alimentarius

The Codex Alimentarius is a collection of international guidelines, standards, codes of practise and recommendations on food. They were established within the *Joint Food Standards Programme* of the FAO and WHO to protect consumer health, ensure fair trade and coordinate food standards internationally. The *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods*, also called CAC/GL 32, was

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<sup>118</sup> European Commission, European Commission Website, Agriculture and Rural Development, Organic Farming, *Relations with non EU countries*, [https://ec.europa.eu/agriculture/organic/eu-policy/eu-rules-on-trade/non-eu-trading-partners\\_en](https://ec.europa.eu/agriculture/organic/eu-policy/eu-rules-on-trade/non-eu-trading-partners_en), last updated 07-08-2017, visited 07-08-2017; Federation of Organic Agriculture Movements (IFOAM), Global Organic Market Access (GOMA) – a project of FAO, IFOAM and UNCTAD, *Bilateral Equivalence Arrangements on Trade of Organic Products: a review of processes leading to arrangements between Canada and United States, Canada and European Union and European Union and United States*, published by: UNCTAD in Switzerland; FAO in Italy; IFOAM in Germany, 2013, at page 4.

<sup>119</sup> 2007 Regulation on organic production (n 3) at art 33; Implementing regulation on imports of organic products (n 114) at title III.

<sup>120</sup> Ibid.

<sup>121</sup> Implementing regulation on imports of organic products (n 114) at art 15; Implementing regulation on organic production (n 3) at art 33, 91.

developed by the food labelling Committee in response to the growth in production and trade at the end of the 1990s. The CAC/GL 32 guidelines shall provide assistance in creating national regulations, harmonise the requirements on organic production, facilitate trade and prevent misleading claims. It guides the recognition of equivalent systems to facilitate imports.<sup>122</sup>

The CAC/GL 32 specifies that import requirements should be based on the principles of equivalency and transparency. Section 7 on imports in the CAC/GL 32 require the imported products to be accompanied by a certificate of inspection from the exporting country. An importing country may acquire detailed information about the rules and measures of the country of origin to be able to evaluate if the rules are equivalent. The importing country may also examine the production and certification at mutually arranged site visits in the exporting country. Lastly, the importing country may require that the product is labelled in the importing country in according to their regulation, in order to avoid consumer confusion. If imported goods do not meet the requirements of the guidelines, the goods lose its' organic status.<sup>123</sup>

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<sup>122</sup> Codex Alimentarius, International Food Standards, World Health Organization and Food and Agriculture Organization of the United Nations, *Guidelines for the production, processing, labelling and marketing of organically produces foods*, GL 32-1999, Adopted 1999, Revisions 2001,2003,2004 and 2007, Amendments 2008,2009,2010,2012 and 2013, available at <http://www.fao.org/fao-who-codexalimentarius/standards/list-standards/en/>, at preface, foreword 1-2.

<sup>123</sup> Ibid at foreword 11, section 7.

# 4 Future outlook on the organic movement

## 4.1 The future of the international organic movement

IOFAM is currently in the process of creating a major shift toward creating a more unified and sustainable agriculture organic agriculture systems worldwide. The IFOAM General Assembly motioned at the 2011 Organic World Congress to “position the organic movement as a fundamental and core solution to the world’s challenges regarding social and environmental sustainability.”<sup>124</sup> The motion also put forward that IFOAM would create an action group for like-minded organisations, resulting in the *Sustainable Organic Agriculture Action Network* (SOAAN). In 2013 was SOAAN’s first project initiative was drafting and completing the foundational document the *Best Practice Guidelines for Agriculture and Value Chains*. SOAAN together with IFOAM is currently working on a second major project, the *Organic 3.0*. The Organic 3.0 concept has been presented in a booklet and is proposed as a new landmark for the organic movement.<sup>125</sup>

Organic 3.0 is the vision of moving the organic movement from the 2.0 version of today’s systems of private standards, public regulations, and global recognition into the next upgraded version. The Organic 3.0 seeks to become a more inclusive and innovative production system.<sup>126</sup>

*The overall goal of Organic 3.0 is to enable a widespread uptake of truly sustainable farming systems and markets based on organic principles and imbued with a culture of innovation, of progressive improvement towards best practice, of transparent integrity, of inclusive collaboration, of holistic systems, and of true value pricing.*<sup>127</sup>

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<sup>124</sup> IFOAM - Organics International website, SOAAN History, *The sustainable Organic Agriculture Action Network*, available at <https://www.ifoam.bio/en/soaan-history>, visited 31-05-17.

<sup>125</sup> Markus Arbenz, David Gould and Christopher Stopes, *Organic 3.0 – for truly sustainable farming and consumption*, 2nd updated edition 2016, IFOAM Organics International, Bonn and SOAAN, Bonn, at 1-7; IFOAM - Organics International website, *The sustainable Organic Agriculture Action Network* (n 124); IFOAM – Organics International website, *Organic 3.0, Sustainable Organic Agriculture Action Network (SOAAN) Phase Three, Think Tank on True Cost Accounting, True Value & Fair Pricing*, available at <http://www.ifoam.bio/en/organic-30/sustainable-organic-agriculture-action-network-soaan-phase-three>, visited 31-05-17.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

Organic 3.0 evolves from the governmental regulation and standard setting systems of today by being descriptive instead of prescriptive. It is an outcome-based model that calls for continuous improvement and adaptation to local contexts and private initiatives. Similar to today, the minimum requirements of standards and regulations will be upheld but with expanded opportunities for local and stakeholder progression. Instead of enforcing a static “one-size-fits-all” approach it promotes diversity and inclusion to reach the best practice.<sup>128</sup>

The new approach has six key features to reach their vision of truly sustainable agriculture:<sup>129</sup>

- **Feature 1. “A culture of innovation”**
  - Innovations can help farmers with the agronomic challenges that organic agriculture poses. Innovations can increase yields and attract more farmers to convert to organic agriculture. Traditional knowledge, modern technology and social networks will be used to identify new innovations.
- **Feature 2. “Continuous improvement towards best practice”**
  - The development should be of continuous improvement among all operators to get the tools and methods with the biggest impact and best practices. The focus on governmental regulations with detailed requirements, the standards will become more outcome based. Government frameworks will give the broad sustainability targets with the minimum “no go” requirements and monitor the operators progress.
- **Feature 3. “Diverse ways to ensure transparency and integrity”**
  - Requirements of third party certification limits the expansion of organic agriculture. New ways of verifying the products will be needed. One of these new tools are the Participatory Guarantee Systems (PGS) which are based on the relationship and reputation of the operators in the value chain. Another improvement is to take use of new web-based communication tools.
- **Feature 4. “Inclusive of wider sustainability interests”**
  - The organic movement shall seek to be a more active partner to like-minded movements and in civil society organisations. However, the organic movement make a clear stand point against stakeholders’ exploitation and abuse of green and organic claims, so called greenwashing.
- **Feature 5. “Empowerment from farm to the final consumer”**
  - Organic 3.0 addresses sustainability at all dimensions along the whole value chain from farmer to consumer. The system needs to empower the disadvantaged stakeholders, such as smallholding farmers, farm laborers and women. Consumers

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<sup>128</sup> Ibid at 2-11.

<sup>129</sup> The information in the bulleted list is from; Arbenz, Gould, Stopes, *Organic 3.0 – for truly sustainable farming and consumption* (n 125) at 12-18.

will be benefitted by organic 3.0's objective of healthy nutrition.

- **Feature 6. “True value & cost accounting”**
  - An essential component of organic 3.0 is fair price. It should be economically viable for farmers, producers, traders, and consumers to choose the more sustainable option. The price should reflect the true cost of the positive and negative externalities of the production.

