



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B. Quality, Research & Innovation, Outreach
The Director

Brussels

/agri.ddg1.b.4(2020)6886811

[Redacted]

Please find below the answers to your questions raised on [Redacted]

Question 1- 'How do you advice to handle an OFIS case when the source of contamination cannot be cleared (organic status is not revoked), the product in dispute is contaminated by pesticide residues in a dimension that experts (in notifying country) assume an unallowed treatment?'

Such cases should be treated in accordance with Regulation (EC) No 834/2007 Article 30(1) which sets out basic measures in case of infringements and irregularities, and in line with the catalogue of measures as defined in Regulation (EC) No 889/2008 Article 92d.

If, according to the notifying country's control body (CB) or competent authority (CA), the case involves unauthorised treatment (i.e. use of unauthorised active substance), which is the case here, and given that it affects the organic status of the product, the corresponding measure should be applied by the notifying country's CB, i.e. the measure prescribed for the CB in the relevant [Redacted] catalogue of measures.

Importantly, the CB may require that the product cannot be placed on the market with indications referring to the organic production method until it is satisfied, by the information received from the operator or from other sources, that the doubt has been eliminated, in other words, until the results of analysis does not reveal any contamination, see Regulation (EC) No 889/2008 91(1). Therefore, if the notifying country's CB is not satisfied that the doubt has been eliminated, and this is the case here, that CB may require that the product is not marketed as organic.

Question 2 – 'Are analyses, carried out by accredited and nominated laboratories, on behalf of organic operators (in the frame of QM) no more acceptable for an OFIS notification?'

All irregularities shall be notified in OFIS as per Regulation (EC) No 889/2008 Article 92a.

[Redacted]

If the private test results indicate irregularities in accordance with Regulation (EC) No 834/2007 Article 30(1) and in line with the catalogue of measures as per Regulation (EC) No 889/2008 Article 92d, these shall be notified in OFIS immediately and without delay to enable appropriate action in the notified country immediately.

The Commission services note that several private test results notified in OFIS led to the unravelling of serious irregularities in the notified countries.

Moreover, OFIS also allows Member States (countries) to notify even the suspicion, the relevant standard forms were discussed and agreed with the Member States in the Committee on Organic Production (previously, Standing Committee on Organic Farming). The new rules under Regulation (EU) 2018/848 will explicitly require that even the suspicion of non-compliance be reported, see Articles 27, 28, and 43.

Question 3 – ‘Does it mean that the notifying country accepts the decision taken by the notified country when an OFIS reply is accepted and the case is closed?’

The regulations do not mention that the notifying country can accept or reject the reply, even if this is the terminology used in OFIS.

The country which sent the original notification may ask the replying country for additional information, if needed, see Regulation (EC) No 889/2008 Article 92(a)(5).

In that sense, in the case at hand the notifying country did not accept the notified country’s reply, it did not ask for more information. It should be noted that the notifying country asked for more information from the notified country already on five occasions. The notified country was very late with some of the replies.

Moreover, in its final comments the notifying country clearly noted in OFIS that it maintains its doubts as concerns the organic status of the product and no consensus can be achieved between the countries. Also, the notifying country made a complaint to the Commission services about the case.

Therefore, in this specific case, not asking more information from the notified country does not mean that the notifying country accepted the notified country’s decision.

Question 4 – ‘Do you support the possibility of an opposed decision in the notifying country?’

The Commission services accept an opposed decision in the notifying country if it is in compliance with all organic production rules and if the decision is in line with the above cited regulatory provisions on measures in case of irregularities and infringements.

The present opinion is provided on the basis of information exchanged in relation to irregularity [redacted] information in OFIS, information received in relation to meeting of the Committee on Organic Production [redacted] [redacted] and information in your emails [redacted] and expresses the view of the Commission services and does not commit the European Commission. In the event of a

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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,

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c.c.:

A list of recipients redacted with grey boxes. The list consists of three lines of text, each followed by a grey box of varying length.