

Regulation of Production, Labeling and Certification of Organic Products in Legislation of the Republic of Kazakhstan

Introduction

Consumer demand for organic products is growing steadily worldwide. Organic production is the system that avoids the use of most synthetic pesticides and fertilizers, contributes to preservation of the ecosystems, maintenance of biodiversity, and enhancement of soil fertility. The increasing demand for organic produce has created new market opportunities for farmers around the world. According to FiBL-IFOAM, a leading international research institute for organic agriculture, the global market for organic food products in 2020 amounted to more than €120 billion against €106 billion in 2018 ¹.

The Law of the Republic of Kazakhstan "On organic production" was adopted on November 27, 2015, to set out the legal and institutional framework for organic production. The law is based on the internationally recognized rules and standards, in particular, on the provisions of the "Guidelines for Production, Processing, Labeling and Marketing of Organic Foods" by the Codex Alimentarius Commission ("Codex Alimentarius Guidelines")², and also norms and standards of International Federation of Organic Agriculture Movements (IFOAM)³. The Codex Alimentarius and the IFOAM norms (International Reference Standards) are the main international sources for the development and harmonization of national legislations on organic production.

In parallel with the development of national legislation, Kazakhstan has been involved in the harmonization of organic legislation within the Eurasian Economic Union (EAEU)⁴. Recently the Eurasian Economic Commission (operative body of EAEU) approved the roadmap for the development of a common market for

¹ FiBL IFOAM – Organic International, *World of Organic Agriculture, Statistics, and Emerging Trends, 2022* (p. 22) на https://www.fibl.org/fileadmin/documents/shop/1344-organic-world-2022_lr.pdf

² Available at <https://www.fao.org/fao-who-codexalimentarius/codex-texts/guidelines/en/>

³ See IFOAM norms at https://www.ifoam.bio/sites/default/files/2020-04/ifoam_norms_version_july_2014.pdf

⁴ Established by the Treaty in 2014 by the Russian Federation, Belarus and Kazakhstan and joined by Armenia and Kyrgyzstan in 2015

organic agricultural products in the EAEU⁵. One of the key objectives of this roadmap is the unification of organic legislation including the requirements for the production and labeling of organic products in order to provide mutual recognition of organic certificates of member-states in the common market of the EAEU. However, the ongoing geopolitical crisis in the region may affect the integration processes within EAEU.

Currently, the organic production in Kazakhstan is export oriented⁶. The concept of organic production is quite new for consumers, and the domestic market is not well developed⁷. Therefore, there is a high risk of greenwashing, that is, green laundering⁸.

This paper provides the analysis of Kazakhstan legislation concerning the production, labeling and certification of organic products against the international reference standards. The paper identifies the gaps and suggests the recommendations for improvement. It is hoped that the paper will also contribute to raising public awareness of Kazakh consumers of organic products.

Main legal acts and standards on organic production

In order to implement the Law of the Republic of Kazakhstan “On organic production” of 2015 (hereinafter referred to as the Law or Organic law), the following implementing regulations and standards were developed and adopted:

- Rules “On the organic production”, approved by the Order of the Minister of Agriculture dated May 23, 2016 No. 230 (hereinafter referred to as the Rules on organic production).
- Rules “On maintaining the register of producers of organic products”, approved by the order of the Minister of Agriculture dated December 18, 2015 No. 1–3/1102.
- The list of permitted inputs used in the production of organic products, approved by the order of the Minister of Agriculture dated May 23, 2016 No. 231 (hereinafter referred to as List of permitted inputs).
- National standard ST RK 3109-2017 “Organic products. National mark of conformity for organic products. Technical requirements and procedure for labeling of organic products” (hereinafter referred to as the Labeling Standard).

⁵ Decision of the Eurasian Intergovernmental Council "On the action plan ("road map") for the development of common market for organic agricultural products within the framework of the Eurasian Economic Union" dated August 20, 2021 N 16

⁶ Grigoruk V.V., Klimov E.V., *The introduction of organic agriculture in the world and Kazakhstan*, 2016 (pp. 92-116); <https://www.fao.org/documents/card/ru/c/2aa5cd16-ea04-4713-a2e3-bc60ff8c9429/>

⁷ Report "Organic agriculture in the countries of the Eurasian Economic Union: current state and prospects" 2020, see at https://ecfs.msu.ru/images/publications/Organic_in_Eurasia.pdf

⁸ Greenwashing concept was coined in 1986 by American environmentalist and researcher Jay Westerveld with regard to environmental claims that are false, misleading or exaggerated. The Troubling Evolution of Corporate Greewashing, *The Guardian*, August 20, 2016

- National standard ST RK 3110-2017 “Conformity assessment. Requirements for bodies conducting the conformity of organic production and organic products” (hereinafter referred to as the Certification Standard).
- National standard ST RK 3111-2017 “Organic products. Requirements for the production process” (hereinafter referred to as the Organic Production Standard).

