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# Regulatory Governance of Organic Farming in the EU

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From a Multilevel Perspective

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## **Executive Summary**

The paper describes the EU governance structure on current organic farming. Council Regulation (EC) 834/2007, Commission Regulation (EC) 889/2008 and the EU-U.S. Organic Equivalence Agreement are taken into consideration. The different regulatory tasks to conclude a regulation are analyzed in regards to the governmental level on which an actor is operating and whether an actor is private, hybrid or public in nature. Therefore, the research has three dimensions. Through the analysis of different organizations, institutions, enterprises and other actors, one draws conclusions about the modes of governance in EU regulations. There is a strong sense of decentralized governance in regards to the enforcement and certification task in all three regulations. The EU control system of organic farming is a good example for co-regulative processes. There also is a high degree of stakeholder involvement in regards to expertise, evaluation and monitoring processes. However, this is only a consultative arrangement. Therefore, stakeholders do not have direct regulatory powers. It will also become evident that there is a strong sense of multilevel governance in the organic farming sector, which is reinforced by the emergence of international and European umbrella organizations in addition to private local farmers associations. The most centralized modes of governance (public governance) are found in regards to the initiative and legislative task, which shows that the EU institutions, especially the Commission, are still the most important player in concluding supranational regulations.

## 1. Introduction

Since the introduction of the Single European Act in 1986, the importance of regulation and regulatory activities at the European level has increased significantly. The interconnectedness of the single trade area called for the emergence of new regulatory regimes. Baldwin and Scott (1998) state that the EU had to find new ways to deal with the common market, the increased competition and the removed barriers to trade. Mutual recognition and harmonization policies are concepts, which stand central in this sense. Due to Dehousse (1997) regulation has become an important instrument to alter the behavior of member states and the market in the light of the common market and free competition. Regarding the food industry, important regulatory goals are food safety and food quality. By reason of the SEA, a supranational approach to these policy fields was needed to protect consumers throughout the European Union. This caused a shift towards new competences in health, safety and environmental policy. Health, safety, quality and environmental protection are post-materialist values which had significant importance during the emergence of organic farming (Michelsen, 2001). Stolze and Lampkin (2009) are stressing that organic farming is seen as an approach to environmental protection, animal welfare, food quality, health and sustainability. Therefore, organic farming is seen as a new approach to agriculture and agricultural techniques, which excludes all types of synthetic fertilizers and pesticides and focuses on animal welfare and product quality. Due to the growing awareness of environmental, social and health consequences of conventional agriculture, organic farming has emerged to be a critique on the conventional economically-driven approach to agriculture of the 1960s and 1970s, which was strongly based on external inputs, pesticides and fertilizers. Organic farming is strongly relying on values and norms, which are valued by the society and stand in opposition to the practices of conventional agriculture. Organic farming emerged through social movements, which means that private actors and organizations have translated their values, norms and beliefs into a new locally-based and sustainable production system (Michelsen, 2001). Local farmers tried to collaborate between each other and to exchange knowledge and experiences. That led to the emergence of agriculture associations, which form the basis of the organic farming social movement throughout the world (Vogl, Kilcher, & Schmidt, 2005). Until the 1990s, the private actors were setting their own standards without governmental interaction. Private associations and organizations were defining the means of the product and the process of producing organic goods. It is solely voluntary to implement standards of organic farming. However, different associations have set different standards respectively higher standards than other associations. This led to reliability problems of the quality and safety of the products (Garcia Martinez, Fearne, Caswell, & Henson, 2007). The first interventions by governments were reactive, by means that they were only reacting on the policies and regulation of the organic farming associations. One can therefore conclude that organic farming policy was a bottom-up development. Before the first national governments took action to regulate the organic farming sector was purely self-regulated. The reasons why governments saw the importance to intervene in the self-regulated organic farming market were two-fold. On the one hand, the EU and the International

Federation of Organic Agriculture Movement (IFOAM)<sup>1</sup> discovered that organic farming could be a solution to the extensive overproduction in the food industry in the Western world. On the other hand, self-regulation caused reliability problems which had to be dealt with by governments. The first national regulation on organic food production and labeling was concluded in 1987 in Denmark. The USA concluded its Organic Food Production Act in 1990 and the EU concluded its EU Extensification Program (Regulation (EEC) 4115/88) to tackle the overproduction in Europe in 1988. The first comprehensive EU Regulation on organic food production and labeling was concluded in 1991. Regulation (EEC) 2092/91 has defined the concepts regarding organic farming and certification, such as preparation, marketing, ingredients, plant protection products, livestock production, genetically modified organism, feeding, the use of pesticides and animal nutrition. Since the enforcement in 1993, all products called 'organic' or any translation had to fulfill the standards set by the EU. This was meant to ensure a fair competition and to improve transparency at all production stages. Regulation (EEC) 2092/91 was seen as a set of minimum standards. Private farmers and national governments were still able to set higher standards. However, other organic farmers associations had to adopt these decisions in order to remain equivalence and to be able to trade their products within the EU. The 1991 Regulation build the basis for a range of third countries and international organization such as, Norway, Switzerland, USA, Canada and the FAO WHO Codex Alimentarius (Stolze & Lampkin, 2009). Regulation (EEC) 2092/91 has been amended by a list of regulations and has fully been revised in 2007 by Regulation (EC) 834/2007<sup>2</sup> and implementing Regulation (EC) 889/2008<sup>3</sup>, which were revised by Regulation 1254/2008<sup>4</sup>. Since 2010, all food products which are called 'organic' have to

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<sup>1</sup> The IFOAM is a worldwide umbrella organization on organic agricultural movements. The IFOAM EU is the European organization which represents the interest of about 160 member organizations.

<sup>2</sup> Amended by Regulation (EC) 967/2008 postponing regulation to use the organic logo; Regulation (EU) 517/2013 adaption to EU enlargement to Croatia

<sup>3</sup> Amended by Commission Regulation (EC) 1254/2008 on organic yeast, in-conversion feeding stuffs and use of enzymes; Regulation (EC) 710/2009 on aquaculture and seaweed production; Regulation (EU) 271/2010 on organic logo; Regulation (EU) 344/2011 on labeling and rosemary extract; Regulation (EU) 426/2011 on publication of information; Regulation (EU) 126/2012 on the equivalency agreement with the USA; Regulation (EU) 203/2012 on organic wine production; Regulation (EU) 505/2012 on feed and use of rosemary extract; Regulation (EU) 392/2013 on control system; Regulation (EU) 519/2013 on EU enlargement to Croatia; Regulation (EU) 1030/2013 postponement of deadline for organic aquaculture; Regulation (EU) 1364/2013 on aquaculture and seed; Regulation (EU) 354/2014 correction and amendment of annexes I, II, V and VI; Regulation (EU) 836/2014 postponement of deadline for using non-organic young poultry and protein feed; Regulation (EU) 1358/2014 on aquaculture

<sup>4</sup> Amended by Regulation (EC) 537/2009 on list of third countries; Regulation (EU) 471/2010 on list of third countries; Regulation (EU) 590/2011 on imports from third countries; Regulation (EU) 1084/2011 on imports from third countries; Regulation (EU) 1267/2011 on imports from third countries; Regulation (EU) 126/2012 on imports from the USA; Regulation (EU) 508/2012 on imports from third countries; Regulation (EU) 751/2012 on imports from third countries; Regulation (EU) 125/2013 on imports from third countries; Regulation (EU) 519/2013 on EU enlargement to Croatia; Regulation (EU) 567/2013 on imports from third countries; Regulation (EU) 586/2013 on imports from third countries and date of submission of annual report; Regulation (EU) 355/2014 on imports from third countries; Regulation (EU) 442/2014 on the list of third countries; Regulation (EU) 644/2014 on imports from third countries; Regulation (EU) 829/2014 on imports from third countries; Regulation (EU) 1287/2014 on imports from third countries; Regulation (EU) 2015/131 on imports from third countries

bear the European organic logo, which means that these products are fulfilling the standards set by the EU.

Most scholars claim that the importance of original values are diminished by public regulation, especially by EU regulation (Vogl et al., 2005). Whereas, Stolze and Lampkin (2009) claim that regulation is supporting the organic farming sector. Guthman (2004) speaks about the ‘conventionalization’ of the organic farming sector. Michelsen (2001) emphasizes the possibility to set even higher standards by the private sector due to fact that values and norms are more enduring than regulation.

## **2. Purpose and relevance of the research**

This introduction of the connection between the organic farming sector and regulation showed that a complex system of regulation between different levels and different actors evolved since the first social movements concerned organic farming. The aim of this paper is to describe the regulatory governance structure on current organic farming regulation from a European perspective. The research question to be answered is: *Which actors at which levels are involved in the different regulatory tasks related to current organic food production and labeling regulations in the European Union?* The research will make conclusions about the involvement of actors in the different regulatory tasks – not about their influence. The research will analyze three dimensions – namely the regulatory task, the type of regulatory actor and the governmental level on which an entity is operating. The regulatory tasks - RIA/initiative, expertise/research, legislature, enforcement/executive and monitoring/evaluation – will be analyzed in regards to which actors are involved in performing these regulatory tasks and at which governmental levels these tasks are performed. The ‘type of actor’ variable has the attributes private, private-public/hybrid and public and will support conclusions on the degree of self-respectively co-regulatory regimes in regards to organic farming regulation. The governmental level on which the tasks are performed will be analyzed in order to assess whether there is decentralized multilevel governance or centralized decision-making. These modes of governance are conceptualized in the following section. One will also be able to make conclusions about the actors involved at which level in the different task and who this relates to the overall involvement in the regulatory act.

The research will promote transparency, accountability and responsibility by means of democratic decision-making. To know and understand who is involved in which decision increases the level of accountability and opens the access of stakeholders into the regulatory decision-making process. The research focuses on European regulatory acts in order to make conclusion on the level of centralization of EU decision-making. It is especially interesting to analyze organic farming regulation due to two facts. First, it is interesting to look at the governance structure of the organic farming sector since there were only a few accomplished regulations at national level before the EU began to intervene in this field. Most national governments have only adopted the guidelines of Regulation (EEC) 2092/91,

while others have concluded higher standards. This stands in clear contrast to most policy fields where national governments were the core decision-makers before the EU got some degree of competence. Secondly, the political attention of organic farming, as described above, faded just after the first signs of shifting modes of governance in the 1980s and 1990s in the EU, which leads to the expectation that organic farming regulation will feature more characteristics of these new mode of governance.

In the following the concept 'regulation' will be described in regards to the different tasks of regulatory activities, the different modes of regulatory governance theorized by scholars and regulations in regards to the type of actors involved. On that basis, one will analyze and make conclusions about the governance structure of the different regulatory tasks of the EU Regulations. The matrices showing which actors at which levels are involved in performing the different regulatory tasks will support the understanding of the governance structure behind the EU Regulations.

### **3. Theory & Concept: Regulation**

The term 'regulation' is generally understood as a politico-economic concept. In this - fairly market-based - sense, regulation is meant to change the behavior of private actors, the economy and private businesses. In this regard, regulation is often a response to market failure (Baldwin & Scott, 1998; Michelsen, 2001) through direct state intervention (Baldwin & Scott, 1998). As Baldwin and Scott (1998) emphasize, these types of regulation are steering the economy directly through rule-making, taxation, restrictions and other types of requirements. The OECD describes regulation as an 'interventionist' activity if unregulated markets fail to secure valued norms, such as safety and quality (Black, 2001; Radaelli & De Francesco, 2007). From the economic perspective, regulation is always meant to ensure the highest level of consumer protection by least restrictive measures on competition. Radaelli and De Francesco (2007) state further that the concept can be seen within the theory of public interest. In this regard, rules and regulation are made to secure the functioning of common goods, to protect consumers from fraud and to ensure the required level of safety (especially in the food branch) (Garcia Martinez et al., 2007). In regard to organic farming regulation Vogl et al. (2005) state that regulation creates trust and confidence by consumers by setting specific definition, terms and concepts on organic farming. In addition to the politico-economic concept of regulation, Black (2001) emphasizes that the concept also relates to the social dimension, such as family, health, education and employment policy. In this sense, regulation emerges from social forces, norms, values and culture. Eckert (2011) defines regulation or regulatory activities as all means of setting rules by all types of actors on topics which are valued by the society. Baldwin and Scott (1998) defines this concept even more broadly by incorporating also unintentional and non-state regulation into their definition of regulation.

