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#### NOTE

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| To:             | Delegations   |
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| No. Cion doc.:  | 7956/14+ADD   |
| Subject:        | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on organic production and labelling of organic products, amending Regulation (EU) No XXX/XXX of the European Parliament and of the Council [Official controls Regulation] and repealing Council Regulation (EC) No 834/2007<br>- Presidency compromise text |

With a view to approximating positions with the European Parliament at the forthcoming trilogue on 30 November, intensive contacts between the three Institutions have taken place over the last few weeks at both drafting group and political levels. These efforts have resulted in possible compromise texts on the four main outstanding political issues of greenhouses, databases/systems and derogations, seeds and precautionary measures, which you will find in Annexes 1 to 4.

At the forthcoming meeting of the SCA on 28 November, delegations are invited to indicate whether the attached text is an acceptable basis for seeking a conclusion for the negotiations on the file.

## **Greenhouses**

### Article 4 – General principles

Organic production is a sustainable management system for agriculture that is based on the following general principles: [...]

(e) appropriate design and management of biological processes based on ecological systems using natural resources which are internal to the system by methods that:

(i) use living organisms and mechanical production methods;

(ii) practice soil-related crop cultivation and land-related livestock production or practice aquaculture which complies with the principle of sustainable exploitation of fisheries; [...]

*To be introduced in Annex II, Part I – Plant production rules*

#### **1. General requirements**

1. Organic crops shall be produced in living soil or in soil mixed or fertilised with materials and products allowed in organic production, in connection with the subsoil and bedrock, in accordance with the principle of soil-related crop cultivation.

2. Hydroponic production, which is a method of growing plants, which are not naturally grown in water, with their roots in a nutrient solution only or in an inert medium to which a nutrient solution is added, is prohibited.

3. The production of sprouts by moistening of seeds shall be allowed.

4. By way of derogation from paragraph 1, the following practices shall be allowed, under the condition that the material where the plant grows is made up of at least 80% of soil obtained from the organic production unit of the holding itself and/or mixed and/or fertilised with products allowed in organic production, in accordance with Article 19:

- (a) growing plants in pots to be sold together with the pot to the final consumer;
- (b) growing plants in demarcated beds where specific climatic conditions such as an average temperature below zero degrees Celsius during winter months, justifies it,
- (c) growing seedlings or transplants in containers for on-growing purposes.

*To be integrated in Article 10*

5. The Commission shall adopt delegated acts amending by adding to Annex II specific conditions on the cultivation practices referred to in Annex II, Part I (exact reference corresponding to paragraph 4 to be introduced), in particular with regard to rules on conversion, preventive measures including crop rotation, soil and crop health, use of energy and natural resources, nutrient and soil fertility management.

# Annex I

Extracts from the 4-column table

| Amendment 102            |  |  |  |
|--------------------------|--|--|--|
| Article 3 (43) (e) (new) |  |  |  |
|                          |  | <i>(43e) 'soil-bound crop cultivation' means production in living soil such as mineral soil mixed and/or fertilised with materials and products allowed in organic production, in connection with the subsoil and bedrock;</i> | Compromise proposal: (43e) 'soil-related crop cultivation' means production in living soil or in soil mixed or fertilised with materials and products allowed in organic production, in connection with the subsoil and bedrock; |

**Databases/systems and derogations**

**1. Derogations for the use of non organic seeds, livestock and juveniles**

**A/ Derogations for the use of non organic seeds**

1.4.2.1 By way of derogation from point 1.4.1, where the data collected in the seeds database referred to in Article 19a(1) or (2) (a) shows that the qualitative or quantitative needs of the farmer regarding relevant organic plant reproductive material, excluding seedlings, are not met, competent authorities may authorise the use of in-conversion or non-organic plant reproductive material under the conditions laid down under points 1.4.2.4 and 1.4.3.

Prior to requesting any such derogation the farmer shall consult the seeds database as laid out in point 1 or (2)(a) of Article 19a in order to verify whether his or her request is justified.

