Raushan Zhazykbayeva, Counsel, AEQUITAS Law Firm
Zeinulla Sharipov, Expert for Technical Regulation,
Standardization and Certification in Agriculture and Food Industry

Organic Production in Kazakhstan: Comments on the Draft Law on Production and Circulation of Organic Products

The organic market has been steadily increasing worldwide along with people's concern over environmental pollution, depletion of natural resources, quality and safety of food. Organic production rules prohibit the use of chemical pesticides, fertilizers and GMOs, and contribute to conservation of natural resources and ecosystems.

In Kazakhstan, a new Law on Production and Circulation of Organic Products (Draft Law)[1] has been drafted, which should replace the current Kazakhstan Law "On Organic Production" of 27 November 2015 (Law). The first years of implementation of the current law have demonstrated that it needs further improvement. The internal market for organic production is still developing and requires additional support of the government. Organic products are primarily produced only for export. However, after 20 years of successfully exporting to the European Union (EU), Kazakhstan was put on the list of the so-called "grey" countries (together with Russia, Ukraine, Turkey and Moldova) by the EU in 2020, because organic products were failing to meet the EU regulations. According to FiBL & IFOAM[2], in 2019, Kazakhstan was ranked 9th for organic products import into the EU and dramatically decreased to 17th place[3] in 2020. Accordingly, the area of the land for organic production in Kazakhstan reduced in 2019 from 229,463 ha to 114,886 ha in 2020, i.e. by 50%.

The key drivers for the development of the Draft Law have been the need to align it better with best international practices and address the interests of domestic organic producers. The development of the Draft Law was envisaged in the government policy document "Concept of Developing the Agro-Industrial Sector of Kazakhstan for 2021-2030".

Unfortunately, the Draft Law provisions, in our view, may open the door for green washing and the "organic" label may be used improperly[4]. Implementation of legislation is often undermined by insufficient financing of functions of authorized agencies. Absence of state support for transition to organic production also weakens the chances of the domestic market development. This article presents the analysis of the key innovations of the Draft

[1] Draft Law concept (https://online.zakon.kz/Document/?doc_id=34226838).

[2] FiBL & IFOAM International, *World of organic agriculture. Statistics & Emerging Trends 2021.* Data of the reputable Research Institute of Organic Agriculture (FiBL) and IFOAM International are published each year.

[3] FiBL & IFOAM World of organic agriculture 2022, p. 49.

[4] The concept of "greenwashing" was introduced in 1986 by a US environmentalist and researcher Jay Westerveld with respect to ecological statements, which are false, misleading or exaggerated.

Law. It also argues that the effective implementation of the Law depends on the political will of the government, and the funding and institutional capacity for its implementation.

Why do we need national legislation in the field of organic production?

- *To develop export*

From the beginning of 2000s, local producers have been exporting their products abroad, primarily to the EU countries. Products are produced according to the EU rules and controlled by foreign certification authorities accredited in the EU. One can ask why the national law and standards are required for if Kazakh producers successfully produce and export organic products under the EU standards? Would it not be easier to adopt advanced international standards or standards of the countries with developed markets as national standards?

Adoption of national legislation can encourage and stimulate the development of a clear legal environment for organic production and institutions in line with international rules, where competent authorities have the right to exercise control and remedy violations at any stage of production. The national legislation may serve as an additional guarantee for foreign partners that the products are supplied from a regulated, not "wild" market. Therefore, adoption of national legislation indirectly contributes to the export development.

- *To develop local market*

The organic production legislation is an instrument for developing the domestic market and satisfying the demands of local consumers. International experience shows that national rules for organic production are required in each country to take into account the climatic and geographical specifics or structural constraints of a country. According to the data of FiBL & IFOAM of 2021, the organic production legislation has been adopted in 96 countries[5]. At the beginning of development of organic agriculture, the introduction of certain exceptions is advisable in order to encourage and stimulate production and the local market development. Standards of the countries with a developed organic production system provided for such exceptions in the past, but now they are stricter and limit any exceptions. As Kazakhstan is in the early stages of developing organic production, laws should not unreasonably restrict the local producers, which may happen if foreign standards are applied directly in Kazakhstan. If some exceptions are not stipulated by the Kazakhstan legislation, local producers will have no motivation to transition to organic production systems.

Furthermore, national standards allow more specific regulation of production of certain agricultural crops or products specific or of particular importance for the country's organic sector, which may be not addressed in foreign rules. For example, the rules for producing organic horsemeat are not included in the standards of any country, but they are relevant for Kazakhstan. Finally, national standards allow addressing specific epidemic and epizootic situation in each country. Thus, in light of worse epizootic situation in Kazakhstan than in Europe, the application of European rules may be ineffective in Kazakhstan.

