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DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B. Quality, Research & Innovation, Outreach

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I would like to thank you for your email of 25 October 2021 (Int. Ref. ARES(2021)6577388), in which you ask for clarification with respect to organic guar gum powder exported from India and its natural presence of nicotine. You ask in particular whether Commission Regulation (EU) 812/2011<sup>1</sup> *“is also applicable for organic products and compliance to this regulation would be acceptable as organic.”*

I would like to start by confirming that, in order to be placed on the market in the European Union, all food and feed products of plant and animal origin (including organic products) must respect the Maximum Residues Levels (MRLs) set under Regulation (EC) No 396/2005<sup>2</sup> and its amendments, such as Commission Regulation (EU) 812/2011. Therefore, to address your first question, I confirm that Commission Regulation (EU) 812/2011 applies also to organic products.

However, in order to address your second question, I would like to recall the following relevant legal provisions. Under the EU organic rules, i.e. current Regulation (EC) No 834/2007<sup>3</sup> and Regulation (EU) 2018/848<sup>4</sup> applicable from 1 January 2022, active substances can be authorised for use in organic production subject to prior approval of such substances in conformity with Union Law. Therefore, in line with horizontal Regulation (EU) 1107/2009<sup>5</sup>, some active substances have been authorised at EU level

<sup>1</sup> Commission Regulation (EU) No 812/2011 of 10 August 2011 amending Annex III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for dimethomorph, fluopicolide, mandipropamid, metrafenone, nicotine and spirotetramat in or on certain products (OJ L 208, 13.8.2011, p.1).

<sup>2</sup> Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p.1)

<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32007R0834>

<sup>4</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 \(OJ L 150, 14.6.2018 p.1\)](#)

<sup>5</sup> Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p.1)

for use in organic production, mainly mineral and biological active substances. These are listed in Annex II to Commission Regulation (EC) No 889/2008<sup>6</sup> and, for future application, in Commission Implementing Regulation (EU) 2021/1165<sup>7</sup>. The presence of residues of a substance not authorised in organic production, even at levels below the set MRL, can be a sign of contamination or of illegal use of such substance in organic production and, therefore, should be subject to a specific investigation and as appropriate to related enforcement measures.

In the case of nicotine, the substance is not approved under horizontal Regulation (EU) 1107/2009 as active substance to be used in plant protection products. Therefore, its MRLs are set at the default level of 0,01 mg/kg in accordance with Article 18(1), point (b), of Regulation (EC) No 396/2005. While Commission Regulation (EU) 812/2011 established temporary higher MRLs for certain products (tea, herbal infusions, spices, herbs and edible flowers and fungi) based on the provisions of Article 16 of Regulation (EC) No 396/2005, such higher MRLs do not apply to guar gum (a processed product made from guar beans). For guar gum, the default MRL of 0.01 mg/kg applies to both organic and conventionally produced guar gum. If residues of nicotine above MRL are detected, the product should not be released into free circulation or, if already, released be withdrawn from the market immediately, the product destroyed and the root cause should be investigated. Any detected residues of nicotine in guar gum below MRL should lead to the blocking of the products concerned and be duly investigated and the decision on whether to keep the product certified organic when residues are detected will have to be taken by the competent authority, or where appropriate, control authority or control body in accordance with Article 29(2) of Regulation (EU) 2018/848 and Regulation (EU) 2021/279<sup>8</sup>. Indeed, an official investigation shall be carried out in order to establish the source and the cause of the contamination and whether the operator concerned holds responsibility.

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

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<sup>6</sup> Commission Regulation (EC) No 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>7</sup> [Commission Implementing Regulation \(EU\) 2021/1165 of 15 July 2021 authorising certain products and substances for use in organic production and establishing their lists \(OJ L253, 16.7.2021, p.13\)](#)

<sup>8</sup> Commission Implementing Regulation (EU) 2021/279 of 22 February 2021 laying down detailed rules for the implementation of Regulation (EU) 2018/848 of the European Parliament and of the Council on controls and other measures ensuring traceability and compliance in organic production and the labelling of organic products (OJ L 62, 23.2.2021, p.6)

Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

Yours sincerely,