Version 1.0 was the vision of pioneers of a farming system that produces healthy and nutritious food for people using methods that protects the environment and biodiversity of the planet. Organic 2.0 was the realisation of these ideas into standards and enforced rules. The organic movement has through the previous versions had positive impact on health, environment, and biodiversity. The recognition of the organic movement has spread globally and has positively affected the consumer habits and improved the livelihoods of producers worldwide. However, the Organic 2.0 and its governmental regulations has shown constraints and weaknesses. The current implemented version 2.0 with government regulations and codified standards that certify and control the compliance of the production of a good cannot evolve to truly be sustainable and fulfil the core values of the organic philosophy because of the systems constraints. The constraints, issues and improvements discussed in the Organic 3.0 project are interesting questions for the review process of the EU organic framework.<sup>130</sup>

## 4.2 The future of the EU agricultural policy schemes

As a contribution to the Rome Summit of 2017, the European Commission's President Jean-Claude Juncker presented the Commission's *White Paper on the Future of Europe* on the 1<sup>st</sup> of March 2017.<sup>131</sup>

According to the Commission's press release, President Juncker presented his vision of the future of Europe as:

*“... it is time for a united Europe of 27 to shape a vision for its future. It's time for leadership, unity and common resolve. The Commission's White Paper presents a series*

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<sup>130</sup> Arbenz, Gould, Stopes, *Organic 3.0 – for truly sustainable farming and consumption* (n 125) at 1-7; IFOAM - Organics International website, *The sustainable Organic Agriculture Action Network* (n 124); IFOAM – Organics International website, *Organic 3.0, Sustainable Organic Agriculture Action Network (SOAAN) Phase Three, Think Tank on True Cost Accounting, True Value & Fair Pricing*, available at <http://www.ifoam.bio/en/organic-30/sustainable-organic-agriculture-action-network-soaan-phase-three>, visited 31-05-17; Arbenz, Gould, Stopes, *Organic 3.0 – for truly sustainable farming and consumption*, (n 125) at 2.

<sup>131</sup> European Commission, Press release, *Commission presents White Paper on the future of Europe: Avenues for unity for the EU at 27*, Brussels, 1 March 2017, last update 20-02-2017, available at [http://europa.eu/rapid/press-release\\_IP-17-385\\_en.htm](http://europa.eu/rapid/press-release_IP-17-385_en.htm), visited 25-05-17.

*of different paths this united EU at 27 could choose to follow. It is the start of the process, not the end, and I hope that now an honest and wide-ranging debate will take place. The form will then follow the function. We have Europe's future in our hands.*"<sup>132</sup>

The White Paper looks into the future of Europe for the coming decade. It visualises five scenarios of how Europe can evolve by 2025. With these scenarios, the commission wants to start a debate on the path and future of the European Union. Following the White Paper, a series of reflection papers will be contributing to the discussion. These reflection papers will encourage the discussion by offering ideas, proposals, scenarios on topics such as; the social dimension, globalisation, finance, and defence. President Juncker foresees that the first conclusions from the debate could be presented in his State of the Union speech in December 2017. This should be in time for shaping the course of action before the European Parliament elections in June 2019.<sup>133</sup>

Very shortly summarised the White Papers five scenarios are<sup>134</sup>:

- **Scenario 1: “Carrying on”**
  - The Union carries on as before and focuses on its positive reform agenda.
- **Scenario 2: “Nothing but the single market”**
  - The Union focuses on the single market. EU regulation is reduced, and collective cooperation and action is limited to policies related to the functioning of the single market.
- **Scenario 3: “Those who want more do more”**
  - The EU carries on as before but those Member States that want to do more in specific policy areas are able to form coalitions.
- **Scenario 4: “Doing less more efficiently”**
  - The EU focuses on selected policy areas. The prioritised policy areas are given resources and tools to make decisions and implement quicker.
- **Scenario 5: “Doing much more together”**
  - The Member States decides that more cooperation is needed to face the future challenges and the EU gets more power and resources to decide and enforce quicker in all areas.

The Commission's second reflection paper to the White Paper was published on the 10<sup>th</sup> of May 2017. The *Reflection Paper on Harnessing Globalisation* assesses what globalisation means for Europe and how globalisation can be shaped in line with the values and interests of the EU. In the beginning of the paper the Leaders of the Member States, council, Parliament, and

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<sup>132</sup> European Commission, *Commission presents White Paper on the future of Europe: Avenues for unity for the EU at 27* (n 131).

<sup>133</sup> European Commission, *White Paper on the Future of Europe – Reflections and scenarios for the EU27 by 2025* (n 12) at page 3,7, 26.

<sup>134</sup> *Ibid* at 15-25.

Commission have included a declaration of standing together in unity to face the global and domestic challenges.<sup>135</sup> The declaration states that:

*“...We will make the European Union stronger and more resilient, through even greater unity and solidarity amongst us and the respect of common rules. Unity is both a necessity and a free choice. Taken individually, we would be side-lined by global dynamics. Standing together is our best chance to influence them, and to defend our common interests and values.”*<sup>136</sup>

Trade, production and supply chains are nowadays globally connected. Global trade helps the economic growth and competitiveness of the EU. Furthermore, it helps to promote the EU’s model on social and environmental protection, by integrating and providing resources for these models into the global supply chain. Globalisation creates both benefits and challenges. Global competition can lead to social and environmental “dumping”, where some countries reap more benefits than others. European citizens’ views on globalisation are mixed, many are threatened by the globalisation and think that governments are not able to manage and control its impacts. The world of today faces many challenges like: migration flows, terrorist threats, financial crisis, health pandemics and climate change. Governments political challenge is to balance the protectionist view, on being threatened by globalisation, with facing the world’s need for global cooperation. The difficulty is that protectionism and self-regulating markets are on opposite ends. In the reflection paper, the Commission argues for more collective actions through multilateral institutions and rules and for promotion of common solutions to the global challenges, in accordance with the EU’s founding values of cooperation, solidarity, and rule of law. Even the wealthy countries do not have the capacity to face these challenges on their own. They argue that in order to maintain EU’s influence in international cooperation and shaping the global governance, in face of the political challenge, the Union needs to speak with one voice. This argument of strong unity, is in accordance with scenario five of the White Paper.<sup>137</sup>

The suggested cooperation should both include governments as well as non-state actors. In creating sustainable development win-win situations should be promoted for developed and developing nations and the efforts need to go beyond aid. Trade, investments, private sector and rule of law needs to be brought together to promote good governance. It is argued that the EU should continue developing progressive trade and investment agendas to open markets and enhance environmental protection, food safety and human rights. The trade agreements must uphold the public policy objectives and EU high standards, in areas such as environmental protection and unfair competition. To protect the environment, the trade globalisation should not lead to increases in externalities such as depletion of resources and pollution.<sup>138</sup>

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<sup>135</sup> European Commission, Reflection Paper on Harnessing Globalisation (n 11) at page 2-3.

<sup>136</sup> Ibid at 3.

<sup>137</sup> Ibid at 5-10, 17.

<sup>138</sup> Ibid at 15-17.

An important aspect of globalisation is ensuring fair competition, equal opportunity and prevent unfair practises. The EU must have instruments and tools to be able to enforce international agreements on trade and environmental protection. International organisations dispute resolution systems, such as the one in the WHO, should continue to be used. Cooperation between Member States authorities and the EU institutions, and also a more transparent and improved enforcement and sanction system, can prevent fraudulent behaviour. Companies should be able to be held accountable when they disregard their social and environmental responsibilities. The discussed proposals in the reflection paper on strengthening the enforcement system, increasing transparency and cooperation are solutions and challenges that the EU regulation face and can use.<sup>139</sup>

The economy of the EU needs to be modernised to better promote innovation. The European economy needs to be “...more competitive, sustainable, resilient to globalisation and ensuring that it generates the necessary resources to ensure a fairer distribution of its benefits, is a shared responsibility of all levels of government.”<sup>140</sup> The consumer demand is evolving, and the products manufactured in EU need to meet the demands. EU need to invest in innovative companies to be able to thrive in the global market. “Reinforcing the Single Market involves both taking policy and enforcement actions at the EU and country level and refraining from putting up new barriers, such as in the retail sector.”<sup>141</sup> Benefiting policies in the internal market will increase competitiveness of European companies. It is deemed in the reflection paper that special attention should be given to strengthening the resilience of rural communities to reduce the risk of them falling behind in the rapidly changing globalisation. The Common Agricultural Policy plays a key role for the rural development and agriculture sectors integration in the international markets. The modernisation of the policy needs to encourage competitiveness and promote high standards.<sup>142</sup>

The reflection paper concludes its assessment on the future of Europe in harnessing globalisation, stating that reversing the single market integration is a dead end. The question here is how the EU can move forward in effectively managing the challenges. Harnessing globalisation starts within Europe and the EU should be an innovative and competitive economy. Member states and EU institutions share tools that can contribute to the development towards a more innovative and globally competitive Europe. The common rules of the EU need to continue to ensure high standards and a competitive economy that supports innovation, solidarity, and sustainability.<sup>143</sup>

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<sup>139</sup> European Commission, Reflection Paper on Harnessing Globalisation (n 11) at 17-18.

<sup>140</sup> Ibid at 23.

<sup>141</sup> Ibid at 22.

<sup>142</sup> Ibid at 19-23.

<sup>143</sup> Ibid at 25.

