

Legal Opinion
on
the permissible maximum surface area
for fattening poultry
according to Regulation (EU) 2018/848

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I. Object of the assessment

1. In its FAQ on the organic rules¹ (“the FAQ”), the services of the European Commission stated that a farm may not have several organic production units on one site:

“16) Is it possible for a farm to have several organic production units with fattening poultry on one site?”

No. Several fattening poultry houses on one site – even if all necessary facilities including electricity and water supply are separated – cannot be considered as separated organic production units. This is because an organic production unit, as defined in Article 3(9) of Regulation (EU) 2018/848, includes not only the poultry houses themselves but also the primary production premises, land parcels, open air areas, premises for the storage of crops, of crops products, of animal products, of raw materials and of any relevant inputs. Furthermore, an organic production unit with several poultry houses shall comply with the maximum total usable surface area of 1 600 m² for fattening poultry set out in point 1.9.4.4 (m) of Part II of Annex II to Regulation (EU) 2018/848.”

2. Against this background, we were requested to assess whether it is allowed under Regulation (EU) 2018/848² to permanently have more than one organic production unit for fattening poultry in one holding.
3. We will analyse this question based on the relevant provisions of Regulation (EU) 2018/848, their historical background and context as well as the objectives pursued by the provisions.

¹ Commission, Directorate-General for Agriculture and Rural Development, Directorate B. Sustainability, B.4. Organics, Frequently asked questions on organic rules, Last update: 6 May 2025.

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 2018 L 150/1.

II. Executive Summary

4. According to Regulation (EU) 2018/848, the total usable surface area for fattening poultry in poultry houses of any production unit must not exceed 1,600 m².
5. However, none of the provisions of the Regulation explicitly states that a holding can or cannot have more than one production unit. As a consequence, the provisions need to be interpreted with a view to the wording, the context and (historical) background of its adoption and the objectives pursued.
6. The **wording of Regulation (EU) 2018/848** does not allow to conclude that a holding can consist of only one production unit. A comprehensive reading (i.e. beyond Article 3 (9) of Regulation (EU) 2018/848 and of different language versions) rather allows for the conclusion that a holding is permitted to have several production units and even more than one organic production unit.
7. The provision on the maximum surface area appears to have its **origin in the marketing standards**. However, the legislator has chosen a partly different wording in Regulation (EU) 2018/848: While Regulation (EU) 2018/848 refers to “*any production unit*”, in the marketing standards for poultry the maximum surface area is defined for “*any single production site*”. This allows to assume that the different wording is chosen intentionally and that, in the present context, **the surface area should not be applied per production site but to “any single production unit”**. This implies that the total surface area of one holding for fattening poultry can exceed 1,600 m² if there are several production units on one site.
8. As regards the **objectives pursued by Regulation (EU) 2018/848**, the requirement regarding the maximum surface area should not be interpreted to the effect that only one organic production unit is permissible per holding. Such an interpretation would not contribute to environmental protection, animal welfare and consumer confidence safeguards. Rather, it would disincentivise the application of organic farming methods for fattening poultry. By contrast, an interpretation permitting several organic production units would ensure the economic viability of fattening poultry on organic holdings that cannot generate a sufficient income based on only one organic production unit. The Commission could follow this interpretation to facilitate organic production.

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III. Assessment

1. Maximum surface area for fattening poultry per production unit

9. According to Article 14 (1) of Regulation (EU) 2018/848 livestock operators have to comply, in particular, with the detailed production rules set out in Part II of Annex II. As regards poultry, lit. m of point 1.9.4.4 of Part II of Annex II provides for a maximum size per production unit:

“With regard to housing and husbandry practices, the following rules shall apply:

[...]

m) the total usable surface area for fattening poultry in poultry houses of any production unit shall not exceed 1 600 m²”

