

OPTA Europe's contribution to public consultation on investigations into contamination with non-authorised products or substances (reporting template)

OPTA Europe (www.opta-eu.org) is the membership organization representing the interest of European Organic Processing and Trade companies. Its members account for a large share of total EU trade and processing of organic products and play an essential role in an efficient supply chain.

— KEY MESSAGES —

- ▷ The high number and variety of residues of prohibited substances in organics, combined with the multiple sources/entries for many of these substances, raise the question as whether a case-by-case official investigation to determine the source is feasible. It will block goods, delay the supply chain and collapse the organic control & certification system for no gains in reliability.
- ▷ We call the Commission and Member States to minimize the burden and cost for organic operators by further relying on the regular control and certification system for the determination of the organic integrity and the causes of contamination. We also call to streamline, clarify and expedite the investigation procedure.
- ▷ The cause of the contamination is associated with a corrective measure. Thus, it is important to accommodate the cases where the cause cannot be found or the contamination is technically unavoidable and beyond the organic operator's responsibility.

I. General comments

We are grateful for the opportunity to comment on this draft Regulation, which is of the utmost importance for our members.

Guided by the objective of producing food in an environmentally friendly manner, OPTA Europe's members have voluntarily adhered to organic standards, which rely on the use of natural substances and processes rather than on inputs with adverse effects. Risk-based analysis are conducted regularly along the supply chain to identify any issue that might affect the product's integrity.

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Reg 848/2018 introduce new obligations in the presence of non-authorized products and substances. We would like to offer the following comments:

The challenge of an increasingly polluted environment

It is well documented the increase in the intensity of phytosanitary products used in conventional agriculture in the EU in the last 10 years, with ever greater use of combinations of chemical substances¹. It is also substantiated the wide contamination of ecosystems by phytosanitary products, which affects areas located at a distance from cultivated plots, and even areas hundreds or thousands of kilometers away from their area of application². A recent study found that airborne pesticide mixtures are ubiquitous in Germany and detected pesticides in locations where their presence is not expected, such as the highest mountain top in a national park³.

This has inevitable consequences for organics. EFSA has reported that 19.9 % of organic products contains quantifiable residues of both authorized and non-authorized substances^{4,5}. The risk-based sampling along the organic supply chain which is regularly conducted by OPTA Europe's members indicates that this proportion is higher, raising to 19% of samples containing residues of solely non-authorized substances.

In the regular risk-based controls conducted by organic companies, 19% of samples contains residues of non-authorized substances.

These numbers raise the question as whether a strict implementation of Art 29, namely a systematic investigation, is feasible and reasonable. In an increasingly polluted context, the presence of unauthorized substances is no objective evidence that organic production rules have been disregarded. Unless violation of the organic rules can be established, disqualifying organic products and processes because of residues will just act as disincentive to take the path of organic food & farming, in a way that runs counter to the EU objectives.

OPTA Europe's members fully share the aim of healthy and sustainable food. To reach that goal, we call the Commission and Member States to swiftly and effectively phase-out the use of substances

¹ <https://www.pan-europe.info/resources/reports/2022/05/forbidden-fruit-dramatic-rise-dangerous-pesticides-found-fruits-and>

² Impacts des produits phytopharmaceutiques sur la biodiversité et les services écosystémiques : résultats de l'expertise scientifique collective INRAE-Ifremer, <https://www.inrae.fr/actualites/impacts-produits-phytopharmaceutiques-biodiversite-services-ecosystemiques-resultats-lexpertise-scientifique-collective-inrae-ifremer>

³ Pesticides and pesticide-related products in ambient air in Germany, Environmental Sciences Europe, 2021 <https://enveurope.springeropen.com/track/pdf/10.1186/s12302-021-00553-4.pdf>

⁴ The 2020 European Union report on pesticide residues in food, <https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2022.7215>, p.16.

⁵ The 2019 European Union report on pesticide residues in food <https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2021.6491>, p.31.

that are toxic for the health of the planet and citizens.

