



30.6.2014

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the Austrian Federal Council on the proposal for a regulation of the European Parliament and of the Council on organic production and labelling of organic products, amending Regulation (EU) No XXX/XXX of the European Parliament and of the Council [Official Controls Regulation] and repealing Council Regulation (EC) No 834/2007 (COM(2014)0180 – C7-0109/2014 – 2014/0100(COD))

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

The Austrian Federal Council has sent the attached reasoned opinion on the aforementioned proposal for a regulation.

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

Reasoned opinion pursuant to Article 23g (1) of the Austrian Constitution in conjunction with Article 6 of Protocol No 2 of the Committee on European Union Affairs of the Austrian Federal Council of 14 May 2014 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 proposal under consideration is incompatible with the principle of subsidiarity.

B. Reasons

The proposed regulation would replace Regulation (EC) No 834/2007 currently in force. The Commission has indicated that the reason for the recast is the dynamic development of the fast-growing market for organic products and the changing expectations of companies and consumers. The aim is to tighten and harmonise production rules, particularly by removing derogations, and improve the monitoring system. For example, the agricultural ingredients used in organic processed products should in future be exclusively organic. The requirement for annual compliancy checks for all companies is withdrawn and companies with a lower risk profile will be checked less often or less rigorously, whilst higher-risk companies will be subjected to more targeted checks. A system of group certification is introduced for small-scale farmers with a view to reducing inspection and certification costs and the associated administrative burden and contributing to better market outlets. Traceability will be improved, reducing the risk of fraudulent practices.

The proposal is based on the Treaty on the Functioning of the European Union (TFEU), in particular on Articles 42(1) and 43(2) thereof, and concerns a shared competence in the sense of Article 4 TFEU.

The EU-wide regulation of organic production and the labelling of organic products is basically a good idea. However, the following must be emphasised with regard to conformity with the principles of subsidiarity and proportionality:

- Article 17 of the proposal (Adoption of exceptional production rules)

In many cases provision is made for safeguarding rules for derogations only in the event of catastrophic circumstances. A certain amount of leeway should, however, remain at national level for safeguarding organic production in certain situations. Factors such as the effects of climate conditions, disasters and restrictions imposed by geographical and structural characteristics can all cause sudden shortages in organic production (e.g. seeds and feedstuffs). Since these factors are often only relevant in part of a Member State or cannot be

predicted, national or regional requirements should be preferred in this context to an EU-wide regulation in order to maintain a degree of flexibility.

- Article 20 of the proposal (Presence of non-authorised products or substances)

An EU-wide regulation laying down certain criteria and the conditions, application and regulation of levels is unacceptable. The agricultural structures in the individual Member States differ too widely. The proposal would have a considerable negative impact, particularly on Austria. The small size of plots and the resultant large number of bordering plots means that contamination and thus the detection of unauthorised products or substances cannot be excluded either completely or to a specified degree.

It would not be right to penalise an organic producer for the use made of a neighbouring plot – over which the producer in question has no control – and the possibility of resultant contamination of his or her product on an organically-farmed area which causes that product to lose its organic status.

A requirement for all appropriate protective measures to be taken is in practice difficult to enforce, and monitoring would involve a large amount of red tape. This provision must therefore be regarded as excessive and inappropriate.

- Transition period for existing, certified organic farms

The proposal makes no provision for a transition period for existing, certified organic farms. In order to ensure that such farms have legal and planning security for the ÖPUL period until 2020 (which will be operative by 2017), a transition period can be laid down by means of a delegated act, but there is no security as yet. A transition period of at least this length is therefore necessary. The granting of a transition period should be laid out more comprehensively in the proposal. If this does not happen, there should be provision for an appropriate degree of leeway at national level.

- Possibility of temporary authorisation for ‘non-organic ingredients’

If individual organically-produced ingredients are temporarily unavailable in a particular Member State, a fixed-period authorisation should be available at Member State level to permit the use of ‘non-organic ingredients’ for processed foods.

To maintain levels of regional production and the consumption of regional products, with particular regard to climate change, the current rules set out in Articles 28 and 29 of Commission Regulation (EC) No 889/2008 laying down detailed rules for the application of Council Regulation (EC) No 834/2008 (regarding, inter alia, authorisation by Member States) should be maintained.

The use of conventional seeds should continue to be permitted in the event of the unavailability of special regional varieties of organic seeds necessary for marketing purposes.

- Delegated acts

As is the case with various other proposals since the Lisbon Treaty came into force, the

Commission also reserves the right to apply a raft of detailed rules in the form of numerous delegated acts in this proposal. In future the Commission will thus be able to adopt detailed rules on individual aspects of production, labelling, marketing, storage, transport and monitoring. Reference should be made to the announcement by the Committee on European Union Affairs of the Austrian Federal Council concerning Article 23f(4) of the Austrian Federal Constitutional Law (B-VG) of 3 December 2013, which criticises, among other things, the frequent application of delegated acts. The proposal in question here is also used as an example of the problems which a huge numbers of such acts might entail. For the above-mentioned reasons, it can only be concluded that the principles of subsidiarity and proportionality are not being complied with.

From the point of view of the Austrian Federal Council, the large number of delegated acts means that the real impact of the proposal is extremely vague and can be neither understood nor evaluated, qualitatively or quantitatively, in its entirety.

This vagueness with regard to the provisions of Article 5 in Protocol No 2 on the Treaties means that there is a lack of clear information enabling

- the effectiveness of measures to achieve the objectives and the question of whether these must be implemented at EU level, and
- the impact of the proposal – not least the financial impact and the amount of red tape it would mean for the Member States –

to be assessed.

If, however, there is a lack of sufficient details, this alone constitutes a formal contravention of the subsidiarity principle, all the more so with regard to delegated acts, as these do not provide for a subsidiarity check by national parliaments.

According to the long-established principle of European law of ‘potestas delegata non delegatur’, authorisations for delegated acts are, in accordance with the Treaties, to be interpreted restrictively. The number of delegated acts provided for here and the impreciseness of these acts contravenes this principle.

The number of delegated legal acts is excessive and must be reduced to the absolute minimum in order for this proposal to be compatible with the principles of subsidiarity and proportionality. The aim, substance and scope of the powers then still to be transferred must also be set out explicitly and unambiguously.