1.4.2.4 non-organic plant reproductive material shall not be treated with plant protection products, other than those authorised for treatment of seed in accordance with Article 19(1) of this Regulation, unless chemical treatment is prescribed in accordance with Regulation (EU) No XX/XXX of the European Parliament and of the Council (protective measures against pests of plants) for phytosanitary purposes by the competent authority of the Member State for all varieties of a given species in the area where the plant reproductive material is to be used.

1.4.2.5 Member States may confer the responsibility for granting authorisation(s) referred to in point 1.4.2.1 to control authorities or delegate it to another public administration under their supervision or to control bodies.

1.4.2.6 The authorisation shall be granted before the sowing of the crop.

1.4.2.7 The authorisation shall be granted only to individual users for one season at a time and the authority or body responsible for the authorisations shall list the quantities of plant reproductive material authorised.

**B/ Derogations for the use of non organic livestock**

1.3.5.a By way of derogation from points 1.3.1 , where the data collected according to the system referred to in Article 19a (1) (c) shows that the qualitative or quantitative needs of the farmer regarding organic animals are not met, competent authorities may authorise the introduction of non-organic animals onto an organic production unit, subject to the following conditions provided for in points 1.3.5.1 to 1.3.5.4a.

Prior to requesting any such derogation the farmer shall consult the data collected as laid out in point 1(c) of Article 19a in order to verify whether his or her request is justified.

1.3.5.1.1 For breeding purposes, non-organic young animals may be introduced when a herd or flock is constituted for the first time. They shall be reared in accordance with the organic production rules immediately after they are weaned. Moreover, the following restrictions shall apply at the date on which those animals enter the herd or flock:

- (a) bovine, equine and cervine animals shall be less than six months old;
- (b) ovine and caprine animals shall be less than 60 days old;
- (c) porcine animals shall weigh less than 35 kg.
- (d) rabbits shall be less than 3 months old;

1.3.5.1.2 For breeding purposes, non-organic adult male and nulliparous female animals may be introduced for the renewal of a herd or flock. They shall be reared subsequently in accordance with the organic production rules. Moreover, the number of female animals shall be subject to the following restrictions per year:

- (a) up to a maximum of 10 % of adult equine or bovine animals; and 20 % of the adult porcine, ovine, caprine animals, rabbits and cervine animals;
- (b) for units with fewer than 10 equine, cervine or bovine animals or rabbits, or with fewer than five porcine, ovine or caprine animals, any renewal as mentioned above shall be limited to a maximum of one animal per year.

1.3.5.2. The percentages referred to in sub-point 1.3.5.1.2 may be increased up to 40%, provided that the competent authority has confirmed that the one of following conditions is fulfilled:

- (a) a major extension to the farm has been undertaken;
- (b) a breed has been changed;
- (c) a new livestock specialisation has been initiated;
- (d) breeds are in danger of being lost to farming as defined by Member States in accordance with Article 7(3) of Commission Delegated Regulation (EU) No 807/2014, and in that case animals of those breeds must not necessarily be nulliparous.

1.3.5.3 For the renovation of apiaries, 20% per year of the queen bees and swarms may be replaced by non-organic queen bees and swarms in the organic production unit provided that the queen bees and swarms are placed in hives with combs or comb foundations coming from organic production units. In any case, one swarm or queen bee may be replaced per year by a non-organic swarm or a queen bee.

1.3.5.4 When a flock is constituted for the first time, renewed or reconstituted non-organically reared poultry may be brought into an organic poultry production unit, provided that the pullets for the production of eggs and poultry for meat production are less than three days old.

1.3.5.4a In the cases referred to in points 1.3.5.1 to 1.3.5.4, non-organic animals and products derived from them may only be considered as organic provided that the conversion period specified in point 1.2 of Part II of this Annex is respected.



## **C/ Derogations for the use of non organic juveniles**

4.1.2.1(db). By way of derogation to (a), for on-growing purposes and where the data collected according to the system referred to in Article 19a (1) (d) shows that the quantitative needs of the operator regarding organic aquaculture juveniles, are not met Member States may authorise until 31 December 2019 the introduction of a maximum of 50% of non-organic juveniles on an aquaculture holding, provided that at least the latter two thirds of the duration of the production cycle is managed under organic management.

