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RELEVANT LEGAL PROVISIONS ON THE EXEMPTION OF NOTIFICATION OF OPERATORS THAT SELL PREPACKED ORGANIC PRODUCTS DIRECTLY TO THE FINAL CONSUMER

Article 34(1) of Regulation (EU) 2018/848¹ provides that “**Prior to placing any products on the market** as ‘organic’ or as ‘in- conversion’ or prior to the conversion period, **operators** and groups of operators referred to in Article 36 which produce, prepare, distribute or store organic or in-conversion products, which import such products from a third country or export such products to a third country, or which place such products on the market, **shall notify their activity** to the competent authorities of the Member State in which it is carried out and in which their undertaking is subject to the control system.”

Recital (84) of Regulation (EU) 2018/848 does the distinction between prepacked and unpacked organic product: “Small **retail shops not selling organic products other than prepacked organic products** present a relatively low risk of non-compliance with organic production rules, and they should not face disproportionate burdens for selling organic products. They should therefore not be subject to the notification and certification obligations, but should remain subject to official controls performed for the verification of compliance with the rules governing organic production and the labelling of organic products. Equally, small **retail shops selling unpacked organic products** should be subject to official controls, but in order to facilitate the marketing of organic products, Member States should have the possibility of exempting such shops from the obligation to certify their activities.”

Based on this distinction, two types of exemptions to Article 34(1) are provided in Regulation (EU) 2018/848:

1. Article 34(2) provides an exemption for the retailer selling prepacked organic products: “**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.”
2. Article 35(8) provides an exemption for small retailer selling unpacked products: “**Member States may exempt from the obligation to be in the possession of a**

¹ [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](#)

***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.

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.”

Article 3(68) of Regulation (EU) 2018/848 provides a definition for “prepacked food” with a reference to the definition in point (e) of Article 2(2) of Regulation (EU) No 1169/2011²: “**prepacked food** means any single item for presentation as such to the final consumer and to mass caterers, **consisting of a food and the packaging into which it was put before being offered for sale**, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging; ‘prepacked food’ does not cover foods packed on the sales premises at the consumer’s request or prepacked for direct sale;”

Regulation (EU) No 543/2011³ mentions explicitly in some specific marketing standards for some fruit and vegetables the possibility to provide information to the consumer via sticker affixed on the products or via lasered single fruit. The following provisions are included in marketing standards for apples, citrus, kiwifruit, peaches, nectarines, pears, sweet peppers and tomatoes laid down in Part B of Annex I to Regulation (EU) No 543/2011: “**Stickers individually affixed on the produce** shall be such that, when removed, they neither leave visible traces of glue, nor lead to skin defects. **Information lasered on single fruit** should not lead to flesh or skin defects.”

Those fruit and vegetables that are lasered or with a stickers may be presented unpacked or prepacked. The two exemptions to Article 34(1) of Regulation (EU) 2018/848 are independent from the way some information is provided. **Unpacked single fruit with lasered information or with an individually affixed sticker cannot be considered as prepacked food.**

There is **no empowerment given to the Commission to add or to modify exemptions** to the requirement provided in Article 34(1) of Regulation (EU) 2018/848.

² [Regulation \(EU\) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations \(EC\) No 1924/2006 and \(EC\) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation \(EC\) No 608/2004; OJ L 304, 22.11.2011, p. 18](#)

³ [Commission Implementing Regulation \(EU\) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation \(EC\) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors; OJ L 157, 15.6.2011, p. 1](#)