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# **Comment on the registered draft law No. 5448 "General principles, requirements for organic production, regulation and organic food labeling" by the Ukrainian Ministry of Agricultural Policy and Food**

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## **About the Project “German-Ukrainian Agricultural Policy Dialogue” (APD)**

The project German-Ukrainian Agricultural Policy Dialogue (APD) started 2006 and is supported up to 2018 by the Federal Ministry of Food and Agriculture of Germany (BMEL). On behalf of BMEL, it is carried out by the mandatary, GFA Consulting Group GmbH, and a working group consisting of IAK AGRAR CONSULTING GmbH (IAK), Leibniz-Institut für Agrarentwicklung in Transformationsökonomien (IAMO) and AFC Consultants International GmbH. Project executing organization is the Institute of Economic Research and Policy Consulting in Kyiv. The APD cooperates with the BVVG Bodenverwertungs- und -verwaltungs GmbH on the implementation of key components related to the development of an effective and transparent land administration system in Ukraine. Beneficiary of the project is the Ministry of Agrarian Policy and Food of Ukraine.

In accordance with the principles of market economy and public regulation, taking into account the potentials, arising from the EU-Ukraine Association Agreement, the project aims at supporting Ukraine in the development of sustainable agriculture, efficient processing industries and enhancing its competitiveness on the world market. With regard to the above purpose, mainly German, but also East German and international, especially EU experience are provided by APD when designing the agricultural policy framework and establishing of relevant institutions in the agriculture sector of Ukraine.



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## **1. INTRODUCTION**

On January 9, 2014 Law No 425-VII "about production and processing of organic products and raw materials" was established. The Act defines legal and economic principles of organic production, regulates the processing of organic raw materials and organic products. It is intended to ensure the proper functioning of the market for organic products and to determine the necessary control and supervisory measures in this area. So far this law has not been accomplished by appropriate implementing regulations. Questions with regards to the harmonization with EU regulations remain unresolved.

In August 2016, the Ukrainian Ministry of Agricultural Policy and Food announced that a draft law on the implementation of organic farming regulations and the handling and labeling of organic products has been submitted to the Ukrainian parliament (Verkhovna Rada) for examination. The draft law "General principles, requirements for organic production, regulation and organic food labeling" was registered in the parliament under number 5448.

Against this background, this basic draft no. 5448 is to be compared and commented against comparable legal frameworks of the European Union and especially the laws and regulations applied in Germany. The following statements refer to the draft Ukrainian Basic Law on Organic Farming, available to the author (use as short-term expert) in English version.

## **2. THE EUROPEAN AND GERMAN LEGAL FRAMEWORK IN THIS AREA**

In Europe, organic farming is subject to the Basic Regulation (EC) No 834/2007, its implementing regulations (EC) No 889/2008 and (EC) No 1235/2008 and its amendments and annexes (in 2008 and 2011). Several member states established additional national laws to implement the above mentioned EC organic regulations.

The first European Union organic regulation was established in 1991 to take account of the fact that food products, produced as organic products, were no longer directly purchased just in farmers' markets but found their ways into the shelves of supermarkets. The setup of a legal framework has significantly contributed to an increasing consumer confidence and positive market development.

The EC organic regulation aims to cover all aspects that are essential for the compliance according to the principles of organic farming and the integrity of organic products. The relevant parties (producers, processors, traders, transporters, exporters, importers, certification or inspection bodies, control authorities, national competent authorities, indirectly also accreditation bodies, manufacturers of means of transport, service providers, exporting third countries, the European Commission, the Council of Ministers of the European Union and the European Parliament) and their individual roles and/or responsibilities with regards to organic production, processing, marketing, transport and distribution have been explained.