Terms "Organic", "Eco", "Natural"

In Kazakhstan, as in other post-soviet republics, consumers often associate organic products with the "ecologically clean" products. Such an approach is enshrined in the legislation of the Russian Federation and Tajikistan, which define organic products as "ecologically clean products"⁹.

Until recently, Kazakh legislation also contained the concept of "ecologically clean food products" (Environmental Code of 2007 and the Law "On Food Safety" of 2007). This allowed some food companies to trade products labeled "Eco" and obtain added value, but there were no clear rules for the production and control of such products. After intensive public debates among the key stakeholders, the concept of "ecologically clean food products" was removed in 2019 from the Environmental Code and the Law "On Food Safety" in order to bring it into conformity with the Law "On Organic Production".

The Law defines **organic products** as *"raw and processed agricultural products, products of aquaculture and fisheries, products from wild plants, including food products, produced in accordance with the requirements of this law"* (Art 1). Article 14 (3) of the Law allows the use of the words "bio" and "eco", separately or together, only in labeling and advertising of organic products that meet the requirements of organic legislation. The Law prohibits the use of any indications, signs, symbols, etc., which could mislead consumers into believing that a product or its ingredients comply with organic legislation if they are not duly certified. The provisions of Article 14 of the Kazakh law on the use of "eco" or "bio" labels are in line with the Codex Alimentarius Guidelines (Point 1.2 of Chapter 2). Thus, according to Kazakhstan legislation, products labeled "bio" and "eco" are identical to "organic" products and the procedure for their labeling should be regulated by the legislation on organic production.

It should be noted that in international trade, the concept of "organic" is close, but not identical to the concept of "eco - friendly". There are many products labeled as "natural", "origin green", "antibiotic free", "grassfed" etc. that can broadly be referred to as "eco-friendly". The popular label "natural" usually applies to those products that are produced with the use of natural ingredients. However, the use of "natural" or "eco-friendly" labels does not mean that these products do not contain chemicals or synthetic ingredients, which are not tolerated in organic production with some exceptions.

⁹ Art 2 of the Law of the Russian Federation "On Organic Products" dated August 3, 2018, and Art 1 of the Law of the Republic of Tajikistan "On biological management and production" dated July 22, 2013

The main requirements for organic production

Article 11 of the Organic law is based on the recommendations of the Codex Alimentarius Guidelines and prohibits the use of:

- synthetic substances, pesticides, hormones, antibiotics and food additives, with the exceptions provided for in the approved regulations;
- genetically modified organisms;
- methods of crop production without the use of soil;
- ionizing radiation;
- chemical methods of treatment of wild plants.

In addition, following the principles of the Codex Alimentarius Guidelines, the Law promotes the use of organic production methods aimed at:

- preserving and improving soil fertility and minimizing the use of non-renewable natural resources;
- recycling of waste and by-products of plant and animal origin produced in organic production system;
- preservation of ecological systems in organic production;
- preference for mechanical, biological and physical methods of plant protection against pests, weeds and plant diseases;
- care for the health of animals; provision of appropriate facilities and grazing conditions that take into account their natural behavior; and stimulation of natural immunity;
- selection of sustainable species and varieties of plants and breeds of animals adapted to local conditions;
- application of organic feeds in animal husbandry.

The National standard ST RK 3111-2017 “Organic products. Requirements for the production process” (Organic Production Standard) is a standard that defines specific technical conditions and methods in organic crop production, animal husbandry, fisheries and beekeeping. The standard defines the technical rules for all stages of organic production including production of raw materials, processing, packaging, storage, and transportation of the final organic product.

