



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B – Sustainability

Brussels

Dear [REDACTED],

I would like to thank you for your email¹ of 29 July 2022 regarding the potential use of carbon dioxide in the production of organic microalgae.

In your analysis, you conclude that the use of carbon dioxide as a carbon source for algae is not covered by Articles 24 or 25 of Regulation (EU) 2018/848² and, consequently, does not need to be listed in Annex II to Regulation (EU) 2021/1165³.

I would like to start by recalling that, under the definition of algae within the scope of Regulation (EU) 2018/848, microalgae are also included, as explained in the Frequently Asked Questions document available on our webpage (see question number nine of the relevant chapter on aquaculture)⁴.

I would also like to confirm that products consisting of carbon dioxide are not belonging to Product Function Category 1, fertilisers, in accordance with Annex I to Regulation (EU) 2019/1009 on the making available on the market of EU fertilising products⁵.

However, I would like to recall that fertilisers may be: a) CE-marked fertilisers that may move freely in the single market if compliant with the provisions of Regulation (EU) 2019/1009 or b) non-harmonised “national fertilisers” that are compliant with the applicable national rules on such products and that may be sold on the single market on the basis of mutual recognition principle and related implementation.

¹ ARES(2022)5466887

² [Regulation \(EU\) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation \(EC\) No 834/2007 \(OJ L 150, 14.6.2018, p. 1\)](#)

³ Commission Implementing Regulation (EU) 2021/1165 of 15 July 2021 authorising certain products and substances for use in organic production and establishing their lists (OJ L 253, 16.7.2021,p.13)

⁴ [Organics at a glance \(europa.eu\)](#)

⁵ Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 (OJ L 170 25.6.2019, p. 1).

In addition, carbon dioxide products, considering their nature and properties, and conventional use in microalgae production, might also qualify as ‘nutrients’.

Article 24, in particular its paragraph (1) (b), reads as follows: “*The Commission may authorise certain products and substances for use in organic production and shall include any such authorised products and substances in restrictive lists for the following purposes: .../... b0 as fertilisers, soil conditioners and nutrients;*”

Therefore, carbon dioxide products must be assessed in compliance with Article 24, and when appropriate, approved for use **as fertiliser/nutrient** in organic production at EU level. Please see also point 2.3.2 of Part III of Annex II to Regulation 2018/848 : “*In facilities on land where external nutrient sources are used, the nutrient levels in the effluent water shall be verifiably the same, or lower, than the inflowing water. Only nutrients of plant or mineral origin authorised pursuant to Article 24 for use in organic production may be used.*”

On this issue, I do not agree with your conclusion that “*Annex II of Regulation (EU) 2021/1165 remained with minor changes, relative to the previously in force (Annex 1 of Regulation (EC) 889/2008), ensuring the continuity of the existing restrictive lists of products and substances. To avoid misunderstanding, concerning nutrients covered in Annex II of Regulation (EU) 2021/1165, the scope of nutrients is confined to those associated with UE regulations of fertilisers and animal-by product (as explained in paragraph 25)*”.

Indeed, from your above-mentioned text, I understand that you aimed to refer to page 25 of Regulation (EU) 2021/1165, which contains a footnote referring to fertilisers, soil conditioners and nutrients which reads as follows: “*(1) Covering in particular all the product function categories listed in Part I of Annex I to Regulation (EU) 2019/1009.*”

The reference to “*in particular*” does not limit the possibility to assess and approve for organic production, the use of nutrients or national fertilisers, in addition to fertilisers within the scope of Regulation (EU) 2019/1009.

The present opinion is provided on the basis of the facts as set out in your email of 29 July 2022 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,

