EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B – Sustainability

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Thank you for your email[1] of 8 February 2022 asking for clarifications with respect to certain provisions of the Commission Delegated Regulation C(2022)101[2], which is currently under scrutiny of European Parliament and Council. This act will amend Annex II to Regulation (EU) 2018/848[3].

Please find below responses for each of your questions.

Question 1.1: Article 10(4) is a clear rule and describes how PRM can be marketed as in-conversion PRM: …when the land parcel has completed a conversion period of 12 months before harvest of the PRM. Are the provisions under a) and b) to be seen as derogations to this rule, or as additional rules? In any case: We do not see any delegation in Article 10 to change/amend this provision. There is only a delegation for the use of in-conversion and non-organic PRM in Article 12(2). Of course there is a delegation in Article 30(8) for Article 30(3). But in Article 30(3) compliance with Article 10(4) is foreseen. Article 10(4) does not give any reference to the PRM used for the production of in-conversion seedlings, only to the period, the land parcel used for its production has to complete before harvest of the in-conversion seedling. Under a) ii) the draft text gives a production rule for in-conversion seedlings: "…in-conversion seedlings …. may be used when grown as follows: …"

There are indeed additional rules on how the seedlings should be grown to be marketed as in-conversion under Article 10(4). Considering the nature of seedlings, originating from seeds, and the existing derogation under point 1.4 for the cultivation of seedlings in

1 ARES (2022) 931243

2 Commission Delegated Regulation (EU) …/… of XXX amending Annex II to Regulation (EU) 2018/848 of the European Parliament and of the Council as regards specific requirements for the production and use of non-organic, in-conversion and organic seedlings and other plant reproductive material –C(2022)101

3 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).

containers for further transplanting, the objective of the new provisions is to clarify the possible cycles of production of in-conversion seedlings.

Under Article 12(2) of Regulation (EU) 2018/848, the Commission is empowered to amend points 1.3 and 1.4 of Part I of Annex II as regards the derogations (see point (a)) and also, in accordance with point (e) to amend Part I of Annex II by adding further detailed rules and cultivation practices for specific plants and plants products.

Question 1.2: We ask the COM for clarification on which legal basis Article 10(4) is amended with this proposal.

Article 10(4) has not been amended. Please see above and the text of the Annex.

Question 1.3: However, we do not understand the reference to Article 10(4), as according to our understanding the provision given in (a) of new paragraph 2 of 1.8.5.1. ("…a land parcel that, during that same period, has completed a conversion period of at least 12 months;") repeats the provisions of Article 10(4). Why is this para necessary?

The reference to Article 10(4) is needed in order to clarify the applicable rules. In case of unavailability of organic PRM, in-conversion PRM marketed in accordance with Article 10(4) may be used. The provisions of Article 10(4) provides for: "*However, the following products produced during the conversion period and in compliance with paragraph 1 may be marketed as in-conversion products: a) plant reproductive material, provided that a conversion period of at least 12 months has been complied with;….".* Moreover, Article 30(3) reads as follows: "*However, plant reproductive material, food products of plant origin and feed products of plant origin that have been produced during the conversion period, which comply with Article 10(4), may be labelled and advertised as in-conversion products by using the term 'in- conversion' or a corresponding term, together with the terms referred to in paragraph 1."*

Indeed, the point (a) is there in order to clarify that both the cultivation cycle of the seedlings itself and the conversion of the parcel shall last at least 12 months for purpose of integrity of the final PRM.

Question 2.1: We ask for clarification on the wording "…during that same period…": Does this mean, that the seed must be sown at the same time (on the same day) as the conversion of the parcel starts, so that the full 12 months of conversion and the full 12 months of minimum production cycle are running in parallel?

Yes, the purpose is to clarify that the cycle of the seedling itself needs to comply with the 12 months in-conversion and can be run in parallel on a parcel in-conversion or on a parcel having already completed the 12 months in-conversion in line with Article 10(4) and Article 30(3). See above.

Question 2.2: Does this mean, that the seedlings must not be harvested before the 12 months conversion time for the parcel are over?

Yes.

Question 2.3: Does this mean that the date of sowing the seed for producing the seedling is not relevant, as long as it is planted between day 1 of conversion and the end of 12 months conversion period of the parcel?

No, as said above also the seedling cultivation cycle on the parcel shall have to comply with a 12 months period in accordance with new provision.

Question 2.4: Which provision applies, if the sowing of the seed happens after 12 months conversion time for the parcel is completed, but not 24 months? Can the seedling be labelled as organic then, in contrary to Article 10.4.?