Despite the general rule prohibiting the use of chemical products, some limited use of them can be allowed in organic production provided that the alternative products are not available, and these products are included in the list of permitted inputs approved by the competent authority (point 21 of Rules on organic production). The List of permitted inputs allowed in the organic production was approved by Order of the Minister of Agriculture dated May 23, 2016, No. 231. It should be noted that in international trade the inputs and methods allowed in organic production constantly change. Some inputs are excluded while others, on the contrary, are allowed for organic production. It would be advisable to

provide in the Kazak legislation the procedure, criteria and frequency of amending the list of permitted inputs. This would allow addressing in a timely manner the changing conditions and scientific developments and also would guarantee the equal treatment for Kazakh producers as compared to the producers in other countries.

Obviously, meeting all the requirements of organic production is not easy. Not all producers have the capacity and resources to comply with the organic standards. At the same time, many producers could fulfill some of these conditions, which could also have a positive environmental and economic impact, however the organic certificate should not be issued for such products and label “organic” shall not be attached to them.

Use of Label “Organic”

The Organic law sets forth that the label "organic" can be used only for products that: a) comply with the requirements of organic production and b) are certified as compliant with these requirements in the prescribed manner (Art 14(2)). The rules for labeling are not addressed in the Law but in the National Standard "National Mark of Conformity of Organic Products. Technical Requirements" (2017). This standard provides that certified products, containing from 95% to 100% of the organic ingredients (by weight) can be labeled as “organic” with the use of the national organic mark (point 10.2). Producers who are in the process of transitioning to organic production may label only a single ingredient product as "in conversion to organic". The transition period is the time between the start of application of organic rules and actual certification as organic of crop and livestock production. The transition period differs for different types of crop and livestock production.

It should be noted that IFOAM norms provide that products with less than 95% but not less than 70% of the organic ingredients (by weight) may be labeled as "made from organic ingredients", provided that the percentage of organic ingredients is clearly indicated. This provision is enshrined in the legislation of many countries in order to encourage producers of organic products that do not reach the threshold of 95 % in the organic content but only 75 %. This option could be recommended for inclusion into the Kazakhstan legislation to encourage the development of organic production.

The National Standard “National Mark of Conformity for Organic Products. Technical Requirements” (2017) contains rules for the design and application of the national mark of conformity for organic products (See Figure 1).



Figure 1. National mark of conformity for Kazakhstan organic products

The conformity mark shall be applied to organic products next to the manufacturer's trademark (if any) or above the indication of the regulatory document (standard) on the basis of which the organic product is certified. If it is impossible to apply the mark of conformity directly to organic products (e.g. for gaseous, liquid and bulk materials and substances, or small products), it is applied to containers or packaging (point 5.6 of the above standard).

The bad news for the Kazakhstan consumers is that it is not yet possible to find organic food products on the market with a national conformity mark for the reasons stated below.

Certification as a mean to guarantee the organic quality of products

The certification of organic products is instrumental for controlling organic quality and use of “organic” label. A reliable organic certification system, on the one hand, protects the interests of organic producers from unfair competitors and, on the other hand, guarantees the proper quality of organic products for consumers. The Law does not regulate the creation and activities of certification bodies (CBs) operating in the organic field. The procedure for organic certification is set out in the National Standard "Requirements for certification bodies for the organic production" (2017). This standard is developed in accordance with the legislation on technical regulation and standardization of Kazakhstan. The main provisions of the standard include:

- general requirements and principles of CBs activities;
- certification program and record keeping;
- inspection procedures;
- certification procedure;
- issuance of a certificate;
- certification of producers' groups;
- liabilities and sanctions in case of non-compliances.

Certification bodies (CBs) in the field of organic production must comply with the general requirements of the Laws “On technical regulation” (2020) and “On accreditation in the field of conformity assessment” (2008). This legislation requires that CBs get accreditation with the National Center for Accreditation of the Committee for Technical Regulation and Metrology under the Ministry of Trade and Integration of the Republic of Kazakhstan. The accreditation is carried out in accordance with the Law "On accreditation in the field of conformity assessment" and shall confirm the compliance with the standard “GOST ISO / IEC 17065-2013 "Requirements for certification bodies for products, processes and services". This standard is identical to the international standard ISO 17065, which is recognized by all states in EAEU.

Organic certification is a complex and costly process worldwide, and not all producers can afford the certification costs. It requires maintaining extensive documentation on the history of the production units and the organization of production, test results for soil, water, and other resources. The annual on-site inspections by well-trained inspectors are required to conduct physical examination of production units, review all records and interview the employees.

