



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Deputy Director-General, in charge of Directorates A, B and C

Brussels
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[REDACTED]

Thank you for your questions concerning the control system for organic production – wholesalers dealing with pre-packaged organic food and drink products, your reference:

[REDACTED]

I apologise for the delay in responding to your questions.

I understand that your questions are raised based on the present organic production rules and in relation to business-to-business operations, i.e. operators that are not selling to the final consumer or final user.

The relevant rules are set out in Regulation (EC) No 834/2007, which state that, *in any case, all operators with the exception of wholesalers dealing only with pre-packaged products and operators selling to the final consumer or user as described in Article 28(2), shall be subject to a verification of compliance at least once a year¹.*

The same regulation also requires that ‘*any operator who produces, prepares, stores, or imports from a third country products in the meaning of Article 1(2) of the same regulation or who places such products on the market shall, prior to placing on the market of any products as organic or in conversion to organic:*

(a) notify his activity to the competent authorities of the Member State where the activity is carried out;

(b) submit his undertaking to the control system referred to in Article 27.

...

Member States may exempt from the application of this Article operators who sell products directly to the final consumer or user provided they do not produce, prepare,

¹ Article 27(3) of Council Regulation (EC) No 834/2007

*store other than in connection with the point of sale or import such products from a third country or have not contracted out such activities to a third part*².

It follows from these rules that operators who do not sell directly to the final consumer or user, such as the business-to-business operators referenced in your letter, including wholesalers trading only in pre-packaged products, may not be exempted from their obligations to notify their activity to the competent authority and to submit to the control system.

The legislators opined that in some cases it appeared disproportionate to apply notification and control requirements to certain types of retail operators, in particular to those who sell products directly to the final consumer or user³. Hence the need for exemption and the justification why it is reserved for the retail operators in reference.

As for non-profit organisations, the regulations do not recognise non-profit organisations, per se, as operators selling directly to the final consumer or user. Therefore, exemptions may only be granted to these operators on a case-by-case basis and only in case they meet all relevant requirements for such exemptions.

As for wholesalers trading only in pre-packaged products not eligible for exemptions, the basic rules are set out under Article 27(3) of Council Regulation (EC) No 834/2007. These rules envisage that wholesalers dealing only with pre-packaged products are exempted from the obligation that requires a verification of compliance at least once a year. The nature and frequency of controls shall be determined on the basis of an assessment of the risk of occurrence of irregularities and infringements as regards the compliance with the regulatory requirements.

The present opinion is provided on the basis of the facts as set out in your e-letter dated 14 January 2020 and expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

Yours sincerely,



María de los Ángeles
BENÍTEZ SALAS

c.c.:

[Redacted recipient information]

² Article 28(1) and (2) of Council Regulation (EC) No 834/2007

³ Preamble 32 of Council Regulation (EC) No 834/2007