[5] FiBL & IFOAM 2022, p. 23

- *Separation from other types of legislation*

It is not uncommon that the organic production legislation is confused with legislation on technical regulation and food safety. However, the organic production legislation has its own specific purpose and instruments to ensure *organic* quality of a product, which must *a priori* comply with requirements of food safety, technical regulation and environmental legislation. Unfortunately, the Draft Law tends to confuse the purpose and principles of organic legislation with that of legislation on technical regulation and food safety. The example is the inclusion of the Committee for Technical Regulation and Metrology of the Ministry of Trade and Integration (CTRM) among authorized bodies in organic sector, which will be discussed further in more detail.

Analysis of the Key Changes of the Draft Law

The key objectives of the organic production legislation based on the international standards are as follows:

- protection of consumers from improper labeling of products as "organic";
- protection of producers from unfair competitors; and
- ensuring of reliable control at all stages of production, preparation, storage, transportation and sale[6].

Adoption of the Law in 2015 allowed establishing basic requirements for all participants of the organic market and liability for incompliance. However, the Draft Law introduces new approaches that are inconsistent with the said objectives and may impair protection of the organic products from falsification and encourage unfair competition. These new changes include:

- **Draft Law allows for certification of organic products based on regulatory requirements established in the national, interstate, regional, and foreign standard, and other forms of documents (Article 12.1 of the Draft Law).**

What is new in this provision? If the current Law provides for certification of organic products as to compliance with legislation requirements, the Draft Law allows for certification of organic products and application of certain synthetic substances based on requirements of standards and other forms of documents without verifying as to compliance with legislation requirements. The Draft Law does not clarify what is meant by "other documents". Other documents may include documents with technical requirements of any private organization. The application of a standard of a private organization is not prohibited by the Kazakhstan legislation[7], but private standards must comply with legislation requirements, which shall be the same for everyone who wishes to draft a private standard, however, this requirement is unclear in the Draft Law. No doubt the standard requirements on organic production are very strict worldwide. *Dura lex sed lex.* Not all producers are able to fulfill these requirements. However, the support to producers shall not be made at

[6] Codex Alimentarius Guidelines, paragraph 2.

[7] For example, please see Article 19.10 of the Technical Regulation Law.

the expense of mandatory organic standards. Otherwise, why do we need a law at all if any company may draft its own "regulatory document" not consistent with law and apply the "organic" label to products of questionable quality?

The EU Organic Production Regulation[8] is the most recently updated and recognized internationally document, and it also provides for mandatory compliance with this regulation at all stages of production, preparation and distribution of products[9]. The EU member states may adopt national or private standards incorporating the production conditions specific for their countries, however, these standards shall comply with the EU organic production rules.

It should be noted that the Kazakhstan Administrative Code provides for liability in case of violating the legislation requirements for organic production, but not the requirements established by private standards or "other documents". Thus, the rules of the Draft Law may create conditions for users of private standards to escape from liability.

It is worth mentioning that a trend to bypass strict requirements of the new quality assurance systems can be observed around the world. Once a new standard is created, which allows receiving a higher price for a product, for example, organic or halal, this gives rise to attempts to gain relevant advantages without proper grounds. For example, in the USA, once the organic production standard entered into force, different enterprises started looking for the ways to bypass the standards in order to make profit from the USDA organic label. There is a constant pressure by agricultural business for the relaxation or simplification of organic standards[10].

After adoption of the Law, the Ministry of Agriculture of Kazakhstan (MoA) made considerable effort during 2015-2017 on elimination of the practices that mislead consumers related to the unlawful application of labels "eco", "organic" and "bio". At the initiative of MoA and the Ministry of Justice, the provisions of the environmental legislation and legislation on food safety on certification of the "ecologically clean products" were abolished to bring this legislation into compliance with the Law on Organic Production.

It is advisable to encourage development of new agri-food quality conformity systems that are based on production methods, which are more environmentally friendly than conventional production, but still do not fully meet the stringent requirements of organic production. This can include products labeled as "natural", "origin green", "antibiotic free", "grassfed" etc. However, it is important that legislation provides for a clear distinction among all these new products and ensures protection of the "organic" label.

We believe that the provisions of the Draft Law should be revised in order to stress that organic producers may choose any standard recognized by legislation, however, they shall comply with mandatory requirements of the organic legislation of Kazakhstan.