10. Based on the wording, the **surface area of each production unit** must not go beyond 1,600 m². Therefore, it needs to be assessed whether there can be only one or several production units in one holding. However, none of the provisions of Regulation (EU) 2018/848 explicitly states whether a holding can or cannot have more than one production unit. As a consequence, the **provisions need to be interpreted** in one way or another.
11. In line with the case law of the Union Courts³, when interpreting a legal provision, it is necessary to consider not only its wording but also the context in which it occurs, the (historical) background of its adoption and the objectives pursued by the rules of which it is part. In the present case, a more detailed interpretation, based on context, the historical background and the purpose is required as point 1.9.4.4 of Part II of Annex II of Regulation (EU) 2018/848 is unclear regarding the question whether a holding can have several production units with a maximum surface for fattening poultry of 1,600 m².
12. Therefore, we will analyse the wording of Regulation (EU) 2018/848 as to whether a holding can have several production units (paras. 13 ff.). Subsequently, we will assess

³ Cf. only Judgement of 12 February 2009, C-466/07, ECLI:EU:C:2009:85, para. 37 – Klarenberg; Judgement of 11 December 2015, case T-124/14, ECLI:EU:T:2015:955, para. 24 – Finland v Commission.

whether the historical background (paras. 31 ff.) or the purpose of the provisions (paras. 35 ff.) indicate if the number of production units per holding is limited or not.

2. Wording of the provisions on production units

a) Assessment based on Article 3 (9) of Regulation (EU) 2018/848

13. The term “production unit” is used frequently in Regulation (EU) 2018/848. In particular, it is used regarding “organic production units”, “in-conversion production units” and “non-organic production units”.⁴
14. The FAQ of the Commission’s services rely (merely) on the definition of “production unit” as defined in Article 3 (9) of Regulation (EU) 2018/848:

“‘production unit’ means all assets of a holding, such as primary production premises, land parcels, pasturages, open air areas, livestock buildings or parts thereof, hives, fish ponds, containment systems and sites for algae or aquaculture animals, rearing units, shore or seabed concessions, and premises for the storage of crops, of crop products, of algae products, of animal products, of raw materials and of any other relevant inputs managed as described in point (10), point (11) or point (12)”

15. The Commission’s services seem to consider that there can be only one production unit per holding as, based on the wording of the definition, **a production unit comprises “all assets of a holding”**. Accordingly, it might be argued that, if all assets of a holding are included, a holding cannot have any additional production units. The reply in the FAQ appears to be based in principle on this understanding of Article 3 (9) of Regulation (EU) 2018/848.

b) Assessment based on comprehensive reading of Regulation (EU) 2018/848

16. While a maximum of *one* production unit per holding seems to be plausible if the assessment is based exclusively on Article 3 (9) of Regulation (EU) 2018/848, other provisions

⁴ See definition of the terms in Article 3 (10) to (12) of Regulation (EU) 2018/848.

of the same Regulation imply that a holding can have more than one unit. Therefore, we are of the opinion that these **provisions are clearly based on the permissibility of several production units per holding**:

17. *First*, the definition of the term “holding” in Article 3 (8) of Regulation (EU) 2018/848 shows that a holding may have several production units:

“‘holding’ means all the production units operated under single management for the purpose of producing live or unprocessed agricultural products, including products originating from aquaculture and beekeeping, referred to in point (a) of Article 2(1) or products listed in Annex I other than essential oils and yeast;”

18. *Second*, lit. m of point 1.9.4.4 of Part II of Annex II of Regulation (EU) 2018/848 clearly sets a maximum surface area per production unit (“*of any production unit*”), not per holding.

“m) the total usable surface area for fattening poultry in poultry houses of any production unit shall not exceed 1 600 m²”

19. Setting a **maximum surface area per unit** was not necessary if the holding can have only one unit. The provision rather indicates that “any production unit” may have a surface area of up to 1,600 m². We believe that the wording is not limited to covering cases where a holding also has non-organic units (next to an organic unit) as Part II of Annex II of Regulation (EU) 2018/848, including lit. m of point 1.9.4.4., only applies to organic production:

“In addition to the production rules laid down in Articles 9, 10, 11 and 14, the rules laid down in this Part shall apply to organic live-stock production.”

20. Therefore, the rules in Part II of Annex II merely concern organic production. As a result, the maximum surface area, as provided for by lit. m of point 1.9.4.4 of Part II, of Annex II, applies to “any” organic (or in-conversion production) unit of a holding, which implies that a holding can have several organic units.