### **3.1. Regulatory tasks**

In order to describe the governance structure of regulation on organic farming in the EU, one has to take the different tasks of the regulatory process into consideration. Black (2001) describes regulation as a process of coordinating, facilitating, enabling, ordering, influencing, controlling and governing. This description shows already that regulation is very complex and the borders between the different tasks are often blurred. The first regulatory task is the ‘regulatory impact assessment (RIA)’ which stands in connection to the task of ‘initiative’ and is meant to identify the policy problem and main goals of a regulation (Garcia Martinez et al., 2007). Subtasks of RIA are the risk assessment, a cost-benefit analysis (of alternatives) and empirical support. However RIA connects also to the monitoring/enforcement/ evaluation process by evaluating the implementation of the regulation. The next official task is the ‘initiative’, which is often expressed as a competence in treaties of constitutions. Within the EU framework, the European Commission (hereafter called Commission) has the right for initiative. However, the initiative on a specific subject can potentially be demanded by another authority. RIA and the task of initiative will be seen as one task field in the following research analysis. In order to translate public and private interests into the decision-making process governments or other legislative authorities need to incorporate research and other forms of expertise into the legislative proposal. Here, it is important to describe who is providing for expertise or making research and who or which authority is funding the research. After and during the collection and discussion of expertise and research findings, the regulatory act respectively the legislative act takes place. This will hereinafter be expressed as legislative task. After the conclusion of a regulatory act the executive authorities have to implement and enforce the regulation. Regarding organic farming regulation, certification authorities and control bodies are in the following classified as enforcement bodies. The last tasks, which will be considered in this paper, are monitoring and evaluation. These tasks are needed to evaluate to what extent the regulation is implemented and how it could be improved in practice and theory. After the evaluation and monitoring process regulations are often adjusted.

In the empirical part of this paper, the actors involved and at which governmental levels they act in the different regulatory tasks in current EU Regulations regarding organic farming in the food industry are described. What follows now is an analysis of meaningful regulatory governance concepts, like the ‘regulatory state’, ‘multilevel governance’, stakeholder involvement and decentralized regulatory governance. These concepts support the understanding of the empirical analysis and the research outcome.

### **3.2. The ‘regulatory state’ and good regulatory governance**

Majone (1994) first introduced the modern theory on the ‘regulatory state’ which means the emergence and expansion of centralized government intervention on the behavior of actors. The government has the task to translate public needs and preferences into legal regulatory setting, to control public agencies and to control the compliance of such regulations (Baldwin & Scott, 1998).



During the last centuries, one has noticed a significant increase of supranational rule-making activities, especially in the European Union, which shows that our society is moving away from modern characteristics and centralized government to a post-modern notion of governing and behaving. Majone (1994) anticipated already in 1994, that cooperation in regards to regulation will increase due to the growing interdependencies in the world. The emergence of new institutional settings, such as the EU, is reinforcing this development. The OECD and the EU already insisted that these developments in regulatory activity call for a new type regulatory management and regulatory coordination in the light of good regulatory governance. Radaelli and De Francesco (2007) state further that the original forms of the social contract is no longer effective and that new arrangements between the (supranational) government, the citizens and regulatory authorities are needed due to the developing interdependencies and transnational political and economic arrangements. This is also crucial to answer questions of accountability, responsibility and transparency. Noll (1999) claims that there is often a neither clear nor democratic delegation of regulatory tasks and policy influence to experts and independent private entities. In this sense, Parker (2002) and Scott (2003) noticed a form of meta-regulation to control co – or self-regulatory regimes. Therefore, the Commission published a White Paper on good governance principles in 2001, which states objectives to open up regulatory processes to stakeholders and to increase the accountability and inclusiveness. What becomes evident is the fact that policy and rule-making in the EU is moving away from state-centeredness to multilevel governance, stakeholder involvement and the principle of subsidiarity (Black, 2001; Radaelli & De Francesco, 2007).

The post-modern concepts underlying these claims are participatory governance, multilevel governance and decentralized regulation, which will be presented in the following.

### **3.3. Multilevel governance**

Jordan (2001) describes multilevel governance as a process of decentralization and the empowerment of sub-national actors. The EU is understood as the first organization with profound characteristics of multilevel governance and is therefore seen as an organization *sui generis*. There is a high level of interaction between EU institutions (supranational level), national authorities, sub- state authorities, municipalities and private interest (Gornitzka & Sverdrup, 2008). Jordan (2001) claims that the EU treaties give the EU increasing competences to function as a ‘quasi-federal state’ through the concept of spill-over. In 2014, the EU adopted a Charter for Multilevel Governance to promote multilevel governance, the principle of subsidiarity, proportionality and partnership and implement instruments of joint policy action. The direct effect of supranational legislation can therefore overrule national and sub-national legislation. However, other policy fields are still purely performed through intergovernmental bargaining. The complexity of governance at EU level becomes evident through the polycentric and often fragmented EU action and the intersecting competences between different governmental levels. Peters and Pierre (2001) and Chowdhury and Wessel (2012) explain that a

feature of multilevel governance is the non-hierarchical exchange between different governmental levels and the vertical layering of governmental levels, which allows to evade other intermediate levels. Chowdhury and Wessel (2012) agree on this feature and state that multilevel governance relies on the fact that no governance level has the monopoly of decision-making. In this sense, one can speak about shared responsibilities and shared legislative activities. A type of transnational and multi-sectoral system emerges through the growing interconnectedness of the political system and different policy areas (Chowdhury & Wessel, 2012; Piattoni, 2009). This development fosters the interconnectedness through policy networks. These networks are often built on either competitive or collaborative relationships.

Chowdhury and Wessel (2012) distinguish between multilevel governance and multilevel regulation. Due to them, multilevel regulation is seen as the space the rules are made, implemented and enforced at different levels and by different actors. In contrast to multilevel governance, multilevel regulations have legally binding effects. Multilevel governance and multilevel regulation is obviously a process with a high degree of influencing power. Chowdhury and Wessel (2012) define regulatory power as the ability to influence the rule-making process and outcome. The degree of regulatory power can often be traced back to the resources of an actor or the resource surplus of a governmental level. Multilevel governance is therefore a logic approach to improve efficiency and resource allocation. On that basis, Piattoni (2009) has developed functional spaces. She distinguished between the public-private dichotomy, where private actors are performing public functions and the other way round, the substate-suprastate dichotomy and the domestic-international dichotomy. Therefore, she defined three axis of activity – the central-federal axis (X1), the private-public axis (X2) and the intergovernmental-neofunctional axis (X3). These three axes are compounding functional spaces. The X1 and X2 space is featured by a high degree of regionalism and center-periphery relations. An example is the concept of ‘Europe of Regions’. The increasing power of the civil society and NGO’s is composed by axes X1 and X3. The X2 and X3 space emphasizes the importance of transnational groups. This conceptualization shows a high degree of complexity of the concept of multilevel governance. Piattoni (2009) has developed conditions to check whether ‘multilevel governance’ is appropriate. The first condition is the simultaneous involvement of different governmental levels in the decision-making process. The second condition is that non-governmental actors are involved at different governmental levels. The third condition to be checked is whether there is a non-hierarchical relationship within networks and between actors.

#### **3.4. Decentralized regulation**

The above conceptualization of multilevel governance shows that multilevel governance is based on highly decentralized processes of governance. Black (2001) renames the concept of decentralized regulation as the ‘new regulatory state’ and underlines the post-modern notion of regulation. The main claim of that concept is that national governments should not have the monopoly in decision-making,

regulation and enforcement (Baldwin & Scott, 1998) because they often fail to interpret and meet the needs of citizens and interest groups and have general lack of information. In this sense, there is and should be a shift in the perception of governors and the governed, which causes a changing relationship between the society and the government. The need of decentralized regulation and decision-making is conceptualized by Black (2001), who states that social problems are often highly complex and can therefore only be solved by interaction between the concerned actors. He further claims that there is a ‘fragmentation of knowledge’, which means that regulators in the modern sense have often a lack of knowledge to perform efficient and effective regulatory activities. This has the consequence that, comprehensive information is not concentrated in one actor and cooperation between information providers is therefore needed. Furthermore, the emergence of hybrid organizations of public and private actors calls for a new understanding of power and control. Decentralized regulation should also be seen in the light of globalization, transnationalism and regionalism. These concepts are based on a high level of interdependencies, which reinforces the complexity between levels and actors. Black (2001) describes this as ‘webs of influence’ and considers regulation as the outcome of interaction between different actors at different levels. Technical committees and influence networks are gaining importance. The interest group theory is based on corporatism and pluralism and describes regulation as the outcome of interaction between different social, economic and political groups (Baldwin & Scott, 1998). The microeconomic theory regards regulation as the outcomes of special interests, which means that there is competitive framework of stakeholder and other actors pursuing their individual interest (Baldwin & Scott, 1998). In the 1970s and 1980s the notion of ‘government as a market’ emerged due to the fact that preferences were moving away from the common interest on the basis of the competitive power of stakeholders.

González, Amin, and Verhoest (2014) are distinguishing between different regulatory arrangements. On the one hand, in the vertical respectively the multilevel regulation, the responsibility is shared between different governmental levels. A horizontal arrangement is based on shared responsibilities between entities on the same governmental level, such as private actors, courts, ministries and businesses. Eckert (2011) distinguishes regulations regarding to which actors are involved. The characteristics and processes of public regulation, co-regulation and self-regulation will be explained later on.

### **3.5. Stakeholder involvement & the bottom-up approach**

A crucial characteristic of decentralized governance and decentralized regulation is the so called bottom-up approach. Especially in the EU, one could see a governance change since the 1990s. Smismans (2008) characterizes the ‘Community method’, which was common until then, as having a strong sense of hierarchy, institutional balance and centrality of EU institutions in legislative processes. Since then, concepts and practices like the Open Method of Coordination, benchmarking

and the European Social Dialogue emerged. In addition, one could notice an increase of agencies and NGO's, which are active on the European level to exchange information and to look after the implementation of regulation. This involvement of often local or sub-national stakeholders leads often to a quite complex system of policy-making. The involvement of stakeholders, other actors and the absence of a hierarchical order is what Smismans (2008) conceptualizes as 'new governance'. This 'participatory' type of governance is based on the involvement of stakeholders and the civil society rather than on citizens' involvement. This leads to a more flexible and revisable system of governance. The bottom-up approach is also agency-driven and relies on highly interdependent networks, which means that a range of politically independent but otherwise interdependent agencies, e.g. information agencies, are giving expertise in the daily decision-making processes (Smismans, 2008). Majone (1996) states that agencies and stakeholder do have policy output legitimacy, which refers to the public assessment of outcomes. Benn, Dunphy, and Martin (2009) see stakeholder involvement in the light of the 'reflexive modernization' theory and the 'radical pluralism' theory. The former should be seen in a decentralized context, which involves inclusive decision-making and stakeholder interaction. The latter theory emphasizes the complexity and diversity of values, experiences and knowledge and focuses on non-hierarchical networks and collaboration between actors.

