



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

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

Brussels,  
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I thank for your e-mail of 3 July 2020 (Int. Ref. Ares(2020)2863879) where, among others, you express concern on a possible “misunderstanding” in the implementation of Article 45 of Commission Regulation (EC) No 889/2008<sup>1</sup> with respect to seedlings and you make reference to a previous letter sent by us (ARES(2019)6523523) arguing that the authorisation of “seedlings” may be out of scope. I am writing to clarify this issue.

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<sup>2</sup>. 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 fact, 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;*”.

Hence, Article 45(1)(a) and (b) of Regulation (EC) No 889/2008 apply only if organic material is not available. In such a case, first of all, conversion material should be used, and only when this material is not available, Member States may authorise the use of non-organic seed or vegetative propagating material.

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

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<sup>1</sup> 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).

<sup>2</sup> 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)



propagating material. Therefore, the conditions do not apply to seedlings, but a possible derogation to be issued for use of non-organic seedling is required.

Even if there is no definition of “seedling”, of “rhizomes” or of “cutting” in the organic legislation they are indeed examples of vegetative propagating material.

Finally, I bring to your attention the future legislative provisions under point 1.8.5.1. of Part I of Annex II to Regulation (EU) 2018/848<sup>3</sup> which indeed extend the applicability of certain conditions for derogations to all plant reproductive material: “ *By way of derogation from point 1.8.1, where the data collected in the database referred to in Article 26(1) or the system referred to in point (a) of Article 26(2) shows that the qualitative or quantitative needs of the operator regarding relevant organic plant reproductive material, excluding seedlings, are not met, competent authorities may authorise the use of in-conversion or non-organic plant reproductive material under the conditions laid down in points 1.8.5.3, 1.8.5.4 and 1.8.5.5.*”

The present opinion is provided on the basis of the facts as set out in your e-mail of 3 June 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,



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<sup>3</sup> 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 )