*The Reflection Paper on Harnessing Globalisation* concludes that:

*“The EU27 remains the world’s largest trader, investor and development assistance provider. We are deeply integrated into global value chains and will continue to carry weight even as other powers emerge. Rather than sitting back and letting globalisation shape our destinies, we have the opportunity to shape globalisation in line with our own values and interests.”*<sup>144</sup>

## 4.2.1 Common Agricultural Policy scheme amendments

CAP went through a public consultation in spring 2017 about the future policy directions of CAP post-2020. The aim was to reform CAP by modernising and simplifying it, and a new model of payments to promote sustainable farming systems. The current *Europe 2020 – a European strategy for smart, sustainable and inclusive growth* (Europe 2020 strategy), came out of the financial crisis of 2008 and is a strategy to “turn the EU into a smart, sustainable and inclusive economy by delivering high levels of employment, productivity and social cohesion.”<sup>145</sup> CAP is adapted to the Europe 2020 strategy and incorporates the priorities set therein. In summary CAP 2020 “means green growth in the agricultural sector and the rural economy as a way to enhance wellbeing and pursuing economic growth while preventing environmental degradation.”<sup>146</sup> It responds to the EU’s flagship initiatives of “Low carbon, resource efficient Europe, “Innovation Union”, and “A European Platform against Poverty”.<sup>147</sup> The 2014 proposal for a revision of the organic framework in EU states in the preamble that it pursues the same objectives as the CAP and contributes to the Europe 2020 strategy. Since the organic regulations form a part of the Union’s common agricultural and environmental policies, the rules in the organic framework need to be able to evolve and progress in the same direction as these policies. It also needs to progress in line with the market and production developments in order to ensure and maintain consumer confidence, proper functioning of the internal market and fair competition.<sup>148</sup>

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<sup>144</sup> European Commission, Reflection Paper on Harnessing Globalisation (n 11) at 25.

<sup>145</sup> European Commission, Communication from the commission, *Europe 2020 – a strategy for smart, sustainable and inclusive growth*, Brussels 3.3.2010, COM(2010) 2020, available at <http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>, visited 11/05/17, at Executive Summary page 3.

<sup>146</sup> European Commission, Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and The Committee of the Regions, *The CAP towards 2020: Meeting the food, natural resources and territorial challenges of the future*, Brussels 18.11.2010, COM(2010) 672 final, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0672:FIN:en:PDF>, visited 11/05/17, at page 6, (in the original text “green growth” is written with bold font).

<sup>147</sup> Ibid at page 6 footnote 7.

<sup>148</sup> The proposal on Organic production regulation (n 5) at preamble point 2-8; European Commission, *Europe 2020 – a strategy for smart, sustainable and inclusive growth* (n 145)

The 2014 proposal for the review of the organic regulation points out the close relationship between the CAP and Organic production policy system. The preamble of the proposal as it was formulated in 2014 states that, “the objectives of the organic production policy are embedded in the objectives of the CAP...”<sup>149</sup> and “Furthermore, organic production is a system that contributes to the integration of environmental protection requirements into the CAP, and promotes sustainable agricultural production.”<sup>150</sup> The proposals explanatory memorandum declares that it is consistent with the Europe 2020 Strategy and the CAP reform for the period 2014-2020. Organic production is there identified as a key-element in the sustainable food production aim of the CAP during 2014-2020.<sup>151</sup>

### 4.3 The Proposal for amending the EU organic regulations

On the 28<sup>th</sup> of June 2017 the Maltese presidency and the European Parliament have reached a preliminary agreement on the new regulation. The process of reviewing the regulation has taken longer than initially expected. This preliminary agreement needs to be formally endorsed and approved by the Council’s Special Committee on Agriculture, the Council and the Parliament before it can be adopted and applied. It will also undergo a technical text revision. The new regulation is estimated to be applied from the 1<sup>st</sup> of July 2020.<sup>152</sup>

The IFOAM EU Regional Groups Director Eduardo Cuoco made a critical statement in 2016 on the long negotiation process. He believed that it has led to the disappearance of the innovative aspects by rewriting the proposal to match what already exist. He was also critical of how the review will deliver on the improvement and strengthening of the environmental and social goals, to not create something that is too similar to the existing regulation. As an example, he considers that the organic import reviews do not support the development of the organic markets abroad. Instead they focus only on the EU regulation and forcing smallholders in developing countries to fulfil conditions of the EU regulations.<sup>153</sup>

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at Executive Summary page 3-4; European Commission, *The CAP towards 2020: Meeting the food, natural resources and territorial challenges of the future* (n 146) at page 6.

<sup>149</sup>The proposal on Organic production regulation (n 5) at preamble point 3.

<sup>150</sup> Ibid at preamble point 4.

<sup>151</sup> Ibid at Explanatory Memorandum 1.4.

<sup>152</sup> Council of the EU, *Green light to new European rules on organic farming* (Press release 421/17, Press office – General Secretariat of the Council, Brussels, 28/06/2017) available at [http://www.consilium.europa.eu/press-releases-pdf/2017/6/47244661931\\_en.pdf](http://www.consilium.europa.eu/press-releases-pdf/2017/6/47244661931_en.pdf), visited 15/09/17;

<sup>153</sup> European Commission Press Release, Organics: Commission proposal for more and better, Brussels 25 March 2014, Contacts: Roger Waite and Fanny Dabertrand; Eduardo Cuoco, IFOAM EU Director, RE: The organic regulation review has reached a *dead end – we need to turn around*, International Federation of Organic Agriculture Movements EU Regional Group, Open Letter, Brussels 7 December 2016.

The idea behind the new proposal was to address the shortcomings of the current system, update the rules in response to the last decade's market growth and adjust to future challenges. The legislators' ambition has been to create an improved version of the organic regulation that is more in line with today's organic sector. They have set out to make the rules more modern and uniform by having simpler and clearer production rules, strengthening the control system and additionally to make the competition rules fairer both within the EU and in regard to trade with third countries. The current step for the EU legislators and other organic organisations is to examine the text and consider its' future impacts on operators and sustainable development.<sup>154</sup>

The challenge is to manage the expansion of the organic market without harming consumer trust and weakening the environmental protection. Exceptions were previously created to help the early transition and expansion of the market sector, but now they have become obsolete and risk undermining the integrity of the principles of organic farming and complicating the interpretation and implementation of the scheme. Increased retail sales and demand have increased the risk of fraudulent behaviour, which can harm consumer trust. Harming consumer trust can create a risk of market failure of the organic market sector, by giving the whole sector a negative reputation. To prevent this, control systems need to be able to guarantee the credibility of the scheme. The control system plays a particularly important role for consumer trust in imported organic goods. Imports are an important source of supply to meet the growing consumer demand. In order to respond to these challenges, it is suggested to pay particular attention to synergies between EU policies and instruments. The Action Plan will take account of and contribute to the objectives in the Europe 2020 Strategy<sup>155</sup>, the Environment Action Programme to 2020<sup>156</sup> and the review of the Common Agricultural Policy.<sup>157</sup>

The grounds for the new revision are the shortcomings described in the proposal as:

*“Production rules do not, sufficiently take into account evolving consumer and citizen concerns and expectations; labelling rules are complicated; weaknesses in the control system and in the trade regime have been identified. The legislation is complex and entails a high level of administrative burden which is stopping small farmers from joining the Union's organic scheme. Some of the*

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<sup>154</sup> Council of the EU, *Green light to new European rules on organic* (n 152).

<sup>155</sup> European Commission, *Europe 2020: A strategy for smart, sustainable and inclusive growth* (n 145).

<sup>156</sup> Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet', OJ L 354, 28.12.2013, p. 171–200.

<sup>157</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Action Plan for the future of Organic Production in the European Union*, COM(2014) 179 final, Brussels, 24-03-14, at sections 1-4.

*exemptions that were needed for the development of the sector seem no longer to be justified.*<sup>158</sup>

The three main objectives of the proposal are “maintain consumer confidence, maintaining producer confidence, and making it easier for farmers to switch to organics.”<sup>159</sup> They seek to re-focus on the principles of organic production to closer adhere to the consumers’ expectations. One of the proposals main drivers is “a risk of erosion of consumer confidence, notably because of the many exceptions that are watering down organic production rules and because of the fraud cases that have developed in connection with shortcoming in the control system and in the import regime.”<sup>160</sup> The 2007 regulation on organic farming risk creating unfair competition among the operators in the EU and third countries. The proposal wants in particular to review the import rules, by strengthening and harmonising rules both within the EU and in the international dimension. Further it wishes to improve the control system, for enhanced traceability and fraud prevention. They wish to remove many of the exception rules, reduce administrative costs for farmers, simplify the legislation, especially in the import regime, and improve transparency.<sup>161</sup>

The simplification process pursues the objective of simplifying the legislative burdens. The legislative burdens can be simplified by harmonising the rules of overlapping policies. To make the regulation consistent with other policies and regulations, the proposal takes account of and is a part of several other EU regulations such as the Europe 2020 Strategy, the Common Agricultural Policy, the agricultural product quality schemes<sup>162</sup> and the 2017 EU regulation on Official controls. The organic production is pointed out as a key-element of the Common Agricultural Policy. It is also a big part of the EU schemes to promote a sustainable, environmental friendly, resource efficient, competitive economy.<sup>163</sup>

The 2017 Official controls regulation was finalised before the review on organic production had reached agreement. The organic regulations proposal

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<sup>158</sup> The proposal on Organic production regulation (n 5) at Explanatory Memorandum 1.1.