Although, stakeholder involvement is often needed in regards to resources and expertise there is often a lack of accountability and representativeness. Original concepts like parliamentary representation and the principle agent theory do not longer hold. Michelsen et al. (2008) state further the involvement of stakeholders is often based on their resources. Chalmers (2013) claims that - in reality - stakeholder involvement can be seen as elite pluralism. A regulatory system, which is strongly relying on stakeholder involvement has to deal with a high variety of needs and interests which calls for intensive conflict management (Michelsen et al., 2008). It is also often intransparent, which actors are involved. Michelsen et al. (2008) state that the selection of stakeholders and actors, which are involved are often a political choice. For example, the EU has a high range of action plan strategy groups, steering groups, expert commissions and advisory groups there the composition of these groups is still an EU competence (Gornitzka & Sverdrup, 2008). The main reason why the EU is involving public and private experts is the general lack of staff of the Commission and the Directorates General. In this way the EU can reduce legislative costs, the costs for expertise and increase efficiency and effectiveness of its legislation (Chalmers, 2013). To increase the involvement of stakeholder the EU has reformed a range of policy fields. For example the CAP was reformed in 1992 in order to increase the participation of stakeholders and to promote socially valued means such as environmental production of food and rural development policies (Michelsen et al., 2008).

### **3.6. Regulatory actors**

In order to assess the involvement of actors in regulatory acts related to organic food production and labeling in the EU, it is now crucial to describe types of regulatory involvement. Videira, Antunes,

Santos, and Lobo (2006) give account to the regulatory impact of actors. The level of involvement ranges from 'information', 'consultation', 'involvement' and 'collaboration' to 'self determination. Aubin and Verhoest (2014) define the levels of involvement as 'not involved', 'informed', 'consulted with non-binding advice', 'binding opinion', 'co-deciding' and 'final decision-maker'. These attributes of the variable 'involvement' will be adopted in this paper. González et al. (2014) developed the types of regulatory involvement. The 'fragmented regulatory arrangement' is built on a range of actors taking decisions without the involvement of the other actor. 'Cooperative arrangements' means that there is no domination by one actor and the decision is jointly concluded. The 'consultative arrangement' indicates that there is one final decision-maker who is consulting other actors. The 'concentrated arrangement' gives no opportunity to participate in the decision-making process to other actors. After having assessed the involvement of actors in the specific regulatory tasks later on, these definitions will help to characterize the regulatory arrangements of the chosen regulations on organic food production and labeling.

### **3.7.1 Public regulation**

Public regulation is a common concept and means that regulatory acts are made by legislative, judicial executive and public administrative and bureaucratic bodies (Eckert, 2011). The functioning of these bodies is crucial to perform effective regulatory activities. Public policy-makers are regarded as the safeguards to social welfare and to counteract private forces and specific interests. Public regulation therefore is the opposition to liberal market regulation and the laissez faire approach. Public bodies in this paper will be regarded as all governmental entities and other bodies with governmental control.

### **3.7.2 Co-regulation**

Co-regulation means the interaction between public and private entities in regulatory acts. Some or all regulatory tasks are in this sense seen as a shared responsibility. Verbruggen (2009) states that there is a varying degree of private and public involvement in regulatory processes. Private and public actors are often involved at different stages of the regulatory cycle. Recently, one could also notice the emergence of hybrid agencies, where the distinction between public and private is blurred. Governments often seek to involve private entities due to their limited resource and staff capacity. This is also the case in the EU legislative framework. The first modes of co-regulation in the EU were in the 1980s due to the new approach to harmonization (Verbruggen, 2009). The involvement of private actors in EU legislation is often needed to assess the needs of the market and to gather information and expertise. However, Verbruggen (2009) claims that the top-down approach, which rests on the hierarchical relationship is still common. To counteract this, the Commission issued a White Paper on European Governance in 2001 to promote co-regulation in the EU legislative framework due to the technical expertise of experts. This was especially implemented in the European Economic Social Committee where the regulatory responsibilities are shared between private and public entities. Co-regulation does also play a crucial role in food and food safety policy. Food safety

and environmental protection are seen as private norms and values. Co-regulation and the involvement of the actors concerned with these values are needed to enforce these privately established norms. As described above, organic farming emerged through private norms and values. Garcia Martinez et al. (2007) claims that co-regulation in the food safety market can enhance the level of food safety due to the introduction of private norms into regulation and lowers the cost due a more efficient allocation of resources. However, co-regulation is still limited due to missing trust between actors and the market and due to differing preferences.

### **3.7.3 Self-regulation**

Self-regulation, as well as co-regulation, evolved through the light of decentred regulation. Private organizations en entities are responsible for the regulatory tasks. In regards to the principle-agent theory, one has to emphasize that the ‘principle’ and the ‘agent’ are concentrated in the same entities. Self-regulation is a direct application of the principle of subsidiarity with a clear notion of self-influence and delegation of power to professionals and experts (Black, 2001). Self-regulation, due to Black (2001), is a ‘self-reflexive system’, where policy norms are set and can be adjusted flexibly. Some scholars claim that self-regulations are those regulations which are not influenced by the government. Black (2001), on the other hand, states that governments can play a minor role. In this regard, governments are creating the right setting or broad policy guidelines for self-regulation and private organizations are therein steering themselves. An obvious advantage of self-regulation is that private entities have often much more resources and capacities to perform regulatory tasks than governments have. Typical entities self-regulating themselves are collective associations, businesses, NGO’s and consumers. Due to Michelsen (2001) the civil society is the central organ in regards to self-regulation. A typical manner of pushing for (self-) regulation is the social movement, which was as described above the origin of organic farming policy. Due to the lack of legitimacy, self-regulation is seen as voluntary type of soft law measures. Besides multi-lateral and collective regulation, there are also unilateral adopted standards, for example when firms are setting standards. Black (2001) distinguishes also between different types of self-regulation. ‘Mandated self-regulation’ means that the governments ask a specific collective group to formulate and enforce norms within broad guidelines set by the government. Self-regulation there the industries and business formulate standards is called ‘coerced self-regulation’. ‘Voluntary self-regulation’ and ‘stakeholder self-regulation’ exclude governmental involvement. ‘Verified self-regulation’ means that third parties have the task to monitor the compliance of regulation, whereas ‘accredited self-regulation’ means that the regulation is accredited by other private entities and NGO’s. ‘Sanctioned self-regulation’ is approved by the government.

Whereas, self-regulation leads to greater levels of compliance due to self-responsiveness and voluntarism, it is often lacking sanctions. The free rider problem of the compliance of voluntary regulation is the most crucial problem of non-governmental regulation.

## **4. Empirical part**

In the following, Council Regulation (EC) 834/2007, implementing Regulation (EC) 889/2008 and the EU-U.S. Equivalence Agreement on organic production will be analyzed regarding to which type of actors are involved in the different regulatory tasks. The analysis focuses on specific actors, organizations and associations somehow involved in the process. One has to be conscious about the fact that there is possibility that organizations are missing in the analysis because there is no official note of their involvement. I only included organizations and actors if I found a clear evidence of involvement. The outcomes are illustrated in several actor-level matrices, which will support our understanding and enables to make conclusions about the mode of governance of the different EU Regulations. It will be specifically interesting to see whether the actors are of homogenous nature throughout the different regulatory tasks or whether the governance of the different regulatory tasks is varying. I will start with an introduction of the three regulations. Afterwards, the regulations will be analyzed and compared due to the different tasks. Subsequently, I will make some remarks on the governance on organic food and farming regulation beyond the EU framework. Private and international standards will be explicated.

### **4.1. Content & aims of the EU Regulations**

Council Regulation (EC) 834/2007 has its roots in the 2004 Organic Action Plan and revised the original Regulation 2092/91. After the implementation of the first EU Regulation on organic food and farming the share of the organic farming sector and the consumer demand increased significantly. The revision Regulation was meant to stabilize the EU organic farming market and to adjust on new developments in the production process. The Regulation centralized objectives and obligations of the use of substances and the farming methods. The Regulation intended to develop the emphasis on the societal role and core values of organic food and farming – such as biodiversity, environmental care and animal welfare. The Regulation criticizes the use of GMOs as being incompatible with organic farming values. A special focus lied on the control system of organic farming to ensure consumer protection and increase consumer confidence. The new EU Organic Logo was mentioned but the introduction of the logo was delayed. Overall, Regulation (EC) 834/2007 intended to bring more simplicity, harmonization, transparency and flexibility into the EU framework.

Article 38 of Council Regulation (EC) 834/2007 laid down the Commission obligation to set up detailed implementing rules in regards to the principles and objectives of this Regulation. This resulted in the implementing Regulation which was adopted by the Standing Committee on Organic Farming (SCOF) in 2008 (Commission Regulation (EC) 889/2008). In opposition to Council Regulation in 2007, which was much more political, the implementing Regulation was meant to lay down detailed requirements and focused on the technical dimension of the rules and requirements of labeling and controls. Detailed rules for organic aquaculture were laid down for the first time. However the provisions of organic wine standards were exposed.

The EU-U.S. Organic Equivalence Agreement is, on the EU side, based on Regulation (EU) 126/2012 which is an amendment of Regulation (EC) 1235/2008 and extends the list of equivalent third countries. From the U.S. perspective, the U.S. Organic Foods Production Act 1990 and the U.S. Code of Federal regulation (CFR) Part 205, NOP form the basis of this agreement. Generally, it implements the mutual recognition of each other's organic production rules and, control and certification systems. Products which are inspected and certified due to the US National Organic Program (NOP) may be imported into the EU and use the EU organic logo and vice versa. The agreement covers all products produced, processed and packaged within the U.S. or the EU.

#### **4.2. RIA & Initiative**

Before a regulatory proposal is drafted by the Commission, an institution or actor has to take the initiative to adjust the provisions in a regulatory framework or policy field. Generally, the Commission has the right of initiative laid down in the EU treaties. In the case of Council Regulation 834/2007, the 2004 European Organic Action Plan for Organic Food and Farming called for a revision of Council Regulation (EEC) 2092/91. The Council asked the Commission to prepare a proposal. The review of the legal framework started in 2005.

In regards to Commission Regulation (EC) 889/2008, the initiative is based on the provisions laid down in Article 38 of Council Regulation (EC) 834/2007. Due to this article the Council again called for a proposal by the Commission.

The initiative for the EU-U.S. Equivalency Agreement is based on a request by the U.S. Department for Agriculture (USDA). Article 7 of Regulation (EC) 1235/2008 determines a list the U.S. has to provide while making the request. This list was provided properly. The process of making such an international agreement is mandated from the Council to the Commission. The Commission presents the EU during the decision-making process.

After the initiative the competent authorities have to be conscious about policy impacts and alternative options. The regulatory impact assessment (RIA) focuses on economic, environmental and social consequences of different policy options and usually involves stakeholder consultation and external assessment agencies. In the case of the EU, the competent DG has the leading role and creates and inter-service steering group, which consists of different stakeholders and prepares the analysis and the report.