Every step of the entire process is defined:

- 1** legislative development and adaptation by the European Commission, Council, Parliament and Member States;
- 2** control, monitoring, certification, issuing of certificates (organic certificates), withdrawal of certifications and product de-certifications for eco-companies by certification bodies, inspection bodies or control authorities; recognition, monitoring and withdrawal of authorizations for certification bodies or inspection bodies in the individual EU member states by the respective national competent authorities or in third countries by the European Commission;
- 3** accreditation of approved certification bodies within the EU and in third countries through accreditation bodies according to ISO 17065
- 4** recognition and monitoring of third countries with equivalent organic production and control standards or the withdrawal of such recognition by the European Commission;
- 5** exchange of information between operators, certification bodies or inspection bodies and authorities
- 6** cross-references to other relevant regulations, e.g. general control regulation, labelling regulation for genetically modified organisms (GMO) and its feedback to the organic certification / control system;
- 7** global monitoring of the system by the European Commission, the European Court of Auditors and also by the EU Parliament and the Council.

In the Federal Republic of Germany, control, monitoring, certification, issuing of certificates (organic certificates), withdrawal of operating certificates and product de-certifications for organic operations are carried out by private certification bodies ("System A"). The approval, monitoring and withdrawal of authorizations for these inspection bodies are in the responsibility of the German federal authority and, due to the clear division of tasks within the federal structure of Germany, with the certain authorities of the respective federal states.

The following table visualizes the institutions involved in the implementation of the EC Eco-Regulation:

Administrative level	Legislation	Institution
European Union	Basic Regulation (EC) No 834/2007; Implementing Regulations (EC) No 889/2008 and (EC) No 1235/2008	European Commission European Council
Member State (here: Federal Republic of Germany)	"National act for implementing the regulations of the European Union in the field of organic farming (Öko-Landbaugesetz - ÖLG)"; "Ordinance on the admission of inspection bodies according to the Öko-Landbaugesetz (ÖLG-Kontrollstellen-Zulassungsverordnung / ÖLG-KontrollStZuV)"	Federal Ministry of Food and Agriculture (BMEL); Federal Institute for Agriculture and Food (BLE)
Federal State (e.g.: Bavaria)	"Notice on the implementation of legislation in the field of organic farming (Ref .: Z5-7670-1 / 125)"	Bavarian State Ministry for food, agriculture and forestry (StMELF); Bavarian State Research Center for Agriculture (LfL)

The accreditation of the certification/control/inspection bodies in Germany is ensured by the German accreditation body "Deutsche Akkreditierungsstelle GmbH (DAkkS)" according to ISO 17065 and referring to European regulation (EC) No 765/2008.

On a private level, the organic producer associations in Germany (e.G.: Demeter, Bioland, Biokreis, Naturland, etc.) developed binding regulations for ecological agricultural production long time before establishing the EC organic regulation in 1991. Their regulations are, in most details, more stringent than the organic regulations of the European Union and are nationally and internationally considered as high level standards among processors and consumers.

### 3. COMMENTARY ON THE UKRAINIAN DRAFT LAW

The organic food sector is increasing throughout the world. The demand for organic raw materials and processed organic food is steadily growing, particularly in the countries of North America and Western Europe, which continue to fill their domestic market gap between production and demand by importing organic products from third countries.

Against this background, the introduction of a legal framework for organic farming in Ukraine is generally regarded as an indispensable tool for a successful development of this specific agricultural food sector. Thus, the Ukrainian government expects as well, that establishing the present draft law leads to an important growth for domestic production and marketing. It is of national interest not only to export organic products, but also to develop its own domestic market for organic products in order to generate more value in Ukraine and to gain independence from international market fluctuations.

Regarding the harmonization between the present Ukrainian draft law and the regulations of the European Union, an intensive exchange of experts seems advisable. Exemplarily it may be mentioned here, that the International Federation of Organic Agricultural Movement (IFOAM) provides an appropriate program for developing a national organic standard and the support of embedding it in the "international family of organic standards". The earlier an exchange may take place, the higher the possibility of future recognition in the international context, e.g. towards future equivalency agreements. Generally it needs to be clarified how a legal framework for the Ukraine is fitting to its administrative structure and the actual existing state capacity (e.g. limited staffing).