The provisions are in line with Article 10(4). Please note that you should distinguish the land and the seedlings.

First of all, please note that if the parcel has completed its 12 months in-conversion, it is still a parcel in-conversion (see provisions of point 1.7.1. of Part I of Annex II to Regulation (EU) 2018/848 which read as follows: " *For plants and plant products to be considered as organic products, the production rules laid down in this Regulation shall have been applied with respect to the parcels during a conversion period of at least two years before sowing, or, in the case of grassland or perennial forage, during a period of at least two years before its use as organic feed, or, in the case of perennial crops other than forage, during a period of at least three years before the first harvest of organic products.*").

If the cycle of production of the seedling itself is shorter than 12 months, it cannot be labelled in-conversion when derived from conventional seed.
If derived from organic or in-conversion seed, the seedling can be labelled as in-conversion seedling, in that case provisions of point 1.8.5.1 (b) will apply but in accordance with Article 10(4) the parcel must have completed the 12 months period.

The purpose of the provisions is indeed to ensure integrity of the final in-conversion material and avoid the marketing of short cycle seedlings in-conversion when derived from conventional seeds.

Seedlings can be labelled organic only when originated from mother plants in compliance with point 1.8.2 or, in compliance with new provisions of point 1.8.6. when authorised to be grown organically in accordance with those new conditions.

Question 2.5: regarding the seed used for producing such seedlings: Please explain and give the reference to the relevant provision regulating what kind of seed (organic, or in-conversion seed or derogated non-organic)

Article 10(4) does not specify the origin of plant reproductive material to be used on in-conversion parcel for the production of in-conversion PRM.

I would recall that for the production of organic PRM the producer shall have to respect the provisions of point 1.8.2: "*To obtain organic plant reproductive material to be used for the production of products other than plant reproductive material, the mother plant and, where relevant, other plants intended for plant reproductive material production shall have been produced in accordance with this Regulation for at least one generation, or, in the case of perennial crops, for at least one generation during two growing seasons."*

For the mother plant/other plant to comply with the requirement "*produced in accordance with this Regulation*", the provisions on conversion should have already been

complied with. In accordance with Article 10(4), after 12 months on a parcel in-conversion, PRM could be labelled as in-conversion.

Seedlings could be labelled as in-conversion when in compliance with Article 10(4) and grown as follows:

1) when grown in soil, the parcel must have completed a 12 months conversion period and the seedling must have been cultivated for at least 12 months, independently from origin of seeds (Ref. new paragraph in Point 1.8.5.1. point (a))

2) when originated from in-conversion seeds and grown in organic or in-conversion parcels (Ref. new paragraph in Point 1.8.5.1(b) and Article 10(4))

3) when originated from in-conversion seeds and grown in containers (Ref. new paragraph in Point 1.8.5.1(b) and Article 10(4)).

The use of organic seeds to grow seedlings on a parcel in-conversion is not directly addressed, but in compliance with Article 10(4), when such seedlings are grown on in-conversion parcel they could be labelled as in-conversion provided 12 months have been completed.

The main purpose of the new provisions is indeed to ensure integrity of the final in-conversion material and avoid the marketing of short cycle seedlings in-conversion when derived from conventional seeds and to clarify the case of cultivation in containers from in-conversion seeds.

1.8.5.1, second paragraph, (b): (b) on a converted land parcel or on a land parcel during the conversion period or in containers if covered by the derogation referred to in point 1.4, provided that the seedlings have originated from in-conversion seeds, harvested from a mother plant or other plant grown on a land parcel that, during the same period, has completed a conversion period of at least 12 months before harvest and marketed in compliance with Article 10(4).';
Question 3.1: This provision contradicts Article 10(4) where it is said that at the time of harvest of the in-conversion-PRM, the land parcel has to have completed 12 months of conversion period. Whereas, here it is said, that the plant delivering the in-conversion seed for seedlings has to be planted after the parcel has completed 12 months conversion period. Where in a consolidated version of all relevant provisions can be deduced, which option is to be applied when?