*Matrix 1: Council Regulation (EC) 834/2007: RIA & initiative*

Level \ Actor	private	Private-public/hybrid	public
International			
Supranational/European	ECNC <sup>5</sup>		Council European Commission EFSA DG AGRI <sup>6</sup>
national			
Sub-national			
local			

*Matrix 2: Commission Regulation (EC) 889/2008: RIA & Initiative*

Level \ Actor	private	Private-public/hybrid	public
International			
Supranational/European			Council <sup>7</sup> European Commission
national			
Sub-national			
local			

*Matrix 3: EU-U.S. Equivalence Agreement: RIA & Initiative*

Level\actor	private	Private-public/hybrid	public
International			
Supranational/European			European Commission
National			USDA <sup>8</sup>
Sub-national			
local			

The analysis of the task of initiative shows that the EU is acting in a centralized way. The task of initiative is concentrated in the Commission which is a supranational public institution. The Council is also related to this task in the way that the Council is setting the objectives in the policy field. It is noticeable that there are nearly no private or hybrid actors involved. Except the EU-U.S. Equivalence Agreement, there is no involvement of other (external actors) and the Commission of dominating this task of initiative. In the case of the EU-U.S. Equivalence Agreement the USDA was requesting the agreement. It makes clear that initiative task on the U.S. side is also centralized in a governmental actor. Although, it is a logical application of public regulation to allocate the right of initiative to the Commission, it would be reasonable to develop some kind of platform where stakeholders, national authorities and consumers can call for new regulations or adjustments of current regulatory regimes.

<sup>5</sup> Environmental Risk Assessment for European Agriculture until 2004

<sup>6</sup> Leading role in impact assessment

<sup>7</sup> Article 38 Council Regulation (EC) 834/2007

<sup>8</sup> Request to the Commission including list provided for in Article 7 Regulation (EC) 1235/2008

This would increase the effectiveness and reliability of proposed regulations since the affected can give input if the market is out of balance. However, this is not the case in most regulations.

There are no evidences on the actors involved in RIA. At the European Commission website on impact assessment reports the impact reports issued under the DG AGRI are listed (European Commission, 2014a). Thereby any evidence on an RIA reports on organic farming or one of the analyzed EU regulations are missing, which is odd in the regard that the DG AGRI issued a whole range of RIA reports on other issues.

### **4.3. Expertise & research**

In the light of the above described notions of stakeholder involvement and decentralized governance, it is expected that expertise and research to assist the proposal by the Commission is conducted by external and multilevel actors. This expectation derives from the facts, that the Commission has not sufficient resources and capacities to fulfill this function and that the involvement of stakeholders increases the efficiency and practicability of such a regulation.

The expertise sources and research programs regarding to Council Regulation (EC) 834/2007 and Commission Regulation (EC) 889/2008 are mostly similar because they are directly related to each other. The Advisory Group on Organic Farming (AGOF) may be consulted by the Commission at any time. The AGOF is composed of representatives of the IFOAM, the European Consumers' Organization (BEUC), COPA COEGCA, COFALEC and other non-permanent technical and business interest groups. The AGOF can be seen as the stakeholder organ in EU decision-making. The Commission consults the AGOF, which means that it gets non-binding opinions on its proposal or non-binding recommendations. The AGOF is a supranational public entity. However, its members are highly involved in the regulatory process and are therefore, on their own, involved too. The IFOAM is an international private organization bringing together international stakeholders in the organic farming sector. The IFOAM EU Group is the European subgroup and has regular meetings with the Commissioner of the DG AGRI (during the process of Regulation 834/2007 and 889/2008 Mariann Fischer Boel) and submits comments to the Commission. During the research phase which resulted in this paper contacts with German members of the IFOAM EU Group showed that there is a range of members (e.g. Agrum consult, Artebio, Biofrisch.net, EkoConnect and Biokreis) which are not active within the IFOAM EU Group and also not in regards to the EU Regulations (Appendix 1). This passiveness of often smaller organizations and businesses shows that the involvement in the expertise and research tasks is often related to capacities and resources of an organization or enterprise. I got positive responses from the German association 'BÖWL' and 'Bingenheimer Saatgut AG', which claimed that they are involved in the two regulations in regards to expertise via the IFOAM EU Group. The 'Bingenheimer Saatgut AG' for example is member of the 'seed expert group'. These expert groups are developing the positions of the IFOAM EU Group in a specific field. COPA COGECA

represents European farmers and agri-cooperatives in Brussels and meets with the EU institutions to increase the dialogue between stakeholders and the EU.

In addition to the direct advisors of the Commission there were research programs to support the regulatory process, which were also partly financed by EU budget. The following research programs refer to Council Regulation (EC) 834/2007 and Commission Regulation (EC) 889/2008. The project 'EEC 2092/91 REVISION: Research to support revision of the EU Regulation on organic agriculture' (2004-2007) was financed by the Commission and the IFOAM EU Group and focused on the integration of values into the revision and the comparison between the EEC Regulation, national and private standards. The reason why this comparison was conducted is that the aim of Commissioner Fischer Boel was to harmonize the standards as widely as possible. The project was predominantly conducted by private multilevel research institutions, Universities and an Austrian national public body.

The next official project financed by EU budget is the ORGAP 'Action Plan for Agriculture' Project which was carried out between 2006 and 2008. It was meant to develop criteria for the assessment of the EU Action Plan, the degree of stakeholder involvement and provided expertise on the implementation of the Action plan. The project was carried out by four public universities, national and local research institutions like FiBL, the IFOAM EU Group and national public institutions.

The 'Organic inputs evaluation project ORGIN' (2003-2006) was meant to develop criteria standards for the use of fertilizers, soil conditioners and plant protection products. In addition to private research institutes, control and certification bodies played a role in conducting these projects. Control and certification bodies are non-governmental. However, they are in the following characterized as being private-public (hybrid) in nature because they are subordinated to the supervision by national or federal governmental authorities and are fulfilling a public function – namely certification and labeling.

*Matrix 4: Council Regulation (EC) 834/2007 & Commission Regulation (EC) 889/2008: Expertise & research*

Level \ Actor	private	Private-public/hybrid	public
International	Louis Bolk Instiuit <sup>9</sup> (LBI) InfoXgen <sup>10</sup>	EOCC COPA COEGCA	
Supranational/European	IFOAM EU Group <sup>11</sup> COFALEC <sup>12</sup>	EOCC COPA COGECA BEUC <sup>13</sup>	CORE Organic <sup>14</sup> AGOF
national	Bingenheimer Saatgut AG BÖWL FiBL <sup>15</sup> Associazione Italiana Agricoltura Biologica <sup>16</sup> Institut for Sustainable Development (ISD) <sup>17</sup> SEAE <sup>18</sup>	EOCC COPA COGECA DARCOF <sup>19</sup> Bio.inspecta <sup>20</sup> Austria Bio Garantie <sup>21</sup>	Bundesanstalt für alpenländische Landwirtschaft (BAL) <sup>22</sup> Institute of Agricultural Economics and Information, Prague <sup>23</sup>
local	Agricultural Economics Research Institute <sup>24</sup>		University of Wales <sup>25</sup> University of Kassel <sup>26</sup> University of Lund <sup>27</sup> Universität Hohenheim <sup>28</sup> Università Politecnica delle Marche <sup>29</sup> University of Southern Denmark <sup>30</sup>

<sup>9</sup> Organic Revision Project: 'EEC 2092/91 REVISION: Research to support revision of the EU Regulation on organic agriculture

<sup>10</sup> 'Organic inputs evaluation project ORGIN'

<sup>11</sup> Organic Revision Project: 'EEC 2092/91 REVISION: Research to support revision of the EU Regulation on organic agriculture; ORGAP 'Action Plant for Agriculture' Project

<sup>12</sup> Via Advisory Group on organic farming

<sup>13</sup> Via Advisory Group on organic farming; funded by EU grant

<sup>14</sup> CORE Organic pilot call 2006

<sup>15</sup> Organic Revision Project: 'EEC 2092/91 REVISION: Research to support revision of the EU Regulation on organic agriculture; ORGAP 'Action Plant for Agriculture' Project; 'Organic inputs evaluation project ORGIN'

<sup>16</sup> Organic Revision Project: 'EEC 2092/91 REVISION: Research to support revision of the EU Regulation on organic agriculture

<sup>17</sup> ORGAP 'Action Plant for Agriculture' Project

<sup>18</sup> ORGAP 'Action Plant for Agriculture' Project

<sup>19</sup> Danish Research Centre for Organic Farming: Organic Revision Project: 'EEC 2092/91 REVISION: Research to support revision of the EU Regulation on organic agriculture

<sup>20</sup> 'Organic inputs evaluation project ORGIN'

<sup>21</sup> 'Organic inputs evaluation project ORGIN'

<sup>22</sup> Organic Revision Project: 'EEC 2092/91 REVISION: Research to support revision of the EU Regulation on organic agriculture

<sup>23</sup> ORGAP 'Action Plant for Agriculture' Project

<sup>24</sup> ORGAP 'Action Plant for Agriculture' Project

<sup>25</sup> Organic Revision Project: 'EEC 2092/91 REVISION: Research to support revision of the EU Regulation on organic agriculture; ORGAP 'Action Plant for Agriculture' Project

<sup>26</sup> Organic Revision Project: 'EEC 2092/91 REVISION: Research to support revision of the EU Regulation on organic agriculture

<sup>27</sup> Organic Revision Project: 'EEC 2092/91 REVISION: Research to support revision of the EU Regulation on organic agriculture

<sup>28</sup> ORGAP 'Action Plant for Agriculture' Project

<sup>29</sup> ORGAP 'Action Plant for Agriculture' Project

Before the Commission and the USDA could draft a proposal on the regulations implementing the equivalence agreement, they agreed to conduct reviews on the organic production, inspection and certification systems of each other. Next to the U.S. review team, consisting of the public subdivisions of the USDA Agricultural Marketing Service and the Foreign Agricultural Service, The U.S. Organic Trade Association (OTA) established the U.S.-EU Equivalency Task Force in May 2010 to assist the USDA and to analyze, discuss and advise on issues between the U.S. and the EU during the process of making such an international agreement.

Article 33(2) of Council Regulation (EC) 834/2007 states that the Commission had to check the equivalence between the EU and the U.S. production and control standards, which was successful. As a consequence, the Commission had the obligation to draft a proposal to include the U.S. in the list of equivalent third countries.

*Matrix 5: EU-U.S. Equivalence Agreement: Expertise & research*

Level\actor	private	Private-public/hybrid	public
International			
Supranational/European			Advisory Group on Organic Farming (AGOF) <sup>31</sup>
National	BÖWL OTA Task Force		USTR USDA Agricultural Marketing Service <sup>32</sup> US Foreign Agriculture Service (FAS) <sup>33</sup> European Commission <sup>34</sup>
Sub-national			
local			

In regards to the regulatory task ‘expertise & research’, one could conclude that there is high level of multilevel and decentralized governance, which is illustrated in ‘Matrix 4’. There is high range of actors acting similarly on different governmental levels and but also horizontally. Especially, the EU financed research projects showed a high degree of cooperation between private, hybrid and public actors at different governmental levels without a clear hierarchy. Therefore the multilevel governance conditions developed by (Chowdhury & Wessel, 2012; Piattoni, 2009) are met in regards to Council Regulation (EC) 834/2007 and Commission Regulation (EC) 889/2008. Another positive fact to mention is the fact that the actors, which have conducted the research projects, are widely spread

<sup>30</sup> ORGAP ‘Action Plant for Agriculture’ Project

<sup>31</sup> Issued approach on ‘EU organic control body verification of EU organic ‘animal products produced without the use of antibiotics’ for export to the USA’ at the meeting of the AGOF on 12<sup>th</sup> of June 2012

<sup>32</sup> Review on EU organic production, accreditation and certification system

<sup>33</sup> Review on EU organic production, accreditation and certification system

<sup>34</sup> Review on US organic production, accreditation and certification system

throughout the EU. Actors from the North, East, West and South of Europe are represented, which encourages the exchange and tolerance between the member states. However, it is noticeable that there is slight prominence of German and Austrian organizations and actors involved in expertise and research. This becomes also evident if one looks at the membership list of the IFOAM. The amount of German member organizations is significantly greater than those of other member states. This could be related to the fact that the organic farming sector in the German-speaking countries is highly developed.

