



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

The Director-General

Brussels,  
MKsn/ARESAGRI.dd1.b.4(2015)3458915

Dear ,

Thank you for your letter of 10 June 2015 about the presence of DEET (N,N-Diethyl-3-methylbenzamide or diethyltoluamide) in organic products from Ecuador. You enquire in particular about the regulatory requirements in the EU, the placing on the market of organic products in the EU containing the substance in question and the precautionary measures to avoid such non-authorised residues. I understand from the above-mentioned letter that the investigations are on-going and that the products concerned are cocoa beans.

"N,N-diethyl-meta-toluamide" (known/hereinafter referred to as DEET) has not been authorised in the EU for the use as a plant protection product, neither in organic farming nor in conventional farming. It has been authorised in the EU in 2010, through the inclusion in Annex I of Directive 98/8/EC<sup>1</sup>, as a biocide. Since DEET is not an input from organic production and is not a natural or naturally-derived substances, it cannot be used in organic farming (Article 16 of Regulation (EC) No 834/2007<sup>2</sup>).

Regulation (EC) No 396/2005<sup>3</sup> provides for maximum residue levels of pesticides in or on food and feed of plant and animal origin. It provides in Article 3(2)(c) that "pesticide residues" include residues of "active substances [...] currently or formerly used in plant protection products", even if those residues result from a use other than plant protection, such as use as biocidal product. They however do not apply to substances that are

<sup>1</sup> Commission Directive 2010/51/EU of 11 August 2010 amending Directive 98/8/EC of the European Parliament and of the Council to include N,N-diethyl- meta-toluamide as an active substance in Annex I thereto (Official Journal of the European Union L 211/14 of 12.8.2010). Directive 98/8/EC was repealed by Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (Official Journal of the European Union L 167, 27.6.2012).

<sup>2</sup> Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (Official Journal of the European Union L 189 of 20.07.2007)

<sup>3</sup> Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (Official Journal of the European Union L 70, 16.3.2005).

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"biocides only", i.e. substances being used in biocidal product that are not and were not in the past used in plant protection products. To our knowledge, DEET falls within this category and in consequence and, contrary to what you seem to imply in your letter, neither the default value of 0.01 mg/kg nor a specific maximum residue limit applies to DEET.

Given that Regulation (EC) No 396/2005 is not applicable, no tolerance level exists for DEET for food and feed, whether it is conventional or organic.

In this context, I would like to stress that Article 14 of Regulation (EC) No 178/2002<sup>4</sup> points out that food shall not be placed on the market if it is unsafe and provides the conditions under which food shall be considered as unsafe.

With regard to the precautionary measures as regards organic farming, Article 4 of Regulation (EC) No 834/2007 foresees that organic production shall be based on the appropriate design and management of biological processes based on ecological systems using natural resources which are internal to the system by methods that are based on risk assessment and the use of precautionary and preventive measures, when appropriate.

According to the provisions of Article 63(1)(c) of Regulation (EC) No 889/2008, when the control arrangements are first implemented, the operator shall draw up and subsequently maintain the precautionary measures to be taken in order to reduce the risk of contamination by unauthorised products or substances and the cleaning measures to be taken in storage places and throughout the operator's production chain. The description of these measures together with other requirements provided in Article 63(1) shall be contained in a declaration, signed by the responsible operator and verified by the control authority or control body according to the provisions of Article 63(2) of the same Regulation. Specific control arrangements per type of operator are set out in Articles 70 to 90 of Regulation (EC) No 889/2008.

Article 26 of Regulation (EC) No 889/2008<sup>5</sup> illustrates, in case of production of organic processed food and feed, specific requirements for operators. In particular, paragraph 2 provides that operators establish and update appropriate procedures based on a systematic identification of critical processing steps and paragraph 4 provides for the implementation of procedures including concerning precautionary measures to avoid the risk of contamination.

In relation to the issue you described in your letter and on the understanding that the investigations are on-going, I trust that your control body is verifying whether the measures taken by the operator are effective to reduce the risk of contamination with non-authorised products or substances and identifying the possible deficiencies and non-compliances with the organic control rules. In case you conclude that these measures are not effective, they should be reviewed by the operators in view of the requirements of the relevant EU legislative framework.

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<sup>4</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (Official Journal of the European Union, L 31 of 1.2.2002°)

<sup>5</sup> 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 (Official Journal of the European Union L 250 of 18.09.2008).

Finally, I would like to recall that Article 91 of Regulation (EC) No 889/008 provides the measures to be taken by the operator and the control authority or control body in case of suspicion of infringements and irregularities.

The present is provided on the basis of the facts as set out in your letter of 10 June 2015 and on the understanding that 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,

A handwritten signature in black ink, appearing to be 'J. Plewa', with a stylized flourish at the end.

Jerzy PLEWA

Cc: DG SANTE, Delegations RCOP