I would bring your attention to the text of the new paragraph inserted in point 1.8.5.1 of Part I of Annex II which reads as follows:

> *(ii) the following paragraph is inserted after the first paragraph:*
>
> *'In addition, in case of a lack of availability of organic seedlings, "in-conversion seedlings", marketed in compliance with Article 10(4), second subparagraph, point (a), may be used when grown as follows:*
>
> *(a) through a cultivation cycle from seeds to final seedling lasting at least 12 months on a land parcel that, during that same period, has completed a conversion period of at least 12 months; or*

(b) *on an organic or in-conversion land parcel or in containers if covered by the derogation referred to in point 1.4, provided that the seedlings have originated from in-conversion seeds, harvested from a plant grown on a land parcel that has completed a conversion period of at least 12 months.';*

As explained above, the parcel must have completed the conversion period of at least 12 months in compliance with Article 10(4) to allow seedlings to be marketed as in-conversion, the additional provisions refer to how the in-conversion seedlings should be grown,

Question 3.2: What is the labelling in case organic seeds are used for the production of seedlings with a production cycle completed in one growing season - produced on a converted land parcel? - produced on a parcel during the conversion period less than 12 months? - produced on a parcel during the conversion period of at least 12 months? - produced in a container covered by point 1.4.? and which are the applicable provisions for these cases?

Please see above. Please note that you should clarify the status of the parcel at stake and take into account point 1.7.1 of Part I of Annex II to the basic act.

4) 1.8.5.1, third paragraph: 'Where organic or in-conversion plant reproductive material or plant reproductive material authorised in accordance with point 1.8.6 is not available in sufficient quality or quantity to fulfil the operator's needs, competent authorities may authorise the use of non-organic plant reproductive material subject to points 1.8.5.3. to 1.8.5.8. Question 4.1: What happens if organic plant reproductive material is not available, but in-conversion plant reproductive material is available? Can a derogation still be granted, as there is "or" between the categories?

I would recall that the paragraph above concerns authorisation for use of conventional PRM to be issued to users of PRM for production of final organic products subject to points 1.8.5.3. to 1.8.5.8: "'*By way of derogation from point 1.8.1, where the data collected in the database referred to in Article 26(1) or the systems referred to in Article 26(2) show that the qualitative or quantitative needs of the operator regarding relevant organic plant reproductive material are not met, the operator may use in-conversion plant reproductive material in accordance with Article 10(4), second subparagraph, point (a), or plant reproductive material authorised in accordance with point 1.8.6.';..../...*".

Please note point 1.8.1.: "*1.8.1. For the production of plants and plant products* ***other than plant reproductive material****, only organic plant reproductive material shall be used.*"

Consequently, the competent authorities shall consider whether the availability of in-conversion PRM is appropriate in qualitative and quantitative terms and whether justification presented by the operator are appropriate to decide whether derogate use of non-organic PRM.

With respect to possible authorisation for producers of PRM, in line with the provisions set under point 1.8.6, the competent authority may grant such authorisations when mother plants/other plants produced in compliance with point 1.8.2. provisions are not available.

I would bring your attention to the fact that authorisations under points 1.8.5 and 1.8.6. relate to two different categories of users of PRM, and that only 1.8.5. is a derogation to point 1.8.1. Point 1.8.6. refers to an authorisation to produce PRM organically when mother plants/other plants produced in accordance with point 1.8.2. are not available: "*1.8.6. Competent authorities or, where appropriate, control authorities or control bodies recognised in accordance with Article 46(1)* ***may authorise*** *operators producing plant reproductive material for use in organic production to use non-organic plant reproductive material, when mother plants or, where relevant, other plants intended for the production of plant reproductive material and produced in compliance with point 1.8.2 are not available in sufficient quantity or quality, and to place such material on the market for use in organic production provided that the following conditions are met:.../...*"

Question 4.2: We do not understand the reference to plant reproductive material authorised in accordance with point 1.8.6., as 1.8.6. addresses only operators producing plant reproductive material for use in organic production. Under 1.8.6. is regulated, how such PRM producing operators may ask for a derogation for the PRM they use for the production of PRM. What is the connection from 1.8.6. to the possibility of operators to ask for a derogation in accordance with new 1.8.5.1.?

See above reply. The two categories of operators are well distinct, on the basis of point 1.8.1. "*1.8.1. For the production of plants and plant products* ***other than plant reproductive material****, only organic plant reproductive material shall be used.*

For the production of organic products, farmers must use organic PRM. When organic PMR is not available in sufficient quality or quantity and in accordance with the applicable provisions, they can rely on point 1.8.5 and ask for a derogation under the set conditions.

For producers of PRM, point 1.8.2 lays down the conditions for the production of organic PRM. Such operators may be authorised under point 1.8.6 to produce organic PRM according to the different conditions set under point 1.8.6.

Question 5.1: Is it correct that 1.8.6. applies to all kinds off PRM e.g. seeds, perennials, seed potatoes, other vegetative PRM…, except seedling of species that have a cultivation cycle completed in one growing season, from the transplantation of the seedling to the first harvest of product?