<sup>159</sup> European Commission Press Release, *Organics: Commission proposal for more and better*, Brussels 25 March 2014, Contacts: Roger Waite and Fanny Dabertrand.

<sup>160</sup> The proposal on Organic production regulation (n 5) at Legislative Financial Statement 1.5.1, (in the original text “many exceptions” is written in bold font).

<sup>161</sup> The proposal on Organic production regulation (n 5) at Explanatory Memorandum and Legislative Financial Statement; European Parliament/Legislative Observatory, 2014/0100(COD) – 24/03/2014 Legislative proposal, Legislative proposal COM(2014)0180 Summary, version 7.12, last updated 10/05/17, <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1343926&t=e&l=en>, visited 10/05/17; Huber, Schmid and Möller, *Standards and Regulations*, in the book Willer, Lernoud (ed.), *The World of Organic Agriculture. Statistics and Emerging Trends 2016* (n 5) at page 140; Willer, Meredith, *Organic Farming in Europe*, in the book Willer, Lernoud (ed.), *The World of Organic Agriculture. Statistics and Emerging Trends 2016* (n 5) at page 193.

<sup>162</sup> Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs [2012] OJ L343/1.

<sup>163</sup> The proposal on Organic production regulation (n 5) at Preamble 2-7, Explanatory Memorandum 1.4.

is however consistent with the new regulation on Official controls, which has made changes that affect the control rules in the Organic regulations. The 2017 Official controls regulation aims to integrate specific area legislations containing official controls into one legislative framework. The rules on controls on the organic food products will thereby be legislated in the same control system as other food items in the EU, but have specified rules for organic production controls. The harmonisation and integration of the official control provisions on food and feed in the EU in one single text will simplify and clarify the administration for operators and authorities.<sup>164</sup>

Both the organic regulation and the new 2017 Official control regulation need to be amended in order to reach a more easily implemented and harmonized regulation and control thereof. It need to be adapted to for example new responsibilities and obligations given to the control authorities on reporting, certification and supervision. Article 25 of the 2014 proposal on Organic production regulation refers to article 85 and 86 of the 2017 Official controls regulation, and that it is an official certification such as described therein.<sup>165</sup>

All member states have implemented the EU legislation on organic farming in their national law and most national organic legislation refer in full to the EU regulation. However, there are differences between the national rules of the member states because of both diverging interpretations of the legislation and the member states option of applying their own national law areas that are not covered by the regulations. Differing interpretations and national laws can affect the fair competition negatively among the operators and farmers in the EU.<sup>166</sup>

In the study report evaluating the EU legislation on organic farming from 2013, the exceptional and transitional production rules were examined. It questioned the adequacy and justification of these rules in the 2007 regulation. The exceptional and transitional rules in the legislation where included to transition from conventional farming to the organic system. The justification was that the availability of organic supplies needed to farm organically. The justification for the exceptional rules were also to only be as transitional rules while developing the organic sector so to create enough supply for the organic producers in the future. The exceptional rules also intended to provide flexibility for the differences in the member states climate, geography, and structural constraints. The evaluation concluded that “The justification for exceptional and transitional rules is not fully

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<sup>164</sup> 2017 Official Controls Regulation (n 85) at preamble 19; The proposal on Organic production regulation (n 5) at Explanatory Memorandum 1.4, 3.1.

<sup>165</sup> The proposal on Organic production regulation (n 5) at article 25, 44, preamble 80.

<sup>166</sup> 2007 Regulation on organic production (n 3) at preamble 21-22, 24, 26, 29, and article 22-25, 38; Commission Implementing Regulation (EU) 2016/1842 of 14 October 2016 amending Regulation (EC) No 1235/2008 as regards the electronic certificate of inspection for imported organic products and certain other elements, and Regulation (EC) No 889/2008 as regards the requirements for preserved or processed organic products and the transmission of information (n 54); Padel, Vieweger, Nocentini, Devot, Schmid, Stolze, *Adequacy of the production rules* in the Report Sanders (ed.), *Evaluation of the EU legislation on organic farming* (n 2) at 75,78-79.

adequate.”<sup>167</sup> They base the conclusion on the fact that there is no evidence that these rules have helped in developing the supply for the development of the organic farming sector and that the use of non-organic inputs goes against the principles of organic farming. The rules could only be justified if there is no negative impact on the development of the sector, if it does not disadvantage some producers or go against consumers expectations. It could not be shown that the rules fulfilled these requirements for the justification of all the different production exceptions.<sup>168</sup>

In the public consultation in the review process of the regulation the majority responded that they were in favour of removing the exceptional rules. The proposals preamble states that the exception provisions have had a negative impact on organic production and has required a considerable administrative burden. It also distorted competition and threatened consumer confidence. Therefore, the proposal limits the use of exceptions to cases of catastrophic circumstances. The Commission will be empowered to adopt delegated acts specifying the criteria for situations qualifying as catastrophic circumstances. The scope for member states granting exceptions has been limited. There is still an option for member states to have national provisions that can be stricter on the use of products and substances in the production of organic products. The national law need to be based on Union law.<sup>169</sup>

The new 2017 Official control regulation’s disposition and level of detail is quite different from the 2004 Official regulation. The definitions, scope, commission empowerment, and the common set of rules on goods entering the union have been broadened, clarified, and redrafted. The new regulation has specific and additional rules for certain areas, one of which is organic products. These specific rules on official controls on organic production and products clarify the commission’s empowerment to adopt implementing acts unifying the practical arrangements of official control.<sup>170</sup>

One of the sensitive issues of the debate in the trialogue meetings was the control system. The control system is an intrinsic part of a certification system. The organic label is only credible for consumers if the organic production can be verified by official controls in an efficient way at all stages of the production. The debate on control systems has concerned the mechanism governing the frequency of controls, either it would be regular mandatory physical inspections or a risk-based control system. The latest Agriculture and Rural Development Committee report from November 2015, recommended that the proposal should be amended so as to appease both stand points. Controls shall be on a risk-based assessment and subject to at least an annual physical on-site inspection. The committee reported that

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<sup>167</sup> Padel, Vieweger, Nocentini, Devot, Schmid, Stolze, *Adequacy of the production rules in the Report Sanders* (ed.), *Evaluation of the EU legislation on organic farming* (n 2) at 127.

<sup>168</sup> *Ibid* at 74-75, 97-98, 127.

<sup>169</sup> The proposal on Organic production regulation (n 5) at art 7, 17, preamble 43, Explanatory Memorandum 2.2, 5.

<sup>170</sup> 2017 Official Controls Regulation (n 85) at article 25; Official Controls Regulation Proposal 2013 (n 92) at Explanatory Memorandum 5, *Optional Elements*, page 9-12.

member states stressed the need to strengthen the Commission's supervision in third countries.<sup>171</sup>

A shortcoming in the 2007 Regulation on organic production is the uncertainty of what measures shall be taken when control bodies find non-authorised substances or products. In the regulation there are no rules on what measures to take in that situation which have led to different approaches and treatment have been developed in the Union. The debated differences in fees of controls and actions taken by the control bodies when finding non-compliance, have led to new provisions in the proposal to increase transparency and setting out what actions to be taken in certain instances. More uniform and clear provisions will increase consumer confidence in the certification process. Regulation of the fees that may be collected will also ensure that products are treated with equal market access and fair competition on the internal market.<sup>172</sup>

The new feature of a risk-based control system is introduced to make the compliance pressure more balanced and fairer for the operators. The expected results of a risk-based approach are “to improve the effectiveness and efficiency of controls and contribute, together with a more reliable import regime, to fraud prevention.”<sup>173</sup>The mandatory annual inspections have been removed and exchanged for the inspection frequency to be set by the operators' risk profile. This risk-based system where the frequency of controls is adapted to the risk profile is adopted in accordance with the Official controls regulation. This change in the system will hopefully reduce the administrative burden, increase efficiency, and reduce the costs for the control authorities. This new approach to controls might meet critique from some stakeholders and member states as it can be seen as inappropriate if the enforcement and control rules are not made fair and capable of ensuring the quality of the organic certification. Article 44 of the Proposal on organic production regulation sets out how the 2017 Official controls regulation intends to be amended to accommodate for the organic review. Accordingly,

