EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Crisis preparedness in food, animals and plants
Plant health

Brussels
SANTE.DDG2.G.1/SH/MJM (6557995)

[redacted]

Subject: Commission Implementing Regulation (EU) amending section 9 of the part II of the annex of Regulation (EU) 2019/723 regarding the organic data in the Annual Reports.

Thank you for your e-mails of 23 August 2021 to the Directorate-General for Agriculture and Rural Development (DG AGRI Int. Ref. Ares (2021)5228570) and of 31 August 2021 to the Directorate-General for Health and Food Safety (DG SANTE Int. Ref. Ares (2021)5674375, where you ask clarifications with respect to the provisions of Commission Delegated Regulation (EU) 2021/1189[1] on organic heterogeneous material (OHM). Please note that the technical aspects of OHM production in this delegated act fall mainly under the remit of DG SANTE.

For the sake of clarity, you will find below a specific reply for each of your questions.

1) *How is the organic heterogeneous propagating material from fruit plants (sweet cherries, plums, hazelnuts, strawberries etc.) made? How can we identify the organic heterogeneous propagating material and maintain it? How many seasons should the organic heterogeneous propagating material be grown in order for a material description to be established?*

There is yet no experience on OHM of fruit plants. The main activities carried out have been so far in annual crops of agricultural and vegetable species, which are propagated by seeds. The definition of OHM in the organic Regulation 2018/848[2] covers all species groups and thus include fruit propagating material and fruit plants. Therefore, the Commission set up in the Delegated Regulation (EU) 2021/1189 possibilities for future development of OHM in all species groups, even if for some of them there are yet no production/breeding activities to allow any potential development.

[1] Commission Delegated Regulation (EU) 2021/1189 of 7 May 2021 supplementing Regulation (EU) 2018/848 of the European Parliament and of the Council as regards the production and marketing of plant reproductive material of organic heterogeneous material of particular genera of species (OJ L 258, 20.07.2021, p18).

[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).

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2) *What kind of characteristics should be included in the description of the organic fruit plant heterogeneous material (sweet cherries, plums, hazelnuts, strawberries etc.)?*

Potential future developments have to demonstrate which characteristics should be included or excluded of the description of fruit plants OHM.

3) *Could the organic heterogenic propagating material, which is intended for trade, be made using vegetative propagation (not only made from fruit plant seeds)? (Example - the organic heterogenic propagating material parents are made using seeds, but next generation propagation materials are made by vegetative propagation).*

The plant propagating material of OHM is not only limited to seeds and therefore vegetative propagation is also part of marketing.

4) *Does the operator who produces organic heterogeneous material also need to maintain the parent material? Or is it enough to know where fruit plant propagating parent materials are grown? And what if the parent material is destroyed (for example, if the tree is cut down)?*

Parental material only exist in the initial step to create OHM. OHM develops over the time and therefore the expression of characteristics may change. Article 4 (1)(c) Commission Delegated Regulation (EU) 2021/1189[3] on organic heterogeneous material clarifies that the description of the OHM should contain information about the parental lines which have been used to produce the first cycle of OHM. It is not the intention that the parental material is somehow kept and maintained.

"*(c) A description of the parental material used to breed or produce the organic heterogeneous material and own production control programme used by the operator concerned with a reference to the practices as referred to in paragraph (2) (a) and, if applicable, in paragraph 2(c)*"

Further, the traceability of the origin should be ensured. The operator should just keep certain information, as provided for under Article 8 of Regulation 2021/1189 as follows:

"*Any operator producing organic heterogeneous plant reproductive material intended for marketing shall:*

(a) keep a copy of the notification submitted in accordance with Article 13(2) of Regulation (EU) 2018/848, a copy of the declaration submitted under Article 39(1)(d) thereof and, where applicable, a copy of the certificate received in accordance with Article 35 thereof;

(b) Ensure the traceability of the organic heterogeneous material in the production scheme as defined in Article (4)(2)(a) or, if applicable, in Article (4)(2)(c) by keeping information allowing to identify the operators which have supplied parental material of organic heterogeneous material.
The operator shall keep those documents for five years."

[3] Commission Delegated Regulation (EU) 2021/1189 of 7 May 2021 supplementing Regulation (EU) 2018/848 of the European Parliament and of the Council as regards the production and marketing of plant reproductive material of organic heterogeneous material of particular genera of species (OJ L 258, 20.07.2021, p18).

5) *How many years after establishment should the organic heterogeneous propagating material (sweet cherries, plums, hazelnuts, strawberries etc.) be grown in order to be registered and marketed?*

The delegated act on OHM does not set any limitation regarding the growing period of OHM.

6) *We have questions about methods which can be used to generate the organic heterogeneous propagating material which are mentioned in Regulation (EU) 2021/1189 Article 4 point 2 point b and c:*

> *(b) on-farm-management practices, including selection, establishing or maintaining material, which is characterized by a high level of genetic diversity in accordance with Article 3(18) of Regulation (EU) 2018/848;*
> *(c) any other technique used for breeding or production of organic heterogeneous material, taking into account particular features of propagation.*
>
> *How are these methods used to make fruit plant propagating heterogeneous material? What are these methods? What criteria and requirements will you set to register the organic heterogeneous propagating material (sweet cherries, plums, hazelnuts, strawberries ect.) which are generated in accordance with farm management practices or other techniques mentioned in Regulation 2021/1189 Article 4 (2) (b) and (c)?*

As already explained under the first question, OHM does yet not exist for fruit plants, therefore, there is no experience nor descriptive methods for fruit plants.

7) *What should the competent authorities do if the operator does not maintain and preserve the main characteristics of the material which have been noted at the time of its notification as long as it remains on the market? "Where maintenance is possible" is mentioned In Regulation 2021/1189 Article 10, but if maintenance is not possible – do the competent authorities exclude the organic heterogeneous material from the list?*

One of the principal benefits of OHM is the change of characteristics over time and therefore preservation of the characteristics is not part of the necessary requirements, which can/have to be fulfilled by the operator/producer. Therefore, the competent authorities do not have to exclude the OHM from the list basing such exclusion only on the fact that maintenance of the material and preservation of its characteristics are not possible.

The present opinion is provided based on the facts as set out in your e-mails of 23 and 31 August 2021 and expresses the view of the Commission services and does not present any legally binding opinion. 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.

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