Yes.

Question 5.2: Is this provision, addressing operators producing plant reproductive material, a derogation from point 1.8.5.1 3rd paragraph, where rules for use of non-organic PRM (which therefore are also addressing operators producing plant reproductive material) are described in the first place?

Please see above, point 1.8.6 is addressing the production of PRM and relevant conditions have been inserted specifically for the production and placing on the market of PRM.
The derogation under point 1.8.5.1 are only addressing users of PRM for the production of final organic products.

Please see point 1.8.1: " *For the production of plants and plant products other than plant reproductive material, only organic plant reproductive material shall be used."*

For the production of PRM, please see points 1.8.2 and 1.8.6.

Question 5.3: Which criterion is decisive to apply either 1.8.5.1 or 1.8.6?

See above.

Question 5.4: Which labelling rules apply to PRM produced in use of such a derogation if placed on the market for use in organic production?

Producers of PRM, authorised to produce organic PRM under the conditions of point 1.8.6. may label such PRM as organic when fully compliant with conditions set under point 1.8.6. The labelling rules laid down in the basic act apply, see in particular Articles 30 and 33(1).

Question 5.5: Does the wording "…for use in organic production…" mean, that this provision is not applicable in case the PRM-producing operator is selling his PRM to private users?

There are no limitations in sale, the reference to "*for use in organic production*" is for the authorisation issued for the purpose of producing and placing the PRM on the market as organic, when placed on the market as organic PRM it can be sold to farmers and other customers.

Question 5.5.1: If yes, which production rules apply then?

Point 1.8.6 is applicable. Please see in particular point (c): "*the plant reproductive material is grown in compliance with all other relevant organic plant production requirements"*

Question 5.5.2: Which labelling rules apply to PRM produced in use of such a derogation if placed on the market for use of private consumers?

Please see above. The labelling provisions are not differentiated in accordance to type of customers.

Question 5.6: We ask for a clarification regarding the reference to 1.8.2. ("… in compliance with point 1.8.2 are not available…"): 1.8.2. is not applicable to the production of PRM. What is the practical consequence of this reference with regard of the production of PRM according to 1.8.6.?

Point 1.8.2 concerns how the final certified "organic PRM" to be used for the production of products should be produced.
This reference relates to the "definition of the conditions" where point 1.8.6 will apply: "*when mother plants or, where relevant, other plants intended for the production of plant reproductive material and produced in compliance with point 1.8.2 are not available in sufficient quantity or quality*".
Consequently, the competent authorities shall consider whether such condition is satisfied to decide whether authorise operators under point 1.8.6.

Question 6.1: 1.8.6. refers to producers of PRM. Is letter (b) applicable in case the operator producing PRM is using seedlings for the production of the PRM, e.g. for the

production of seeds, see "…the non-organic plant reproductive material used…"? Could you give a practical example for the production of PRM out of seedlings?

Yes. The prohibition set under paragraph (b) concerns only seedlings of species having a cultivation cycle completed in one growing season (for example lettuce). For those species, only non organic seeds (and not non organic seedlings) could be authorised for the production of organic seedlings when PRM **produced in compliance with point 1.8.2 are not available in sufficient quantity or quality** and provided that the conditions listed in point 1.8.6 are met.

Point 1.8.6 cover all type of PRM including seeds. I would recall the definition of PRM provided under Article 3(17) as follows: "*plant reproductive material means plants and all parts of plants, including seeds, at any stage of growth that are capable of, and intended for, producing entire plants*".

Question 6.1.1: If yes, does this mean: If the PRM used for the production of another PRM is a non-organic seedling with a cultivation cycle longer than one growing season, the deriving PRM is not organic, except the operator has been granted a derogation to use such non-organic seedlings for the production of PRM?

Yes. In case of non-organic seedling with a cultivation cycle longer than one growing season, the competent authorities may authorise operators producing plant reproductive material for use in organic production to use non-organic plant reproductive material, **when mother plants or, where relevant, other plants intended for the production of plant reproductive material and produced in compliance with point 1.8.2 are not available in sufficient quantity or quality**, and to place such material on the market for use in organic production provided that the conditions listed in point 1.8.6 are met.

Question 7) 1.8.6., last sentence of final paragraph: When relying on the general authorisation referred to in point (e), operators shall keep records of the quantity used.' Question 7.1: There is no provision regarding general authorisation in point (e). What relevance does the reference to (e) have in the given context?

The provision regarding general authorisation is under point (f). The procedure for correcting this typing error is ongoing.

Yours sincerely,