Amendment of the EU Organic Regulation

NATRUE position statement on MEP Martin Häusling's report on the Commission's proposal

2014/0100(COD)
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The proposal submitted by Mr. Häusling on 7 May 2015 includes amendments to the Commission's proposal. The report does not raise less concern than the Commission's proposal of March 2014. Natural cosmetics manufacturers are especially concerned about the fact that the organic inspection, commissioned by public authorities, intervenes almost up until the finished cosmetic product.
From our point of view, there is an urgent need to reshape the proposal in such a way that the already established natural cosmetics certifications by institutions, like NATRUE and BDIH, are implemented at the manufacturer's factory gate and as of this stage, substitute the publically and legally organised organic inspections. Any other approach, both for us and for the entire natural cosmetics industry, would result in great uncertainty and confusion in practice.

1. The problem with regards to Annex 1 (Article 2 paragraph 1 of the Commission's proposal / Amendment 47 report Häusling)

Both Mr. Häusling's and the Commission's proposals integrate "essential oils" into the scope of application of the Regulation. Article 2 paragraph 1 (version Häusling) reads: *"This Regulation shall apply to the following products originating from agriculture, including aquaculture, where such products are, or are intended to be, produced, prepared, distributed, placed on the European Union market, or imported into or exported from the Union as organic: (a) live or unprocessed agricultural products, including seed and other plant reproductive material; (b) processed agricultural products and those other products which are intended to be produced, prepared, distributed, placed on the market, imported or exported".* Annex 1 lists "essential oils", "beeswax" and "pollen".

The manner in which the provisions are formulated has consequences e.g. "essential oils" also lie within the scope of application even if they are intended for non-food purposes, since the above mentioned Article, in reference to Annex 1, does not make any difference between food and non-food nor between processed and unprocessed. A practical example: the crops serving as a source for the production of rose oil would, just as the rose oil itself, fall within the scope of application. Rose oil will remain within the scope of application, during the production, storage and processing phases, even if it is further processed into e.g. a cosmetic.

Therefore, the integration of "essential oils" meets our – and other cosmetic manufacturers' – interests with regards to agricultural produce and processing into oils. This guarantees that the "essential oils" we receive for processing originate from a production in which compliance with organic regulations is ensured by local supervision.

Mr. Häusling's proposal unfortunately does not set any limitations when it comes to further processing an "essential oil" into a non-food product.

However, this would be useful, otherwise the organic inspection body would not only have to follow up the processing of a cosmetic product containing an essential oil, but also monitor the finished cosmetic product taking account of the essential oil as an ingredient through the wholesale distribution and, depending on how the organic inspection body will be designed in future, right up until it reaches the retail shelves. For us, this would not only be burdensome from a bureaucratic point of view, but also increase costs and generate legal uncertainty.

Article 2 of the Commission's proposal should therefore clearly state that the organic inspection ends when the processing of products such as essential oils into a non-food product listed in Annex 1 starts: i.e. upon entering the manufacturing facilities.
Therefore, we suggest the following amendment of Article 2 paragraph 2 of the Commission's proposal:

> "This Regulation shall apply to any operator involved in activities, at any stage of production, preparation and distribution, relating to the products referred to in paragraph 1, **excluding those operators with activities related to products, which are not food and which have been processed or which are about to be processed."**

This would imply that the EU organic inspection ends upon entering the manufacturer's factory and as of this specific moment inspections in accordance with private standards are implemented.

2. The problem of preserved agricultural ingredients (Art. 2 paragraph 1 (a)(b) report Häusling)

Mr. Häusling's proposal plans to integrate unprocessed agricultural products into the scope of application of the Regulation regardless of their purpose (Amendment 47: Article 2 paragraph 1 under a). As of the first processing step, they would fall out of the scope of application unless they are food products (Amendment 47: Article 2 paragraph 1 under b). This only accounts for products which are not (!) listed in Annex 1, thus e.g. not for essential oils. The latter, as mentioned under point 1, usually falls within the scope of application.

In this case, the first processing step constitutes the limit as in the scope of application. The question which now arises relates to the definition of the processing step. The definition of "preparation" in the Commission's proposal as well as in Mr. Häusling's report makes a connection between "processing" and "preserving". Article 3 (20) states: *"'preparation' means the operations of preserving or processing of organic products, including slaughter and cutting for livestock products, packaging, labelling or alterations made to the labelling relating to the organic production method".*

This makes it clear that preservation steps are not yet part of the processing. Consequently, agricultural products which are long-lasting but have not been further processed remain within the scope of application even if they are not intended for food products but for other purposes. So if herbs, leaves, petals (unprocessed agricultural

products, plant materials) are placed into an aqueous or alcoholic solution for preservation purposes, this is not yet a processing step. Hence arnica essence (plant extract) would also fall within the scope of application of the Regulation. This essence is produced by placing arnica in water and, in order to preserve, in ethanol. The manufacturing of cosmetics involves several preliminary stages in which petals, herbs and other plant parts are placed into water or alcohol in order to preserve their ingredients.

According to the classification in the present proposals, these steps are not part of "processing" but (still) pertain to "preservation".