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[8] Please see the European Union Regulations 018/848 on organic production and labeling of organic products of 2018. Entered into force starting from 1 January 2021 (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R0848&qid=1655900539637).

[9] Ibid., Article 3(1).

[10] "*2018 farm bill watch: a sneak attack on the organic standards?"* (https://foodtank.com/news/2018/05/farm-bill-organic-standards-farming/) and "*organic farms are under attack from agribusiness, weakened standards*" (https://www.ecowatch.com/organic-farms-under-attack-from-agribusiness-2632466672).

Draft Law provides for direct application of international, regional, and foreign states' standards to the Kazakhstan organic production

The Law on Organic Production does not explicitly provide for the application of international and foreign standards to organic production. After adoption of the Law, producers complained that the Law limited the use of standards other than those of Kazakhstan[11]. Indeed, the definition of "organic products" in the Law establishes that such products must be produced in compliance with requirements of the Kazakhstan legislation (Article 1(1)). This provision of the Law is often interpreted as the necessity to regulate organic production only according to the Kazakhstan legislation, excluding the application of any other non-Kazakhstan standards.

However, the Kazakhstan Law on Standardization of 5 October 2018, which prevails over other laws in respect of standardization issues, permits the application of international, regional and foreign standards provided that the following conditions are met:

- Kazakhstan is a member of international and regional organizations on standardization, metrology and accreditation whose standards are to be applied in Kazakhstan;
- international agreements of Kazakhstan on cooperation in the sphere of standardization are in place;
- an agreement between the national agency on standardization and **international**, **regional**, and **foreign** organization on cooperation in the sphere of standardization is in place; and
- compliance with requirements of original document holders as to application of international and regional standards, and standards of foreign states (Article 27.2 of the Law on Standardization).

It should be noted that according to the Law on Standardization, foreign standards must comply with requirements of the Kazakhstan legislation in case the products are to be sold in domestic market (Article 16). Accordingly, provisions of the Draft Law on direct application of international and foreign standards without compliance with requirements of the Kazakhstan law contradict the provisions of the Law on Standardization and national interests of the country.

The rationale of the above requirements of the Law on Standardization is that the national authorities cannot control implementation of a foreign standard in the territory of Kazakhstan, unless it is incorporated into the legal system of the state. For this reason even international agreements of Kazakhstan need to be ratified by the Parliament for inclusion of the rules of the agreement in the national law system with all the legal consequences that come with it (control over rules implementation, enforcement, etc.). Kazakhstan products certified by a foreign certification body (CB) as to compliance with foreign standards cannot be inspected by the national authorities of Kazakhstan, because

[11] Discussion of the round table of 12 March 2021 in the Senate of the Parliament on the issues of organic industry (https://senate.parlam.kz/ru-RU/news/details/4521).

they have competence to inspect products only as to compliance with Kazakhstan standards.

Furthermore, the application of international or foreign standards makes it impossible to take account of the Kazakhstan's specific conditions and may infringe upon the interests of domestic producers and consumers. Therefore, their application must meet the requirements of the Kazakhstan legislation if the case is about the products sold in Kazakhstan.

National standards are developed in Kazakhstan in accordance with the state policy and national priorities. The state has all the required resources to determine the key markets for export promotion, analyze export markets requirements and interpret them in national standards in order to provide the national producers with standards adapted to both international and national level with consideration of national priorities in a certain industry.

It is worth mentioning that the national standard on organic production adopted in 2017 has not been tested in practice yet, because the Kazakhstan CBs, which could apply it, have been set up only recently and have not issued any certificate so far (only two national CBs have been registered in Kazakhstan by 2022[12]). Further work will be required to clarify provisions of this standard, but this work shall not be replaced by a simple capitulation to the foreign standards if we really want to build the national system of organic production.

- **Draft Law provides for inclusion of the Committee for Technical Regulation and Metrology of the Ministry of Trade and Integration (CTRM) among authorized bodies in organic sector to strengthen the institutional framework**

According to the current Law, authorized bodies in organic are:

- MoA – authorized agency in the sphere of organic production, which coordinates the activities of other agencies;
- Sanitary and Epidemiological Control Committee of the Ministry of Health;
- Consumer Protection Committee of the Ministry of Trade and Integration; and
- local executive authorities of oblasts, cities of national significance and the capital of Kazakhstan.

The Draft Law proposes to include CTRM in the group of authorized agencies and exclude the Consumer Protection Committee, which exercises control over organic products at the stage of sale, which will weaken the control at the stage of selling the organic products.