To date, only one national certification body is registered for organic production in Kazakhstan - JSC "National Center for Expertise and Certification", accredited by the National Center for Accreditation in July 2018 ¹⁰. However, this new certification body has not yet started certification activities. This confirms that the legislative framework alone is not sufficient to launch organic certification, if it is not supported by other organizational and financial measures. Among the required support measures, the Kazakhstan producers propose the introduction of subsidies for certification costs and financial support of producers during the transition period, when the production volume falls due to the abandonment of chemicals and stimulants. In addition, the government could provide support for the training of inspectors that are currently lacking in the organic sector ¹¹. It would be also recommended to include in the legislation rules that allow some exceptions or alternative types of certifications to support local producers and CBs.

The exemption of organic CBs from accreditation

In accordance with the requirements of Kazakhstan legislation, all CBs must be accredited for compliance with the requirements of GOST ISO / IEC 17065-2013 "Requirements for bodies for certification of products, processes and services", developed on the basis of the international standard ISO 17065. The requirements of this standard are stringent and require significant economic and technical efforts from CBs. For Kazakhstan CBs engaged in organic agriculture with often low incomes the compliance with the requirements of ISO 17065 may not be feasible. Therefore, it is advisable to consider for inclusion in legislation the exemption for the national CBs to get accreditation for the standard GOST ISO / IEC 17065-2013. The authorized body shall grant this exemption only for a limited period, for example, for the first two years from the CB registration. Such an exemption would allow the CB to gain experience and build a customer base. It is clear that during this period the CB will not be able to certify products for export markets, where only certificates of the accredited CBs are recognized. However, such CB could inspect and certify products for local markets. This would give an impetus to the development of organic certification in the country and, as a consequence, to the growth of domestic organic market.

¹⁰ <http://www.nca.kz/info/articles/media/pervyy-organ-po-sertifikatsii-organicheskogo-proizvodstva-i-organicheskoy-produktsii-v-kazakhstane/>

¹¹ APK-inform: *Kazakhstan can become a recognizable brand of organic products around the world* - Dikanshy Firm LLP, August 7, 2021; <https://www.apk-inform.com/ru/exclusive/opinion/1521420>

Group Certification and PGS system

The Organic law does not provide for the use of alternative schemes of certification such as group certification and PGS system that are widely accepted worldwide. It is advisable to establish in the Law the legal basis for these certification schemes and develop the implementing rules. In the group certification, an organized group of producers creates an internal control system and receives a single certificate for the entire group. This approach avoids certification by each member of the group and thus reduces the certification cost. In the past, the group certification was considered suitable only for developing countries where the small householders could not afford certification costs. The trend has changed. The new European Union Regulation 018/848 on organic production and labeling of organic products (in force from 1 January 2022) allows the group certification while previously it was prohibited in Europe ¹².

PGS (participatory guarantee system) is another tool for certification of organic products. Under this form, the participants, based on trust, participate in all matters of management of organic agricultural production. Each member of the PGS group can obtain a separate certificate and sell their products using the group's logo. The PGS system is suitable for local markets, while group certification allows small producers to join efforts and access the export markets together. According to FIBL, about 80% of all organic producers worldwide are certified in groups¹³. The standards and recommendations for group certification and the PGS system developed by IFOAM are the most authoritative at the international level and can be used to develop Kazakhstan regulations ¹⁴.

Registration of foreign certification bodies in Kazakhstan

To date, certification of organic products is carried out in Kazakhstan only by foreign certification bodies that check the compliance of domestic products with the requirements of the legislation of those states where these products are exported to, primarily to the requirements of the countries of the European Union and China. According to some sources, about ten foreign CBs operate in Kazakhstan to certify organic products for compliance with foreign standards¹⁵.

Foreign CBs do not get registered in Kazakhstan in order to avoid accreditation in Kazakhstan. The Law "On Technical Regulation" provides a general requirement that foreign CBs can get registered on the basis of a notification if they certify the conformity to a foreign standard (Article 25, paragraph 6), while the Law "On Accreditation in the Field of Conformity Assessment" requires all CBs operating in Kazakhstan be accredited with the Kazakh authorities. In this regard, it is recommended to clarify in the legislation that foreign CBs can carry out their activities on the basis of a notification, without the

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R0848>

¹³ Group Certification Internal Control Systems in Organic Agriculture: Significance, Opportunities and Challenges, FIBL, 2019 (стр. 42).

