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DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B – Sustainability

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Thank you for your email¹ of 7 February 2022 asking for clarifications with respect to certain provisions of Regulation (EU) 2018/848² and of the Commission Delegated Regulation C(2022)101³, which is currently under scrutiny of European Parliament and Council. This act will amend Annex II to Regulation (EU) 2018/848.

Please find below detailed responses to each of your questions.

Point 1.8.2: Point 1.8.5 on the use of in-conversion and non-organic plant reproductive material seems to refer to point 1.8.1, but not to point 1.8.2, which is not mentioned. Therefore, the first time an organic operator uses non-organic plant propagating material for the production of organic plant propagating material, would he have to ask for an exceptional authorisation for its use?

Point 1.8.5.1 of Part I of Annex II to Regulation (EU) 2018/848 concerns possible derogation for users of plant reproductive material from point 1.8.1. which reads as follow: *“for the production of plants and plant products, other than plant reproductive material, only organic plant reproductive material shall be used”*.

I would bring your attention to the wording “other than plant reproductive material” as in fact, in case of production of plant reproductive material (PRM), the operator is free to start to use conventional PRM but to be able to label the PRM as organic provisions of point 1.8.2. must be respected and read as follows: ***“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***

¹ ARES (2022)871302

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 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



this Regulation for at least one generation, or, in the case of perennial crops, for at least one generation during two growing seasons.”

Therefore, to address your question: the first time organic operators use non-organic plant propagating material for the production of organic plant propagating material, they will not need to ask for an exceptional authorisation if they will be able to comply with point 1.8.2 which means that they will have to grow mother/other plant organically from which they will be able to harvest/produce the final organic plant propagating material. However, in case of lack of organically grown mother plants, the new provisions of point 1.8.6 would allow the competent authorities to authorise the production of organic PRM provided that the conditions listed in point 1.8.6 are met.

2- Point 1.8.2 The regulation does not provide a definition of "growing season". How should it be interpreted?

The growing season is the period of the year when plant can grow and it depends on climatic conditions; in Europe, for most species, it can be considered as the period from spring to autumn and two growing seasons correspond in general to almost two years depending on the climate and time of sowing of plant species.

3- Point 1.8.5.1, first paragraph It reads as follows: "...in the event that the data collected in the database referred to in Article 26(1) or the systems referred to in Article 26(2)...". How, if at all, will the Database in paragraph 1 and the System in paragraph 2 be articulated? Are they different tools? Will they overlap? Is paragraph 2 a continuation of paragraph 1? Will operators have access to both?

To address your question, I would recall the availability of a reply presented to the Committee on organic production in May 2021 and made available to Member States in CIRCA BC⁴. In particular, the motivations of such provisions expressed in the recital 66 of Regulation (EU) 2018/848: *“In order to foster organic production and address the need for reliable data, information and data on the availability on the market for organic and in-conversion plant reproductive material, for organic animals and for organic aquaculture juveniles needs to be collected and disseminated to farmers and operators. For that purpose, Member States should ensure that regularly updated databases and systems with such information are established on their territories, and the Commission should make such information public.”*

As explained in our previous reply, the Co-legislators have introduced a distinction between the collection of data on the availability of organic and in-conversion plant reproductive material (Article 26(1) of Regulation (EU) 2018/848) and the establishment of proper systems to make accessible information from the operators marketing such material on a voluntary basis to promote their use (Article 26(2)). At the same time, the Co-legislators have kept a certain flexibility: Article 26(5) of Regulation (EU) 2018/848 allows Member States to continue to use relevant information systems already in existence for the purposes of Article 26 (1), (2) and (3). Therefore, whether and how the database and the system should be developed to list all available organic and in-conversion plant reproductive material excluding seedlings fall under national responsibilities.

⁴ ARES(2021)2807591

4- Point 1.8.5.1, second paragraph, letter (a): Does it refer to seedlings to be produced during the first year of conversion and marketed from the second year of conversion onwards?

Yes, new provisions of point 1.8.5.1 aim to clarify when seedlings could be labelled as in-conversion in compliance with set provisions of Article 10(4). It reads as follows: “*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 [.../...]*

Therefore, after a production cycle of 12 months, they can be labelled in-conversion.

5- Point 1.8.5.1, fourth paragraph, point (c) (in particular the expression: “..., in particular the agronomic and soil and climatic conditions and the technological properties necessary for production;”)-Must operators justify the non-use of each and every variety of the species concerned appearing in the database or in the systems referred to in Article 26(1) and (2) respectively, and how must such justification be provided?

The operators shall justify their choice on the basis of the above-mentioned criteria, to demonstrate that the authorisation would be significant for their production, therefore explaining why the registered alternatives of the same species are not appropriate. The competent authorities shall decide on that basis whether to authorise the use of non organic plant reproductive material. Please also note that the above-mentioned provisions of point 1.8.5.1, currently in Part I of Annex II to Regulation (EU) 2018/848 are similar to the past provisions under Article 45(5) of Regulation (EC) 889/2008.