21. *Third, Article 9 (7) of Regulation (EU) 2018/848 demonstrates that a holding may have several production units, as it refers to production units (for organic, in-conversion and non-organic production), i.e. in plural form:*

“Notwithstanding paragraph 2, a holding may be split into clearly and effectively separated production units for organic, in-conversion and non-organic production, provided that for the non-organic production units:

(a) as regards livestock, different species are involved;

(b) as regards plants, different varieties that can be easily differentiated are involved.

As regards algae and aquaculture animals, the same species may be involved, provided that there is a clear and effective separation between the production sites or units.”

22. Moreover, Article 9 (7) of Regulation (EU) 2018/848 refers to a holding having “*non-organic production units*”. The use of the plural form indicates again that a holding may even have **several production units of the same type**.
23. The wording of Article 9 (7) of Regulation (EU) 2018/848 also shows that a holding may have **an “organic production unit” as well as an “in-conversion production unit” and a “non-organic production unit” at the same time**. In the case of non-organic production units, it is required that the livestock and plants are sufficiently distinguishable from those in the organic and in-conversion production units. As this refers only to non-organic production units, by implication, in case of several organic and/or in-conversion production units, the livestock and plants can be the same or alike.
24. *Fourth, and like the previous provisions, Article 9 (10) of Regulation (EU) 2018/848 refers to “production units” (in plural form):*

“Where, in the cases referred to in paragraphs 7, 8 and 9, not all production units of a holding are managed under organic production rules, the operators shall:

(a) keep the products used for the organic and in-conversion production units separate from those used for the non-organic production units;

(b) keep the products produced by the organic, in-conversion and non-organic production units separate from each other;

(c) keep adequate records to show the effective separation of the production units and of the products.”

25. *Fifth, Article 9 (11) of Regulation (EU) 2018/848 also refers to several “production units” (in plural form):*

“The Commission is empowered to adopt delegated acts in accordance with Article 54 amending paragraph 7 of this Article by adding further rules on the splitting of a holding into organic, in-conversion and non-organic production units, in particular in relation to products listed in Annex I, or by amending those added rules.”

26. *Sixth, Article 38 (1) lit. b of Regulation (EU) 2018/848 refers to “production units” (in plural form):*

“where the holding includes non-organic or in-conversion production units, the verification of the records and of the measures or procedures or arrangements in place to ensure the clear and effective separation between organic, in-conversion and non-organic production units as well as between the respective products produced by those units, and of the substances and products used for organic, in-conversion and non-organic production units; such verification shall include checks on parcels for which a previous period was recognised retroactively as part of the conversion period, and checks on the non-organic production units;”

27. Seventh, point 1.1 of Part II of Annex II of Regulation (EU) 2018/848 only makes sense if one farmer can have several organic production units or several in-conversion production units:

“Except in the case of beekeeping, landless livestock production, where the farmer intending to produce organic livestock does not manage agricultural land and has not established a written cooperation agreement with a farmer as regards the use of organic production units or in-conversion production units for that livestock, shall be prohibited.”

28. Likewise, recitals 19 and 22 of Regulation (EU) 2018/848 show that a holding can consist of several units:

“(19) The risk of non-compliance with organic production rules is considered higher in agricultural holdings which include units that are not managed under those rules. Therefore, after an appropriate conversion period, all agricultural holdings in the Union which aim to become organic should be entirely managed in compliance with the requirements applicable to organic production. However, holdings including both units managed under organic production rules and units managed under non-organic production rules should be allowed under certain conditions, including in particular the condition of clear and effective separation between organic, in-conversion and non-organic production units and between the products produced by those units.”

“(22) In order to ensure quality, traceability, compliance with this Regulation as regards organic production and adaptation to technical developments, the power to adopt certain acts should be delegated to the Commission in respect of further rules on the splitting of holdings into organic, in-conversion and non-organic production units.”

