

Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control

TITLE II

RULES ON PRODUCTION, PROCESSING, PACKAGING, TRANSPORT AND STORAGE OF ORGANIC PRODUCTS

CHAPTER 6

Exceptional production rules

Section 1

Exceptional production rules related to climatic, geographical or structural constraints in accordance with Article 22(2)(a) of Regulation (EC) No 834/2007

Article 39

Tethering of animals

Where the conditions laid down in Article 22(2)(a) of Regulation (EC) No 834/2007 apply, competent authorities may authorise cattle in small holdings to be tethered if it is not possible to keep the cattle in groups appropriate to their behaviour requirements, provided they have access to pastures during the grazing period according to Article 14(2), and at least twice a week access to open air areas when grazing is not possible.

Article 40

Parallel production

1 Where the conditions laid down in Article 22(2)(a) of Regulation (EC) No 834/2007 apply, a producer may run organic and non-organic production units in the same area:

- a in the case of the production of perennial crops, which require a cultivation period of at least three years, where varieties cannot be easily differentiated, provided the following conditions are met:
 - (i) the production in question forms part of a conversion plan in respect of which the producer gives a firm undertaking and which provides for the beginning of the conversion of the last part of the area concerned to organic production in the shortest possible period which may not in any event exceed a maximum of five years;
 - (ii) appropriate measures have been taken to ensure the permanent separation of the products obtained from each unit concerned;

- (iii) the control authority or control body is notified of the harvest of each of the products concerned at least 48 hours in advance;
 - (iv) upon completion of the harvest, the producer informs the control authority or control body of the exact quantities harvested on the units concerned and of the measures applied to separate the products;
 - (v) the conversion plan and the control measures referred to in Chapter 1 and 2 of Title IV have been approved by the competent authority; this approval shall be confirmed each year after the start of the conversion plan;
- b in the case of areas intended for agricultural research or formal education agreed by the Member States' competent authorities and provided the conditions set out in point (a)(ii)(iii)(iv) and the relevant part of point (v) are met;
 - c in the case of production of seed, vegetative propagating material and transplants and provided the conditions set out in point (a)(ii)(iii)(iv) and the relevant part of point (v) are met;
 - d in the case of grassland exclusively used for grazing.
- 2 The competent authority may authorise holdings carrying out agricultural research or formal education to rear organic and non-organic livestock of the same species, where the following conditions are met:
- a appropriate measures, notified in advance to the control authority or control body, have been taken in order to guarantee the permanent separation between livestock, livestock products, manure and feedingstuffs of each of the units;
 - b the producer informs the control authority or control body in advance of any delivery or selling of the livestock or livestock products;
 - c the operator informs the control authority or control body of the exact quantities produced in the units together with all characteristics permitting the identification of the products and confirms that the measures taken to separate the products have been applied.

Article 41

Management of beekeeping units for the purpose of pollination

Where the conditions laid down in Article 22(2)(a) of Regulation (EC) No 834/2007 apply, for the purpose of pollination actions an operator may run organic and non-organic beekeeping units on the same holding, provided that all the requirements of the organic production rules are fulfilled, with the exception of the provisions for the siting of the apiaries. In that case the product cannot be sold as organic.

The operator shall keep documentary evidence of the use of this provision.

Section 2

Exceptional production rules related to non-availability of organic farm inputs in accordance with Article 22(2)(b) of Regulation (EC) No 834/2007

Article 42

Use of non-organic animals

Where the conditions laid down in Article 22(2)(b) of Regulation (EC) No 834/2007 apply, and with prior authorisation of the competent authority,

- (a) when a flock is constituted for the first time, renewed or reconstituted and organically reared poultry are not available in sufficient numbers, 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;
- (b) non-organically reared pullets for egg production of not more than 18 weeks may be brought into an organic livestock unit until 31 December 2011, when organically reared pullets are not available and provided that the relevant provisions laid down in Section 3 and 4 of Chapter 2 are complied with.

Article 43

Use of non-organic feed of agricultural origin

Where the conditions laid down in Article 22(2)(b) of Regulation (EC) No 834/2007 apply, the use of a limited proportion of non-organic feed of plant and animal origin is allowed where farmers are unable to obtain feed exclusively from organic production. The maximum percentage of non-organic feed authorised per period of 12 months for species other than herbivores shall be:

- (a) 10 % during the period from 1 January 2009 to 31 December 2009;
- (b) 5 % during the period from 1 January 2010 to 31 December 2011.

The figures shall be calculated annually as a percentage of the dry matter of feed from agricultural origin. The maximum percentage authorised of non-organic feed in the daily ration shall be 25 % calculated as a percentage of the dry matter.

