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Report Highlights:

In 2014, the European Commission launched negotiations with a sweeping regulatory reform agenda for the organics sector. After more than three years of uncertainty over how and whether the EU organic legislation would change, Brussels appears to have emerged with an answer. This report discusses the evolution of the regulatory reforms and how the final regulations may affect the U.S.-EU Organic Equivalence Arrangement going forward.

General Information:

POLITICAL AGREEMENT ON ORGANIC REGULATIONS REACHED—EP AND COUNCIL TO VOTE

On Wednesday, June, 28, 2017, after 18 trilogues—meetings where the three EU institutions: the European Commission, Council, and Parliament negotiate—parties reached an agreement on a new regulation for the organic sector. The regulation would replace [Regulation 834/2007](#), but first the agreement must receive formal approval from the Council and the European Parliament; a vote is expected in the Council on November 20, and in the Parliament at the beginning of next year. The EU organic sector has experienced strong growth in recent years, 21% from 2010 - 2015, and represents an estimated 6.2% of the total EU agricultural area (Eurostat 2015).

Negotiations were very lengthy and contentious. In fact, EU legislators held more trilogues for regulatory reform of the organic sector than efforts to reform the EU's Common Agricultural Policy for 2014-2020, which programmed 400 billion dollars for the EU's agricultural sector. Several of the EU Member States (MS) voiced skepticism on the need for new organic regulations, given that the existing regulation has been operational for less than ten years. Germany has been the most vocal skeptic relaying that the current rules work well and the organic sector needs stability. After the U.S., the German organic food market is the second largest organic market in the world. Sales of organic food in Germany have steeply increased in recent years, peaking in 2015 with organic food sales reaching over €8.6 billion (\$9.6 billion dollars see: GAIN report "[Opportunities for U.S. organics on German Market](#)").

In the European press, Germany appears to be withdrawing support for the organic regulation overhaul, but policy analysts believe there will be enough votes to pass the final agreement; the vote is expected to be very close. If passed, the new regulation would be applied from January, 1, 2021.

MODEST CHANGES TO THE EU ORGANIC REGULATIONS ON THE HORIZON

Despite the Commission's ambitious original proposal, the future EU organic regulation is expected to introduce comparatively minor changes. The main modifications of the current EU organic legislation are likely to be: organic trade will ultimately be regulated by trade agreements; auditing controls on EU organic operators would be partially risk-based and, for most cases, would be reduced to every other year; EU MS exemptions/derogations from the EU-wide regulations will be slowly phased out; and demarcated beds for EU organic production will be allowed only for Northern MS and for a limited time. A cornerstone of the Commission's original proposal was to introduce pesticide residue level limits for pesticides that are not allowed under the organic regulations. However, many EU organic farmers opposed this provision noting how difficult it is to fully prevent exposure from pesticides unapproved in organic production, originating from sources outside their control, e.g., drift from neighboring farms under conventional production.

Trade Agreements Replace Equivalence Arrangements

The biggest likely impact for the United States organic sector is that the EU will require trade agreements in place of the current framework, equivalence arrangements. In 2012, the United States and the EU signed and implemented an organics equivalence arrangement that recognizes respective countries' certified organic products thereby facilitating trade and reducing administrative burdens. This partnership streamlined trade between the two largest organic producers in the world, and now provides organic farmers and businesses access to a combined 50 billion dollar market. Prior to 2013, EU members imported an average of \$6.7 million in U.S. organic products per year. This amount has climbed to over \$8.9 million since 2013, according to the U.S. Organic Trade Association. [1] With the proposed EU regulatory changes, this equivalence arrangement would expire by January, 1, 2026, five years after the entry into force of the new regulation. Sources at the Commission have indicated that U.S.-EU arrangement is already quite harmonized and thus the conversion to an organic trade agreement could be straightforward. Presently the EU has 12 bilateral equivalence arrangements that would need to be converted to trade agreements. If not, exporters will have fully to comply with the exact same standards as the EU organic regulations to export to the EU.

Another aspect of the reform affects equivalence rules, which currently require products imported by the EU and certified as organic to meet similar but not necessarily the same EU organic standards for production and processing. The EU presently recognizes more than 60 organic standards. This recognition will be phased out and replaced by a single standard.