The action of the AGOF related to expertise and research is quite common. However, one has to be conscious about the fact that the group is only consulted by the Commission which means that the recommendations the stakeholders make are not binding for the Commission. This establishes a strong hierarchy between EU institutions and the AGOF and therefore opposes the 'no hierarchy' condition of multilevel governance by Piattoni (2009). Secondly, The AGOF is mostly consisting of umbrella organizations. Their members are big-, medium- and small-sized organizations and businesses, which collaborate in these umbrella organizations to increase their say in the market. On the one hand, this is a good opportunity to get involved for small-sized organizations. On the other hand, organizations and enterprises with more resources and capacity are more likely to be involved and influence the collaboration and position of organizations such as the IFOAM and COPA COGECA, which is a characteristic of elite pluralism. As already stated above, especially small-sized organizations are passive within these associations. Furthermore, umbrella organizations bring together highly differing stakeholders from different perspectives. The members of the IFOAM for example are highly multi-sectoral. There is no domination of one group of stakeholders, which encourages interconnectedness between the different organic farming sectors. Therefore the negotiation between the members seems to be a highly democratic process. Therefore, the position paper or recommendation reaching the Commission is an outcome of the negotiation between stakeholders and is a characteristic of the bottom-up approach. Stakeholders, who are members of such umbrella organizations, are operating at differing levels and are mostly private or hybrid in nature. One could therefore conclude that there is a notion of multilevel governance within these organizations, which actually underlines the notion of multilevel governance and the bottom-up approach in regards to the EU organic farming regulations. In the light of decentralized governance, one could state that the phenomena of outsourcing research and expertise due to knowledge and capacity limits is applicable in regards to the EU organic farming regulations but the incentives to do research is often led and financed by the EU. Although the expertise and research seems to be quite decentralized and happens at all governmental levels, there is no clear algorithm or pattern about the selection of entities involved and consulted in expertise and research. The process has to become more transparent and the opportunities to get involved should be equalized between small-, medium- and large-sized business and organizations.

The picture in regards to international agreements in the case of the EU-U.S. Equivalence Agreement is more central. The governmental authorities (the Commission and the USDA) had the obligation to induct the reviews and outsourced this to subdivisions of their institutions. The Commission was assisted by the AGOF, but did not conduct other research projects and therefore excluded stakeholders which are not members of the AGOF. On the other hand, the AGOF had direct communications with the U.S., which shows that four to five years after Council Regulation (EC) 834/2007 the competences of the AGOF have broadened. Overall, one can conclude that the EU is working much more centralized while making international agreements, which is actually a contrasting development to the regular EU Regulations. This could be due to efficiency and to demonstrate that the EU is one actor in the international sphere. However, the exclusion of stakeholders and other affected parties while making international agreements is a crucial problem and should be considered by the EU. The civil society and the stakeholders should exert more pressure on the EU and ask for the right to get involved in these processes, too.

#### **4.4. Legislature**

Council Regulation (EC) 834/2007 and Commission Regulation (EC) 889/2008 are concluded within the pre-Lisbon regulatory framework. Council Regulation (EC) 834/2007 is done under the former ordinary decision-making procedure with EP consultation. On the request by the former Council presidency, the Commission worked out the first detailed concept on the revision of Council Regulation (EEC) 2092/91 in December 2005. Beforehand, a consultation phase took place to inform the member states and stakeholders about the draft. It was highly criticized, especially by the IFOAM EU Group that this period was with three weeks too short to give stakeholders the opportunity to develop an opinion and send it to the Commission (Mikkelsen & Schlüter, 2009). The Commission published the proposal and handed it over to the Council and the EP. The EP had no co-deciding powers before Lisbon and was therefore only consulted. The EP, nevertheless, issued an opinion and criticized the low level of stakeholder involvement. The Council is the organ to adopt the regulation and is at the same time the organ where member states can influence the decision-making process. The Council had not adopted the proposal with qualified majority and therefore issued two compromise papers, which was done by a European Council working group and the Special Committee on Agriculture. After long negotiations, the new Presidency issued a third compromise paper and delayed any technical discussion. This resulted in the obligation by the Commission to draft proposals for an implementing act to lay down the technical matters. Council Regulation (EC) 834/2004 was therefore rather general and political and did not lay down detailed rules and methods of production. The opinion of the EP was long outstanding and blocked the adoption of the revision Regulation by not providing its opinion. The IFOAM EU Group claims in its report that the EP delivered no opinion to delay the regulation until the co-decision procedure under Lisbon comes into force (Mikkelsen & Schlüter, 2009). The Council adopted the regulation in June 2007.

*Matrix 6: Council Regulation (EC) 834/2007: Legislature*

Level \ Actor	private	Private-public/hybrid	public
International			
Supranational/European			European Commission European Parliament Special Committee on Agriculture EU Council European Council working group
national			
Sub-national			
local			

Before Lisbon, the comitology procedure stood central in making implementing acts such as Commission Regulation (EC) 889/2007. Implementing regulations were formerly distinguished between the advisory procedures, the management procedures and regulatory procedures. Regulation (EC) 889/2008 was adopted through a regulatory procedure. First article 37 of Council Regulation 834/2007 laid down that the Commission should be assisted by a Regulatory Committee in drafting the proposal. The Commission sends the draft to the Standing Committee on Organic Farming (SCOF), which consists of the 27 national representatives. Beforehand, a six week consultation period took place to support the work on the draft. Overall, one can claim that the consultation rounds are very short and leave less room for small associations and entities who are not member in an umbrella organization to deliver an opinion. The SCOF amended the proposal and approved the regulation without the involvement of the Council, which would happen if there were not agreement reached. The EP has highly restricted powers in the regulatory procedure as it may only act if the Commission is working beyond their competences.

*Matrix 7: Commission Regulation (EC) 889/2008: Legislature*

Level \ Actor	private	Private-public/hybrid	public
International			
Supranational/European			European Commission Regulatory Committee SCOF
national			
Sub-national			
local			

The regulation which implemented the EU-U.S. Equivalence Agreement on the European side was the Commission implementing Regulation (EU) 126/2012. This implementing act was concluded under post-Lisbon Treaty provisions. The Lisbon Treaty divided the regulatory procedures into ‘delegated acts’ and ‘implementing acts’. Regulation 126/2012 was concluded through an implementing act,



which amended Commission Regulation (EC) 1235/2008. It is the Commissions’ obligation to propose a draft of the implementing act. A committee including representatives from the member states delivers its opinion on the proposal. In case of the negative opinion, which means that the qualified majority is not reached, the Commission has to submit the draft to an Appeal Committee, which can then force the Commission to adopt the proposal by delivering a positive or no opinion. In case of a negative opinion the Commission may not adopt the proposal. While making the regulation the Commission took the opinion of the Regulatory Committee on Organic Farming into account. The In addition to the implementing act, the EU-U.S. Equivalence Agreement is an international agreement. The competence by the EU to conclude international agreements is set up in Article 218 TFEU. The Commission is mandated by the Council. The main negotiation work lies with the Commission, while the Council is signing the agreement. The Commission negotiated this agreement with USDA. Since food policy is a shared competence between the EU and the member states the Commission is also negotiating the agreement with the member states. After the negotiation phase the European Parliament is consulted. The Council adopts the agreement by qualified majority voting and signs the agreement.

*Matrix 8: EU-U.S. Equivalence Agreement: Legislature*

Level\actor	private	Private-public/hybrid	public
International			
Supranational/European			European Commission Regulatory Committee on organic production Council EP Appeal Committee
National			USDA
Sub-national			
local			

In regards to all three regulations, it becomes evident that the legislative task is solely based on public authority work. The legislative process is concentrated in the EU institutions with the prominence of the Commission. The Commission as central actor has a consultative regulatory arrangement with the European Parliament and the member states. The Commission is operating under the mandate of the Council and the Council is the main signee of the regulations. Especially in negotiating international agreements the Commission under the mandate of the Council has extensive competences. In regards to stakeholder involvement and decentralized governance, one has to admit that there is low level of opportunities by stakeholders to have a say on the proposal by the Commission. The main phase of stakeholder involvement takes place before the proposal is published. However, member states are involved in the regulatory process by being consulted and through their seats in the Council. Stakeholders may be involved in the position developing processes at national and federal level. In the case of Germany, stakeholder may influence and be involved in the position developing process in the

two biggest associations – ‘Bund der ökologischen Lebensmittelwirtschaft’ (BÖWL) and ‘Assoziation der ökologischen Lebensmittelhersteller’ (AöL) – which are involved at sub-national level and at the Federal Agency of Food and Agriculture (BMEL). However, this can only be assessed as indirect involvement.

The legislative regulatory task is the most EU-centralized and least multilevel approach of all regulatory tasks analyzed in this paper. On the one hand, the process seems to be the most feasible in regards to time and competence concerns. On the other hand, one has to critique the low level of stakeholder consultation and the non-existing opportunities by stakeholders to influence the text and the conclusion of EU Regulations. The effectiveness and accountability of the concluded EU Regulations could be significantly increased if stakeholders, such as the AGOF and their member organizations, would set up the text of the regulation together with the Commission and could issue binding recommendations and opinions on Commission proposals. This could potentially prolong the decision-making process but would lead to a more effective implementation, which would be supported by the stakeholders and main stakeholder associations. It would then be a more decentralized approach in regards to multilevel governance and at the horizontal dimension in the light of co-regulation.

#### **4.5. Enforcement & Certification**

In regards to enforcement of Council Regulation (EC) 834/2007 the Commission has the main obligation to ensure the proper implementation at national level. The member states have account for the implementation to the Commission by submitting implementation reports on an annual basis. Council Regulation (EC) 834/2007 also sets out the obligation to conclude a Commission Regulation to set up detailed rules on production methods. In this sense, Commission Regulation (EC) 889/2008 can be seen as an enforcement activity by the European Commission.

The main enforcement activity in regards to organic farming is to ensure the functioning of the control system. The certification system is regulated through Council Regulation (EC) 834/2007 and the following Commission Regulations. Certification is a signal to consumers that the particular product is produced due to the standards a specific label represents. The main goal of a certification and control system is to increase consumer trust in the specific product or label (Kosovska, 2013), which has a positive impact on the productivity of the supply chain of organic farming products. Organic labeling is an integral part of the EU organic food law. In 2010, the EU concluded a regulation on the new mandatory EU organic logo because of the great confusion about the national organic logos. The DG AGRI under Mariann Fischer Boel was an advocate of harmonization measures and prohibited nationally set standards.

The certification system in the EU can be characterized by the bottom-up approach. The main supranational actors in regards to the certification system are the DG SANCO and the DG AGRI.