Prior to requesting any such derogation the operator shall consult the data collected as laid out in point 1(d) of Article 19a in order to verify whether his or her request is justified.

## 2. Phasing out of the derogations for the use of non organic seeds and livestock

### *Article 35*

#### **End of derogations and report**

1. The derogations to the use of organic plant reproductive material and livestock, provided under points 1.4.2.1 of part I of annex II and 1.3.5.a of part II of Annex II end on 1 January 2030 at the latest, unless the report on the availability on the market of organic plant reproductive material and of organic livestock to be prepared by the Commission by 2025 on the basis of the data provided for under Article 19a, shows that sufficient quantities of suitable varieties or breeds are available. In such a case, as of 2027, the Commission shall be empowered to adopt delegated acts in accordance with Article 36, to end the derogations referred to in points 1.4.2.1 of part I of annex II and 1.3.5.a of part II of Annex II in Annex II, at an earlier date.

2. By the 30th of October of each year, Member States shall make the information related to granted derogations available to the Commission and the other Member States.

**3. Collection of data concerning the availability on the market  
of organic livestock, seeds, and juveniles**

*Article 19a new*

**Collection of data concerning the availability on the market of organic and in-conversion  
plant reproductive material, organic animals and organic aquaculture juveniles**

1. Each Member State shall ensure that a regularly updated database is established for the listing of the organic or in-conversion plant reproductive material except seedlings, including seed potatoes which is available on its territory.
2.

In order to promote and facilitate the use of organic reproductive material and to improve transparency by providing information on its availability, including its adaptability to local conditions and to organic production, each Member State shall have a systems in place that allow operators who market that organic material and who are able to supply it in sufficient quantities and within a reasonable time period, to make public on a voluntary basis, free of charge, together with their names and contact details, the following data:

(a) the organic and in-conversion plant reproductive material except seedlings, such as heterogeneous material, seeds and propagating material suitable for organic production including seed potatoes, are available; the quantity in weight of those materials and the period of the year of its availability. That organic reproductive material shall be listed using at least the Latin scientific name;

(b) the breeds and strains adapted to organic farming in accordance with point 1.3.4 of Part II of Annex II available; including the landraces, parentage line, the age of the animals, and the number of breeding animals categorised by sex.

(c) the organic animals for the purposes of the application of the derogations provided for in point 1.3.5a.; including information, if relevant to the different species of animals, as regards the breed, the strains or landraces, parentage line, local ecotypes, the age of the animals, and the number of animals categorised by sex

(d) the certified holdings producing organic aquaculture juveniles available on its territory, including the production capacity of these holdings for each aquaculture species and their health status in accordance with Council Directive 2006/88/EC<sup>1</sup> ;

Operators including material or animals in the systems referred to in the 1<sup>st</sup> subparagraph shall ensure that the information is updated regularly and that the information is withdrawn from the lists once the material or animals are no longer available.

2a. Member States may continue to use already existing seeds databases and systems for livestock and aquaculture juveniles.

3. The Commission shall adopt implementing acts to provide technical details concerning the collection of data referred to in this Article.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37.

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<sup>1</sup> *Council Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals* – (OJ EU L328; 24.11.2006, page 14)

## Seeds

### Definitions to be added to Article 3

(xx) "plant reproductive material" means plants as well as all forms of plants at any growth stage including seeds, capable of, and intended for, producing entire plants

(xx) 'heterogeneous material' means plant grouping within a single botanical taxon of the lowest known rank, which:

(i) presents common phenotypic characteristics

(ii) is, however, characterised by a high level of genetic and phenotypic diversity between individual reproductive units, so that this plant grouping is represented by the material as a whole, and not by a small number of units;

(iii) does not meet the definition of variety within the meaning of Article 5(2) of Regulation 2100/94;

(iv) is not a mixture of varieties;

(xx) A plant grouping within a single botanical taxon of the lowest known rank is considered as seed and propagating material suitable for organic production if it:

(i) is characterized by a high level of genetic and, if relevant, phenotypical diversity between individual reproductive units;

(ii) is not protected by a Union plant variety right, as provided for in Council Regulation (EC) No 2100/94; or by a national plant variety right;

(iv) results of organic plant breeding and variety development,

(v) enhances productivity or quality of the products, and

(vi) is coupled with reliance on natural reproductive ability and restricted within natural crossing barriers.

