

Good implementation practices for Articles 28 and 29 of Regulation (EU) 2018/848

**Handles, keys and levers for investigation of residue cases
in EU organic production**

Open discussion on the concept and the content

Brussels, 25 and 26 January 2024

Introduction

Chapter 1: The most common contaminants found in organic production

Chapter 2: Laboratory analysis: the main tool for detection of contamination

Chapter 3: Potential sources and causes of contamination

Chapter 4: The toolbox for investigation methods and techniques

Chapter 5: Systematic approach for official investigations

Chapter 6: The role of the different actors in the investigation.

6.1: Assessments conducted by the operator (Art. 28)

6.2: Investigations conducted by the control bodies (Art. 29)

6.3: Investigations conducted by the competent authorities (Art. 29)

6.4: Information exchange including cross-border communication (OFIS)

Chapter 7: Decision making

Conclusion

Coordinators

- Jochen Neuendorff
- Bernhard Speiser
- Nicolas Verlet

1. Decision making – basic principles

Upon discovery of an analysis testing positive for unauthorized substances in organic products, the control body receiving the analysis result for the operator decides whether or not the suspicion is substantiated.

In case of a substantiated suspicion the control body carries out an investigation of a possible noncompliance at the level of it's own operator. If a noncompliance can be excluded, control bodies from preceding operators and authorities are notified to start an official investigation on their operator's level.

Once the official investigation is finalised, the following decisions shall be taken by the competent authority, or, where appropriate, by the respective Control body.

- Decision to conclude on the source and cause of the presence of unauthorized substances.
- Decision to be taken on whether or not the product concerned can be marketed as an organic product.
- Decision to be taken on the operator, in particular the possible suspension or withdrawal of its certificate.
- Decision to be taken on the follow-up of the investigation, related to documentation and re-evaluation of the risk analysis and future audits.

2. Decision on the source and cause

When all relevant techniques and methods of investigation have been used, a decision shall be taken on the conclusion regarding the source and cause of the presence of non-authorized products and substances.

- On what evidence and arguments can we consider that the origin has been established with sufficient certainty to decide to conclude the investigation?
- Under what conditions the decision to stop the investigation can be taken when the origin of the contamination has not been found?

3. Decision to be taken on the operator

The investigation should conclude on the integrity of the product, the source and cause, and on the elements provided in Article 29(2) (use of non-authorized substance, precautionary measure not taken, and no reply to CB requests by the operator). As a follow-up of the investigation, the Control body has to:

- Establish possible non-compliances, and decide on their qualification (minor/major/critical).
- Decide, based on Article 42(2) if the certificate of the operator should be maintained, suspended, or withdrawn.
- Decide if some precautionary measures should be introduced or reinforced.

4. Decision to not market a lot as organic

When a competent authority, or, where appropriate a control body receive a substantiated information on the presence of non-authorized products or substances, it shall immediately carry out an official investigation and provisionally prohibit the placing on the market of the product concerned as organic (Article 29(1)).

- Should this decision apply to the batch, or all batches of the same product to be placed on the market by the operator?
(Preliminary) Response: This will be a case-to-case decision depending on the results of the official investigation.
- Under which circumstances can the product concerned be released (partially or totally) as organic?
(Preliminary) Response: If no non-conformity according to Art. 29 (2) could be identified during the official investigations along the supply chain or the identified nonconformity is only relevant for a part of the lot.
- What evidence should lead to deciding that the product should not be marketed as organic, as set by Article 29(2)?
(Preliminary) Response: One or more non-conformities according to Art. 29 (2) could be identified during the official investigations along the supply chain.
- How to apply this regulatory obligation to highly perishable goods, both to avoid economic damage not proportional to the risk, but also to prevent that the perishability being a pretext for not launching an official investigation?
(Preliminary) Response: This is a case for the IMF (Impossible Missions Force). Don't ask us.

5. Decision to be taken on the follow-up of the investigation

The follow-up of the investigation is a key element, often neglected, to reinforce the control system and to contain the presence of non-authorized products in organic.

- Documentation and reporting serve for a more accurate determination of source, and, in case of emergence of similar cases on a product or region, allow anticipated action for reinforcing controls.
- The results of the investigation should lead to a re-assessment of the risk analysis.
- The outcome of the investigation should be taken into account in the preparation of the following annual control (specific checks, reinforces mass balance, cross checks additional sampling...), in particular when some uncertainty could not be fully eliminated.