29. Based on the English version of Regulation (EU) 2018/848, it could be considered that the plural form is used in some of the provisions only to reflect that a holding can consist

of one organic, one in-conversion and one non-organic production unit. However, several provisions refer to “*non-organic production units*” (plural form), indicating that **a holding can have several non-organic production units**. In addition, **other language versions** also use the plural form regarding organic production units and in-conversion production units in:

– Dutch:

“biologische productie-eenheden, productie-eenheden in omschakeling en niet-biologische productie-eenheden”⁵

– French:

“les unités de production biologique, les unités de production en conversion et les unités de production non biologique”⁶

– German:

“die ökologischen/biologischen Produktionseinheiten und die Produktionseinheiten in Umstellung”⁷

30. As a **result**, the wording of Regulation (EU) 2018/848 does not allow to conclude that a holding can consist of only one production unit. A comprehensive reading (i.e. not limited to Article 3 (9) of Regulation (EU) 2018/848 and consulting different language versions) rather allows for the conclusion that a holding may have several production units and even more than one organic production unit.

⁵ See Article 9 (10) and (11)), Article 38 (1) lit. b, point 1.1 of of Part II of Annex II and recitals 19 and 22 of Regulation (EU) 2018/848

⁶ See Article 38 (1) lit. b, point 1.1 of of Part II of Annex II and recitals 19 and 22 of Regulation (EU) 2018/848.

⁷ See Article 9 (7), (10) and (11), Article 38 (1) lit. b, point 1.1 of of Part II of Annex II and recitals 19 and 22 of Regulation (EU) 2018/848.

3. Historical background and context of provision on maximum surface area

31. The maximum surface area for poultry fattening was not newly introduced by Regulation (EU) 2018/848. Article 12 (3) lit. f of Regulation (EU) 889/2008⁸ already included a similar provision:

“Buildings for all poultry shall meet the following conditions:

[...]

(f) the total usable area of poultry houses for meat production on any single unit, shall not exceed 1 600 m²;”

32. The maximum surface area of poultry houses in Regulation (EU) 2018/848 and Regulation (EU) 889/2008 appears to be based on or **inspired by a similar provision in the marketing standards**. According to the marketing standards for poultry in Commission Regulation (EEC) No 1538/91⁹ and Commission Regulation (EC) No 543/2008¹⁰ the term “traditional free range” may only be used when:

“the total usable area of poultryhouses at any single production site does not exceed 1 600 m²”

33. The wording is largely identical to lit. m of point 1.9.4.4 of Part II of Annex II of Regulation (EU) 2018/848, which reads:

“the total usable surface area for fattening poultry in poultry houses of any production unit shall not exceed 1 600 m²”

⁸ 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, OJ 2008 L 250/1.

⁹ Commission Regulation (EEC) No 1538/91 of 5 June 1991 introducing detailed rules for implementing Regulation (EEC) No 1906/90 on certain marketing standards for poultry, OJ 1991 L 143/11.

¹⁰ Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat, OJ 2008 L 157/46.

34. A remarkable difference is that the maximum surface area is defined in the marketing standards for poultry for “*any single production site*” while Regulation (EU) 2018/848 refers to “*any production unit*” and Regulation (EU) 889/2008 to “*any single unit*”. It is not explained in the recitals of Regulation (EU) 2018/848 or Regulation (EU) 889/2008 why the **term “unit” is used instead of “site”**. However, the difference in the wording suggests that the maximum surface area, as referred to in Regulation (EU) 2018/848 does not refer to the whole site (i.e. the plot used) but the production unit. This understanding implies that under Regulation (EU) 2018/848 there may be several units of up to 1,600 m² on the same site. While we were not able to trace an explicit explanation regarding the choice of the wording, the difference to the requirement regarding the maximum surface area in the marketing standards indicates that, in the present context, **the surface area should not be applied per production site but to “any single production unit”**. This implies that the total surface area of one holding for fattening poultry can exceed 1,600 m² if there are several production units on one site.