Article 27 (1) of Council Regulation (EC) 834/2007 states that the member states are responsible for setting up a control system and appoint one or more ‘competent authorities’. ‘Competent authorities’ (Art. 2 (n) of Council Regulation (EC) 834/2007) are the central authorities at national level which supervise the functioning of the national control and certification system and are accountable to the Commission and have to report the activities to the DG AGRI. These competent authorities are therefore the main enforcer of Council Regulation (EC) 834/2007 and Commission Regulation (EC) 889/2008 at national level. Due to efficiency concerns, the competent authorities are delegating the tasks of inspecting, controlling and certification to ‘control authorities’, which are public bodies, or ‘control bodies’, which are private in nature and accredited by the competent authority. The certification by control bodies is called ‘Third Party Certification’ (TPC). ‘Second Party certification’ means that farmers are controlled by retailers and technicians and ‘First Party certification’ is a type of self-certification. TPC bodies are claiming to be more transparent, reliable and objective due to their independency from the market (Hatanaka, Bain, & Busch, 2005). The control bodies are accredited under EN 45011 and ISO Guide 65 standards (Art.7 (5c) of Council Regulation (EC) 834/2007). The control bodies and control authorities are obliged to report the results and activities to the competent authority, which, as described above, is accountable to the Commission. The competent authorities are also obliged to communicate any changes in list of accredited control bodies and control authorities to the Commission (Art. 35 Council Regulation (EC) 834/2007)<sup>35</sup>. The member states can chose between three different certification systems. In ‘System A’ controlling and certification is done through accredited private control bodies (TPC). System A is the most common system within the EU. Member states which have implemented this system are for example Germany, France, Hungary, Italy and the United Kingdom (European Commission, 2014c). ‘System B’ is built on public control authorities fulfilling the certification function. ‘System C’ is a mixed system with private control bodies and public control authorities. Since control bodies are private but take public functions and are responsible to a public authority, they are in the following characterized as hybrid (public-private) institutions. In regards to the certification and control system, one can see a high degree of private-public partnerships (PPP), which means that private entities are fulfilling public functions due to efficiency.

The European Organic Certifiers Council (EOCC) is an international organization composed of control bodies and control authorities. They cooperate and exchange information in regards to controlling and certification. The EOCC represents their members at national an EU level. Repeatedly, the EOCC is an example of small and medium organizations uniting in an umbrella organization to increase their say at European and international level.

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<sup>35</sup> A list of control bodies and control authorities is set up by the European Commission (2014c)

*Matrix 9: Council Regulation (EC) 834/2007 & Commission Regulation (EC) 889/2008: Executive & Certification*

Level \ Actor	private	Private-public/hybrid	public
International		EOCC	
Supranational/European			European Commission
national		Control bodies	Competent authorities Control authorities
Sub-national		Control bodies	Control authorities
local			

In regards to the EU-U.S. Equivalence Agreement, the Commission and the USDA are responsible for the constant enforcement of the agreement and the subsequent regulations. They have the task to supervise those entities to which enforcement and certification tasks are delegated. The Commission and the USDA agreed on the establishment of an Organics Working group consisting of representatives from the USDA, USTR and the Commission. The Organics Working Group was meant to ensure the proper implementation of the agreement by exchanging information, reviewing each other's standards and control systems and to discuss measures in case of serious non-compliance.

In regards to the certification system under the agreement, imports from the U.S. and other equivalent third countries into the EU do not need any additional certification. The Commission has developed a list of recognized control bodies from the U.S. in Annex II 1(5) of Commission Regulation (EC) 126/2012. The recognized control bodies from the U.S. have to be approved by the same standards as European control bodies – namely EN 45011 or ISO Guide 65 (Art.32 (2) of Council Regulation (EC) 834/2007).

*Matrix 10: EU-U.S. Equivalence Agreement: Executive & certification*

Level\actor	private	Private-public/hybrid	public
International			Organics Working group
Supranational/European			European Commission AGOF
National		U.S. control bodies <sup>36</sup> EU control bodies	USDA U.S. control authorities EU control authorities
Sub-national		EU control bodies U.S. control bodies	EU Control authorities U.S. control authorities
local			

The certification system within the EU and in regards to EU imports is a prime example for decentralized and multilevel governance. The certification and inspection is done by national and sub-national control bodies and authorities, in the sense of decentralized governance at the lowest efficient level. However, there is a clear hierarchy between the different levels and organizational units. The

<sup>36</sup> Regulation 126/2912 Annex II 1(5) list of control bodies and control authorities

non-hierarchy condition by Piattoni (2009) is therefore not fulfilled. However, in regards to responsibility and accountability matters this is a reasonable approach to limit free-rider and non-compliance problems. One can also see that, the control entities are building up a network between each other to increase their regulatory power and exchange about best practice. There is also a transnational dimension of the control bodies which are cooperating with control bodies from other countries or are active in regards to certification in other countries. The certification systems A and B do have strong characteristics of co-governance. To conclude, the bottom-up approach of the EU certifications system is highly feasible and efficient by means that competences are allocated at the lowest feasible level.

#### **4.6. Monitoring & evaluation**

Monitoring and evaluation of a regulation or policy are meant to assess the effectiveness of a regulation of policy and to find ways to improve currently holding legislation. Evaluation and monitoring outcomes are dossiers, reports and expert/stakeholder hearings. Ex post evaluation and monitoring outcomes are often used as the basis for ex ante impact assessments of follow-up legislation.

Article 36 of Council Regulation 834/2007 states the obligation by the national ministries of agriculture to send their national statistics to the Commission at a regular basis. This is used in the 'Community Statistical Programme'. Article 41 of the same regulation further states that Commission is committed to submit an evaluation report to the Council. The Report from the Commission to the European Parliament and the Council on the application of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products' from the 11th of May 2012 was carried out by an inter-service steering group consisting of the competent DG's. The report was based on a questionnaire sent to member states and stakeholders, but also non-registered organizations and citizens showed high participation in this questionnaire. Organizations and other bodies consulted through this questionnaire are private in nature and working at different governmental levels (compare with matrix 11). In addition, the Commission held expert hearings on the current stage of EU organic farming legislation. One has to be conscious about the fact that Commission Regulation (EC) 889/2008 was in the same year amended by Commission Regulation (EC) 1235/2008. The consequence is that there is no report or evaluation activity solely focusing on this regulation but most evaluations took the current stage of EU legislation into consideration. The themes of the expert hearings were: 'the EU organic market – Internal market and standards', 'The European Union's organic production – Controls and enforcement' and 'International trade in organic products and global issues'. Private stakeholder as well as umbrella organization and EU entities, such as the Court of Auditors and different DGs, were invited to these expert hearings. The participation showed diversity between private and public actors at different governmental levels. Again, the big umbrella organizations were prominent in all three hearings. It is also noticeable that most participating

organizations were not only participating in one hearing but in two or all of the hearings. This could be consequence of elite pluralism, as described above, and extensive capacities of these organizations.

In addition to the by the EU conducted evaluations, the Thünen Institute of Farm Economics conducted a report on the ‘Evaluation of the EU legislation on organic farming’. This project was financed by EU budget and was meant to evaluate the relevance and effectiveness of Council Regulation (EC) 834/2007. The Thünen Institute is subordinated to the German Federal Agency of Food and Agriculture (BMEL) to support decision-making process through scientific research.

The IFOAM EU Group does also plaid a significant role in the monitoring and evaluation processes. The IFOAM EU Group conducted a range of evaluation reports, which were partly co-financed by the DG AGRI. In 2009, the IFOAM EU Group issued ‘The IFOAM EU Group’s initial Assessment of the new EU organic regulations’ report, which focused on Council Regulation (EC) 834/2007 and Commission Regulation (EC) 889/2008 (IFOAM EU GROUP, 2009). In 2012, the IFOAM EU Group published ‘An Evaluation of the First three Years - Looking for Further Developments’ on the European Organic Regulations (EC) No 834/2007, 889/2008 and 1235/2008 (IFOAM EU Group, 2012).

*Matrix 11: Council Regulation (EC) 834/2007: Monitoring & evaluation*

Level \ Actor	private	Private-public/hybrid	public
International	Compassion in World Farming <sup>37</sup> Eurogroup for Animals <sup>38</sup> European Plant Science Organisation (EPSO) <sup>39</sup> EURO COOP <sup>40</sup> SLOW FOOD <sup>41</sup> FRUCOM <sup>42</sup> GORDAN <sup>43</sup> European Coordination of Via Campesina <sup>44</sup> ECOCERT <sup>45</sup> FiBL <sup>46</sup>	EOCC <sup>48</sup> COPA COGECA <sup>49</sup>	

<sup>37</sup> Questionnaire contributor

<sup>38</sup> Questionnaire contributor

<sup>39</sup> Questionnaire contributor

<sup>40</sup> Questionnaire contributor

<sup>41</sup> Questionnaire contributor

<sup>42</sup> Questionnaire contributor

<sup>43</sup> Questionnaire contributor

<sup>44</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>45</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

	Carrefour <sup>47</sup>		
Supranational/European	IFOAM <sup>50</sup> IFOAM EU Group <sup>51</sup> Eurogroup for Animals EURO COOP <sup>52</sup> EPSO European Technology Platform: Plants for the Future <sup>53</sup> EUROPABIO <sup>54</sup> FRUCOM <sup>55</sup> ERPA <sup>56</sup> FRESHFEL <sup>57</sup> European Coffee Federation <sup>58</sup>	WECF <sup>59</sup> BEUC <sup>60</sup> COLEACP PIP <sup>61</sup>	Thünen Institute <sup>62</sup> European Commission <sup>63</sup> DG AGRI <sup>64</sup> European Court of Auditors <sup>65</sup> DG SANCO <sup>66</sup> European Joint Research Centre <sup>67</sup> AGOF <sup>68</sup> EGTOP <sup>69</sup>
national	EURO COOP EPSO		Thünen Institute Akkreditierungsstelle

<sup>46</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries); Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards

<sup>48</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries); Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards

<sup>49</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries); Expert hearing 20<sup>th</sup> and 21<sup>st</sup> November 2012 on External Trade on organic products and global issues; Questionnaire contributor

<sup>47</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>50</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries); Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards; Expert hearing 20<sup>th</sup> and 21<sup>st</sup> November 2012 on External Trade on organic products and global issues

<sup>51</sup> Questionnaire contributor; evaluation dossiers

<sup>52</sup> Questionnaire contributor

<sup>53</sup> Questionnaire contributor

<sup>54</sup> Questionnaire contributor

<sup>55</sup> Questionnaire contributor

<sup>56</sup> Questionnaire contributor

<sup>57</sup> Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards; Expert hearing 20<sup>th</sup> and 21<sup>st</sup> November 2012 on External Trade on organic products and global issues

<sup>58</sup> Expert hearing 20<sup>th</sup> and 21<sup>st</sup> November 2012 on External Trade on organic products and global issues

<sup>59</sup> Questionnaire contributor

<sup>60</sup> Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards

<sup>61</sup> Expert hearing 20<sup>th</sup> and 21<sup>st</sup> November 2012 on External Trade on organic products and global issues

<sup>62</sup> ,Evaluation of the EU legislation on organic farming‘ report

<sup>63</sup> ,Report from the Commission to the European Parliament and the Council on the application of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products‘ 11th of May 2012

<sup>64</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>65</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries); Special Report No. 9/2012 ‘Audit of the Control System Governing the Production, Processing, Distribution and Imports of Organic Products‘

<sup>66</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>67</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>68</sup> Impact assessment of EU’s political and legal framework for organic production (began June 2012); Impact assessment analysis on the organic farming review (11<sup>th</sup> of April 2013)

<sup>69</sup> Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards

	Certisys <sup>70</sup> ECOCERT FiBL SLOW FOOD Organic Denmark <sup>71</sup> Pro Luomu <sup>72</sup> Synabio <sup>73</sup> DAFC (Danish Agriculture and Food Council) <sup>74</sup> Deutscher Bauernverband <sup>75</sup> FNSEA <sup>76</sup> INTERFEL <sup>77</sup> Soil Association <sup>78</sup> SYNALAF <sup>79</sup> UNADIS <sup>80</sup> Agence BIO <sup>81</sup> Città del bio <sup>82</sup> BÖLW <sup>83</sup> SODEXO <sup>84</sup>		Bundesministerium für Wirtschaft, Familie und Jugend (Austria) <sup>85</sup> Member states' ministries of agriculture National Food Safety Authorities
Sub-national			
local	SLOW FOOD SALUS Pharma GmbH <sup>86</sup>		University of Newcastle <sup>87</sup>

<sup>70</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>71</sup> Questionnaire contributor