The operator shall keep documentary evidence of the need for the use of this provision.

Article 44

Use of non-organic beeswax

In the case of new installations or during the conversion period, non-organic beeswax may be used only

- (a) where beeswax from organic beekeeping is not available on the market;
- (b) where it is proven free of contamination by substances not authorised for organic production; and

- (c) provided that it comes from the cap.

Article 45

Use of seed or vegetative propagating material not obtained by the organic production method

1 Where the conditions laid down in Article 22(2)(b) of Regulation (EC) No 834/2007 apply,

- a seed and vegetative propagating material from a production unit in conversion to organic farming may be used,
- b where point (a) is not applicable, Member States may authorise the use of non-organic seed or vegetative propagating material if not available from organic production. However, for the use of non-organic seed and seed potatoes the following paragraphs (2) to (9) apply.

2 Non-organic seed and seed potatoes may be used, provided that the seed or seed potatoes are not treated with plant protection products, other than those authorised for treatment of seed in accordance with Article 5(1), unless chemical treatment is prescribed in accordance with Council Directive 2000/29/EC⁽¹⁾ for phytosanitary purposes by the competent authority of the Member State for all varieties of a given species in the area where the seed or seed potatoes are to be used.

3 Species for which it is established that organically produced seed or seed potatoes are available in sufficient quantities and for a significant number of varieties in all parts of the Community are set out in Annex X.

The species listed in Annex X may not be subject of authorisations pursuant to paragraph 1(b), unless these are justified by one of the purposes referred to in paragraph 5(d).

4 Member States may delegate the responsibility for granting the authorisation referred to in paragraph 1(b) to another public administration under their supervision or to the control authorities or control bodies referred to in Article 27 of Regulation (EC) No 834/2007.

5 Authorisation to use seed or seed potatoes not obtained by the organic production method may only be granted in the following cases:

- a where no variety of the species which the user wants to obtain is registered in the database referred to in Article 48;
- b where no supplier, meaning an operator who markets seed or seed potatoes to other operators, is able to deliver the seed or seed potatoes before sowing or planting in situations where the user has ordered the seed or seed potatoes in reasonable time;
- c where the variety which the user wants to obtain is not registered in the database referred to in Article 48, and the user is able to demonstrate that none of the registered alternatives of the same species are appropriate and that the authorisation therefore is significant for his production;
- d where it is justified for use in research, test in small-scale field trials or for variety conservation purposes agreed by the competent authority of the Member State.

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

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 register the quantities of seed or seed potatoes authorised.

8 By way of derogation from paragraph 7, the competent authority of the Member State may grant to all users a general authorisation:

- a for a given species when and in so far as the condition laid down in paragraph 5(a) is fulfilled;
- b for a given variety when and in so far as the conditions laid down in paragraph 5(c) are fulfilled.

The authorisations referred to in the first subparagraph shall be clearly indicated in the database referred to in Article 48.

9 Authorisation may only be granted during periods for which the database is updated in accordance with Article 49(3).

Section 3

Exceptional production rules related to specific management problems in organic livestock in accordance with Article 22(2)(d) of Regulation (EC) No 834/2007

Article 46

Specific management problems in organic livestock

The final fattening phase of adult bovines for meat production may take place indoors, provided that this indoors period does not exceed one fifth of their lifetime and in any case for a maximum period of three months.

Section 4

Exceptional production rules related to catastrophic circumstances in accordance with Article 22(2)(f) of Regulation (EC) No 834/2007

Article 47

Catastrophic circumstances

The competent authority may authorise on a temporary basis:

- (a) in the case of high mortality of animals caused by health or catastrophic circumstances, the renewal or reconstitution of the herd or flock with non-organic animals, when organically reared animals are not available;
- (b) in case of high mortality of bees caused by health or catastrophic circumstances, the reconstitution of the apiaries with non-organic bees, when organic apiaries are not available;
- (c) the use of non-organic feedingstuffs for a limited period and in relation to a specific area by individual operators, when forage production is lost or when restrictions are imposed, in particular as a result of exceptional meteorological conditions, the outbreak of infectious diseases, the contamination with toxic substances, or as a consequence of fires;

Status: This is the original version (as it was originally adopted).

- (d) the feeding of bees with organic honey, organic sugar or organic sugar syrup in case of long lasting exceptional weather conditions or catastrophic circumstances, which hamper the nectar or honeydew production.

Upon approval by the competent authority, the individual operators shall keep documentary evidence of the use of the above exceptions. Member States shall inform each other and the Commission on the exceptions they have granted under point (c) of the first subparagraph within 1 month from its approval.

(1) OJ L 169, 10.7.2000, p. 1.