4. Purpose of provision on maximum surface area

35. In addition to the historical interpretation, the provision on the maximum surface area per production unit pursuant to lit. m of point 1.9.4.4 of Part II of Annex II of Regulation (EU) 2018/848 can be interpreted with a view to the **objectives pursued by the rules of which it is part**. According to Article 4 of Regulation (EU) 2018/848, the organic production shall pursue the following general objectives:

“(a) contributing to protection of the environment and the climate;

(b) maintaining the long-term fertility of soils;

(c) contributing to a high level of biodiversity;

(d) substantially contributing to a non-toxic environment;

(e) contributing to high animal welfare standards and, in particular, to meeting the species-specific behavioural needs of animals;

(f) encouraging short distribution channels and local production in the various areas of the Union;

(g) encouraging the preservation of rare and native breeds in danger of extinction;

(h) contributing to the development of the supply of plant genetic material adapted to the specific needs and objectives of organic agriculture;

(i) contributing to a high level of biodiversity, in particular by using diverse plant genetic material, such as organic heterogeneous material and organic varieties suitable for organic production;

(j) fostering the development of organic plant breeding activities in order to contribute to favourable economic perspectives of the organic sector.”

36. Out of these objectives, the **protection of the environment** (see below, paras. 37 ff.) and the **contribution to animal welfare** (see below, paras. 40 f.) could be relevant with a view to the requirement regarding a maximum surface area for fattening poultry. A further potentially relevant objective, which needs to be considered when interpreting the requirement, is the **safeguarding of consumer confidence** in products labelled as organic (see below, paras. 43 ff.).¹¹ These objectives are also reflected in the policy targets of the Union (see below, paras. 45 ff.).

a) Protection of the environment

37. A maximum surface area could be considered relevant for the protection of the environment (e.g. regarding soil pollution, water consumption or odour emissions). However, we do not have any indications that the maximum surface area was set with this purpose. The protection of the environment is rather ensured by setting a minimum space per animal and thereby limiting the density.
38. In addition, it does not make a difference regarding the impact on the environment if a holding has several production units or if there are several holdings with each one

¹¹ Cf. Opinion of Advocate General Campos Sánchez-Bordona, C-228/23, ECLI:EU:C:2024:364, para. 47 – AFAIA.

production unit in the same area. Therefore, setting a maximum surface area per holding **would not be a suitable instrument to limit the impact of fattening poultry on the environment.**

39. Moreover, as we will set out below (para. 46), farmers may need to stop organic production (or reduce substantially the fattening of poultry) if the number of organic production units per holding is limited to one. As a result, to meet the demand for poultry, the number of organic holdings will decrease while the number of non-organic holdings increases, which is not beneficial for the protection of the environment.

b) Animal welfare

40. It could be argued that a maximum surface area is required for reasons of animal welfare. However, it is our understanding that the maximum surface area was not set for this reason, as animal welfare and, in particular, meeting the species-specific behavioural needs is ensured by other husbandry requirements. To this end, Regulation (EU) 2018/848 contains **comprehensive provisions ensuring animal welfare** for poultry, in particular:

- Poultry needs to have **access to an open air area** for at least one third of their life.¹² The open air areas for poultry shall be covered mainly with vegetation.¹³
- The **minimum surface for indoor and outdoor areas**, and the technical details relating to housing, laid down in the implementing acts need to be respected.¹⁴
 - Article 15 of Commission Implementing Regulation (EU) 2020/464¹⁵ sets out the characteristics of and technical **requirements for poultry houses**. For example, poultry houses need to be subdivided in order to house multiple flocks, defining maximum flock sizes.
 - The stocking density and the minimum surface for indoor and outdoor areas are set out in Part IV of Annex I of Commission Implementing Regulation

¹² Lit. d) of point 1.9.4 of Part II of Annex II of Regulation (EU) 2018/848.

¹³ Lit. h) of point 1.9.4 of Part II of Annex II of Regulation (EU) 2018/848.

¹⁴ Point 1.6.4 of Part II of Annex II of Regulation (EU) 2018/848.

¹⁵ Commission Implementing Regulation (EU) 2020/464 of 26 March 2020 laying down certain rules for the application of Regulation (EU) 2018/848 of the European Parliament and of the Council as regards the documents needed for the retroactive recognition of periods for the purpose of conversion, the production of organic products and information to be provided by Member States, OJ 2020 L 98/2.