<sup>72</sup> Questionnaire contributor

<sup>73</sup> Questionnaire contributor; Expert hearing 20<sup>th</sup> and 21<sup>st</sup> November 2012 on External Trade on organic products and global issues

<sup>74</sup> Questionnaire contributor

<sup>75</sup> Questionnaire contributor

<sup>76</sup> Questionnaire contributor

<sup>77</sup> Questionnaire contributor

<sup>78</sup> Questionnaire contributor

<sup>79</sup> Questionnaire contributor

<sup>80</sup> Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards

<sup>81</sup> Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards

<sup>82</sup> Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards

<sup>83</sup> Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards

<sup>84</sup> Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards

<sup>85</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>86</sup> Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards

<sup>87</sup> Expert hearing 27<sup>th</sup> and 28<sup>th</sup> September 2012 on The EU organic market – Internal market standards



*Matrix 12: Commission Regulation (EC) 889/2008: Monitoring & evaluation*

Level \ Actor	private	Private-public/hybrid	public
International	European Coordination of Via Campesina <sup>88</sup> ECOCERT <sup>89</sup> FiBL <sup>90</sup> Carrefour <sup>91</sup>	COPA COGECA <sup>92</sup> EOCC <sup>93</sup>	
Supranational/European	IFOAM <sup>94</sup>	COPA COGECA	European Commission DG AGRI <sup>95</sup> DG SANCO <sup>96</sup> European Joint Research Centre <sup>97</sup> European Court of Auditors <sup>98</sup>
national	ECOCERT FiBL Certisys <sup>99</sup>		Member states <sup>4</sup> ministries of agriculture Akkreditierungsstelle Bundesministerium für Wirtschaft, Familie und Jugend (Asutria) <sup>100</sup> AGOF <sup>101</sup>
Sub-national			
local			

<sup>88</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>89</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>90</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>91</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>92</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>93</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>94</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>95</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>96</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>97</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>98</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>99</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>100</sup> Expert hearing 25th and 26th October 2012 on Organic Production – Controls and Enforcement (in the EU and third countries)

<sup>101</sup> Impact assessment of current legal and political organic farming framework (began 2012)

In mutual letters from 2015 the USDA and the Commission let each other know that their regular assessment of each others' regulatory system was successful and had a positive outcome. On the EU side, this review was conducted by the DG AGRI, which concluded that the agreement resulted in increased market access for EU and U.S. producers, expanded the consumer choices and supported the regulatory cooperation between the U.S. and the EU. Over and above that, another review was issued within the Global Organic Market Access project of the FOA, IFOAM and UNACTAD (GOMA, 2013).

*Matrix 13: EU-U.S. Equivalence Agreement: Monitoring & evaluation*

Level\actor	private	Private-public	public
International	IFOAM		FAO Organics Working Group
Supranational/European	IFOAM EU Group <sup>102</sup>		European Commission
National			USDA <sup>103</sup> UNACTAD
Sub-national			
local			

In addition to the expertise and research tasks, the monitoring and evaluation task shows a high degree of stakeholder involvement from different governmental levels. The Commission is partly conducting own evaluation programs and obtains other reviews and evaluation reports from external organizations. Therefore, one has to conclude that the Commission has a main role by holding expert hearings and co-financing evaluation projects. However, one can see a high level of interaction between different governmental levels and actors which are private and public in nature. The evaluation and monitoring processes in regards to the organic farming regulations can be seen as form of joint action between the EU and public and private stakeholders and authorities. There is strong sense of co-activity in the regards to evaluation and monitoring. It is also a positive example because there were a high range of opportunities by stakeholders to get involved in the evaluations process. The Commission put reasonable effort in conducting evaluations in different ways and with different stakeholders and research institutes involved.

## 5. Beyond EU organic farming regulation

In addition to the EU organic farming regulations adopted since 1991, there is a need to set standards in the global and local market. This builds on the idea of an, especially in the trade sector,

<sup>102</sup> Official letter to the Commission on 26<sup>th</sup> April 2012 and 19<sup>th</sup> September 2012

<sup>103</sup> Mutual obligation to conduct regular assessments of regulatory system; USDA Certified Programme; contribution to 'Bilateral Equivalence Arrangements on Trade of Organic Products' review by FAO, IFOAM, UNACTAD

interconnected world. To ensure the functioning of the world market internationally agreed standards are needed. On the other hand, one can see that there is an increasing range of privately set standards.

### **5.1. Codex Alimentarius & IFOAM guidelines**

The 'Codex Alimentarius' was developed by the Codex Alimentarius Commission (COC) of the WHO and FAO. The Commission decides on the basis of intergovernmental negotiations between the member countries. The codex was meant to harmonize food standards at the global level and lies within the WHO / FAO 'Joint Standards Programme'.

Through the growing international trade such harmonization standards have increasing importance to protect consumers against fraud. It describes the international standards in regards to the organic farming control system and contains definitions on the terms related to organic farming. Since Decision 2003/822/EC, the EU as well as its member states are members of the Codex Alimentarius and have shared competences in regards to the respective legislations to ensure that consumer interests are ensured throughout the whole European Community. The EU is issuing position papers on the work of the different committees of the Codex. The public European Food Safety Authority (EFSA) is supporting the EU in performing its competences in regards to the decisions made on Codex Alimentarius guidelines. The Codex Alimentarius is governed by governmental authorities with low stakeholder involvement. However, stakeholders may be involved while agreeing on a position at national level, which are then presented at the intergovernmental conferences and meetings.

In addition to the Codex Alimentarius, the IFOAM has set up guidelines for production of organic farming (IFOAM Basic Standards) and an 'Organic Guarantee System'. These guidelines are applicable in 116 countries. In opposition to the Codex Alimentarius, the IFOAM standards do not apply for countries but for the member organizations of the IFOAM and is therefore a self-regulated system at international level.

### **5.2. Private Standardization**

According to the Commission there are two levels of standards setting in regards to food safety and quality. The first is discussed above and focuses on a basic level of food quality and safety, which has to be respected by all producers within a particular territory. These standards are nonnegotiable and have to be applied by the producers. On the other hand, there is a voluntary level if farmers or associations desire to emphasize the uniqueness of their products through private standard setting. Private standards setting is an advantage in regards to competition. Higher standards are often valued by consumers and are therefore higher priced (Kosovska, 2013). In regards to farming in general, private food standards are a logical adaption on climate circumstances which are not taken into consideration at EU level. It also reflects local cultural values. The IFOAM EU Group insists that the practice of setting higher private standards is driving the organic farming sector forward. The emphasis of innovation and pioneering is crucial in the organic farming market (IFOAM EU Group, 2012). In Commissioner Mariann Fischer Boel days, the promotion of the single market stood central

on the policy-making agenda. Private and national production standards were seen as the enemy to the harmonization measure of the single market. National production standards are only allowed if the general food standards in that country are increased. Therefore, organizations increasingly considered to set supplementary standards. Private organic labels gained importance. They gained reliability because consumers got familiar with a specific label and began to trust just that label. The most well-known private labels are ‘Bio Suisse’ from Switzerland, ‘Demeter’ and ‘Naturland’.

Organic farming and selling organic products became also important in regards to corporate social responsibility initiatives (CSR). CSR initiatives are practices by companies, which incorporate environmental and social concerns into their business policy on a voluntary basis. These initiatives are done to demonstrate that a company is promoting ethical values which improve the image of a company (Goessinger & Freyer, 2008). In this sense, CSR is often connected to the marketing strategies of large- and medium-sized companies. An example for CSR practices is the ‘Upländer Bauernmolkerei’ (Germany), which is certified by the accredited certifier ‘ABCert’ and the private certifier ‘Bioland’ and fulfills the criteria of the BioFair association in addition to the EU organic logo. In addition, retailers such as Albert Hein, Tesco and Sainsbury’s are setting up quality control systems to control the quality standards of goods from supplies and manufacturer. They enforce their standards and quasi-regulations through private control bodies.

Private standard setting is still an important instrument to develop the organic farming market and to cope with the rising competition from the non-EU countries. Although the former Commissioner Mariann Fischer Boel was an advocate of harmonization, private standard setting is a valve to ensure the compliance of the original organic values.

## **6. Conclusion & recommendation**

Throughout the course of this paper, we have seen which actors at which governmental levels participate in the different regulatory tasks and how the reality matches the theories of decentralized governance, multilevel governance and stakeholder involvement. In regards to the regulations analyzed above, the task of initiative is performed by public bodies at (supra-) national level. The task ‘initiative’ does not fit the theorized concepts of decentralized governance, multilevel governance and stakeholder involvement since the main right of initiative lies with only one governmental body – namely the Commission. The task is therefore performed in a centralized way and can be characterized as public regulatory task. The low level of stakeholder involvement is a problem and could be coped with by establishing a stakeholder platform where stakeholders have the possibility to call for new or adjusted regulation. Expertise and research, on the other hand, are done through a decentralized approach of stakeholder involvement. That means that various private, public or hybrid actors are providing expertise at multiple governmental levels without any clear hierarchy, which is a characteristic of decentralized and multilevel governance. However, one has to be critical in regards to the organization of this stakeholder involvement. There is significant prominence of umbrella

organizations. This has positive and negative effects on stakeholder involvement. Umbrella organizations are negotiating their position within their organization and are then communicating their position to the EU, respectively the Commission. This can be regarded as a good example of a bottom-up approach. Committees, consisting of the respective stakeholder organizations and companies are negotiating the position on specific subfields e.g. seeds. On that basis, an organization communicates its general position to the EU. Stakeholder organizations, which are members of such umbrella organizations are operating at different governmental levels and are private, public or hybrid in nature. One can therefore conclude that umbrella organizations such as the IFOAM are governed through decentralized and multilevel governance. However, one has to be conscious about the fact that large- and medium sized firms have a greater say within such organizations due to their capacities. Smaller organizations are often passive. Over and above that, the existence of umbrella organizations leaves less room for non-members to become involved in EU Regulations on organic farming. Hence, the relationship between stakeholders and the EU is only based on a consultative regulatory arrangement. The expertise stakeholders are providing is non-binding to the EU and the EU is therefore acting very centralized in regards to legislature. The legislative task is carried out by the public authorities at supranational level with the opportunity to influence the Council by national governments and ministries. As stated above, the vertical and horizontal decentralization is missing in regards to the legislative process. Although, this seems to speed up the regulatory process it would deliver more enduring regulation if the Commission would involve stakeholders while setting up the text of the proposal and give them opportunities to issue binding opinions before the regulation is concluded. This procedure would be more decentralized with a higher degree of private stakeholder involvement. The task of enforcement and certification on the other hand is a prime example for decentralized governance and co-regulative processes, which means that the task is performed at different levels and by different private, public and hybrid actors. The task of controlling the compliance of the EU organic farming regulations is executed by control bodies at local, federal or national level, which are hybrid in nature. They are supervised by and responsible to the competent authorities of the member states, which have to report about the functioning of the national control system to the EU. All activities of enforcement are done at the lowest feasible level. However, one cannot speak about multilevel governance in the light of Piattoni (2009) since the non-hierarchy feature is not fulfilled. Monitoring and evaluation is done through joint projects by the EU, independent research institutes, umbrella organizations and other stakeholders at different governmental levels and can therefore be regarded as a multilevel and decentralized regulatory activity. However, as the co-financer and initiator of most projects, the Commission has the main role in regards to evaluation and monitoring. Over and above that, most of the Commissions' obligations to monitor and evaluate the effectiveness of the concluded regulations are stated within the regulations.

