



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B – Sustainability

Brussels

Dear [REDACTED],

During a recent (7 October 2022) meeting with DG AGRI, you raised an important issue of interpretation regarding the investigations to be carried out in relation to notifications of suspicions of non-compliance with the organic legislation in the Organic Farming Information System (OFIS). This is an issue that has also been raised by other stakeholders. Through this letter, we would like to clarify the issue.

I would like to start by recalling Recital 69 of Regulation 2018/848 ⁽¹⁾: *“In order to ensure a harmonised approach across the Union as regards the measures to be taken in the case of suspicion of non-compliance, especially where such suspicion arises due to the presence of non-authorized products and substances in organic or in-conversion products, and to avoid uncertainties for operators, competent authorities, or, where appropriate, control authorities or control bodies, should carry out an official investigation in accordance with Regulation (EU) 2017/625 in order to verify compliance with the requirements for organic production. In the specific case of suspicion of non-compliance due to the presence of non-authorized products or substances, **the investigation should determine the source and the cause of the presence of such products or substances, in order to ensure that operators comply with the requirements for organic production and, in particular, have not used products or substances that are not authorised for use in organic production, and to ensure that those operators have taken proportionate and appropriate precautionary measures to avoid the contamination of organic production with such products and substances.** Such investigations should be proportionate to the suspected non-compliance, and therefore should be completed as soon as possible within a reasonable period, taking into account the durability of the product and the complexity of the case. They could include any method and technique for official controls which is considered appropriate to efficiently eliminate or confirm, without any unnecessary delay, any suspicion of non-compliance with this Regulation, including the use of any relevant information that would permit the elimination or confirmation of any suspicion of non-compliance without an on-the spot inspection”.*

⁽¹⁾ 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*).

Please also note Article 29 of Regulation (EU) 2018/848, which states: “1. Where the competent authority, or, where appropriate, the control authority or control body, receives substantiated information about the presence of products or substances that are not authorised pursuant to the first subparagraph of Article 9(3) for use in organic production, or has been informed by an operator in accordance with point (d) of Article 28(2), or detects such products or substances in an organic or an in-conversion product: **(a) it shall immediately carry out an official investigation in accordance with Regulation (EU) 2017/625 with a view to determining the source and the cause in order to verify compliance with the first subparagraph of Article 9(3) and with Article 28(1); such investigation shall be completed as soon as possible, within a reasonable period, and shall take into account the durability of the product and the complexity of the case**”.

In addition, Article 2(3) of Commission Implementing Regulation 2021/279 ⁽²⁾ states: “**The official investigation shall at least conclude on: (a) the integrity of organic and in-conversion products; (b) the source and the cause of the presence of non-authorized products or substances; (c) the elements provided in Article 29(2)(a), (b) and (c) of Regulation (EU) 2018:848.**” ⁽³⁾

The issue raised by you was that of which provisions “take precedence”: the provisions on determining/concluding on the source and the cause of the presence of non-authorised products or substances (and the other items mentioned in Article 2 of Commission Implementing Regulation 2021/279), or the provisions on the timely (“**as soon as possible, within a reasonable period, and shall take into account the durability of the product and the complexity of the case**”) conclusion of the investigation.

In other words, the issue raised by you was whether an investigation can be closed if it is not possible to determine/conclude on the source and the cause of the presence of non-authorised products or substances (and the other items mentioned in Article 2 of Commission Implementing Regulation 2021/279) *as soon as possible* .

Please note that the two provisions are not incompatible and should not be opposed. It is clear from the recital mentioned above and the regulatory provisions that all possible effort has to be put into concluding the investigations.

In extreme cases, investigations may be concluded without the source and cause having been found, but then the approach has to be the following: investigations can be closed when:

-the source and cause have been found, or

⁽²⁾ 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).

⁽³⁾ Article 29(2)(a),(b) and (c) of Regulation (EU) 2018/848: “The product concerned shall not be marketed as an organic or in-conversion product or used in organic production where the competent authority, or, where appropriate, the control authority or control body, has established that the operator concerned: (a) has used products or substances not authorised pursuant to the first subparagraph of Article 9(3) for use in organic production; (b) has not taken the precautionary measures referred to in Article 28(1); or (c) has not taken measures in response to relevant previous requests from the competent authorities, control authorities or control bodies.”

-it has been concluded that the source and cause cannot be found (which is not the same as not having been able to find it so far) and it can be justified/proved that they cannot be found (i.e., this is not a matter of time but a matter of having exhausted all means of enquiry).

Therefore, we cannot follow your reasoning that an investigation can be closed if it is not possible to determine/conclude on the source and the cause of the presence of non-authorised products or substances (and the other items mentioned in Article 2 of Commission Implementing Regulation 2021/279) in a timely manner.

This derives clearly from Recital 69 of Regulation (EU) 2018/848 mentioned above.

It is also evident that your reading of the regulatory provisions, which is focused on the timely conclusion of the investigation, would undermine the integrity of the organic production system and the correct implementation of the applicable provisions relating to the measures to be taken in the event of the presence of non-authorised products or substances in organic production

As explained above, the provision on the conclusion of the investigation as soon as possible constitute merely an exhortation to carry out the investigation as quickly as possible, without delay.

A non-conclusive investigation on the source and the cause of the presence of non-authorised products or substances (and the other items mentioned in Article 2 of Commission Regulation 2021/279) can exceptionally be closed if it is demonstrated explicitly by the competent authorities, or where appropriate, control bodies or control authorities - and assessed as satisfactory by the assessing competent authority - that, independently from considerations regarding time, all possible means of investigation have been exhausted.

The present opinion is provided on the basis of the issues raised during our meeting of 7 October 2022, 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 Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.

Yours sincerely,

