



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

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

Brussels,
PP/nb/agri.ddg1.b.4(2020)8680322

[REDACTED]

I thank for your e-mail of 26 November 2020 (Int. Ref. Ares (2020)7111118) expressing your concerns on the requirements related to the use of organic seedlings under Council Regulation (EC) No 834/2007¹ and on the challenges to which operators are confronted to cultivate organic rooibos(*Aspalathus linearis*) in South Africa. Moreover, you ask whether a certain derogatory practice allowing the use of non-organic seedlings “*under the condition that these conventional treated seedlings are planted in organic fields and then go through a 18-month conversion period. During that period, the rooibos plant would flower two times. After the 18-month conversion period, rooibos is harvested and may be considered as EU organic certified*” would be in line with EU organic legislation

In order to address your question, I would recall that in accordance with Article 12(1)(i) of Council Regulation (EC) No 834/2007: “*for the production of products other than seed and vegetative propagating material **only organically produced seed and propagating material shall be used. To this end, the mother plant in the case of seeds and the parent plant in the case of vegetative propagating material shall have been produced in accordance with the rules laid down in this Regulation for at least one generation, or, in the case of perennial crops, two growing seasons;***”.

Please also note that according to Article 36 of Regulation (EC) No 889/2008²: “*For plants and plant products to be considered organic, the production rules as referred to in Articles 9, 10, 11 and 12 of Regulation (EC) No 834/2007 and Chapter 1 of this Regulation and where applicable the exceptional production rules in Chapter 6 of this Regulation must have been applied on the parcels during a conversion period of at least two years before sowing, or, in the case of grassland or perennial forage, at least two years before its use as feed from organic farming, or, **in the case of perennial crops other than forage, at least three years before the first harvest of organic products.***”

¹ Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ L 189, 20.07.2007, p. 1)

² Commission Regulation (EC) n° 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ L 250, 18.9.2008, p. 1).

The current legislation does not provide a definition for seedling, however, being this a plant derived from a seed³ and planted for propagating the crop, the seedling in itself is considered as vegetative propagating material.

Hence, the seedling used for production of organic rooibos must be organic, and to this end, the mother plant from which the seedling derives shall be produced in accordance with the above-mentioned organic production rules. This means that, as rooibos is a perennial crop, the mother plant, from which the seedling is taken, can derive from a conventional seedling of rooibos then grown under organic rules for minimum two growing seasons on a parcel which respected a total conversion period of three years as laid down under Article 36 of Regulation (EC) No 889/2008.

With respect to the derogation to use non-organic propagating material, I would recall that Article 45 is an exceptional production rule, which allows for the use of seeds or vegetative propagating material not obtained by the organic production method on the basis of Article 22 (2) (b) of Council Regulation (EC) No 834/2007. Article 22 concerning exceptional production rules, in its paragraph (2) lays down that exceptions shall be kept to a minimum and where appropriate limited in time and may only be provided in case inputs, such as seed and vegetative propagating material, are not available on the market in organic form.

In addition, Article 45(1)(a) and (b) of Regulation (EC) No 889/2008 require that in-conversion material is used as a priority, and only when this material is not available, the use of non-organic vegetative propagating material may be authorised.

Further conditions are laid down in its paragraph (2) to (9) but such conditions indeed currently apply only to derogation for use of non-organic seeds and seed-potatoes and not to vegetative propagating material.

I bring to your attention that future legislative provisions under Commission Delegated Regulation (EU) 2020/1794⁴ amending Part I of Annex II to Regulation (EU) 2018/848 as regards provisions on use of in-conversion and non-organic plant reproductive material provide for point 1.8.5.3 of Part I of Annex II which will bring a change regarding potential treatments of the conventional seedling used as non organic plant reproductive material: “ *Non-organic plant reproductive material shall not be treated after harvest with plant protection products other than those authorised for the treatment of plant reproductive material in accordance with Article 24 (1) of this Regulation, unless chemical treatment has been prescribed in accordance with Regulation (EU) 2016/2031 for phytosanitary purposes by the competent authorities of the Member State concerned for all varieties and heterogeneous material of a given species in the area in which the plant reproductive material is to be used. Where the non-organic plant reproductive material treated with the prescribed chemical treatment referred to in the first paragraph is used, the parcel on which the treated plant reproductive material is growing shall be subject, where appropriate, to a conversion period as provided in points 1.7.3 and 1.7.4.* ”.

³ EGTOP report on greenhouses (2013) available at <https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/final-report-etop-greenhouse-production.pdf>

⁴ Commission Delegated Regulation (EU) 2020/1794 of 16 September 2020 amending Part I to Annex II to Regulation (EU) 2020/848 of the European Parliament and of the Council as regards the use of in-conversion and non-organic plant reproductive material. (OJ L 402, 1.12.2020, p.23)

Therefore, under the current EU organic rules, the derogatory practice as described in your letter can be considered in line with organic provisions, if indeed it results in mother plants growing on an organic parcel (parcel already organic from three years) for a period of at least 18-month during that period the rooibos plant originated from treated non-organic seedlings would flower two times, therefore, passing through two growing cycles at the end of which the production of rooibos occur. Therefore, at the end of that period the product rooibos can be certified organic. Indeed, it has been applied to a perennial plant, originated from non-organic material, a conversion period comparable to the period applied for a parent plant to produce organic seedlings and this is relevant as leaves are harvested to be processed as rooibos tea for the final consumers.

The present opinion is provided on the basis of the facts as set out in your e-mail of 26 November 2020 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,

