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Directorate B – Quality, Research & Innovation, Outreach

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I would like to thank you for your email of 12 November¹, in which you ask further clarification in order to understand better what the options are for coping with the shortage of organic feedstuff in the market and also the legal basis that would hamper the application of “catastrophic event” to this particular situation.

In your email, you explain that certain Spanish producers are facing a shortage of organic soy on the international market and need this organic soy as a source of protein for certain categories of livestock.

One of the objectives of the reform of the organic rules was to limit the number of derogations in organic production to ensure further consumers’ trust in the organic scheme. Feeding organic livestock with organic or in-conversion feed is one of the major features of organic livestock production laid down in point 1.4.1(b), of Part II of Annex II to Regulation (EU) 2018/848² “*livestock shall be fed with organic or in-conversion feed that meets the animal’s nutritional requirements at the various stages of its development [...]*”. Hence, the derogations to use non organic feed are limited to very specific situations such as catastrophic circumstances as referred to in Article 22 of Regulation (EU) 2018/848 or the lack of specific protein compounds for piglets up to 35 kg or young poultry respectively in points 1.9.3.1(c) and 1.9.4.2 (c) of Part II of Annex II to Regulation (EU) 2018/848.

Recital 60 of Regulation (EU) 2018/848 provides the rationale for setting derogations in case of catastrophic circumstances and states the following: “*Exceptions from organic production rules should be provided for only in the event of catastrophic circumstances. In order to allow organic production to continue or recommence in such cases, the power to adopt certain acts should be delegated to the Commission in respect of laying*

¹Ares(2021)6971119

²<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02018R0848-20201114&qid=1636988808797>

down the criteria to determine whether a situation qualifies as catastrophic circumstances as well as specific rules, including possible derogation from this Regulation, on how Member States are to deal with such catastrophic circumstances and on the necessary monitoring and reporting requirements in such cases”.

Article 22 of Regulation (EU) 2018/848 on the adoption of exceptional rules states the following: “Adoption of exceptional production rules: “1. *The Commission is empowered to adopt delegated acts in accordance with Article 54 supplementing this Regulation by laying down:*

(a) the criteria to determine whether a situation qualifies as catastrophic circumstances deriving from an ‘adverse climatic event’, ‘animal diseases’, an ‘environmental incident’, a ‘natural disaster’ or a ‘catastrophic event’, as defined in points (h), (i), (j), (k) and (l) of Article 2(1) of Regulation (EU) No 1305/2013, respectively, as well as any comparable situation;

(b) specific rules, including possible derogations from this Regulation, on how Member States are to deal with such catastrophic circumstances if they decide to apply this Article; and

(c) specific rules on monitoring and reporting in such cases.

Those criteria and rules shall be subject to the principles of organic production laid down in Chapter II.

2. Where a Member State has formally recognised an event as a natural disaster as referred to in Article 18(3) or Article 24(3) of Regulation (EU) No 1305/2013, and that event makes it impossible to comply with the production rules laid down in this Regulation, that Member State may grant derogations from the production rules for a limited period until organic production can be re-established, subject to the principles laid down in Chapter II and to any delegated act adopted in accordance with paragraph 1.

3. Member States may adopt measures in accordance with the delegated act referred to in paragraph 1 to allow organic production to continue or recommence in the event of catastrophic circumstances.”

Article 22 of Regulation (EU) No 2018/848 clearly does not refer to a shortage of certain organic feed on international market; furthermore, a shortage on the international market of a particular organic feed is not a situation comparable to an adverse climatic event, animal diseases, environmental incident, a natural disaster or catastrophic event as defined in points (h), (i), (j), (k) and (l) of Article 2(1) of Regulation (EU) No 1305/2013, respectively.

Commission Delegated Regulation (EU) 2020/2146³ as regards exceptional production rules in organic production was adopted on the basis of the empowerments given to the Commission in Article 22(1), points (b) and (c), of Regulation (EU) 2018/848. Article 1(1) and (2) of this delegated act require a formal recognition of a situation of

³<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R2146&qid=1636988880765>

catastrophic circumstances by the Member State. It states the following: “1. *For the purposes of the exceptional production rules referred to in Article 22(1) of Regulation (EU) 2018/848, in order for a situation to qualify as catastrophic circumstances deriving from an ‘adverse climatic event’, ‘animal diseases’, an ‘environmental incident’, a ‘natural disaster’ or a ‘catastrophic event’, as well as any comparable situation, it shall be recognised as catastrophic circumstances by a formal decision issued by the Member State in which the situation occurs.*” 2. *Depending on whether the catastrophic circumstances affect a specific area or an individual operator, the formal decision issued under paragraph 1 shall refer to the area or operator concerned*” and Article 2 of this delegated act states that “*Following the formal decision referred to in Article 1, the competent authorities may, upon identification of the operators affected in the area concerned or upon request from the individual operator concerned, grant the relevant derogations set out in Article 3 and the conditions related thereto, provided that those derogations and conditions apply: (a) for a limited period and no longer than necessary, and in no case longer than 12 months, to continue or recommence organic production as carried out before the date of application of those derogations; (b) in relation to specifically affected types of production or, where relevant, land parcels; and (c) to all relevant organic operators affected in the area concerned or only to the individual operator concerned, as the case may be.*”.

Hence, the derogation set in Article 3(3) stating “3. *By way of derogation from point 1.4.1(b) of Part II of Annex II to Regulation (EU) 2018/848, livestock may be fed with non-organic feed instead of organic or in-conversion feed, when feed production is lost or restrictions are imposed.*” may only be granted when the situation of catastrophic circumstances has been recognized by a formal decision of the Member State in line with the provisions of Article 22 (1) and cannot be granted in case of a shortage of organic soy on the international market.

The present opinion is provided on the basis of the facts as set out in your email and expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

Yours sincerely,

