



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B – Sustainability
The Director

Brussels
AGRI.B.4/PP/ARES(2022)4883941

Dear [REDACTED],

I would like to thank you for your email¹ of 18 May 2022, in which you ask clarifications with respect to several provisions of Regulation (EU) 2018/848².

For the sake of clarity, please find below specific replies to each of your questions.

1. Request for clarification on the application of the provisions of point 1.3.4.4.2 of Annex II to Part II of 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 (Regulation (EU) 2018/848), Bulgarian text referring to the use of the term “year”.

To this question concerning the term “year”, you should have received recently a specific reply (ARES(2022)1995726), which is also available to all Member States in CIRCA BC.

However, in your e-mail, you added a further example as follows:

“2. In addition we would to give you the following example in order to provide further clarification on the questions at hand: A derogation has been granted in accordance with Article 9, paragraph 4, letter a) of Regulation (EC) No 889/2008 in July 2021 with a deadline of one year for the introduction of new animals starting from the date of issue of the

¹ ARES (2022)3767887

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 \(OJ L 150, 14.6.2018, p. 1\).](#)

[REDACTED]

derogation. In January 2022 the same operator applied for a derogation in accordance with point 1.3.4.4.3 (a) of Annex II to Part II of Regulation (EU) 2018/848.

Concerning the circumstances mentioned above and due to the short deadline for already issued derogation in July 2021 and subsequently requesting a new one in January 2022, by issuing such derogation the competent authority would possibly violate the application of the annual limits required under point 1.3.4.4.2 of Annex II, Part II of Regulation (EU) 2018/848.

• Please provide us with the clarification whether granting a new derogation in January 2022 would violate the annual limits set out in point 1.3.4.4.2 of Annex II to Part II of Regulation (EU) 2018/848?

To reply to this question, I would first like to recall the provisions of point 1.3.4.4.2 of Annex II to Part II of Regulation (EU) 2018/848: “*For breeding purposes, non-organic adult male and non-organic nulliparous female animals may be introduced for the renewal of a herd or flock. They shall be reared subsequently in accordance with the organic production rules. In addition, **the number of female animals shall be subject to the following restrictions per year:** (a) up to a maximum of 10 % of adult equine animals or bovine animals and 20 % of the adult porcine animals, ovine animals, caprine animals, rabbits or cervine animals may be introduced; (b) for units with fewer than 10 equine animals, cervine animals or bovine animals or rabbits, or with fewer than five porcine animals, ovine animals or caprine animals, any such renewal shall be limited to a maximum of one animal per year.*”

Moreover, under point 1.3.4.4.3, it is stated that: “*The percentages set in point 1.3.4.4.2 may be increased up to 40 %, provided that the competent authority has confirmed that any of following conditions is fulfilled:*

- (a) a major extension to the farm has been undertaken;*
- (b) one breed has been replaced with another;*
- (c) a new livestock specialisation has been initiated.”*

Analogous provisions have been laid down under Article 9 of Regulation (EC) 889/2008. Therefore, the respect of the maximum percentages from July 2021 to July 2022 should be verified by the competent authority in charge of the authorisation, before issuing a new derogation in compliance with point 1.3.4.4. In practice, considering that a

derogation was already issued in July 2021 on the basis of a total livestock quantity, the authority should verify that the total number of non-organic animals introduced from July 2021 to July 2022 respects the 40% with respect to the reference livestock quantity of July 2021. If 40% was already covered by the derogation of July 2021, the operator will have to wait until July 2022 to demand another derogation on the basis of point 1.3.4.4. Otherwise it would be not in line with the conditions set per year.

3. Can an operator be entitled to obtain two certificates from both the control body and the competent authorities for the same activities or different activities carried out in the same Member State regarding the same category of products, at same stages of distribution?

Certificate Art.35, (4) says “An operator or a group of operators shall not be entitled to obtain a certificate from more than one control body in relation to activities carried out in the same Member State regarding the same category of products, including cases in which that operator or group of operators operates at different stages of production, preparation and distribution”. This article introduces a requirement only for certificates issued by the CB’s At the same time, Article 35 (1) competent authorities, or, where appropriate, control authorities or control bodies, shall provide a certificate to any operator or group of operators. The question is related to a real situation created by a new requirement introduced by the Regulation 2018/848 for operators who sell unpacked products directly to the final consumer. Art.34 (2) states that- “Operators that sell prepacked organic products directly to the final consumer or user shall be exempted from the notification obligation referred to in paragraph 1 of this Article and from the obligation to be in the possession of a certificate referred to in Article 35(2) provided that they do not produce, prepare, store other than in connection with the point of sale, or import such products from a third country, or subcontract such activities to another operator.”. This requires operators who sell unpacked products to the final consumer to be in the possession of a certificate.