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<sup>171</sup> The proposal on Organic production regulation (n 5) at preamble 58; European Parliament / Legislative Observatory, European Commission, DG Agriculture and Rural Development, Commissioner Phil Hogan, COM(2014)0180, Summary, *2014/0100(COD)-24/03/2014 Legislative proposal*, 24-03-2014, available at <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1343926&t=e&l=en>, version 7.12, last updated 10-05-2017, visited 10-05-2017; European Parliament / Legislative Observatory, Council of the European Union, Council configuration Agriculture and Fisheries, meeting 3386, Summary, *2014/0100(COD)-11/05/2015 Debate in Council*, 11-05-2015, <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1389221&t=e&l=en>, version 7.12, last update 10-05-2017, visited 10-05-2017; European Parliament / Legislative Observatory, European Parliament Committee responsible: Agricultural and Rural Development, Rapporteur Martin Häusling, A8-0311/2015, Summary, *2014/0100(COD)-05/11/2015 Committee report tabled for plenary, 1st reading/single reading*, 05-11-2015, available at <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1408801&t=e&l=en>, version 7.12, last update 10-05-2017, visited 10-05-2017.

<sup>172</sup> The proposal on Organic production regulation (n 5) at article 24, 32, Preamble 49, Explanatory Memorandum 3.1.

<sup>173</sup> The proposal on Organic production regulation (n 5) at Legislative Financial Statement 1.4.2.

the rules on the risk assessment and the frequency of controls will be established in the specific rules on organic products in the official controls regulation. The methods and responsibilities of the control authorities will also be found there in the official controls regulation.<sup>174</sup>

Another new feature of the regulation is a system for small-scale farmers to be certified as a group. Group certification is introduced to further the fair competition since it reduces the administration and certification costs for small-scale producers. There are also new provisions to prevent fraudulent behaviour, such as concentrating all controls of an operator to one control body. Operators or groups of operators shall not receive certificates from different control bodies for the same group of products. Operators cannot get individual certificates if they are in a group of operators where the group certificate covers the activity. A group of operators shall set up internal controls, so the group can detect non-compliance of the rules by a group member. The group is responsible for verifying compliance of each member and a member's non-compliance may result in the withdrawal of the certification for the entire group.<sup>175</sup>

In the evaluation of the 2007 regulation on organic production made in 2013, the adequacy of the import procedures was evaluated. It was found that there were concerns on the procedure of granting import authorisations. Weaknesses were identified in that it was difficult to keep a harmonized approach in the competent authorities issuing authorisations and that the member states were lacking in their inspection of the control bodies issuing the certificates of inspection. These import procedures were also prone to create unfair competition and the interpretation of the third country rules was not equivalent.<sup>176</sup>

The proposal also recognised the weaknesses in the import regime and has therefore removed the option of individual import authorisations being made by member states. The recognition of third countries can in the proposal be granted through an international agreement between the EU and the third country. The equivalency agreements are also restricted to be pursued as reciprocal recognition of equivalence, meaning that they will no longer grant equivalence guarantees of the third country unless the third country in return agrees on recognising the EU organic rules as equivalent. To ensure a smooth transition to the new system, the third countries recognised by individual authorisation by member states will for a transitional period still be valid.<sup>177</sup>

In the proposal an organic product may be imported from a third country if a) the product complies with the rules in the regulation and have been subject to the control by a recognised control body or b) if the product comes from a

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<sup>174</sup> Ibid at art 44, Explanatory Memorandum 3.1, Legislative Financial Statement 2.2.1.

<sup>175</sup> Ibid at article 25-26, preamble 60, Explanatory Memorandum 3.1.

<sup>176</sup> Huber, Neuendorff, Stolze, *Adequacy of the import regime* in the Report Sanders (ed.), *Evaluation of the EU legislation on organic farming* (n 2) at 170-173.

<sup>177</sup> The proposal on Organic production regulation (n 5) at art 27-31, 41, Preamble 63-66, Explanatory Memorandum 1.3.

country that is recognised as equivalent. The recognition of the control bodies in option a) will be supervised by the Commission. The Commission may also adopt implementing acts on the recognition of control bodies. Under option b) the equivalence of the third country must be made through a trade agreement with the union and be an organic system that meets the same objectives, principles and rules that assures the same level of assurance as the organic rules of the EU. Under option b) there will be the option of importing goods on the rules of the 2007 regulation on equivalence for a transitional period.<sup>178</sup>

When the proposal was made in 2014 there were no mentions of precautions in the text. The proposal only sets that the general principle of the appropriate management methods is based on preventative measures and that the farmers need to take “all appropriate measures to prevent the risk of such contamination”<sup>179</sup> to be eligible for compensation for losses from contamination which prevents them from marketing the product as organic. In a later amendment to the proposal it has been strengthened by including precautionary measures. The suggested text provides that “the operator shall take all necessary precautionary measures in order to avoid the presence of non-authorized processes, products or substances in organic production.”<sup>180</sup>

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<sup>178</sup> Ibid at art 27-31, 41.

<sup>179</sup> The proposal on Organic production regulation (n 5) at art 4, 20.

<sup>180</sup> Citation from European Parliament / Legislative Observatory, Summary, 2014/0100(COD)-05/11/2015 Committee report tabled for plenary, 1st reading/single reading (n 171); Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control, OJ L 250, 18.9.2008, p. 1–84, at art 63; 2017 Official Controls Regulation (n 85) at art 4, 20; European Parliament / Legislative Observatory, Summary, 2014/0100(COD)-24/03/2014 Legislative proposal (n 171); European Parliament / Legislative Observatory, Summary, 2014/0100(COD)-11/05/2015 Debate in Council (n 171); European Parliament / Legislative Observatory, Summary, 2014/0100(COD)-05/11/2015 Committee report tabled for plenary, 1st reading/single reading (n 171).

# **5 Discussion on the challenges and opportunities of the review of the organic regulation**

In this chapter I will describe and discuss the amendments to the proposal, this discussion will be based on the previously described aims, objectives and challenges of the proposal. I will point out the challenges and opportunities that the legislators faced during the reviewing process and discuss how the amendments are responding to these challenges and opportunities. I will especially focus on the objectives of the review process of simplifying the regulation while maintaining consumer and producer confidence in the label.

## **5.1 Cooperation, flexibility and innovation**

The new vision from the internationally important IFOAM on the organic movements future is very interesting in view of the coming review on the EU organic regulations. The Organic 3.0 project and the EU review are occurring simultaneously and IFOAM have a big impact on the organic standards worldwide. Internationally the EU have a major leading role in the organic standard harmonisation and recognition by being an important trade partner and having a large market for organic products. EU have the traditional regulatory system of the Organic 2.0 model. How and if the EU can evolve into the envisioned 3.0 system of the IFOAM will be an interesting issue to follow in the future. The model is as I see it too young to be fully implemented by the leading governments such as the EU and US. However, the challenges of the current system and the beneficial opportunities of the upgraded system pointed out by the Organic 3.0 project are issues and opportunities of the EU review. Many of the six features measures and discussions are similar to the proposed amendments of the EU reviews, not only in the Organic regulations review but also in the other policy schemes and the Official Controls regulation.

One of the debated issues in the Organic regulation review has been the level of detail of the requirements. To detailed and it restricts innovation and inclusion. To flexible and it risks being exploited by fraudulent behaviour and greenwashing, which can damage the consumer trust and thereby jeopardise the entire system of organic labelling. For existing and coming organic labelling schemes globally, the benefits and withdraws of the new Organic 3.0 standard system have to be balanced. As I see it the Organic 3.0 will fit the developing countries and those countries without a current governmental regulation than those countries with an already strong organic label based on a governmental regulation. I think it is harder to find acceptance to a less restrictive regulation from consumers and operators that are used to more

restrictive system. The patterns are then already ingrained of what can be regarded as an organic production process and it can create an unfair competition for newer farmers entering into a market where the established farmers had higher requirements to enter the market.