¹⁴ Rules for group certification are included in chapter 8.3 of the IFOAM "Accreditation Requirements for Bodies Certifying Organic Production and Processing (IFOAM, 2014); available at <https://www.ifoam.bio>. The IFOAM recommendations on PGS are available in Russian at <https://soz.bio/rekomendacii-ifoam-pgs/>

¹⁵ See <https://informburo.kz/stati/pochemu-kazhastanskije-predprinimateli-ne-toropyatsya-poluchit-sertifikaciju-ekoprodukta-.html>

obligation of getting through the accreditation procedure in Kazakhstan. The registration would enable the authorities to check the proper status of foreign CBs and obtain more complete information about the organic production in the country. The absence of data collection system in organic is a big issue both in Kazakhstan and EAEU. Experts consider it among the priority tasks to tackle in the organic sector ¹⁶.

Liability in case of non-compliance with production and labeling requirements

The Code of the Republic of Kazakhstan "On Administrative Offences" was amended in 2015 to address the Organic law requirements. New article 408-1 was included, which provides for the liability in case of violation of rules on production and trade of organic products. Article 408-1 establishes a penalty in the amount of 30 to 400 of Minimal value index (MVI)¹⁷. In case of repeated violation within a year after the first violation and imposition of an administrative penalty, the amount of the penalty increases up to 45-400 MVI depending on the offender's status. This article 408-1 shall cover violations of the rules of labeling and advertising of organic products, as they relate to violation of rules on trade.

It should be noted that violations in organic production might concern not only the liabilities of producers and traders, but also liabilities of certification organizations, for example, for unlawful issuance of a certificate or violation of the certification procedure. It is recommended to specify in legislation the non-compliance by CBs and their liabilities, in particular for issuance of a certificate in violation of law requirements.

Development of new agri-food quality systems

A continuing trend in international trade has been the emergence of new agri-food quality conformity systems and labels that meet not only environmental, but also social or cultural needs of consumers. In particular, there are quality systems and labels that indicate, in addition to environmental requirements, the social concerns of customers for health and safety of workers involved in production; the non-use of child labor; respect of gender equality; the participation of workers in management and fair distribution of income. These include inter alia the Global Good Agricultural Practice (Global GAP) and the Fair Trade quality systems. Some quality systems address consumers' concern for animal welfare, such as one labeled "Animal Welfare Approved". Some quality assurance systems are designed to meet consumers' cultural traditions, such as "Halal" or "Kosher".

In Kazakhstan, the attempt to produce meat products of popular Halal quality is being made, but these products can become truly successful only if the reliable system of quality assurance and state control is introduced. In recent years, quality assurance systems related to the indication of a specific geographical origin have been actively developed in the European Union¹⁸. A properly regulated and controlled geographic origin labeling can

¹⁶ Report "Organic agriculture in the countries of the Eurasian Economic Union: current state and prospects" 2020; https://ecfs.msu.ru/images/publications/Organic_in_Eurasia.pdf

¹⁷ One calculation index is 3,063.0 KZ tenge or 7.0 USD dollars as of 1 February 2022

¹⁸ GEOGRAPHICAL INDICATIONS; [HTTPS://EUROPA.EU/YOUREUROPE/BUSINESS/RUNNING-BUSINESS/INTELLECTUAL-PROPERTY/GEOGRAPHICAL-INDICATIONS/INDEX_EN.HTM](https://EUROPA.EU/YOUREUROPE/BUSINESS/RUNNING-BUSINESS/INTELLECTUAL-PROPERTY/GEOGRAPHICAL-INDICATIONS/INDEX_EN.HTM)

provide additional income for Kazakh producers who guarantee a specific geographic origin of the product.

Based on international practice, it is recommended to develop at the national and regional levels various food quality systems based on production methods which are more environmentally friendly than conventional production, but still do not fully meet the stringent requirements of organic production. The agri-food quality systems that take into account the social and cultural aspirations of consumers may also be developed and introduced in Kazakhstan. It is important that legislation provides for a clear distinction between all these quality assurance systems and provides adequate protection for the “organic” label. The introduction of new schemes for food quality assurance should be ensured by the creation of an effective system of control by authorized bodies. Information related to such schemes and products should be available to the public.

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