Overall, one has to conclude that all regulatory tasks are carried out through different modes of governance. The most accomplished decentralized way of governance is found within the control and

certification framework, whereas initiative and legislature are still centralized competences by the EU. Expertise and research shows a high degree of stakeholder involvement and a quite balanced activity of private and public actors. However, this is a purely consultative arrangement creating a strong hierarchy between stakeholders' interests and EU action. Overall, one could agree to the fact that there is notion of co-regulation in regards to EU organic farming regulations, which has to be further developed. The Commission should establish more integrated platforms and opportunities for stakeholders and affected parties to get involved in all regulatory tasks. This would make EU regulation in regards to organic food and farming more efficient and more harmonized due to the full support by those who have to implement the EU organic farming regulations, such as farmers, retailers and traders. In regards to the EU-U.S. Equivalence Agreement, one can conclude that international agreements are concluded in a more centralized way than ordinary regulations and policies are concluded. This could be connected to the fact that the EU tries to speak with one voice at the international level. However, stakeholders within the EU are more or less overruled by the EU in regards to these international agreements. There is a much lower level of stakeholder involvement in regards to the EU-U.S Agreement than in regards to the other analyzed EU regulations. This is actually a quite common practice of the EU. For example, the TTIP negotiations do also show a low level of public and stakeholder consultation and involvement.

The EU and national governments do progressively increase the involvement of stakeholders especially in the organic farming sector. This is on the one hand related to the increasing complexity and interconnectedness of the global food market, which goes far beyond the capacities of public authorities. Therefore, governments rely on external experts and scientific advice while setting standards. Umbrella organizations and international standard setting emerged because national governments do not have any jurisdiction outside their borders. The global food safety system therefore has to be governed by new kinds of authorities which go beyond the national level. Transparency and accountability issues will gain increased importance in the upcoming centuries, which goes along with the call for more flexible types of regulations. This can be achieved through a high degree of stakeholder involvement, which increases representation, participation and effectiveness of the organic farming regulations. It is important to negotiate between international, supranational, national and private standards setters in order to achieve an international organic farming framework. Especially, transparency of the regulatory process is still not accomplished. The EU tries to improve this situation and has decided on a 'Better Regulation Agenda: Enhancing transparency and scrutiny for EU law-making' in 2015.

The duality between international and privately set standards calls for legitimacy solutions. Noll (1999) claims that the delegation of regulatory tasks to experts and independent private entities is often not done on the basis of a democratic process. The importance of an international organic framework becomes evident if one looks at the high range of international umbrella organizations

consisting of organizations of different sizes and from different levels. It is strongly recommended to put more effort into international standard setting and to adjust these standards permanently through flexible stakeholder governance and the bottom-up approach. I would insist that this is the only way to deal with the duality between international and local production standards setting in the organic farming sector. In doing so, we have to mind that these type of governance is done in a transparent and democratic way. Decentralized and multilevel governance are the modes of governance which have the capacity to efficiently deal with these oppositional streams of internationalization in trade and localization of production standards and should therefore be promoted by the European Union.

## Appendix I: Contact with organizations and companies

The names of the respondents are kept confidential.

### *Freiland Puten*

„Ich selber bin in zwei deutschen Verbänden aktiv: Beim BÖLW (Bund der ökologischen Lebensmittelwirtschaft) als Fachausschusssprecher "Geflügel" sowie der AöL (Assoziation der ökologischen Lebensmittelhersteller).

Wir sind uns darüber bewusst, dass unsere Politik letztlich in Brüssel gemacht wird.

Parallel haben wir ein föderales System in Deutschland, sodass wir über die EU hinaus die Bundesländer sowie den Bund an sich im Hinterkopf haben müssen.

Die Arbeit an Verbesserungen im Ökolandbau ist also immer die Arbeit an verschiedenen Baustellen: Auf Länderebene hat man es mit den Kontrollbehörden und vor allem verschiedenen Interpretationen der Bio-VO zu tun. So kann es passieren, dass die Futtermittelherstellung in Bayern anders beurteilt wird als in Sachsen.

Sollte man über die Landesstruktur hinaus zu Entscheidungen gekommen sein spielt die Agrarministerkonferenz die nächste Rolle: Hier sind die Landwirtschaftsminister der Bundesländer vertreten, die, ähnlich dem Bundesrat, die Bundesagrarpolitik beeinflussen wollen. Leider hält sich Bundesminister Schmidt nicht immer an die Vorgaben und Beschlüsse der AMK.

Sollte man dann im Bund zu einer Meinung und Einigung gekommen sein steht der Gang nach Brüssel an. Dort müssen wir die deutschen Interessen gegen 27 andere Länder vertreten.

Wenn es so funktionieren würde hätten wir so etwas wie gelebte Demokratie: Politik wird von unten nach oben betrieben.

Eine andere, wesentliche Gruppe in diesen ganzen Prozessen sind die Lobbyisten. Die Gruppe der Lobbyisten ist im konv. landwirtschaftlichen Bereich gut mit Geld und damit mit Einfluss ausgestattet. Der Bio-Bereich hat diesbezüglich an beiden Stellen Probleme. Diese werden verstärkt dadurch, dass auch innerhalb der europäischen Bio-Szene nicht immer Einigkeit herrscht.

Soviel zur Theorie.

In der Praxis sieht es so aus, dass wir auf allen Hochzeiten gleichzeitig tanzen: Kontakthalten zu den Landesbehörden, über den BÖLW versuchen die Bundespolitik zu beeinflussen, über die AöL versuchen auf die IFOAM EU-Group Einfluss zu nehmen. Durch persönliche Anwesenheit in Brüssel mit den MitarbeiterInnen der Kommission und des Ökobereiches in Kontakt zu kommen und Herrn Häußling als Berichterstatter zu informieren und ihm Grundlagen für weise Entscheidungen an die Hand zu geben.

Die Wege von unten nach oben sind einzuhalten, ebenso darf das Baggern überall nicht aufhören. Das, was die Komm mit dem Entwurf der Revision vor hat, geht aber schon wieder Richtung Diktatur: Agrarpolitik im "Top-Down"-Stil, anstatt die Branche mit einzubinden und "Bottom-Up" zu praktizieren.

Unter dem Strich kann ich es also nicht konkret bewerten, ob unsere Einmischung, unsere Reisen, unser Reden und Schreiben etwas gebracht haben. Ich hoffe, ja - aber sicher bin ich mir nicht.



Es wäre schön, wenn wir wirklich "Multi-Level" hätten, aber dafür sind vielleicht auch die Interessen der Beteiligten zu unterschiedlich.'

### *Bingenheimer Saatgut AG*

Ist ihre Organisation privater, öffentlicher oder hybridischer (das heißt private und öffentlich Züge) Natur?

„Unsere Organisation ist privater Natur. Wir sind eine Firma und Teil eines Netzwerkes von Bauern und Gärtnern, Züchtern und sonstigen, die sich für ökologische Alternativen zu konventionellem Saatgut und konventioneller Züchtung einsetzen.‘

Waren sie bei EU Regulierungen/EU Öko-Verordnungen beteiligt? Ich richte mich in meiner Arbeit auf die EU Regulierungen 834/2007, 889/2008, 126/2012. Waren sie direkt oder über die IFOAM Gruppe bei einer der folgenden Aufgaben beteiligt - Initiative, Risiko Analyse, Expertise/Forschung, Legislative, Exekutive/Enforcement, monitoring/Auswertung? Sollten nicht bei einer der 3 oben genannten Regulierungen beteiligt gewesen sein, bitte ich sie trotzdem mir zu erklären in wiefern sie bei der IFOAM Group mitwirken und was ihre Aufgaben sind.

„Bei den von Ihnen genannten Regulierungen sind wir nur mittelbar über IFOAM und durch die Diskussion innerhalb der Ökoverbände zu der derzeitigen Revision beteiligt. Hierbei konzentrieren wir uns auf die Frage der Verwendung von Biosaatgut.

Bei IFOAM: ich selbst bin Mitglied der so genannten „seed expert group“, die sich neben den o.g. Fragen auch der Problematik der Gentechnik, den so genannten „Neuen Züchtungstechniken“ sowie der Revision der EU-Saatgut-Gesetzgebung widmet.‘

Auf welchen Ebenen sind sie aktiv? Auf internationale Ebene, supranationaler, nationale Ebene, lokaler Ebene?

„Unsere geschäftlichen Aktivitäten konzentrieren sich auf Deutschland und die angrenzenden Nachbarländer und arbeiten dort eng mit ähnlichen Partnerorganisationen zusammen. Politisch sind wir international vernetzt.‘

### *Biokreis*

Ist ihre Organisation privater, öffentlicher oder hybridischer (das heißt private und öffentlich Züge) Natur?

„Wir sind eine private Organisation (ein eingetragener Verein, e.V.)‘

Waren sie bei EU Regulierungen/EU Öko-Verordnungen beteiligt? Ich richte mich in meiner Arbeit auf die EU Regulierungen 834/2007, 889/2008, 126/2012. Waren sie direkt oder über die IFOAM Gruppe bei einer der folgenden Aufgaben beteiligt - Initiative, Risiko Analyse, Expertise/Forschung, Legislative, Exekutive/Enforcement, monitoring/Auswertung? Sollten nicht bei einer der 3 oben genannten Regulierungen beteiligt gewesen sein, bitte ich sie trotzdem mir zu erklären in wiefern sie bei der IFOAM Group mitwirken und was ihre Aufgaben sind.

„Tatsächlich sind wir Mitglied in der IFOAM, aber eher ein symbolisches Mitglied. Für eine kurze Zeit (ca. 1 Jahr) hatten wir einmal einen Biokreis-Vertreter bei der IFOAM, aber aktuell findet keine aktive Beteiligung in der IFOAM statt. Indirekt nehmen wir Einfluss auf Positionen, über die aktive Mitarbeit im BÖLW (Bund Ökologische Lebensmittelwirtschaft, der deutsche Dachverband). Aber insgesamt kann man sagen, dass wir weder in der IFOAM noch sonstwie bei der Erarbeitung von EU-

Regulierungen eine aktive Rolle spielen.’

Auf welchen Ebenen sind sie aktiv? Auf internationale Ebene, supranationaler, nationale Ebene, lokaler Ebene?

„Direkt sind wir vor allem auf lokaler Ebene aktiv, das heißt, auf Landesebene (Bundesland Bayern, Bundesland Nordrhein-Westfalen etc.). Indirekt sind wir auf nationaler Ebene aktiv, da wir aktives Mitglied des BÖLW, des Bund Ökologische Lebensmittelwirtschaft sind. Der BÖLW organisiert die Interessenvertretung in Berlin, wir wirken an der Erarbeitung der politischen und auch praktischen Positionen mit.“

### *EkoConnect*

„EkoConnect ist vor allem in der Bildungs- und Vernetzungsarbeit für den ökologischen Landbau in Mittel- und Osteuropa tätig. Insofern sind wir international, aber auch national und regional, aber meist grenzüberschreitend aktiv.“

Wir sind eine private Organisation in der Rechtsform eines eingetragenen, gemeinnützigen Vereins.

Wir sind Mitglied von IFOAM Europa und IFOAM World, aber über die normalen, jedem Mitglied möglichen Einflussnahmen über die Mitgliederbeteiligung bei der Erstellung von Strategiepapieren oder Stellungnahmen z.B. aktuell der Vision 2030 haben wir als Organisation keinen direkten Einfluss auf die EU-Regularien genommen. Wir haben in der IFOAM EU-Group auch keine speziellen Aufgaben. Als Mitglied unterstützen wir die Entwicklung des Ökolandbaus in der oben genannten Region im Rahmen unserer Möglichkeiten, wie gesagt durch Projekte zur Bildung, Weiterbildung und Vernetzung im Bereich des ökologischen Landbaus und der Vermarktung ökologischer Produkte.“

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