Collaboration and co-regulation take advantage of different regulatory instruments abilities and work towards the same goals. Cooperation benefits all involved parties because it is a measure to pool know-how, fuel innovation, save costs and share risks. On one hand, private actors feel the impact of public policy and often have better knowledge and expertise about the production, processing, and trade practices. On the other hand, governments have better means of enforcement along the supply chains, can allocate funds and facilitate support by public policy. When different actors are included in making new rules and regulations, the regulation is better accepted and complied with and therefore more effective in reaching the objectives and less costly to enforce. The private sector can react to change more rapidly than governments and therefore innovate and challenge the government's policies. If the government is flexible and cooperates with the innovators in the private sector, the organic framework can develop alongside it, meet future needs of the private sector, and respond better to new challenges in reaching sustainability. Cooperation is likewise a central aspect for governments at the international level, both collaborating with other governmental regulation and private international organizations.<sup>181</sup>

Governments face the challenge of legislating and reviewing regulations that aim to benefit both the environment and market and trade. In addition, the member states have different interests and preconditions for farming and trade. For the regulation to be accepted and followed in the EU region the interests need to be properly balanced. Presumably, this balancing act has led to the long negotiation process in the triologue meetings.<sup>182</sup>

Public consultations have been used to review the organic regulations. Responders favoured to strengthen the environmental and quality aspects of the organic framework in order to stay close to the organic principles and objectives, and disapproved of the regulation of exceptions due to its negative effect of the uniformity of the regulations for member states. In response to the public consultations the legislators came up with alternative policy scenarios. The first alternative is an "improved status quo" of the regulation with improvements to the enforcement of the rules. The second alternative is a "market-driven option" to respond to the market development by creating more flexible rules and the exception rules would be integrated into the production rules. The third alternative is the "principle-driven option" which

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<sup>181</sup> Martínez Gándara, *The Law and Economics of Eco-Labels* (n 18) at 95-96, 282-286; Bowen, *The Case for Public-private Collaboration on Organic Agriculture*, in the book Willer, Lernoud (ed.), *The World of Organic Agriculture. Statistics and Emerging Trends 2016* (n 5) at page 152-156; CBTF, *Best Practices for Organic Policy: What developing countries can do to promote the organic agriculture sector* (n 19) at 11-16.

<sup>182</sup> Martínez Gándara, *The Law and Economics of Eco-Labels* (n 18) at 301.

would focus on better reflection of the organic principles in the production rules and take away the exception rules.<sup>183</sup>

The best alternative to efficiently achieve the policy objectives of the review and the objectives in CAP 2020 was deemed to be the “principle-driven option”. This would also be in line with the public consultations which of remaining close to the principles and removing the exceptions. The regulation will be affected by this policy alternative by amendments such as removing the exception rules, making the production rules more clear and simple, stronger harmonisation, improving the control rules and using a risk-based approach to controls.<sup>184</sup>

In my opinion, it is crucial that the negotiations about reviewing the organic regulations take into account future CAP consultation. Since the regulation process of the organic regulation has taken longer than expected, the original proposal will soon be out dated, and it is already in some respects. The organic proposal might be concluded before the new changes to CAP have been clearly proposed. This could become a future issue, if the organic framework has to be amended soon after it comes into force because of the big changes to CAP. To prevent this, the proposal could make it easy to amend the sections that will be affected by the changes in CAP. They could also postpone the conclusion of the discussions on the organic framework proposal, to after the CAP is concluded. If the CAP reform is difficult, it could however mean that there might be many more years until the organic regulation is reformed. The negotiation should also adjust the proposal to the reforms of agriculture and product quality schemes made during the 2014 legislative procedural. This would allow the negotiations to be up to date on the policies that have been made during the procedure and which will come into force in the near future.

To achieve the best outcome of an organic governmental regulation, cooperation with private actors is instrumental. In the organic sector many overlapping normative instruments, both private and governmental, interacting with consumers and the market are at place. In most countries, the development of an organic governmental framework started with private organisations and farmers cooperating in challenging the governmental agricultural policies of today. It is considered best practice by the Capacity Building Task Force on Trade of the UNEP<sup>185</sup> and UNCTAD<sup>186</sup> to include the private organic sector in the formation of governmental organic regulations. Most governmental organic regulations around the world today consult the public and stakeholders in the organic sector in the regulatory process. Public stakeholders in the organic sector are consulted in most governmental regulations around the world today, this interaction is mainly

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<sup>183</sup> The proposal on Organic production regulation (n 5) at Explanatory Memorandum 2.2-2.3.

<sup>184</sup> The proposal on Organic production regulation (n 5) at Explanatory Memorandum 2.2-2.3.

<sup>185</sup> United Nations Environment Programme

<sup>186</sup> United Nations Conference on Trade and Development

driven by three common factors; shared goals, complementary roles and assets, and risk management in making organic policies.<sup>187</sup>

It is imperative that the EU organic framework is voluntary in nature and does not prevent other national or private organizations organic labels to be used simultaneously. A governmental labelling scheme needs to be properly designed so it is not a Technical Barrier to Trade (TBT) in conflict with the World Trade Organisation's (WTO) treaties on free trade. If governmental certification is mandatory and not voluntary it can be a Technical Barrier to Trade. It comes in conflict with the *Agreement on technical barriers to trade* if imported products are treated less favourably than national products and the policies are "more trade-restrictive than necessary to fulfil their legitimate objectives"<sup>188</sup>. Legitimate objectives of a technical regulation are amongst others protection of the environment and human health. A voluntary governmental labelling program is legitimate as long as it is not a disguised mandatory certification that has arbitrary protectionist and trade restrictive rules.<sup>189</sup>

The rules on organic products made by governments can create a technical barrier to trade that disadvantages organic products compared to conventional products in international trade. Technical barriers create extra hurdles in the trade of organic goods that in the end increase the price of the product for the consumer. A major barrier to the trade of certified goods is the recognition of organic regulations as compliant. Differences in climate, geography, governmental structure, and culture calls for a different policy approach in different regions. The policy recommendations from the IOFAM therefore suggest that import regulations therefore should be based on equivalence rather than compliance.<sup>190</sup>

The policy recommendation states that "It is a false idea that protecting one's organic market against foreign competitors will help to develop it."<sup>191</sup> The suggested best practice is to have a special section in the regulation on imports where nations recognise each other's domestic regulations as equivalent to its' own. Global platforms like the Codex Alimentarius and IFOAM, where governments can discuss and negotiate the standards, are important for the

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<sup>187</sup> Martínez Gándara, *The Law and Economics of Eco-Labels* (n 18) at 282-286; Bowen, *The Case for Public-private Collaboration on Organic Agriculture*, in the book Willer, Lernoud (ed.), *The World of Organic Agriculture. Statistics and Emerging Trends 2016* (n 5) at 152-156; CBTF, *Best Practices for Organic Policy: What developing countries can do to promote the organic agriculture sector* (n 19) at 11-16.

<sup>188</sup> Agreement on Technical Barriers to Trade, 1868 U.N.T.S. 120, World Trade Organisation, Uruguay Round Agreements at paragraph 2.1-2.2.

<sup>189</sup> Martínez Gándara, *The Law and Economics of Eco-Labels* (n 18) at 236-239, 324-327, 305, 334-336.

<sup>190</sup> International Federation of Organic Agriculture Movements (IOFAM organics international), *How Governments can Regulate Imports of Organic Products Based on the Concepts of Harmonization and Equivalence* (Policy brief, Charles-de-Gaule-str 5, 53113 Bonn, Germany, Approved by the World Board in July 2011) at page 2-3.

<sup>191</sup> *Ibid* at page 3.

harmonisation process. These tools help governments shape their import process and production standards so that they are globally applicable.<sup>192</sup>

The reviewed proposal does not include any mention to WTO or the Codex Alimentarius. The reviewing process seems to have removed the references to international agreements, policies and guidelines and only refer to regulations and policies from the EU. The reason for this removal is not discussed in the preamble or the explanatory memorandum of the reviewed proposal. The question is if this is a step away from recognising the international agreements and guidelines as important actors in the legislation of the organic sector in the EU. In the official controls regulation there is a reference to the Codex Alimentarius, it could be that it was seen unnecessary to include these references in two overlapping control regulations.<sup>193</sup>

## 5.2 Simplification, harmonisation and clarification

An aim of the review of the organic regulation is to simplify the legislative burdens, in order to do so and to make the regulation more resource-efficient, regulations should be simplified and harmonised where synergies exist between regulations. This can be done by aligning and clarifying definitions, integrating rules from different regulations into a single legislative framework, removing duplicate rules, make the operation of the legislative system more efficient and to make sure the rules are consistent and updated to the Common EU policies and schemes.<sup>194</sup>

Simplifying, harmonising, and clarifying the regulation are measures to enhance the predictability and efficiency of the regulation. These measures together with removing exceptions to the rules will make control and supervision easier. Controllability is one of the key aspects in a labelling market tool because of its reliance on consumer trust to function. Improving the production and operational rules to be more efficiently controllable thereby leads to securing the key aspect of the market instrument of meeting the consumer expectation and creating trust. If consumers do not have trust in the organic food label it can lead to a market failure for organic food.<sup>195</sup>

The production and trade of agricultural products on the internal market is a matter of shared competence of the European Union and the Member States.<sup>196</sup> Harmonised legislation at the Union level is required and more beneficial for a proper functioning of the internal market as legislation on a

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<sup>192</sup> Ibid at page 2-6.