(EU) 2020/464, requiring, *inter alia*, **a maximum of 21 kg live-weight/m² for indoor area and a minimum outdoor area of 4, 4.5, 10 or 15 m² per bird**, depending on the breed.

41. In addition, it does not have an impact on animal welfare if a holding has several production units as the poultry houses and flocks would be fully separated and the **minimum surface (indoor and outdoor) needs to be respected for any additional production unit**. Having several production units would require that the holding has a sufficient surface area to install the indoor and appendant outdoor areas. Due to the condition to maintain directly accessible outdoor areas (with a minimum surface area depending on the number of birds), there needs to be a certain area around each poultry house.
42. Finally, it is clear that the total usable surface area for fattening poultry in poultry houses of any production unit is not set for reasons of animal welfare as it **applies only to poultry for fattening and not for poultry for laying**. If a maximum surface area was required for meeting the species-specific behavioural needs, this would apply to all animals of the same species (*Gallus gallus*).

c) Consumer protection

43. Furthermore, it is not necessary to interpret Regulation (EU) 2018/848 in a way that limits the number of production units in order to safeguard consumer confidence in products labelled as organic. **Consumer protection regarding animal husbandry are reflected by several provisions**. As stated above (para. 40), there exists a number of requirements for husbandry in Regulation (EU) 2018/848 and Commission Implementing Regulation (EU) 2020/464. Also, the marketing standards (see above, para. 32) set closely defined criteria concerning husbandry conditions and quantity thresholds (such as length of fattening period and content of certain foodstuff ingredients) in the interest of consumer protection.¹⁶ By defining criteria for terms such as “traditional free range”, consumers can have the same expectations regarding products that are labelled using those terms. When these criteria are met, consumer confidence as regards products labelled as organic is safeguarded.

¹⁶ Recital 11 of Commission Regulation (EC) No 543/2008.

44. In addition, no total usable surface area for fattening poultry in poultry houses of any production unit is set for other animal species (cattle, pig, etc.) and not even for laying hens. Therefore, it **needs to be duly reasoned** if the Commission assumes that, in addition to the criteria mentioned above (para. 43), consumer confidence regarding organic products requires that a holding has merely one production unit for fattening of poultry.

d) Relevance of interpretation for objectives of organic farming

45. The objectives of Regulation (EU) 2018/848 to protect the environment and consumers and to ensure animal welfare are served when the **overall organic production is increased**. For this purpose, the Commission has set the objective of at least 25 % of the EU's agricultural land under organic farming by 2030.¹⁷ Therefore, the requirement regarding the maximum surface area for fattening poultry per production unit should be interpreted in a way that increases organic farming. This requires larger structures. If holdings were only allowed to have one organic production unit, the 25 % threshold will not be met as regards the fattening of poultry.
46. If only one production unit per organic holding is allowed, **farmers are disincentivised to apply organic farming methods**. According to the information provided to us, a farm having only one production unit with a poultry house of up to 1,600 m² is not economically viable, at least not in Germany. Only holdings with several poultry houses of up to 1,600 m² create synergies and can generate a sufficient income for a family. Therefore, in many Member States (e.g. Austria, Denmark, France, Germany, Italy, the Netherlands, Poland, Spain and Sweden it is common practice to have several organic production units per farm.
47. In addition, **purely organic farms**, which have only one organic production unit, **would have a disadvantage** compared to farms that have also in-conversion or non-organic units. Allowing only one organic production unit would, therefore, encourage to have non-organic units next to the organic unit. As a consequence, it would not be possible to switch fully to organic farming.

¹⁷ Cf. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system, 20. May 2020, COM(2020) 381 final, page 8.

48. A **conversion of non-organic units to organic units** would also be disincentivised if the (former) in-conversion unit could not be kept in addition to an existing organic unit, once the conversion period is over. If the in-conversion unit needs to be closed once the conversion is finished, it does not make sense to start the conversion at all. Therefore, a restrictive interpretation, which limits the total usable surface area for fattening poultry in poultry houses of a holding, would discourage farmers to start a conversion to organic farming.

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