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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	17 January 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 17.1.2022 amending Annex II to Regulation (EU) 2018/848 of the European Parliament and of the Council as regards specific requirements for the production and use of non-organic, in-conversion and organic seedlings and other plant reproductive material

Delegations will find attached document C(2022) 101 final.

Encl.: C(2022) 101 final



EUROPEAN
COMMISSION

Brussels, 17.1.2022
C(2022) 101 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 17.1.2022

amending Annex II to Regulation (EU) 2018/848 of the European Parliament and of the Council as regards specific requirements for the production and use of non-organic, in-conversion and organic seedlings and other plant reproductive material

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Following the adoption of the new organic Regulation (EU) 2018/848 and the amending Commission Delegated Regulation (EU) 2020/1794 as regards the use of in-conversion and non-organic plant reproductive material, it is necessary to introduce further amendments with respect to use of in-conversion and non-organic plant reproductive material. This is in particular the case with respect to possible derogations from the use of organic seedlings, which are a particular type of plant reproductive material originating from seeds and not covered by the databases and systems of information on availability of plant reproductive material referred to in Article 26 of Regulation (EU) 2018/848.

Considering the usual practice to transplant seedlings of horticultural crops that are often subject to a short cycle of production from transplant of seedlings to the first harvest of products, it is important to limit in such cases, the derogation for use of non-organic seedlings, and to clarify the use of in-conversion and non-organic seedlings and their production requirements under strict organic conditions, in order to ensure the integrity of organic productions.

In addition, it is necessary to allow for a smooth transition in the production of organic plant reproductive material to ensure the development of the organic nursery sector, in view of the several techniques of production of the various types of plant reproductive materials for different species. Currently, there are few organic nurseries that work with mother plants or other plants intended for propagation grown in compliance with conditions set in point 1.8.2. of Part I of Annex II to Regulation (EU) 2018/848, due to lengthy production cycles, long term investments and technical difficulties to ensure compliance with quality certification and phytosanitary requirements.

It is therefore necessary to introduce an amendment to allow under certain conditions, the production and placing on the market for use in organic crops of plant reproductive material originating from plants not fulfilling the requirements of point 1.8.2. of Part I of Annex II to Regulation (EU) 2018/848.

Finally, taking into account that Regulation (EU) 2018/848 will be applicable from 1 January 2022, it is necessary to introduce a retroactive clause to avoid a legal vacuum.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The act was thoroughly discussed with Member States at the Group of Experts on Organic Production as well as with the main organisations representing the organic sector and plant reproductive material sectors, namely IFOAM and their sector, specific affiliated groups, COPA-COGECA and ESA. DG AGRI cooperated closely with other DGs in the field of their specific expertise when drafting these rules, in particular with DG SANTE. WTO partners were notified and general public consultations were carried out.

Following the general public consultation, more than 400 contributions were received via the feedback mechanism. In order to address the concerns expressed by various stakeholders the Commission proposes to extend the amendments regarding derogations for seedlings to other types of plant reproductive material in order to allow a smooth transition for the development of organic plant reproductive material in view of the lack of availability of plants grown in compliance with point 1.8.2. of Part I of Annex II to Regulation (EU) 2018/848 for several species and varieties.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Regulation (EU) 2018/848 explains in its recital (35) that, to ensure quality, traceability, compliance and adaptation to technical developments, the power to adopt certain acts is delegated to the Commission, among others, in respect of the use of in-conversion or non-organic plant reproductive material.

The definition of plant reproductive material provided for in Article 3(17) of Regulation (EU) 2018/848 includes all type of materials as follows: “*‘plant reproductive material’ means plants and all parts of plants, including seeds, at any stage of growth that are capable of, and intended for, producing entire plants*”. Seedlings are a type of plant reproductive material and fall within the scope of the derogation under point 1.4 of Part I of Annex II of Regulation (EU) 2018/848, which provides for the possibility to grow seedlings or transplants in containers for further transplanting. Annex III to Implementing Regulation (EU) 2020/464 also provides the following definition: “*For the purposes of this point, ‘seedling’ means a young plant originating from seed and not from cutting.*” That definition excludes seedlings from the information on availability of plant reproductive material, information that Member States will have to provide to the Commission to reflect provisions of Article 26 of Regulation (EU) 2018/848.

Point 1.8.1. requires that for the production of plants and plant products, other than plant reproductive material, only organic plant reproductive material shall be used. Derogations from point 1.8.1. are possible in accordance with point 1.8.5.1 due to lack of organic or in-conversion plant reproductive material.

For the production of organic plant reproductive material, point 1.8.2. of Part I of Annex II of Regulation 2018/848 lays down the following conditions: “*to obtain organic plant reproductive material to be used for the production of products other than plant reproductive material, the mother plant and, where relevant, other plants intended for plant reproductive material production shall have been produced in accordance with this Regulation for at least one generation, or, in the case of perennial crops, for at least one generation during two growing season.*” Hence, organic plant reproductive material should originate from plants grown and adapted to the organic production conditions in accordance with requirements set under point 1.8.2. depending on the species.

