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DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Directorate B – Sustainability
The Director

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[REDACTED]

I would like to thank you for your email¹ of 18 May 2022, in which you ask for clarifications with respect to several provisions of Regulation (EU) 2018/848².

As mentioned in my reply of 29 June 2022³, one of your questions required the collection of information on the implementation of the provisions concerned from Member States.

For the sake of clarity, I will copy your question below:

3. Can an operator be entitled to obtain two certificates from both the control body and the competent authorities for the same activities or different activities carried out in the same Member State regarding the same category of products, at same stages of distribution?

Certificate Art.35, (4) says “An operator or a group of operators shall not be entitled to obtain a certificate from more than one control body in relation to activities carried out in the same Member State regarding the same category of products, including cases in which that operator or group of operators operates at different stages of production, preparation and distribution”. This article introduces a requirement only for certificates issued by the CB’s At the same time, Article 35 (1) competent authorities, or, where appropriate, control authorities or control bodies, shall provide a certificate to any operator or group of operators. The question is related to a real situation created by a new requirement introduced by the Regulation 2018/848 for operators who sell unpacked products directly to the final consumer. Art.34 (2) states that- “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

¹ ARES (2022)3767887

² [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 \(OJ L 150, 14.6.2018, p. 1\).](#)

³ ARES(2022)4764466

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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.”. This requires operators who sell unpacked products to the final consumer to be in the possession of a certificate.

In order to address your first question, I would like to start by confirming that, in accordance with Article 35(4) of Regulation (EU) 2018/848 : *“An operator or a group of operators shall not be entitled to obtain a certificate from more than one control body in relation to activities carried out in the same Member State regarding the same category of products, including cases in which that operator or group of operators operates at different stages of production, preparation and distribution.”*

I confirm that, in the case of sales of unpacked products to the final consumer, the operators shall be certified and be in compliance with above provisions, except if the exemption from certification is applied by the Member State under the conditions of Article 35(8).

I understand that your other concern refers, in particular, to how the possible simultaneous implementation of the provisions related to exemptions under Article 34 (2) and Article 35(8) could be applied.

However, with respect to the exemption under Article 34(2), I would like to recall that recital 84 of Regulation (EU) No 2018/848⁴ reads as follows: *“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.”*

On this matter, Article 34(2) of Regulation (EU) No 2018/848⁵ 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.”*

⁴ 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).

[EUR-Lex - 02018R0848-20220101 - EN - EUR-Lex \(europa.eu\)](#)

⁵ 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).

[EUR-Lex - 02018R0848-20220101 - EN - EUR-Lex \(europa.eu\)](#)

Hence, they are exempted from both notification and certification when in compliance with the set conditions, so when they do not produce or prepare prepacked organic products and store ONLY prepacked organic products and ONLY in connection with the point of sale and do not import such prepacked organic products from a third country, or subcontract such activities to another operator. Otherwise they have to notify and be in possession of a certificate. In general, in case of the mixed sale of prepacked and unpacked products, the operator shall not be exempted and shall have to notify its activity in accordance with Article 34(1) of Regulation (EU) 2018/848 and be subject to the certification system like any operator, with the limitation to be certified by only one control body for the same category of products as mentioned above under Article 35(4).

However, a further situation may arise in case a Member State decides to apply the exemption under Article 35(8), which reads as follows: “*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.

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.”

When the Member State decides to apply an exemption from the obligation to be in the possession of the “Article 35 certificate”, in case of an operator being in compliance simultaneously with both conditions of Article 34(2) and 35(8) of Regulation (EU) 2018/848, hence selling pre-packed products and a limited entity of unpacked products in compliance with the abovementioned conditions (and, when applicable, in compliance with stricter limits set by the Member State in accordance with Article 35(8)), the operator will have to notify under Article 34(1) such activity, but will not be subject to certification.

Finally, with respect to the control of operators exempted under Article 34(2) or/and under Article 35(8), it is clearly stated, under Article 38(1) of Regulation (EU) 2018/848 concerning **additional rules on official controls and on action to be taken by the competent authorities**, that: “*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.”

Therefore, in case of sole exemption under Article 34(2) of Regulation 2018/848 (exemption from the notification obligation of their activity in the organic sector), operators are not required to notify their activity to the competent authority. However, the competent authority has the responsibility to verify that the requirements for exemption are fulfilled. Consequently, the competent authority will have to include in the control programme relating to organic production the verification and in tis case confer the responsibility for such verification to another authority or body.

In case of exemption under Article 35(8), the operators will have to notify their activity under Article 34(1) and it has to be recalled that, in accordance with Article 40(4), point (b), of Regulation 2018/848, the competent authorities shall not delegate to a control body, the authority to receive notification of activities by operators or group of operators under Article 34(1).

However, the Member State may designate in accordance with Article 34(4) an authority or a body, but not a control body, which is to receive the notification under Article 34(1).

This opinion is provided on the basis of the facts set out in your letter of 18 May 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,