## *Article 3a*

### **Objectives**

*This Article to be completed by the following indents:*

- contribution to the development of the offer of plant genetic material adapted to the specific needs and objectives of organic agriculture;
- contribution to a high level of biodiversity, notably by using diverse plant genetic material, such as heterogeneous material and seeds and propagating material suitable for organic production;
- foster the development of organic plant breeding activities in order to favourable economic perspectives of the organic production sector.

## *Article y*

### **Specific provisions for the marketing of heterogeneous material intended exclusively for organic production**

1. By way of derogation from Directive 2002/53/EC (varietal aspects to be screened), and from:
  - (a) Article 2(1)(B), point (d) of Article 2(3)(A), point (b) of Article 4a(1), point (c) of Article 14(a), Article 17, Article 19(2), Annex I, points (1) and (4), and Annex II of Directive 66/401/EEC;
  - (b) Article 2(1)(B), Article 2(1)(C), Article 2(1)(D), point (d) of Article 2(3)(A) Article 7(1), point (c) of Article 14a, Article 17, Article 19(2), Annex I and Annex II to Directive 66/402/EEC;
  - (c) point (c) of Article 2(1), Article 2(2), point (d) of Article 2(3)(A), point (b) of Article 6(1), Article 9(1), Article 21(c), Article 24, Article 25(2), and Annexes 1, III and IV to Directive 2002/54/EC;
  - (d) points (c), (d) and (e) of Article 2(1), Article 2(3), Article 2(4)(A)(d), Article 3(1), Article 23(1), Article 26(3), Article 35(c), points (a) and (b) of Article 37(1), Article 38, point (b) of Article 39(2), Article 40, Article 41, Article 42, and Annexes I, II, IV and V to Directive 2002/55/EC;
  - (e) point (c) of Article 2(1), Article 2(3), point (b) of Article 6(1), Article 9(1), point (a) of Article 12(1), Article 18(c), Article 19a, Article 21, point (b) of Article 22(2), and Annexes I, II, IV and V to Directive 2002/57/EC,

- (f) Directive 68/193 – varietal aspects to be screened
- (g) Directive 2008/90 – varietal aspects to be screened
- (h) Directive 2008/72 – varietal aspects to be screened
- (i) Directive 2002/56 – varietal aspects to be screened

Heterogeneous material may be marketed without belonging to a variety accepted in the Common Catalogues established pursuant to those Directives.

2. Heterogeneous material may only be produced and marketed following the adoption of the delegated act referred to in paragraph 2, and in accordance with the rules set out in that act.

3. The Commission shall be empowered to adopt a delegated act, in accordance with Article 36, setting out proportionate rules concerning the marketing of heterogeneous material of particular genera or species intended exclusively for organic production as regards:

(a) the description of the material, including, where applicable, the breeding methods and parental material used;

(b) the minimum quality requirements of seed lots (identity, specific purity, germination rates and sanitary quality);

[(c) the establishment by the competent authorities of lists for heterogeneous material and professional operators producing that material, modalities for that listing and content of those lists.]

4. The Commission shall adopt implementing acts laying down technical details concerning heterogeneous material as regards:

(a) labelling and packaging;

(b) information and samples of production to be kept by the professional operators;

(c) maintenance of the material.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(2).