In Kazakhstan, as in other post-Soviet countries, certification is possible on the basis of standards, and standards are developed in accordance with legislation on technical regulation and standardization, in which development and implementation of an organic standard inevitably entails the participation of CTRM. However, improvement in the efficiency of state management in the organic sector cannot be solved, in our view, by delegation of certain powers of MoA to CTRM. Functions of CTRM introduced by the Draft Law have already been secured by legislation on technical regulation, except for the

[12] National Expert Examination and Certification Centre JSC accredited by National Accreditation Center of Kazakhstan in July 2018, and Qazaq Bio Control LLP accredited in May 2022.

function of "*formation of negotiating position and representation of the Republic of Kazakhstan in international and regional organizations on standardization, certification and accreditation in the sphere of organic production*" (Article 7.3.5 of the Draft Law).

International authorities developing the organic production standards are not the standardization authorities in the narrow sense of the Kazakhstan law, but they form the key rules for organic production based on agriculture production. CTRM has no competence in agriculture, and it is unclear how CTRM would be able to elaborate on or evaluate compliance with organic farming methods.

The approach applied in most countries is based on recognition of the leadership of the ministries of agriculture in the organic sector. Such an approach is secured in the current Law, which recognizes MoA as an authorized and coordinating authority in organic sector.

We believe that the role of MoA as the authorized body in organic shall be enhanced by strengthening its organizational structure and staffing for more effective interaction between MoA and CTRM. To date, MoA allocates only one or two specialists to deal with the organic production issues, which is insufficient to adequately manage the organic sector. The trend of inadequate funding and limitation of staff required for effective implementation of laws adopted pursuant to international practice can be seen in many countries[13]. For a while now, Kazakhstan experts have been advising to create a division or department composed out of qualified personnel and trained inspectors to perform the supervisory functions of MoA. For example, in Kyrgyzstan, to facilitate the development of the new organic sector, the Organic Agriculture Department as a state institution was created under MoA [14].

Even in case of outsourcing of certain functions, the overall management of organic production regulation should remain with MoA. It is also recommended to take measures to solve the below issues in the management sphere.

Coordination of authorized agencies

State management in organic is complex, since it embraces agricultural production, processing, trade, and other areas. Therefore, timely and efficient coordination at all stages is a recipe for successful management and growth of organic production. MoA is a coordinating body. However, the current coordination comes to simple interaction among the authorized agencies to solve current issues, such as, agreement on rules. In our view, lack of proper coordination among the competent authorities is a serious obstacle for the development of the organic sector.

In international practice, for successful coordination a special structure (committee, council, etc.) is often created to ensure better information exchange among the competent authorities and provide effective governance of organic production system. This structure ensures representation of each ministry and department, which has a role in the organic production management, and establishes their roles and responsibilities for participation in such a structure. The members of this entity seek to meet periodically.

[13] David Barnhizer: *What Causes Laws to Succeed or Fail?* (http://ssrn.com/abstract=274488).

[14] Please see https://agro.gov.kg/ru/dosh/.

Furthermore, it is common in international practice to create external structures serving as a forum for all parties concerned, including the private sector and farmers. The recently organized Project Office "Organic" under the NCE "Atameken" is a positive development, since it creates a platform to discuss and elaborate on recommendations by all parties concerned.

- ***Participation of MoA in authorization of activities of certification bodies (CBs)***

According to the best international practice, ministries of agriculture often have the powers to authorize, monitor and exercise control over the activities of CBs. This includes the supervision of compliance with the organic standards at all production stages. MoA controls whether CBs and other participants of organic market comply with organic production standards, such as sustainable management of soil, water and other natural resources. This approach is used in the EU where the competent authorities in agriculture are responsible for approval of and supervision over the activities of CBs and other participants of the organic market. In the USA, the USDA (analogue of MoA) directly accredits the organic CBs. The involvement of MoA in accreditation, monitoring and control of CBs may contribute to effective introduction of organic standards in Kazakhstan. MoA may provide technical assistance to CBs and organic operators in relation to agricultural issues and take action to remedy incompliances. Moreover, MoA could provide assistance with the training of qualified inspectors who are lacking in the organic sector.

- ***Collection of statistical information***

Collection of comprehensive information is required to effectively manage organic production sector, support the producers and improve the production system. Kazakhstan producers have been exporting products to the EU for more than 20 years; however, there is no official statistical information regarding these exports. The EU collects data on organic imports, but such data are not collected in Kazakhstan. The producers do not submit information to Kazakh authorities using as an excuse the fact they used a foreign standard. It is recommended to include in the Draft Law an explicit obligation of operators on submission of information to the authorized bodies, regardless of whether they apply a foreign or a national production standard.