However, a legal framework in such an evolving market segment like the organic food market is subject to certain risks, which should be included in further considerations:

- small and medium-sized enterprises are endangered to be excluded from this market due to high certification fees and disproportionate, bureaucratic efforts.
- strongly restrictive rules, e.g. the lack of a reasonable derogation system for production factors such as seed, processing ingredients, etc., that are not available in organic quality in the Ukraine, may inhibit the development of certain production and/or processing branches and could cause value losses in the country.
- on the other hand, weak regulations and/or insufficient application of a legal framework and, as a result, repeatedly events of contamination in organic products with unallowed substances may lead to the total loss of credibility of the entire business sector.

The comparison of the present draft law with the corresponding regulations of the European Union organic regulations shows the necessity of exact definitions. Uncertainties in the legal basis can lead to considerable risks, as described above.

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#### **e.g.: Section I. GENERAL PROVISIONS**

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##### **Article 1. Definitions**

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- the definitions for '*food*', '*feed*' and '*placing on the market*', for '*aquaculture*' and for some other terms seem partly short or not sufficient yet.

- very detailed and precise definitions could be found in regulation (EC) No 178/2002, No 1198/2006 and No 834/2007 etc.. Adjustments / comparisons are recommended.

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#### **e.g.: Section II. RIGHTS AND OBLIGATIONS OF ORGANIC MARKET ENTITIES**

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##### **Article 4. Rights and obligations of market operators**

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- the use of terms referring to organic production is specified to '*one-syllable words*' in the present

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draft. It might be advisable to waive of that limit by following the definitions in EC regulation (No 834/2007, Title 4, Article 23).

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Precise definitions should also cover as far as possible all branches and aspects of the organic farming sector, both plant and animal production, processing and marketing.

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**e.g.: Section V. ORGANIC PRODUCTION**

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**Article 13. Sectors of organic production**

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*"1. The sectors of organic production include: organic crop production (including seed and plant propagation as well as wild collection); organic livestock production (including beekeeping); organic mushroom production (including growing organic yeast); organic aquaculture; growing organic seaweed; organic food and feed production (including, organic viticulture)."*

- It is advisable to clarify in this section, that collection, processing, packaging, storage, transport, distribution and retailing are sectors of organic production as well – (as for example described in EC No 889/2008, Title 2).

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**Article 17. Requirements to organic crop production**

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- more detailed requirements could be found in regulation (EC) No 834/2007, Title 3, Chapter 2, Article 12. The adjustment / comparison is recommended.

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**Article 18. Requirements to organic livestock production**

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- more detailed requirements could be found in regulation (EC) No 834/2007, Title 3, Chapter 2, Article 14. The adjustment / comparison is recommended.

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A list of permitted substances to be updated constantly appears more appropriate than a list of prohibited substances. Consequently it is already mentioned in Section XI, "Final and Transitional Provisions", of the present draft law. However, it is advisable to refer to such a list in the implementation regulations above.

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**e.g.: Section V. ORGANIC PRODUCTION**

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**Article 14. General requirements to organic production**

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*"[...] 2. In organic production it is prohibited to use: [...] chemically synthesized substances, including agricultural chemicals, pesticides, hormones, growth promoters and feed additives [...]."*

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As described in (EC) No 834/2007 the use of formulations like *"synthetic ... shall not be used; ... such ... substances ... may only be used if they have been authorized for use in organic production"* are suggested as more viable.

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Just as important is the clear designation of the state bodies, which are to be involved in the implementation of the state legal act for organic farming. The clear assignment of the respective responsibilities is mandatory. Overlaps in specific areas of responsibility are to be avoided with regards to the efficiency of the implementation of these regulations.

