Ref. Ares(2022)8157134 - 25/11/2022

EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B – Sustainability
The Director

Brussels
[redacted]

Dear [redacted]

I would like to thank you for your letter dated 6 October 2022 (Your reference 99-132/06.10.2022 – our reference Ares(2022)6993261 – 10/10/2022), which concerns a 'Request for clarification from the services of the European Commission regarding organic products with the presence of not authorised substances for organic production".

Please find below the replies to your questions.

1. In the provision of Art. 29, paragraph 5 of Regulation (EU) 2018/848 does not state what national rules the Member States have introduced and is it necessary for all countries to introduce them?

Please be informed that paragraph 5 of Article 29 of Regulation (EU) 2018/848 does not refer to the introduction of new national rules. This provision relates to Member States having already in place rules providing for products that contain more than a certain level of products or substances, not authorised pursuant to Article 9(3) of the Regulation (EU) 2018/848, not to be marketed as organic products.

The paragraph in reference states that Member States may continue to apply those rules that pre-existed Regulation (EU) 2018/848, provided that those rules do not prohibit, restrict or impede the placing on the market of products produced in other Member States as organic products, where those products were produced in compliance with this Regulation. Member States that make use of this paragraph shall inform the Commission without delay. . Therefore, this provision does not refer to the introduction of new national rules.

2. The rules according to Art. 29, paragraph 5 of Regulation (EU) 2018/848 are related to the application of processing factors (Pf), tolerance/uncertainty (±U=X%) or other exceptions?

National rules referred to in Paragraph 5 of Article 29 of Regulation (EU) 2018/848 do not concern the application of processing factors, tolerance/uncertainty levels and the like.

[redacted]

3. Which Member States have introduced national rules according to Art. 29, paragraph 5 of Regulation (EU) 2018/848 and are these documents publicly available? What was the basis for notification and recognition of the introduced rules?

Please see the reply to question number 1. Against that background, no Member State has therefore introduced new national rules. Only the Czech Republic, Italy and Belgium (Wallonia) have chosen to continue to apply national rules that pre-existed Regulation (EU) 2018/848

4. Is it allowed to be marketed as organic products containing more than a certain level of substances not authorised in organic production, according to Art. 9, paragraph 3 of Regulation (EU) 2018/848, by applying a processing factor or by recalculating a laboratory result with uncertainty (X%)?

According to the legislation on organic production and labelling of organic products, every contamination by products and substances not authorised in organic production, according to Article 9(3) of Regulation (EU) 2018/848, gives rise to a suspicion of non-compliance with the EU provisions on organic production.

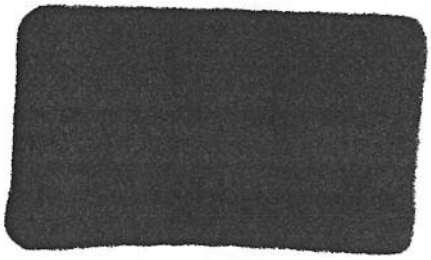
It is then to be assessed whether this suspicion can be eliminated or substantiated. If the suspicion cannot be eliminated or if it is substantiated, all of the relevant steps spelled out in Regulation (EU) 2018/848 and its associated secondary legislation need to be followed. For this reason, there is no scope for the application of processing factors or the recalculation of laboratory test results with uncertainty and the like.

5. Should the Control Bodies refer to Regulation (EC) No 396/2005 regarding the processing factor and/or to Document No SANTE/2019/12682 regarding the 50% uncertainty, in order to assess the compliance of the organic status of the product (without prejudice to the product safety control)?

As mentioned above, according to Regulation (EU) 2018/848, every contamination gives rise to a suspicion of non-compliance with the EU provisions on organic production. It is then to be assessed whether this suspicion can be eliminated or substantiated. If the suspicion cannot be eliminated or is substantiated, all of the relevant steps, spelled out in Regulation (EU) 2018/848 and its associated secondary legislation, need to be followed. For this reason, there is no scope to the application of processing factors or the recalculation of laboratory test results with uncertainty

We sincerely hope these replies provide the needed clarification and stand ready to reply to any additional clarification you may require.

Yours sincerely,



c.c.: [redacted]