



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B – Sustainability
The Director

Brussels,
[REDACTED]

[REDACTED]

I would like to thank you for your email of 25 August 2022¹, in which you ask the opinion of the Commission services on some issues concerning the possible presence of genetically modified organisms (GMOs) in organic animal feed.

Please accept my apologies for the late reply.

I will not repeat here the comprehensive background that you kindly provided in your email but just the main questions in order to be able to address the issues in a structured manner.

Q) Article 11 (2) of Regulation (EU) 2018/848² states that operators may rely on labels accompanying a product or any other accompanying document, affixed or provided pursuant to Directive 2001/18/EC⁽³⁾, Regulation (EC) No 1829/2003⁽⁴⁾ or Regulation (EC) No 1830/2003⁽⁵⁾. Does this mean that organic feed operators may use the threshold of 0.9 % linked to adventitious and technically unavoidable presence of GMOs?

¹ ARES(2022)5989901

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

⁽³⁾ Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ L 106, 17.4.2001, p. 1).

⁽⁴⁾ Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ L 268, 18.10.2003, p. 1).

⁽⁵⁾ Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC (OJ L 268, 18.10.2003, p. 24).

[REDACTED]

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I would like to start by recalling the following provisions of Article 11 concerning the prohibition of the use of GMOs: “1. *GMOs, products produced from GMOs, and products produced by GMOs shall not be used in food or feed, or as food, feed, processing aids, plant protection products, fertilisers, soil conditioners, plant reproductive material, micro-organisms or animals in organic production.*

2. *For the purposes of the prohibition laid down in paragraph 1, with regard to GMOs and products produced from GMOs for food and feed, operators may rely on the labels of a product that have been affixed or provided pursuant to Directive 2001/18/EC, Regulation (EC) No 1829/2003 of the European Parliament and of the Council (1) or Regulation (EC) No 1830/2003 of the European Parliament and of the Council (2) or any accompanying document provided pursuant thereto.*

3. *Operators may assume that no GMOs and no products produced from GMOs have been used in the manufacture of purchased food and feed where such products do not have a label affixed or provided, or are not accompanied by a document provided, pursuant to the legal acts referred to in paragraph 2, unless they have obtained other information indicating that the labelling of the products concerned is not in conformity with those legal acts.*

4. *For the purposes of the prohibition laid down in paragraph 1, with regard to products not covered by paragraphs 2 and 3, operators using non-organic products purchased from third parties shall require the vendor to confirm that those products are not produced from GMOs or produced by GMOs.”*

In addition, it is important to recall the horizontal provision of Article 24(2) of Regulation (EC) No 1829/2003 on genetically modified food and feed concerning the scope of Section 2 on Labelling of GMOs, which applies to feed referred to in its Article 15(1)⁽⁶⁾ and reads as follows: “*This Section shall not apply to feed containing material which contains, consists of or is produced from GMOs in a proportion no higher than 0,9 per cent of the feed and of each feed of which it is composed, provided that this presence is adventitious or technically unavoidable.*”

In compliance with Article 24(3) of Regulation (EC) No 1829/2003, the operator responsible for labelling the product must be in a position to demonstrate that a possible presence of GMOs is adventitious or technically unavoidable. To demonstrate this, operators must supply evidence to satisfy the competent authorities that they have taken appropriate steps to avoid the presence of such material.

Hence, the organic operator who buys such a product, potentially containing GM material below 0.9%, can rely on its label and in doing this indirectly rely on the above-mentioned evidence.

However, in accordance with Article 28 of Regulation (EU) 2018/848, organic operators also have the responsibility to put in place precautionary measures to avoid contamination with any product that is not authorised, and to regularly review these precautionary measures and to adjust these measures if necessary.

Consequently, if any presence of GMOs is detected in an organic product, even below the 0.9% threshold, such presence must be subject to investigation in order to verify whether the correct steps have been taken to avoid this presence.

Q) What is deemed to be an active use of GMO, or an accidental/ unavoidable use of GMO in organic feed?

Organic operators must not use *GMOs, products produced from GMOs, and products produced by GMOs in food or feed, or as food, feed, processing aids, plant protection*

⁽⁶⁾ GMOs for feed use, feed containing or consisting of GMOs and feed produced from GMOs.

products, fertilisers, soil conditioners, plant reproductive material, micro-organisms or animals in organic production” in compliance with Article 11 of Regulation (EU) 2018/848.

Against this background, we understand that your reference to “*unavoidable use*” means “unavoidable” presence in the sense that despite the respect of the precautionary measures to avoid the presence of GMOs, organic operators might be exposed to GMOs when they purchase feed or other external input or via contamination by the crops of their neighbours.

Adventitious or technically unavoidable presence is due to an unplanned situation, such as, for example, the indirect contamination during storage, despite all actions having been put in place to avoid this presence. Evidence must be available to prove these actions.

Q) Where GMOs are detected, should investigations take place in all situations

- *even where the reported level is at or just slightly above a very low LOD?*
- *or should the investigation be above the LOQ? Is there an acceptable LOQ threshold before an investigation takes place?*

Please see also above response. As mentioned above, organic operators have the obligation/responsibility to put in place precautionary measures to avoid contamination with any product or substance not authorised for use in organic production. The operators also have the obligation to regularly review these precautionary measures and to adjust them if necessary. All detections of GMOs at levels higher than the level of detection must therefore trigger investigations to determine whether the presence was adventitious or technically unavoidable. As explained above, the precautionary measures need to be duly reviewed.

Q) How are the relevant provisions of the feed legislation to be taken into account for organic feed, in particular those under Article 24 of Regulation (EC) No 1829/2003?

Please see the above response. In particular, the evidence referred to in Article 24(3) of Regulation (EC) No 1829/2003 is also relevant for organic operators, who must be in a position to prove that they have taken appropriate steps to avoid the presence of GM materials. Please note that, in compliance with Article 30(4) of Regulation (EU) 2018/848, the term organic must not be used for a product for which Union law requires the labelling or advertising to state that the product contains GMOs, consists of GMOs or is produced from GMOs. Therefore, the presence of GMOs below the threshold of 0.9% does not require GMO labelling, but triggers in all cases investigations to determine whether the presence is adventitious or technically unavoidable and whether necessary precautionary measures have been taken. Moreover, I would like to bring to your attention the provisions of Article 28(2), point (c), of Regulation (EU) 2018/848, which provide for the operator suspecting an organic or in-conversion product not to be compliant with the Regulation (EU) 2018/848 to “*not place the product concerned on the market as an organic or in-conversion product and not use it in organic production unless the suspicion can be eliminated*”.

Q) Can organic feed operators use the threshold of 0.9 % where there is adventitious and technically unavoidable presence of GMOs? Does the same principle apply to organic food also?

Please see the above replies. I can confirm that the same approach applies to organic food as comparable provisions are set for food.

The present opinion is provided on the basis of the facts as set out in your e-mail of 28 August 2022 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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