Another reason for the absence of official statistical information on organic may be the fact that foreign CBs certifying the Kazakhstan products do not get registration in Kazakhstan to avoid the accreditation with the Kazakhstan authorities. In light of this fact, it is recommended to clarify in the Draft Law that foreign CBs carrying out organic certification in the Kazakhstan territory must undergo accreditation or get registration according to Kazakh legislation.

- ***Introduction of a product traceability system***

In recent years the traceability systems applied to the production and control of food products have acquired wide recognition in international practice to ensure their quality and safety. To date, the EU uses the *TRACES* electronic system to keep track of movements of food products across the territory of the EU. From now on, certificates of organic products imported into the EU must be executed in the electronic form. Therefore, it is recommended

to authorized agencies to introduce an electronic system of organic certificates in Kazakhstan as well.

- **Draft Law provides for introduction of disused lands into organic production without a transition period**

A transition period in organic production is a period, during which the organic production methods are used, but the production cannot be yet sold as organic. The Draft Law gives no definition or the key rules with respect to the transition period contrary to the international practice. Instead, the Draft Law provides that *"disused lands (for more than three years) shall be considered organic without a transition period*" (Article 10.3). The Draft Law does not clarify what lands are "disused lands" and the use of the words "more than three years" is not clear. Direct inclusion of such a rule in the Draft Law without specifying who will determine if the land is "disused " and what criteria will be applied for such determination may create conditions for legal uncertainty. The Land Code of Kazakhstan defines the disused land as a "*land plot, which has previously formed a part of plough land and has not been used for sowing of agricultural crops, nor has been fallowed, for more than one year starting from autumn*" (Article 97.4). It is advisable to bring the rules of the Draft Law in line with the Land Code.

In international practice, CBs are given the right to increase or reduce a transition period, depending on the history of previous use of a plot of land, type of crop or husbandry practices to be used on a plot of land. It is recommended to include in the Draft Law: (1) general rules for the transition period, and (2) right and liability of CBs for reducing or increasing the transition period to support the start of activities of the organic production operators, based on the rules and criteria to be developed by MoA.

Considering that transition to organic methods results in lower yields due to refusal of chemicals, and the products produced during the transition period cannot be certified as organic and have premium price, the EU and the EU member states provide support measures to producers to encourage the transition to organic production[15], which are also recommended for consideration in Kazakhstan.

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[15] Please see https://ec.europa.eu/info/food-farming-fisheries/farming/organic-farming/becoming-organic-farmer_en.

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Information about the authors

Raushan Zhazykbayeva is a counsel with AEQUITAS law firm. As an international legal counsel to the UN Food and Agriculture Organization (FAO), she has been engaged in legal reforms in the Eastern Europe and Central Asia, including development of organic production legislation in Azerbaijan, Kazakhstan, Kyrgyzstan, Uzbekistan and Tajikistan. For many years she has been a partner of AEQUITAS law firm, advising major international investors in the economy of Kazakhstan. She worked in state and quasi-state authorities of Kazakhstan. Raushan published articles on various legal issues in the leading international and local journals of law. Ms. Zhazykbayeva graduated with honors from the Faculty of Law of the Kazakh State University (1990) and holds an LLM in International Commercial Law from the University of London (1999).

Zeinulla Sharipov worked for the Ministry of Agriculture of the Republic of Kazakhstan from 2009 to 2020, where he handled such issues as development and implementation of technical regulations of the Republic of Kazakhstan and the EAEU, ensuring of food safety, development of systems for certification and sale of "Halal" food products, and fight against such products counterfeiting. In 2015, he acted as a national coordinator for the technical assistance project of UN FAO "TCP/KAZ/3502 "Support for the Development of Organic Farming and Institutional Capacity Building". He acted as a practitioner for MAK on development and adoption of the Law of the Republic of Kazakhstan on Organic Production of 27 November 2015 and introduction of amendments into the current legislation in connection with the adoption thereof. Zeinulla worked as an expert for the Commission group of FAO/WHO "Codex Alimentarius" of Kazakhstan when Kazakhstan was presiding

in the Coordination Committee of the Commission for Europe. Mr. Sharipov graduated from the Pavlodar State University named after S. Toraighyrov majoring in "Standardization, metrology and certification" (2008).

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