



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B – Sustainability

Brussels

Dear [REDACTED],

I would like to thank you for your email<sup>1</sup> of 29 July 2022, in which you ask for clarifications with respect to certain provisions concerning the application of exemptions under Articles 34(2) and 35(8) of Regulation (EU) 2018/848<sup>2</sup>.

Please find below my replies to each of your specific questions.

*With regard to the Article 35 (8) of Regulation (EU) 2018/848 we kindly ask Commission to answer for our question, because the issue of exempting operators from the obligation to hold a certificate raises questions of interpretation*

*1) whether such operator must indicate the CB in the notification (in accordance with Art. 34 (1) second paragraph of Regulation (EU) 2018/848 shall indicate the control body in the notification,*

I would like to start by recalling that Article 35(8) provides for the following: “*Member States may exempt from the obligation to be in the possession of a certificate, provided for in paragraph 2, operators that sell unpacked organic products other than feed directly to the final consumer, provided that those operators **do not produce, prepare, store other than in connection with the point of sale, or import such products from a third country, or subcontract such activities to a third party, and provided that:***

*(a) such sales do not exceed 5 000 kg per year;*

*(b) such sales do not represent an annual turnover in relation to unpacked organic products exceeding EUR 20 000; or*

*(c) the potential certification cost of the operator exceeds 2 % of the total turnover on unpacked organic products sold by that operator.*

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<sup>1</sup> ARES (2022)3767887

<sup>2</sup> [Regulation \(EU\) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation \(EC\) No 834/2007 \(OJ L 150, 14.6.2018, p. 1\).](#)

*If a Member State decides to exempt the operators referred to in the first subparagraph, it may set stricter limits than those set in the first subparagraph.*

*Member States shall inform the Commission and the other Member States of any decision to exempt operators pursuant to the first subparagraph and of the limits up to which such operators are exempted.”*

Therefore, when the Member State decides to apply an exemption from the obligation to be in the possession of the “Article 35 certificate”, Article 38(1) of Regulation (EU) 2018/848 concerning **Additional rules on official controls and on action to be taken by the competent authorities** provides for: “1. *Official controls performed in accordance with Article 9 of Regulation (EU) 2017/625 for the verification of compliance with this Regulation shall include, in particular:*

*.../...*

*(e) where operators are exempted from the notification obligation in accordance with Article 34(2) of this Regulation or from the obligation to be in the possession of a certificate in accordance with Article 35(8) of this Regulation, the verification that the requirements for that exemption have been fulfilled and the verification of the products sold by those operators.”*

In accordance with Article 34(4), Member States may designate an authority or a body that is to receive the notifications under Article 34(1). However, this cannot be a control body as, under Article 40(4) (c), the competent authorities shall not delegate to a control body the authority to receive notifications of activities from operators or group of operators under Article 34(1).

Therefore, the designated competent authority/body shall receive the notifications and the competent authority shall delegate official control tasks in line with relevant provisions identifying the appropriate control body to confer the responsibility of control.

Consequently, in accordance with Article 34(1): “*Where the competent authorities have conferred their responsibilities or delegated certain official control tasks or certain tasks related to other official activities to more than one control authority or control body, the operators or groups of operators shall indicate in the notification referred to in the first subparagraph which control authority or control body verifies whether their activity complies with this Regulation and provides the certificate referred to in Article 35(1).”*

Therefore, the answer to your question will depend on how the competent authority has conferred responsibilities for control activities, whether the operator shall be required to provide the control body indication or not in the case of the notification to be submitted to the competent authorities for exemption under Article 35(8).

***2) in accordance with Art. 38 (3) of the above-mentioned regulations operators with the exception of those referred to in Article 34 (2) and Art. 35 (8) above regulations are subject to verification of compliance. In the light of the above, the disputed issue is:***

***— whether operators in accordance with Article 38 (3) of Regulation (EU) 2018/848 must report to the CB, but they are not subject to control and are not certified?***

***— whether this issue should be subject only to state supervision of the market, i.e. such a producer will do notification to the competent authority without indicating the***

***control body (which would be contrary to Article 34 (1) second paragraph of Regulation (EU) 2018/848) and the competent authorities shall assess the official controls carried out in accordance with the risk analysis?***

I also recall the provisions of Article 34(2) as I understand your doubt concerns both cases of exemption. Article 34(2) of Regulation (EU) No 2018/848<sup>3</sup> provides for: “Operators that sell prepacked organic products directly to the final consumer or user shall be exempted from the notification obligation referred to in paragraph 1 of this Article and from the obligation to be in the possession of a certificate referred to in Article 35(2) provided that they do not produce, prepare, store other than in connection with the point of sale, or import such products from a third country, or subcontract such activities to another operator.”

Hence, in this case, they are exempted from both notification and certification when in compliance with the sets conditions, so when they just produce, prepare or store ONLY prepacked products and ONLY in connection with point of sale, otherwise they have to notify and be in possession of a certificate.

As mentioned above, under Article 38(3), the operators exempted under Article 34(2) and 35(8) are subject to the verification of the respect of the set requirements for the exemption and of the products sold but not to the full verification of compliance to be performed once a year as provided for by Article 38(3) and control authorities/control bodies have to be designated for the verification of the respect of set requirements.

This opinion is provided on the basis of the facts set out in your letter of 29 July 2022 and expresses the opinion 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 Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.

Yours faithfully,



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<sup>3</sup> Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007(OJ L 150, 14.6.2018, p.1).