Consequently, essences and plant extracts automatically continue to be subjected to public legal organic inspection until their next stage of processing, i.e. when they reach the machine in which the essence or the plant extract is mixed with other substances or is otherwise processed in the manufacturing facilities. This differentiation is unfortunate as it infers that the organic inspection [regarding agricultural products which have already been prepared for preservation and not processed in a first stage] would continue long after the products entered the manufacturer's facilities until they reach the machine where they are mixed with other substances or otherwise processed as indicated above.

The amendment proposal outlined above under 1. for Article 2 paragraph 2 would address this problem; therefore, we suggest to modify Article 2 paragraph 2 in the Commission's proposal accordingly.

3. The problem of the paradigm shift

The drafts submitted by the Commission and by Mr. Häusling would result in a reduction of the sanction mechanism in case of irregularities.

On the one hand, the Commission's proposal is referring to the "integrity of production" but on the other to the "integrity of organic products" (Article 26 Commission's proposal). "Integrity of product" is referred to when the question is asked whether an intervention can take place during the organic certification process in case of irregularities. According to the Commission's proposal, the "integrity of the product's" sanction is only applied when the integrity of the product is affected, not the integrity of the production.

This would have the illogical result that de-certifications of organic products can only take place when failure to comply with the EU Organic Regulation has led to identifying traces in the product, i.e. when one recognizes the irregularity, at least analytically, in the product itself. If a herbicide or fungicide is used illegally in a young organic culture, the traces are generally not found in the crops. The harvest remains "organic" even if a breach of the applicable rules has been identified. Last but not least, this contradicts consumer expectations and does not reflect any authentic concept concerning quality.

Mr. Häusling's proposal intends to address the fact that the term "integrity" is vague by relating it to the term "status" (Amendment 212, 213, 237). Hence if the status itself of a

product is affected by non-compliance of the EU Organic Regulation, this will not immediately lead to a sanction if the status of the production is affected.
This ambiguity is due to vague terms which may potentially be subjected to severe distortions in the jurisdiction of Member States. If the current terminology remains as such, even the reliable findings according to which a prohibited application took place cannot change anything about the continuity of the existence of the organic certification.

In our opinion, this looming paradigm shift from 'integrity of production' to 'integrity of product' is highly questionable and incomprehensible.
We deem this new Regulation detrimental to the reputation of organic production as perceived by the general public.

We are afraid that a new Regulation – as it currently stands – will go hand in hand with a serious deterioration of the organic sector, resulting in a loss of product identity and quality. In addition, considerable bureaucratic build-up is expected in our sector but which will not in turn result in any comprehensible upgrading of the term 'organic'.
We would therefore strongly propose the further development of this proposed regulatory text based on the existing Regulation in order to continue to have a clear and secure legal framework for the natural cosmetics sector regarding the certification system and other critical points outlined.

4. Finally some general observations:

Imports:

The draft regulation is shifting from the Third Country regulation and the equivalence principle under Art. 33 Para. 2 Dir. 834/2007 towards the conformity principle (Art. 28 para. 1b of the draft regulation). It is unrealistic to assume that bilateral trade agreements on organic production will soon be signed between all the relevant countries, especially between emerging economies and developing countries. However, farmers from e.g. Malawi or Burkina Faso provide their agricultural production to our members. In the short term, no agreements of this kind are likely to be signed with those countries anymore; no organic Third Country imports from those countries would be possible anymore and, subsequently, for many organic producers, the European market would be lost. This also has a development dimension as some of the farming projects are explicitly linked with measures to promote development, for instance, projects in Afghanistan, Ethiopia or Peru. In addition, this import issue would trigger a decrease of the organic part of our vegetable raw materials. Of particular concern is the fact that through an organic certification in the US (NOP certification) and through a physical trade via the US, producers could theoretically sell their products with an EU organic label in Europe.

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Seeds:

In general, we welcome and encourage the use of organic seeds. However, the requirement according to which until 2021, only organically produced seeds must be used or, more precisely, must be converted to organic production, is practically hardly feasible. Because a complete conversion of all seed types into organic produce will not succeed. There are efforts to produce organic seeds such as for sunflowers or medicinal plants; however, this is usually associated with high costs and requires years of breeding work. What is more, a conversion is not worth for all types of seeds as for some of them, only small amounts are needed. An example is poppy: poppy is heavily regulated and since only small amounts are required in organic form, a conversion is simply not worth for the seed providers. This would result in an irretrievable loss of cultures in organic form and in a reduced biodiversity for organic consumers. This would be counterproductive to the underlying principles of the organic farming practices.

Biodynamic preparations:

Biodynamic preparations constitute an essential part of biodynamic agriculture and according to the Dir. 834/2007, they are explicitly allowed in organic farming. They are no longer mentioned in the new draft ecological regulation, which jeopardizes their availability. For the biodynamic agriculture, this would mean a loss of one of their essential elements. Therefore, the new regulation text should explicitly mention these preparations.

We remain at your disposal for any further information you may require on the topics outlined above.

Brussels 1st June, 2015

About NATRUE:
NATRUE is an international not-for-profit organisation located in Brussels. It has promoted and protected authentic Natural and Organic Cosmetics since October 2007. The NATRUE Label sets a high standard which guarantees quality and integrity so people worldwide may identify and enjoy natural cosmetics truly worthy of that name. Products are listed on the publicly accessible website and database www.natrue.org which can be used as a check list if you want to confirm whether a product is natural or organic.