<sup>193</sup> The proposal on Organic production regulation (n 5); 2017 Official Controls Regulation (n 85) at art 121.

<sup>194</sup> 2017 Official Controls Regulation (n 85) at preamble 19-20, 85; The proposal on Organic production regulation (n 5) at Explanatory Memorandum 1.4.

<sup>195</sup> The proposal on Organic production regulation (n 5) at preamble 13, Explanatory Memorandum 3.1.

<sup>196</sup> The proposal on Organic production regulation (n 5) at Explanatory Memorandum 3.3.

Member state. A regulation may be adopted at the Union level if the “objectives of the proposed action cannot be sufficiently achieved by the Member States”, and if the action does not “exceed what is necessary to achieve the objectives of the Treaties”.<sup>197</sup> This is in accordance with the principle on subsidiarity and proportionality as set out in article 5 in the Treaty on the Union.<sup>198</sup>

The proposal describes the reasoning why the organic sector in the EU is a common regulation, instead of nationally or privately regulated, as this;

*“As part of the overall CAP, to ensure smooth development of the single market, a Union-wide organic scheme is more efficient than 28<sup>199</sup> different schemes. In addition, it allows for a stronger and more consistent trade policy vis-à-vis global trading partners, in particular by enhancing the bargaining power of the Union.”<sup>200</sup>*

Regulation is the best fitting legislative instrument for the organic production and labelling in EU, as it can prevent unfair competition among operators most efficiently. A more flexible instrument, such as directive or soft law, could increase the administrative burdens and create differences in interpretation and implementation.<sup>201</sup>

The organic regulation review has been prolonged in part by the question of how detailed the rules of the regulation should be. The debate on details in the production and control regulation have been difficult to compromise and the removal of exceptions can make it even harder to conclude. A more flexible regulation could make it easier for farmers and producers to convert to organic production, but also water down the regulations intended environmental protection and other principles. A stricter more detailed regulation can be difficult to conclude in a collective decision-making process and prevent innovation of new ideas and technologies. Seeing the debates on the proposal to review the organic regulation and the reflection papers discussion on protectionism it is unclear in what direction the EU is moving. There are arguments for both more cooperation and less regulation involvement on the EU level.

During this long process the organic movement has continued to develop and evolve. Another question, on the viability on the new revision of the regulation, is if the entire system of a governmental regulation is becoming old-fashioned and no longer the best option for the organic movement in Europe. Should the organic regulation be transformed into a more inclusive and flexible legislative system like the ones described by IFOAM on the

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<sup>197</sup> TFEU (n 58).

<sup>198</sup> The proposal on Organic production regulation (n 5) at preamble point 81.

<sup>199</sup> Notice, this was written before the United Kingdom left the European Union and there were 28 Member States.

<sup>200</sup> The proposal on Organic production regulation (n 5) at Explanatory Memorandum 3.3.

<sup>201</sup> The proposal on Organic production regulation (n 5) at Explanatory Memorandum 1.4, 3.3-3.4.

Organic 3.0 projects and discussed in the White Paper on the Future of Europe and the Reflection Paper on Harnessing Globalisation. It boils down to the question of what system can best achieve sustainable development and the aims of the organic movement in an increasingly globalised market without collapsing the market system due too unfair competition and consumer distrust.

The organic regulation plays a key role in the Common Agricultural policy scheme. The promotion of high standards and competitiveness of the agricultural market internationally can be promoted by a well-functioning organic regulation in the EU. The suggested amendments to the organic regulation and its connected policy and regulatory schemes are in line with the reflection papers advice on how to harness globalisation positively. The organic agricultural principles promote resilience in rural communities, environmental protection, and the market. It seeks new trade agreements and shaping the global standards in agriculture and trade towards cooperation, transparency, environmental protection, and fair competition. The new control and import amendments seek to strengthening the enforcement to prevent fraud and un-fair practices. This is made through; enhanced transparency and traceability through databases, clarification and harmonisation on interpretation and responsibilities, removal of exceptions, strengthening of the precautionary measures to be taken by operator, and strengthening of the Commissions supervision on imports from third countries. The new regulation on official controls has additionally changed the previous enforcement of organic products by integrating all food sectors' control regulation and thereby removing regulatory complexity.

I think the organic regulation can be one of these common regulations that as the reflection paper assesses can harness globalisation. It can make the EU companies and single market a competitive and innovative market if regulated correctly. It could promote and make the EU a leader in the field of organic agriculture and promote the EU's values of sustainability, solidarity, and environmental protection. Being the world's largest single market and one of the leading markets in organic retail sales the organic sector has a good starting position to advance into an even stronger world leader position in organic farming. The question is if the European union institutions and Member States can come to a conclusion and overcome the challenges in the legislation process. To make the new regulation be an effective instrument of managing the organic sector and effectively contribute to the objectives and principles governing the EU and Organic production.

## 6 Conclusion

The organic sector in the EU has been evolving and developing a lot since it was first introduced as a regulation in 1991. The regulation has gone through several revisions, added multiple additional implementation regulations and extended by a variety of amendments. The legal revisions have been encouraged as a response to the increasing demand and growth of the organic market. The EU organic market is the second largest market in the world and has increased continuously. The global market for organic trade has also been increasing and international trade in organic products is growing in both retail sale numbers and import and export agreements.

Organic agriculture is a holistic production management system that promotes socially, environmentally and economically sustainable production methods. Organic is a protected product labelling term. The organic label is a market tool that informs consumers about the credence attributes of the production of the product, such as environmental performance and impact in the production of the goods. Organic agriculture uses sustainable farming methods based on natural processes and seeks to protect natural resources, ecosystems and biodiversity and restricts the use of chemicals and pesticides. At the same time, it is designed to protect rural development, fair competition, the stability of the organic market sector and the profitability of producing and selling organic products. It is a market tool that aims at resolving the market failures that are a consequence of information asymmetries regarding products environmental costs.

The EU organic framework is part of the international umbrella network for organic agriculture, *The International Federation of Organic Agriculture Movements* (IFOAM). The aim of the IFOAM is to harmonise and spread the agricultural practices and principles of the organic sector. In addition to the IFOAM, there is the international standard the Codex Alimentarius, which coordinate the international organic food practices. It provides a guideline for the organic sector with the aim of protecting consumers health and ensuring fair practices in the food trade.

The first EU regulation on organic production was established in 1991. In 2004 the European Commission proposed to review the 1991 regulation as the regulation was not deemed to be adequate in harmonising national implementation of the regulation and this was a hinder to trade. There was a need to define common objectives and concepts for the equivalence and transparency of the organic production and to reinforce the organic farming standards and the import, control and inspection requirements.

The review of the 1991 regulation on organic production resulted in the adoption of a new regulation on organic production in the EU, the 2007 regulation on organic production. The 2007 regulation on organic production was a year later followed by two implementing regulations on organic

production, labelling and control and on the imports of organic products from third countries. The regulation and implementing regulations have been in force since 2009 and since then several amendments have been made to them. Some amendments have only just been applicable in 2017.

The 2007 regulations on organic production aims to ensure an effective functioning of the internal market, guarantee fair competition, and to ensure consumer confidence. The objective of the organic production is to establish a sustainable management system that produces high quality goods while protecting the environment, human health and welfare. The 2007 regulations general principles are management system based on risk assessment, preventative and measures and restriction on external inputs.

The production rules of the 2007 regulation on organic production and labelling establish how to sustainably manage agriculture. The farming methods shall respect the local ecosystem balance, contribute to biodiversity, use natural resources responsibly and enhance the health of soil, water, plants, and animals. The regulation prohibits the use of GMOs and restricts the products and substances that may be used in production and processing. The Commission authorises what substances and products may be used in a restricted list. The Commission may provide conditions for when exceptions from the production rules may be granted. The exceptions shall only be granted during a limited time and kept to a minimum. Member states may regulate national provisions that are stricter than the Union regulation. The organic regulation provides the minimum rules and national rules can restrict the use of substances or products further than the EU regulation. Stricter rules may only apply within the Member States territory, without restricting products produced outside of the territory.