As a preliminary step, we ask them to acknowledge the difficult coexistence of conventional and organic food & farming and to carefully assess the burden that a strict implementation of the new obligations will place on the shoulders of organic operators, who already minimize the use of critical chemical substances.

The challenge of multiple-source substances

Art 29 imposes an official investigation to determine the source and the cause of the presence of non-authorized substances in violation of the organic integrity. This represents a particular challenge. In the regular risk-based controls conducted by OPTA Europe's members, 73% of positive cases are related to 5 substances which may have various sources⁶ : their presence in organics can be the result of their use as active ingredients in plant protection products but they may also be food constituents, authorized additives, contaminants, natural salts...etc.

Determining the source requires a complex and technical investigation. In fine, a high proportion of the investigations carried out by competent authorities and control bodies/ authorities:

-are unable to determine the source of the contamination. The new organic regulation 848/2018 does not foresee the case where origin can not be found (previously Art 91.2 2 § of Reg 889/2008);

In the risk-based controls regularly conducted by organic companies, 73% of positive cases correspond to 5 substances with different possible sources, other its use as plant protection product.

- point at causes which are unintentional and technically unavoidable, such as natural presence, authorized additives, ubiquitous contaminant, degradation of approved substances ...etc, in line with EFSA data⁷.



100 % of carrots organically grown in German fields are tested positive to bromide, due to its natural presence.

An illustrative example: 100% organically grown German carrots are tested positive to bromide due to natural occurrence, methyl bromide being banned in Germany for decades. There is not much point at conducting a systematic official investigation.

The cost for industry of blocked goods

Determining the origin of contamination implies a lengthy investigation, of 60-90 days average⁸, during which the entire lot is blocked. This represents delays in the organic supply chain and

⁶ Phosphonic acid, chlorate, dithiocarbamate, bromide, Quaternary Ammonium Compounds (QAC).

⁷ The 2020 European Union report on pesticide residues in food, <https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2022.7215>, p.18.

⁸ Internal enquiry.

economic burden for the operator whose product is blocked, irrespective of who is at fault. In particular, short shelf-life products are either lost or must be marketed as conventional, at the expense of the operator.

Our suggestions for a workable procedure

The high number and variety of residues of prohibited substances in organics, combined with the multiple sources/entries for many of these substances, seem an insurmountable challenge for conducting a case-by-case investigation. It will block goods, delay the supply chain and collapse the organic control & certification system for no gains in reliability.

OPTA Europe's members are committed to organic integrity and share the objective to elucidate the origin of contaminations from non-authorized substances, not least because we want to shine a spotlight on the small proportion that lies within the organic operator's responsibility. Nonetheless, we call for a pragmatic and proportionate approach.

In a constructive spirit, we would like to make the following suggestions:

- ▷ To further rely on the regular control and certification system and its panoply of methods -well beyond analysis- which is implemented at every stage of the production process. For the purpose of determining the organic integrity and the origin of contaminations, field and input samples collected during the inspections have several advantages in regard to the product sample.
- ▷ To streamline, expedite and clarify the process. We suggest to:
 - To set up a science-based list of substances-crops commonly found in organics, whose presence is well established as not related to its use as plant protection products (e.g. phosphonic acid, bromide, chlorate...), and whose presence would not need to be systematically investigated.
 - Clarify that the organic integrity is maintained in cases where the source of the presence cannot be determined or in technically unavoidable cases;
 - Set up time limits for investigations involving perishable products, according to shelf-life.

Our eyes are on the future rules on residues of non-authorized substances which may be laid down as from 2024 (Art 29.4 of Reg 848/2018). We hope that the outcomes from the current investigations will serve the purpose of laying down more targeted rules.

