

REASONED OPINION

of the European Affairs Committee of the Federal Council

of 14 May 2014

**pursuant to Article 23g (1) of the Austrian Constitutional Law in conjunction with
Article 6 of Protocol No.2 on the application of the principles of subsidiarity and
proportionality**

COM (2014) 180 final

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

A. Reasoned Opinion

The project under consideration is incompatible with the principle of subsidiarity.

B. Grounds for Reasoned Opinion

The proposed regulation is intended to replace the current Regulation (EC) No. 834/2007. As stated by the Commission, the new legislation is being proposed in response to the dynamic development of the fast growing market for organic products and the changing expectations of economic operators and consumers. Production rules are to be strengthened and harmonised by removing exceptions and the control system is to be improved. For example, the agricultural ingredients used in processed organic products will have to be exclusively organic. The requirement for annual verification of compliance covering all operators will be removed. Operators with a low risk profile will be subject to less frequent and less comprehensive inspections, while higher risk operators will be more closely targeted. A system of group certification will be introduced for small-scale farmers with a view to reducing inspection and certification costs and the associated administrative burden and to improving opportunities for them to market their products. Potential fraud is to be combated through enhanced traceability.

The proposal is based on the Treaty on the Functioning of the European Union (TFEU), in particular on Art.42 para.1 and Art.43 para.2; the subject matter of the proposal is a shared competence as

defined in Art.4 TFEU.

As a matter of principle, a harmonised regime for the production and labelling of organic products is considered desirable, but in the opinion of the Federal Council the following comments regarding compliance with the principles of subsidiarity and proportionality have to be made:

- On Article 17 of the proposed regulation (Adoption of exceptional production rules):

In many cases, exceptions are only provided for in the event of catastrophic circumstances. However, a certain national leeway should be allowed for organic production to continue under certain circumstances. Such circumstances include climatic conditions, catastrophic events and limitations due to geographic or structural conditions that may cause sudden bottlenecks in the supply of organic inputs (e.g. seed and feed). Given the fact that the reasons for such bottlenecks may only apply to certain regions in a Member State and are mostly unpredictable, national or regional rules would be preferable to rules applying to the EU as a whole in order to maintain a certain level of flexibility.

- On Article 20 of the proposed regulation (Presence of non-authorized products or substances):

The Federal Council cannot agree to uniform rules applying to the EU as a whole regarding the specific criteria and conditions for the establishment of levels of such products or substances. Agricultural structures in the individual Member States are too different to be subjected to a uniform regime. For Austria, in particular, such a regime would entail significant disadvantages. Given the small size of many agricultural holdings and, consequently, the large number of adjacent plots of land, contamination by and the detection of non-authorized products or substances up to a certain limit cannot be entirely excluded.

It would not be fair if an organic farm were to lose its status as an organic producer, thus being penalised for the agricultural practices of a neighbouring farm that are beyond its control, and for the resulting potential contamination of its products produced on land managed according to the principles of organic farming.

Proof of the fact that all appropriate measures to prevent such contamination have been taken will be difficult to obtain in practice and the related controls will constitute a substantial bureaucratic burden. Hence, this provision is considered to be excessive and inappropriate.

- Transitional period for existing, certified organic farms

The proposed regulation does not provide for a transitional period for existing, certified organic farms. However, in order to provide legal certainty for farmers operating under the Austrian Agri-Environment Programme (ÖPUL) running from before 2017 and covering the period until 2020, a

transitional period of at least the same length will be required. Adoption of a transitional period by means of a delegated legal act is possible, but far from certain. Therefore, the proposal should be supplemented by a provision providing for a transitional period. If not, sufficient leeway should be allowed for national decisions on this issue.

- Possibility of temporary authorisation of “non-organic ingredients”

It should still be permitted for the individual Member States to allow the use of “non-organic ingredients” in processed foodstuffs on a temporary basis, if certain ingredients are temporarily not available from organic production in the Member State concerned.

In order not to impair regional production and to prevent a reduction in the consumption of regional products, especially with a view to the fight against climate change, the rules currently laid down in Articles 28 and 29 of Commission Regulation (EC) No. 889/2008 laying down detailed rules for the implementation of Regulation (EC) No. 834/2007 (including provisions on authorisation by the Member States) should remain in force.

If organic seed of special, regional varieties required for the placing on the market of organic products is not available, the possibility of authorising the use of conventional seed should be maintained.

- Delegated legal acts

As in numerous other proposals tabled since the entry into force of the Treaty of Lisbon, the Commission reserves the right to regulate many of the detailed issues arising under the proposal through delegated legal acts. Thus, the Commission will be in a position to adopt detailed provisions on various aspects of production, labelling, placing on the market, storage, transport and control. The European Affairs Committee of the Federal Council wishes to recall its Communication pursuant to Art.23f para.4 of the Federal Constitutional Law of 3 December 2013, criticising, inter alia, the frequency of delegated legal acts; the proposed regulation now on the table is another example of the same problem, i.e. the high frequency of delegated legal acts.

For the aforementioned reasons, the Federal Council is of the opinion that the proposal is not in agreement with the principles of subsidiarity and proportionality.

Moreover, from the viewpoint of the Federal Council, the effect of the proposal is highly unspecific on account of the large number of delegated legal acts and therefore cannot be assessed and evaluated in qualitative or quantitative terms.

Given the unspecific character of the proposal, which runs counter to the provisions of Article 5 of Protocol No.2 attached to the Treaties, the proposal does not allow

- an assessment of the effectiveness of the measures proposed to reach the desired goal and of whether such measures need to be taken at Union level, and
- an assessment of the effects of the proposal and, last but not least, the resulting financial and administrative burden for the Member States.

The very fact that sufficient information on the above issues is not available constitutes a formal violation of the principle of subsidiarity. This applies, in particular, in the context of delegated legal acts, which are not subject to a subsidiarity check by the national parliaments.

According to the long-established principle of European law of “*potestas delegata non delegatur*”, the power to adopt delegated legal acts, in accordance with the Treaties, is to be interpreted in a restrictive manner. The number of delegated legal acts provided for in this proposal and their nonspecific character run counter to this principle of interpretation.

The number of delegated legal acts provided for in this proposal is excessive and has to be reduced to its absolute minimum, if the proposal submitted is to be brought in line with the principles of subsidiarity and proportionality. Moreover, the objective, the substance and the scope of the remaining acts of delegation should be explicitly and clearly specified.