**Specific provisions for the marketing of seeds and propagating material, other than heterogeneous material, suitable for organic production**

1. The Commission shall be empowered to adopt delegated acts, in accordance with Article 36, setting out proportionate rules concerning the marketing of seeds and propagating material suitable for organic production, other than heterogeneous material. Those rules shall concern in particular:

(a) the description of the seeds and propagating material suitable for organic production, including, where applicable, the description of the breeding methods and parental material used;

(b) the determination of the conditions in which seeds and propagating material are considered as suitable for organic production within defined geographical regions;

[(c) the conditions under which seeds and propagating material suitable for organic production may be marketed, including conditions for the examinations of the varieties of those seeds or propagating material.]

2. The Commission shall adopt implementing acts laying down technical details concerning seeds and propagating material suitable for organic production as regards labelling and packaging. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(2).

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## **Precautionary measures**

### **Article XX**

#### *Obligations of and actions by the operator in the event of suspicion of non-compliance*

Where an operator suspects that a product he has produced, prepared, imported or that he has received from another operator is not in compliance with the requirements of this Regulation, that operator shall:

- (a) separate and identify the product(s) concerned;
- (b) not place the product(s) concerned on the market as organic or in-conversion product(s) and not use it in organic production until the investigation is finalised;
- (c) check whether the suspicion can be substantiated;
- (d) immediately inform the relevant competent authority or, as appropriate, the relevant control authority or control body with, where appropriate, available elements;
- (e) fully cooperate in verifying and identifying the reasons for the suspected non-compliance with the relevant competent authority or, as appropriate, with the relevant control authority or control body.

*Precautionary measures and actions to be taken in the event of the presence of non-authorised products or substances*

1. In order to avoid contamination with products and substances that are not authorised to be used in organic production in accordance with Article 7(1)(b) first subparagraph, operators shall take the following precautionary measures at all stages of production, preparation and distribution:

- (a) Put in place and maintain proportionate and appropriate measures to identify risks of contamination of organic production and products with non-authorised products and substances, including systematic identification of critical procedural steps;
- (b) Put in place and maintain proportionate and appropriate measures to avoid risks of contamination of organic production and products with non-authorised products and substances;
- (c) Regularly review and adjust such measures; and,
- (d) Comply with other relevant requirements of this Regulation that ensure the separation of organic and non-organic products.

3. Where an operator suspects the presence of a product or substance that is not authorised in organic production pursuant to Article 7(1)(b), first subparagraph in a product that is intended to be used or marketed as an organic or in-conversion product, that operator shall:

- (a) separate and identify the product(s) concerned;
- (b) not place the product(s) concerned on the market as an organic or in-conversion product(s) and not use it in organic production until the investigation referred to in paragraph 4 is finalised;

- (c) check whether the suspicion can be substantiated;
- (d) immediately inform the relevant competent authority or, as appropriate, the relevant control authority or control body [with, where appropriate, available elements;
- (e) fully cooperate in verifying and identifying the reasons for the presence of non-authorised products and substances with the relevant competent authority or, as appropriate, the relevant control authority or control body.

4. When a competent authority, or where appropriate, a control authority or control body, receives substantiated information about the presence of products or substances that are not authorised in organic production pursuant to Article 7(1)(b) first subparagraph, or is informed by an operator in accordance with paragraph 3 or detects such products or substances in an organic or an in-conversion product:

- (a) it shall carry out immediately an investigation to be completed as soon as possible, within a reasonable period of time, taking into account the durability of the product and the complexity of the case, with a view to determine the source and the cause of contamination in view of verifying compliance with Article 7(1)(b) and paragraph 2 of this article.
- (b) it shall provisionally prohibit the placing on the market of the products concerned as organic or in conversion products and their use in organic production while expecting the results of the investigation as referred to in (a);



4a. When the competent authority has not established within the reasonable period of time referred to in paragraph 4(a) that the operator concerned:

- has used the products or substances not authorised in organic production pursuant to Article 7(1)(b) first subparagraph or;
- has failed to take the precautionary measures referred to in paragraph 2,

the operator may market the product as an organic or in-conversion product and use it in organic production.