This question is currently being subjected to a separate legal analysis by the Commission Services. They will revert back to you at the appropriate time.

4. What are the responsibilities of the operator, the subcontractor and the CB, in the case when the responsibility is not transferred from the operator to the subcontractor. (Art.35 (3) Regulation 2018/848)

What activities the operator, the subcontractor and the CB must perform to ensure that the requirements of the legislation, are met. In particular, should the operator or his representatives need to be present during the application of actions related to the activities that are subcontracted - receiving, storage, processing, labelling of organic products, cleaning and disinfection, record keeping, etc?

When the responsibility is not transferred from the operator to the subcontractor, Article 34(3) states the following: *“Where operators or groups of operators subcontract any of their activities to third parties, both the operators or groups of operators and the third parties to whom those activities have been subcontracted shall comply with paragraph 1, unless the operator or group of operators has declared in the notification referred to in paragraph 1 that it remains responsible as regards organic production and that it has not transferred that responsibility to the subcontractor.”*

Hence, the operator shall declare such case in the notification according to Article 34 (1): *“notify their activity to the competent authorities of the Member State in which it is carried out and in which their undertaking is subject to the control system”*.

Article 34(3) also states the following: *“In such cases, the competent authority, or, where appropriate, the control authority or control body, shall verify that the subcontracted activities comply with this Regulation, in the context of the control it carries out on the operators or groups of operators that have subcontracted their activities.”*

Please note that the regulation does not lay down the rule that the operator needs to be present when the subcontracted activities take place.

Should the CB perform the on-site inspection of the subcontractor during the performance of the activities, that are subcontracted to it?

It will be the responsibility of the Control Body to decide on the most appropriate time and means to perform the physical on the spot inspection to verify whether the subcontracted activities comply with Regulation (EU) 2018/848.

What should the subcontractor do?

The subcontractor shall respect all relevant provisions of Regulation (EU) 2018/848 and its secondary legislation. In case the responsibility remains with the operator, the operator shall ensure that the subcontractor respects the rules on organics and puts in place all necessary precautionary measures to safeguard the integrity of final products.

Furthermore, considering that the subcontracted activities need to be controlled in the context of the control of the operator that subcontracted these activities in accordance with Article 34(3), the subcontractor should take all of the necessary actions to enable such controls to take place.

Please note also the requirement of Article 34 (5), which reads as follows: “*Operators, groups of operators and subcontractors shall keep records in accordance with this Regulation on the different activities they engage in.*”

5. Should the operators who produce wax foundation for organic beekeepers be certified or should be a subcontractor in accordance with Article 35 (3) of the Regulation 2018/848 taking into account that beeswax is included in Annex I of the same Regulation. In particular, when they process the beeswax of each beekeeper individually (produce wax foundation only from own beeswax of beekeepers)?

In accordance with point 1.9.6.5. of Part II to Annex II (e) *the beeswax for new foundations shall come from organic production units;*” Therefore, such beeswax shall have to be certified. It could also be produced by a subcontractor, but beeswax will have to be certified organic in compliance with 1.9.6.5. Therefore, the subcontractor will be responsible for this product and will have to be certified for the production of organic beeswax.

6.Can the requirements of point 1.3.4.2 of Part II of Annex II of the Regulation 2018/848 be applied to the expansion of an apiary by brought (introduced) additional non-organic swarms, as it is in point 1.3.4.1 or those requirements apply only to the replacement of swarms. Can swarms increase from 100 to 120?

No. It is, indeed a replacement, not an expansion.

*“By way of derogation from point 1.3.1, for the renovation of apiaries, 20 % per year of the queen bees and swarms **may be replaced** by non-organic queen bees and swarms in the organic production unit, provided that the queen bees and swarms are placed in hives with combs or comb foundations coming from organic production units. In any case, one swarm or queen bee may be replaced per year by a non-organic swarm or a queen bee.”*

6. Should the competent authority authorize the introduction of 10% or 20% of non-organic animals into an organic farm in accordance with the requirements of points 1.3.4.4. and 1.3.4.4.2 of Part II of Annex II of the Regulation 2018/848?

Yes. In fact, compared to the previous provisions of Article 9 of Regulation (EC) 889/2008, this is a new requirement: Point 1.3.4.4. of Part II of Annex II to Regulation (EU) 2018/848 provides that the competent authorities may authorise the introduction of non organic animals only when the set conditions, in particular on checking the unavailability of organic animals via databases, are fulfilled.