6- Point 1.8.5.1, last paragraph (“...operators may use both organic and in-conversion plant propagating material taken from their own holding,...”). Does this apply to landraces, also known as traditional varieties, as well as to catalogue varieties free of intellectual property? Can operators exchange these varieties?

Point 1.8.5.1. last paragraph reads as follows: “*When in compliance with Article 6(i) operators may use both organic and in-conversion plant reproductive material obtained from their own holding...*”.

Article 6 of Regulation (EU) 2018/848 on specific principles, lays down under point (i): “*Without prejudice to Article 14 of Regulation (EC) No 2100/94 and to the national plant variety rights granted under Member States’ national law, the possibility for farmers to use plant reproductive material obtained from their own farms in order to foster genetic resources adapted to the special conditions of organic production.*”

Consequently, the respect of horizontal rules is a priori condition, the farmers are free to use their own harvested seeds under the conditions laid down in Article 14 of Regulation (EC) No 2100/94, and this can cover all types of plant reproductive material, including landraces and if the varieties are not covered by plant breeders’ rights. Finally, the farmers can exchange seeds in-kind, when not covered by plant variety rights and when

not for commercial purpose, in this last case the farmer would indeed become a professional seeds' producer and should respect the horizontal rules on marketing of seed and plant reproductive material.

7- Point 1.8.5.6 Is there an obligation to submit a list, even if it is empty?

Yes, in compliance with current point 1.8.5.6. *The competent authorities of the Member States shall create an official list of species, subspecies or varieties (grouped if applicable) for which it is established that organic or in-conversion plant reproductive material is available in sufficient quantities and for the appropriate varieties in their territory. No authorisations shall be issued for the species, subspecies or varieties included in that list in the territory of the Member State concerned pursuant to point 1.8.5.1 unless these are justified by one of the purposes referred to in point 1.8.5.1(d). If the quantity or quality of organic or in-conversion plant reproductive material available for a species, subspecies or variety on the list turns out to be insufficient or inappropriate, due to exceptional circumstances, the competent authorities of the Member States may remove a species, subspecies or variety from the list.*

The competent authorities of the Member States shall keep their list updated on an annual basis and shall make that list publicly available.

By 30 June each year and for the first time by 30 June 2022, the competent authorities of the Member States shall transmit to the Commission and to the other Member States the link to the internet website where the updated list is made publicly available. The Commission shall publish the links to the national updated lists on a dedicated website."

Hence, the objective of these provisions is to monitor the progress in the availability of suitable plant reproductive material for organic productions in order to reduce the recourse to derogations set under point 1.8.5.1.

8- Point 1.8.6, first paragraph -Are you referring to biennial and perennial plant species, and does it include both seeds and vegetative propagating material, in particular bulbs, stolons, layering, clutches, cuttings, seedlings of fruit trees, vines, ornamentals, etc.?

The new provisions of point 1.8.6 are referring to plant reproductive material and cover seeds and all types of vegetative propagating material, in compliance with the definition provided under Article 3(17): "*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*".

I would bring to your attention point 1.8.6(b) which is in line with point 1.8.5.8 and prohibits the authorisation for organic nursery to use non-organic seedlings for the production of organic seedlings for species having a cultivation cycle completed in one growing season, from the transplantation of the seedling to the first harvest of product.

This means that the operators can get authorisation to use non-organic seeds for such species, but not seedlings, so that they shall have to grow the seedlings organically. In line with provisions of point 1.8.5.8 this is introduced to avoid the presence of any potential residues and ensure integrity of final products in crops having a short cycle of cultivation.

9- Point 1.8.6, last paragraph - Would it be a matter of advertising NON-organic plant propagating material that has been authorised for use in organic production?

The last paragraph of new point 1.8.6 introduces the possibility for organic operators producing plant reproductive material and authorised to produce such material in accordance with point 1.8.6 requirements, to introduce information on its availability in the national systems established in accordance with Article 26(2). I would recall that the authorisation issued by the competent authority results in the possibility for the operator to label the PRM as organic provided that the applicable conditions are met. Therefore, it will be a matter to allow advertising the organic PRM but produced in accordance with provisions of point 1.8.6.

Moreover, the new provisions concerning the annual notification of authorisations granted under point 1.8.6 together with reporting provisions set under Article 53(6)⁵ of Regulation (EU) 2018/848, providing for an annual report from Member States to Commission on availability of organic and in-conversion PRM and on the derogations granted under point 1.8.5, will allow the Commission to monitor the availability of organic plant reproductive material and to decide whether to end or extend these authorisations in the light of the conclusions presented in the report provided for in Article 53(7) of Regulation (EU) 2018/848 by 31 December 2026.

Yours sincerely,



⁵ To note also specific provisions set under Article 25 of Commission Implementing Regulation (EU) 2020/464 of 26 March 2020 laying down certain rules for the application of Regulation (EU) 2018/848 of the European Parliament and of the Council as regards the documents needed for the retroactive recognition of periods for the purpose of conversion, the production of organic products and information to be provided by Member States (OJ L 98, 31.3.2020, p.2)