5. When the competent authority has established that the operator concerned:

- (a) has used products or substances not authorised in organic production pursuant to Article 7(1)(b) first subparagraph or:
- (b) has not taken the precautionary measures referred to in paragraph 2; or
- (c) has not taken measures pursuant to relevant previous requests from the competent authorities, control authorities or control bodies,

the product shall not be marketed as an organic or in-conversion product or used in organic production.

6. Where required, the operator concerned shall take the necessary corrective measures to avoid future contamination.

The operator concerned shall be allowed to give his comments on the results of the investigation. The competent authority, or where appropriate, the control authority or control body, shall keep records of the investigation carried out.

6a. By way of derogation to paragraphs 4a and 7, products in which the presence of more than two products or substances used as plant protection product, but not authorised to be used in organic production pursuant to Article 7(1)(b), is detected above the limit of determination, shall not be marketed as an organic or in-conversion product or used in organic production.

[**Alternative 1.** 7. By way of derogation from paragraph 4a, products in which the presence of plant protection products or substances not authorised to be used in organic production pursuant to Article 7(1)(b) first subparagraph, is detected beyond a level [of XX][that is three times the limit of determination], shall not be marketed as an organic or in-conversion product or used in organic production, unless:

(a) the competent authority establishes that the use of the [active substance] non-authorised plant protection product or substance in question does not provide any benefit for the plant concerned ;

or

(b) in the case where the presence of the non-authorised plant protection product or substance [active substance] is detected at pre-harvest stage, and, where at the request of the farmer, the competent authority takes a second sample at post-harvest stage that shows that the level of the [active substance] non-authorised product or substance in question is below the level of [XX][that is three times the limit of determination.

**Alternative 2:**

7. By 31 December 2020 at the latest, the Commission shall present a report to the European Parliament and the Council on the state of play of implementation of this article and on the presence of products and substances not authorised in organic production pursuant to Article 7(1)(b) first subparagraph. . This report may be accompanied, if appropriate, by a legislative proposal establishing the levels of unauthorised products or substances not acceptable for organic products and the systems for compensating operators for losses in connection with unavoidable contamination]

[For the purpose of paragraph 7, Member States may lay down lower levels than the level provided for in paragraph 7 for unprocessed products produced on their territory. Such levels shall not prohibit, restrict or impede the placing on the market as organic or in-conversion of products produced in other Member States in compliance with the requirement of this Regulation. Member States which apply this provision shall inform the other Member States and the Commission without delay.]

9. The results of the investigations referred to in paragraph 4 shall be documented by competent authorities together with any measures taken with a view to formulating best practices and further measures to avoid the presence of products and substances not authorised in organic production pursuant to Article 7(1)(b) .

Member States shall make this information available to the other Member States and to the Commission via a computer system enhancing exchanges of documents and information made available by the Commission.

10. Member States may take appropriate measures on their territory to avoid the unintended presence of non-authorised products and substances in organic agriculture. Such measures shall not prohibit, restrict or impede the placing on the market as organic or in-conversion of products produced in other Member States in compliance with the requirement of this Regulation. Member States which apply this provision shall inform the Commission and the other Member States without delay.

11. The Commission may adopt implementing acts laying down uniform rules specifying:

- the methodology on detection and evaluation of the presence of non-authorised products and substances to be applied by control authorities and control bodies;
- the procedural steps to be followed by operators as referred to in paragraph 3 (a) to (e);
- the proportionate and appropriate measures to be adopted and reviewed by operators to identify and avoid risks of contamination as referred to in paragraph 2 (a) to (c) ;
- the details and format of the information to be transmitted by Member States to the Commission and other Member States as referred to in paragraph 9.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 37(2).

12. By 31 March of each year, Member States shall transmit by electronic way to the Commission the relevant information, including information collected at border control posts, relating to the previous year concerning the nature of contamination detected, and in particular the cause, the source, the level of contamination and the volume and nature of products contaminated. This information on findings of non-authorised products and substances shall be collected by the Commission in the database as referred to in Article XX and shall be used to facilitate the formulation of best practices to avoid contamination.