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II. Detailed comments

ANNEX OFIS template referred to in Article 1

Part I: information on the results of the investigations referred to in Article 29(1)(a) of Regulation (EU) 2018/848 and on measures to avoid the presence of products and substances not authorised for use in organic production:

<p>2. Nature of products/ units/facilities contaminated:</p> <p><i>Justification:</i> to better reflect the process' approach. For the purpose of determining the organic integrity, field and input samples have several advantages in regard to the product sample.</p> <p>a) Food Feed Soil Plant material</p> <p>Other (please specify)</p> <p>b) CN code product nomenclature</p>	<p>3.</p> <p>a) Volume of the products contaminated (kg):</p> <p><i>b) Type and dimension of parcel/ unit/facility contaminated (m²/ha)</i></p> <p><i>Justification:</i> to better reflect the process' approach. As previously stated, for the purpose of determining the organic integrity, field and input samples have several advantages in regard to the product sample.</p>	<p>4. Nature of contamination detected:</p>	<p>5. Level of contamination:</p> <p>– Was the contamination found above the Maximum Residue Level established by Regulation (EC) No 396/2005 of the European Parliament and of the Council¹?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not applicable (N/A)</p>
<p>6. Stage of the supply chain where contamination was detected:</p> <p><input type="checkbox"/> Production <i>Only in case of plant production</i></p> <ul style="list-style-type: none"> – Pre-harvest – Post-harvest <p><input type="checkbox"/> Preparation Processing/preserving Packaging Slaughtering, cutting, Cleaning or milling</p> <p><input type="checkbox"/> Distribution</p> <p><input type="checkbox"/> Storing</p> <p><input type="checkbox"/> Placing on the market Retail Wholesale</p> <p><input type="checkbox"/> Import Border Control Post Point of Release for Free</p>	<p>7. Source and cause of the contamination:</p> <p>Operator has used products or substances not authorised in organic production.</p> <p>Spray drift of products or substances not authorised in organic production</p> <p>Commingling of organic or in-conversion products with non-organic or in-conversion products</p> <p>Sale of non-organic or in-conversion products as organic</p> <p>Operator has not taken the precautionary measures referred to in Article 28(1) of Regulation (EU) 2018/848</p> <p>Lack of traceability =></p>	<p>8. Measures taken:</p> <p>Submission by the operator of an action plan within time limit set for the correction of non-compliance</p> <p>Improvement of the implementation of the precautionary measures and the controls that the operator has put in place to ensure compliance</p> <p>No reference to organic production in the labelling and advertising of the entire lot or production run concerned (crop(s) or animal(s) affected) in accordance with</p>	

<p>Circulation</p> <p><input type="checkbox"/> Export</p> <p>The product is:</p> <p><input type="checkbox"/> Packaged</p> <p><input type="checkbox"/> In bulk</p>	<p>we suggest to remove 'lack of traceability'</p> <p><u>Justification:</u> it is not a source or cause of contamination</p> <p>Contamination occurred in the previous stage of the supply chain (please specify, which stage if known) -> We suggest to remove 'Contamination occurred in the previous stage of the supply chain'</p> <p><u>Justification:</u> it is not a source or cause of contamination</p> <p>Source and the cause of the contamination was not identified (please specify the reason)</p> <p><i>Source and the cause of the contamination was technically unavoidable (natural presence, contaminants of unknown origin, ubiquitous contaminants, degradation of approved substances, pesticides used in the past...etc)</i></p> <p><u>Justification:</u> the determination of the cause of the contamination is associated with a corrective measure. Thus, it is important to accommodate the cases where the contamination is technically unavoidable and beyond the organic operator's responsibility.</p> <p>Other (please specify)</p>	<p>Article 42(1) of Regulation (EU) 2018/848</p> <p>New conversion period required</p> <p>Limitation of certificate scope</p> <p>Prohibition of marketing products that refer to organic production for a given period in accordance with Article 42(2) of Regulation (EU) 2018/848</p> <p>Suspension of the certificate</p> <p>Withdrawal of the certificate</p> <p>No measures taken since they were not needed, <i>the source was not identified or the contamination was technically unavoidable.</i></p> <p><u>Justification:</u> See previous.</p> <p>Other (please specify)</p>	
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We thank you for the consultation and hope our comments can be taken into consideration.

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