7. On the question „Can mushroom mycelium be produced organically?“ in Frequently asked questions ON ORGANIC RULES the answer is:

Mushrooms are considered as plants for the purpose of the EU organic legislation. The mycelium is comparable to the vegetative parts of annual or perennial plants; while mushrooms are comparable to the reproductive parts of plants, like flowers and fruits. The rules on plant production (Part I of Annex II to Regulation (EU) No 2018/848) and the specific rules regarding mushroom under point 2.1. of Part 1 of that annex must be respected for mushroom production. These rules apply to the entire fungal body, therefore including the mycelium and the mushrooms. The conversion rules for plants and plant products set out in point 1.7. of Part 1 of Annex II to Regulation (EU) 2018/848 shall also apply to mushroom organic production. If fungus production (mycelium and mushrooms) is managed as an annual crop on the soil, a conversion period of at least two years is required before "sowing" i.e. the dispersal of spores in the soil/substrate or the grafting of the soil/substrate with mycelium. In case fungus production (mycelium and

mushrooms) is managed as a perennial crop on the soil, a conversion period of at least three years has to be applied before the first harvest of organic mushrooms.

Is this mean that if the technology of production mushrooms is not on soil, the rules for conversion do not apply?

No. Indeed, in case of production of mushroom on substrates indoor, only the provisions of point 2.1. of Part I of Annex II to Regulation (EU) 2018/848 apply; please see the next reply below.

8. How should the requirements of point 1, Part 1, Annex II of Reg. 2018/848 for mushrooms be applied provided that, mushrooms are considered as plants for the purpose of the EU organic legislation?

“1. General requirements 1.1. Organic crops, except those which are naturally grown in water, shall be produced in living soil, or in living soil mixed or fertilised with materials and products allowed in organic production, in connection with the subsoil and bedrock.

Is this mean that the practice production of mushrooms in premises on bags and beds is prohibited. Because I have not seen technology for production directly on soil?

On mushrooms, specific provisions are laid down under point 2.1. of Part I of Annex II, which reads as follows: *“For the production of mushrooms, substrates may be used if they are composed only of the following components:*

(a) farmyard manure and animal excrement:

(i) either from organic production units or from in-conversion units in their second year of conversion; or

(ii) referred to in point 1.9.3, only when the product referred to in point (i) is not available, provided that that farmyard manure and animal excrement do not exceed 25 % of the weight of total components of the substrate, excluding the covering material and any added water, before composting;

(b) products of agricultural origin, other than those referred to in point (a), from organic production units;

(c) peat, not treated with chemical products;

(d) wood, not treated with chemical products after felling;

(e) mineral products referred to in point 1.9.3, water and soil.”

9. If mushrooms are grown on woods located in grassland, should the transitional period be applied to the grassland, provided that the mushrooms do not grow on the soil?

As mentioned above, a reply is available from the FAQ document as follows: *“The conversion rules for plants and plant products set out in point 1.7. of Part I of Annex II to Regulation (EU) 2018/848 shall also apply to mushroom organic production. If fungus production (mycelium and mushrooms) is managed as an annual crop on the soil, a conversion period of at least two years is required before "sowing" i.e. the dispersal of spores in the soil/substrate or the grafting of the soil/substrate with mycelium. In case fungus production (mycelium and mushrooms) is managed as a perennial crop on the soil, a conversion period of at least three years has to be applied before the first harvest of organic mushrooms.”*

Indeed, I would like to recall in particular the provisions of point 1.7.1. on conversion, which lay down that: *“For plants and plant products to be considered as organic products, the production rules laid down in this Regulation shall have been applied **with respect to the parcels during a conversion period** of at least two years before sowing, or, in the case of grassland or perennial forage, during a period of at least two years before its use as organic feed, or, in the case of perennial crops other than forage, during a period of at least three years before the first harvest of organic products.”*

Even if the mushrooms are growing on the woods after felling, they grow over a parcel of soil and a conversion period needs to be respected in relation of the species to be produced (i.e. mushroom production cycle) as mentioned above.

10. Questions related to the requirements for conversion periods:

Text from R.848/2018:

“1.2.2. Conversion periods specific to the type of animal production are set out as follows:

(a) 12 months in the case of bovine animals and equine animals for meat production, and in any case no less than three quarters of their lifetime;

(b) six months in the case of ovine animals, caprine animals and porcine animals and animals for milk production;”

Does that text mean that the transitional period should not exceed 12 months or should it be calculated on the basis of the age of the purchased animal at the date of entry into control of the certified establishment?

This means that it should be at least 12 months from the date the bovine animals enter into the holding, but also not less than three quarters of the age of the animal at this same date, so potentially more than 12 months.

How should three quarters of the life cycle of meat-producing farmers be calculated? Is the average life cycle of the species used or is the standard clinical age used?

The life cycle of a meat producing animal should be calculated from the date of birth of the animal to the end, the age of slaughter.

In which cases could we apply a transitional period of 12 months for meat-producing animals and in which cases should the transitional period be longer?

See above, it will be longer when the three quarters of the lifetime of the animal are more than 12 months.

This opinion is provided on the basis of the facts set out in your letter of 18 May 2022 and expresses the opinion 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 Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.

Yours faithfully,