This delegated act amends provisions concerning the possible derogation for use of non-organic seedlings. In particular, this act prohibits the authorisation to use non-organic seedlings for crops subject to a production cycle completed in one growing season from transplant of seedling to the harvest of final product. In addition, the delegated act clarifies the provisions concerning the production of in-conversion seedlings under Article 10(4), point (a), of the Regulation (EU) 2018/848.

Moreover, in order to address the lack of organic seeds from which seedlings should be produced as well as the lack of mother plants or, where relevant, of other plants intended for the production of plant reproductive material grown in compliance with point 1.8.2 of Part I of Annex II to Regulation (EU) 2018/848, this delegated act also introduces provisions for authorisation of operators producing plant reproductive material to produce and place on the market, under certain conditions, plant reproductive material to be used in organic crops when not originating from mother plants or other plants in accordance with point 1.8.2. of Annex II.

COMMISSION DELEGATED REGULATION (EU) .../...

of 17.1.2022

amending Annex II to Regulation (EU) 2018/848 of the European Parliament and of the Council as regards specific requirements for the production and use of non-organic, in-conversion and organic seedlings and other plant reproductive material

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 834/2007¹, and in particular Article 12(2), points (b) and (e), thereof,

Whereas:

- (1) Regulation (EU) 2018/848, and in particular Part I of Annex II thereto, lays down certain requirements with regard to the use of in-conversion and non-organic plant reproductive material.
- (2) In view of the phasing out of the derogations from the use of organic plant reproductive material laid down in Article 53 of Regulation (EU) 2018/848, it is important to increase the production and placing on the market of organic and in-conversion plant reproductive material.
- (3) However, for some horticultural species, the current availability of organic and in-conversion seeds is limited, and the use of non-organic seeds for the production of seedlings as plant reproductive material, grown under organic conditions, is a common technique.
- (4) The databases and systems referred to in Article 26(1) and (2) of Regulation (EU) 2018/848, in which the Member States are required to make public information on the availability of organic and in-conversion plant reproductive material, do not include seedlings. Considering the particular nature of seedlings and the variable duration of their production cycles, it is necessary to clarify the rules on their use in organic production. The availability of organic and in-conversion seeds for the species and variety concerned should be taken into account to determine the potential availability on the market of organic and in-conversion seedlings.
- (5) In accordance with Article 10(4), second subparagraph, point (a), of Regulation (EU) 2018/848, non-organic plant reproductive material can also be marketed as in-conversion, provided that such material has completed a conversion period of at least 12 months. The use of in-conversion plant reproductive material should be prioritised over the use of non-organic plant reproductive material. In that context, it is necessary to clarify that ‘in-conversion seedlings’ may be used when their cultivation cycle has lasted at least 12 months on a land parcel that has completed a conversion period of 12

¹ OJ L 150, 14.6.2018, p. 1.

months or when cultivated in containers or on a land parcel, provided that the seedlings originate from in-conversion seeds that were harvested from plants grown on a land parcel that completed a conversion period of 12 months.

- (6) Nevertheless, as regards seedlings, it is necessary to prohibit the use of non-organic seedlings for crops that have completed a production cycle within one growing season from the transplantation of seedlings to the first harvest of the final product in order to ensure the integrity of organic products which could be undermined in case of presence of residues in the non-organic seeds used as starting material.
- (7) For certain fruit, grapevine and ornamental species or varieties, the availability of mother plants or, where relevant, other plants intended for the production of plant reproductive material, grown in compliance with point 1.8.2 of Part I of Annex II to Regulation (EU) 2018/848, is insufficient. Moreover, there are few organic fruit and grapevine nurseries that work currently with mother plants grown in compliance with point 1.8.2. due to the long term investments and technical difficulties to ensure full compliance with quality certification and phytosanitary requirements.
- (8) In order to promote the further development of this highly specialised production sector, it is appropriate to introduce the possibility to authorise the use of non-organic plant reproductive material grown under organic conditions for the production of plant reproductive material to be marketed and used for organic crops, provided that certain specific conditions are met.
- (9) Operators producing such plant reproductive material should be allowed to make public, on a voluntary basis, information on the availability of such material in the national systems established in accordance with Article 26(2) of Regulation (EU) 2018/848. This will allow operators to choose organically grown plant reproductive material when organic or in-conversion plant reproductive material is not available.
- (10) In order to ensure coherence, the authorisations to use non-organic plant reproductive material grown under organic conditions for the production of plant reproductive material should expire at the same time as the derogations to the use of organic plant reproductive material. The Commission should monitor the availability of organic plant reproductive material and will end or extend such authorisations in the light of the conclusions as regards availability of organic plant reproductive material presented in the report provided for in Article 53(7) of Regulation (EU) 2018/848 and in accordance with Article 53(2) of that Regulation.
- (11) Annex II to Regulation (EU) 2018/848 should therefore be amended accordingly.
- (12) In order to avoid a legal vacuum, this Regulation should apply retroactively from the date of application of Regulation (EU) 2018/848,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EU) 2018/848 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2022.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17.1.2022

For the Commission
The President
Ursula VON DER LEYEN