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**e.g.: Section IV. POWERS OF STATE AUTHORITIES THAT EXERCISE STATE CONTROL AND REGULATION IN ORGANIC PRODUCTION, DISTRIBUTION AND LABELLING OF ORGANIC PRODUCTS**

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**Article 10, 11 and 12. Powers of ...**

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It is advisable to mention the necessity of an effective coordination between the delegating competent authorities. Furthermore it might be useful to name specifically the involved institutions like the *"authority that accredited the certification bodies"*.

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Furthermore, the scope of the future law should be precisely defined. It is necessary to clarify whether the law will also apply in the future to those organic farms in Ukraine which produce only for the European organic market. Parallel frames are not recommended. All companies should have the possibility to freely access markets in the Ukraine and abroad.

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**e.g.: Section VI. DISTRIBUTION AND LABELLING OF ORGANIC PRODUCTS**

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**Article 32. Requirements to distribution of organic products**

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**e.g.: Section IX. INTERNATIONAL COOPERATION**

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**Article 36. International cooperation of Ukraine in organic production, distribution and labelling of organic products**

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*"A product imported from a third country may also be placed on the community market as organic provided that: (a) the product has been produced in accordance with production rules equivalent to those referred to in Titles III and IV [...]"*

- It should be clarified at this point, that the EU organic standard is equivalent and use of EU organic inputs allowed and in according to the present law.

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Processing operations should not be subject to disproportionate barriers to the procurement of ingredients not available in Ukraine.

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**e.g.: SECTION V. ORGANIC PRODUCTION**

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**Article 17. Requirements to organic crop production**

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*"1. Requirements to organic crop production: [...] use of organic seeds and propagating material [...]"*

- The option of derogation should be included and mentioned here. See e.g. EC 889/2008, Section 2, Article 45.

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**Article 22. Exceptions from requirements to organic production**

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*"[...] If an organic ingredient for food or feed production is not available on the market, a certification body may provide a onetime permission to use a nonorganic ingredient (in conversion) at the request of an operator provided that it is not directly prohibited by this Law and there is a documentary confirmation of the necessity to use this ingredient. Nevertheless, the share of nonorganic ingredients in a product shall not exceed 5% without including a share of water and salt [...]"*

- It has to be clarified, if only in conversion ingredients are allowed. Furthermore, there is obviously a list of prohibited ingredients and substances, which is not yet mentioned before. And in the end, it is not clear yet, whether the exceeding 5% use of non-organic inputs is allowed or not. If the latter applies, it should be noted that it is stricter than e.g. the EC organic regulation in those cases.

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Ultimately, it must be clear to all who are concerned in this legislation process, that the expectations for a legal framework in this sector and the objectives for a future positive development of the organic market can only be achieved by further accompanying policy measures.

In addition to the participation of and the state support for private institutions and initiatives in the development of organic farming in Ukraine, the development of a national policy strategy plays a decisive role. Experience in Germany shows, that supporting measures, as for example, organic research, organic farming knowledge transfer, organic marketing and awareness-raising are important impulses for the domestic production, processing, marketing and demand. Certain challenges such as the different operating structures (small scale farms and agriculture holdings) in the Ukraine can also be addressed.

The "Federal Program for Organic Farming and Other Forms of Sustainable Agriculture" at the Federal Institute for Agriculture and Food (BLE) and the "BioRegio Bayern 2020" state program

of the Bavarian state government are examples for so-called "organic action plans" on federal/national and on regional level.

In summary, the legislative initiative of the Ukrainian Ministry of Agriculture and Food is very important with regards to the needs and expectations of the organic sector. An important step in the development of the sector has been taken. However, the risks mentioned above should be considered as not insignificant and should, for example, be taken into account while continuing the exchange of international expertise.

By refining and specifying certain articles and definitions in the draft law and by completing remaining resp. missing sections this legal framework will play a central part of Ukrainian Ministry of Agriculture and Food initiative and might be a growth impetus for organic production and the organic market.