Member States Exceptions to EU Organic Standards to be Studied and Phased Out

The new regulation calls for phasing out of MS derogations from the EU-harmonized organic standards. Currently EU MS are empowered to give derogations to sectors that cannot fully meet EU organic standards. For example, EU organic production regulations call for organic seeds inputs; however, throughout the EU, organic farmers cannot secure sufficient quantities of certified organic seed inputs in some sectors. As such, EU MS give derogations from the EU rules whereby organic farmers can use conventional seeds for their organic production. Going forward, the EU aims to slowly end derogations, and the new regulations call for studies assessing the appropriateness and timeliness of when this can occur. The regulatory reform would include new sets of rules to improve farmers' access to organic seeds and plant reproductive material adapted to organic farming needs. Databases will also be maintained by MS to show the availability of organic seeds and animal feed on the market and to encourage the development of these organic inputs. The EU aims to end derogations by 2035.

EU Producer/Processor Regulatory Compliance Auditing Shifts to Risk Based Approach

With respect to compliance, revised EU organic regulations will incorporate more of a risk-based approach to the frequency of producer and processor audits. Currently, MS audit regulatory compliance annually with at least one on-site check of all organic operators and processors. With the new regulations, if the operators have been in compliance the preceding three years and have a low-risk profile, the frequency of on-site physical checks could be reduced to once every two years.

Pesticide Thresholds: the Most Difficult Issue to Resolve

The most contentious issues embedded in the Commission's original 2014 proposal for reforming organic regulations were the tolerance levels for residues of non-authorized pesticides. The Commission had sought to decertify organic products found to have these residues.

Thus, if an organic producer operating adjacent to conventional farms experienced pesticide drift from those farms that left a residue on the organic product, his or her organic product would have to be sold as conventional and not organic one, with a clear loss of value for the organic producer. Within the EU, some MS including Belgium and Italy pushed for very low tolerance thresholds—or even a zero tolerance—for non-approved pesticide residuals. Others, led by Germany, rejected a threshold arguing that organic farmers should not be made responsible for adventitious contamination from conventional farms. The MS reached a compromise, rejecting stricter limits and instead are likely to agree to a Commission report in 2024 on the issue of non-approved pesticide residues in organic products. Meanwhile, MS with thresholds in place or wishing to introduce thresholds may do so, but only for organic products produced in their countries. MS cannot impose any national residue thresholds for imported food products from other EU and non-EU countries. The deal also includes a new set of precautionary measures to be applied by operators to avoid pesticide contamination or mixing of organic with non-organic products. The Commission will publish a detailed list of those measures in an implementing act after the official publication of the regulation.

Mandatory Soil-Bound Organic Production Sows Divisiveness

The Commission also put forward a proposal to ban organic production in demarcated beds so as to facilitate soil improvement and robust ecological systems through all organic production. Organic ornamental plants in pots as well as herb production would be exempted from the soil-bound clause. Denmark, Finland and Sweden vociferously objected to the Commission's ban as those countries have some organic production in demarcated beds, primarily for accommodating climatic and geological conditions. The compromise reached provides that growing organic crops in demarcated beds shall continue to be allowed only for those surfaces in Denmark, Finland and Sweden that have been certified as organic before June 28, 2017 and production will be phased out over a period of 10 years.

Also, the Commission is to report on the use of demarcated beds in organic agriculture and, if need be, present a legislative proposal on the matter by 2025.

Mixed Farms

Another key element of the initial Commission's proposal was a ban of "mixed farms": farms undertaking both conventional and organic agriculture. Parliament and Council negotiators watered down the Commission proposal and agreed to maintain the possibility for farmers running mixed farms, but with the condition that their conventional farming activities are clearly and effectively separated and differentiated from organic farming ones.

Next Steps

The final text of the revised organic regulation agreed upon in the trilogues is scheduled to be submitted to the EU Agriculture Council—the Ministers of Agriculture of the 28 MS in the EU—for approval on November 20, 2017. Assuming there will be enough support for passage of the organic regulation reforms, the draft regulation is then submitted to the European Parliament's Agriculture Committee for approval, and then to the European Parliament's Plenary for adoption, most likely in the

beginning of 2018. Once fully adopted by the European Parliament, the text will be formally approved by the Council at a future meeting without debate. It will then be published in the European Union's Official Journal and will enter into force January 1, 2021.

^[1] https://ota.com/sites/default/files/indexed_files/OTATradeReport.pdf