The organic certificate label can only be used on a product that has been produced in accordance with the regulation. The use of the term organic production, and derivatives thereof, are protected for use within the framework. This prohibition and the definitions of the requirements of organic production are important for consumer trust. It hinders fraud and greenwashing by creating distinction and separating EU organic farming from other eco-labels and non-organic farming.

The EU regulation on official controls, is the baseline for the control activities and covers all official food and feed controls both organic and non-organic. The organic regulation operates on top of this as a more specific scheme, *lex specialis*. Non-compliance to the organic regulation can also mean liability in respect of the official control and food laws. The new official control system from 2017 integrates many separate rules into one single framework. This creates a uniform approach along the entire food chain. The harmonisation and unification of the official control framework require that current acts in the area are repealed or amended.

The control system within the organic regulations consists of two main elements. They consist of on-site controls of organic operators that occur at

least once a year, and a public surveillance system to supervise and monitor the control bodies. The control system of a certification scheme ensures the effective functioning of the label, by enforcing and monitoring compliance. If an irregularity or infringement is found at the operator, the control body or the control authority shall ensure that the products concerned are not sold with an organic label or any reference to organic production. The official control regulations state that the control authorities shall operate with a high level of transparency and relevant information shall be available to the public.

Organic production and trade is becoming more globalised and a large number of the organic products sold on the EU market have been imported from countries outside the European Union. The European Union has the second largest single market in the world, with 36 % of the world's organic retail sales in 2015. Imported goods compete with EU produced goods on the internal market. It is important to oversee that the organic labels reputation in the EU is not harmed by the import of organic goods. The consumers' confidence in the organic system, including the imported products, is key for the organic movements existence. The imported goods must provide the same level of assurance in the quality of the product at the same level as the EU produced goods. Import from third countries is of great value for the continued development of the organic market, since the supply of goods needs to meet consumers demands.

There are two options to import organic goods into the EU; imports of "compliant" products, and products providing "equivalent guarantees". The Commission has established a list of recognised "compliant" control bodies that operate in third countries to control and certify products that are produced according to the organic EU regulations. The entire chain of producer, exporter and control authorities need to be controlled, accredited, and certified to be in compliance with the EU organic regulations. The second option is recognising the third country's production and control standards as equivalent to the EU standards. The commission includes recognised third countries, control authorities or control bodies on lists equivalency. The conditions for products to be recognised and imported with equivalent guarantees are that the measures and rules on production and control can be seen as equivalent to the EU organic rules. The Codex Alimentarius guides the recognition of equivalent systems to facilitate imports. The EU organic import is also an important element for the fulfilment of the international free-trade agreements of the WTO. The Organic regulation cannot be legislated in a manner that is more trade restrictive than necessary to fulfil the objectives and thereby a possible Technical Barrier to Trade.

IFOAM is currently working on a major project that will shift the organic movement from what they call organic 2.0 to the next generation of organic production and labelling systems. Organic 2.0 is the current system of private standards, public regulations and global recognition. The organic 3.0 concept seeks to be a more innovative and inclusive production system. It is an outcome-based model with continuous improvement and adaption to local contexts and initiatives. The argument to move to a more inclusive standard

is because the current system of government regulations cannot evolve and be flexible enough to be a truly sustainable production system.

The *White Paper on the Future of Europe* and the *Reflection Paper on Harnessing Globalisation* was published in 2017. The White Paper looks into the future of Europe for the coming decade. It visualises five scenarios of how Europe can evolve by 2025. The five scenarios discuss different ways the EU can continue its legislative work. The EU can: continue carrying on and reforming as before; focus its' attention and actions on nothing but the single market; carry on as before but give the member states that want to do more within the EU to form coalitions together; to prioritise certain policy areas to do less more efficiently; or, cooperate much more within the EU to do much more together in all areas.

The *Reflection Paper on Harnessing Globalisation* assesses what globalisation means for Europe and how globalisation can be shaped in line with the values and interests of the EU. European citizens' views on globalisation are mixed. Globalisation creates both benefits and challenges. The Commission argues in the reflection paper for more collective actions through multilateral institutions, for promotion of common solutions to the global challenges. This in accordance with the EU's founding values of cooperation, solidarity, and rule of law. They argue that in order to maintain EU's influence the Union needs to speak with one voice. The EU should continue developing progressive trade and investment agendas, to open markets and enhance environmental protection, food safety and human rights. The trade agreements should uphold the public policy objectives and EU high standards, in areas such as environmental protection and unfair competition.

On the 28<sup>th</sup> of June 2017 the Maltese presidency and the European Parliament have reached a preliminary agreement on the new regulation. The process of reviewing the regulation has taken longer than initially expected. The legislator's ambition has been to create an improved organic regulation that is more in line with the today's organic sector. They have set out to make the rules more modern and uniform, by having simpler and clearer production rules, strengthening the control system and additionally to make the competition rules fairer both within the EU and in regard to trade with third countries. They seek to re-focus on the principles of organic production, to closer adhere to the consumers' expectations. The proposal reviews the import rules, by strengthening and harmonising rules both within the EU and in the international dimension. It seeks to improve the control system, remove exception rules, reduce administrative costs, simplify the legislation and improve transparency.

The proposal takes account of and is a part of several other EU regulations such as the Europe 2020 Strategy, the Common Agricultural Policy, the agricultural product quality schemes, and the 2017 EU regulation on Official controls. The organic production is pointed out as a key-element of the Common Agricultural Policy. It is also a big part of the EU schemes to promote a sustainable, environmental friendly, resource efficient, competitive

economy. The scope for member states granting exceptions has been limited in the proposal, since it was deemed that there is no longer an adequate justification for exceptions to be made for the promotion of organic agriculture. The control system is an intrinsic part of a certification system. The organic label is only credible for consumers if the organic production can be verified by official controls in an efficient way at all stages of the production. A new feature of the organic regulation in the proposal is that controls shall be on a risk-based assessment. This risk-based system where the frequency of controls is adapted to the risk profile is adopted in accordance with the Official controls regulation. Another new feature of the regulation is a system for small-scale farmers to be certified as a group. There are also new provisions to prevent fraudulent behaviour, such as concentrating all controls of an operator to one control body.

In the proposal an organic product may be imported from a third country if the product complies with the rules in the regulation and have been subject to the control by a recognised control body or if the product comes from a country that is recognised as equivalent. The recognition of third countries can in the proposal be granted through a reciprocal international agreement between the EU and the third country. The option of individual import authorisations being made by member states has been removed.

An aim of the review of the organic regulation is to simplify the legislative burdens. Simplifying, harmonising, and clarifying the regulation are measures to enhance the predictability and efficiency of the regulation. These measures together with removing exceptions to the rules will make control and supervision easier. Controllability is a key aspect in a labelling market tool because it relies on consumer trust to function. The best alternative to efficiently achieve the policy objectives of the review and the objectives in CAP 2020 was deemed to be the “principle-driven option”. To achieve the best outcome of an organic governmental regulation, cooperation with private actors is instrumental. In the organic sector many overlapping normative instruments, both private and governmental, interacting with consumers and the market are at place. It is imperative that the EU organic framework is voluntary in nature and does not prevent other national or private organizations organic labels to be used simultaneously. A governmental labelling scheme needs to be properly designed so it is not a TBT in conflict with the WTO treaties on free trade.

The review of the regulation has taken much longer than expected. A detailed regulation such as the organic regulation can be difficult to conclude in a collective decision-making process and prevent innovation of new ideas and technologies. During this long process the international organic movement has continued to develop and evolve. The question is if the reviewed regulation will be out-of-date when it is finally adopted. Perhaps a more flexible regulatory system would better achieve the objectives and principles of the organic movement. Examples on more flexible regulatory systems is being discussed at the moment in IOFAM and in the policy papers on the future of the EU.

The new vision from the internationally important IFOAM on the organic movements future is very interesting in view of the coming review on the EU organic regulations. EU have the traditional regulatory system of the Organic 2.0 model. How and if the EU can evolve into the envisioned 3.0 system of the IFOAM will be an interesting issue to follow in the future. The model is as I see it too young to be fully implemented by the leading governments such as the EU and US. However, the challenges of the current system and the beneficial opportunities of the upgraded system pointed out by the Organic 3.0 project are issues and opportunities of the EU review.

I think the organic can make the EU companies and single market a competitive and innovative market if regulated correctly. It could promote and make the EU a leader in the field of organic agriculture and promote the EU's values of sustainability, solidarity, and environmental protection. The promotion of high standards and competitiveness of the agricultural market internationally can be promoted by a well-functioning organic regulation in the EU. The suggested amendments to the organic regulation and its connected policy and regulatory schemes are in line with the reflection papers advice on how to harness globalisation positively.

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