

**EMERGING CALL FOR THE DEFENCE OF SMALL ORGANIZED PRODUCERS IN THE
FACE OF THE IMPLEMENTATION OF ORGANIC REGULATION OF THE EUROPEAN
COMMUNITY EU REGULATION 2018/848**

16 January 2020

To:

- RELEVANT AUTHORITIES OF THE EUROPEAN COMMISSION
- RELEVANT AUTHORITIES OF EUROPEAN COMMUNITY MEMBER STATES GOVERNMENTS
- EUROPEAN PARLIAMENT
- LEGISLATIVE POWERS OF EUROPEAN COMMUNITY MEMBER STATES

This is a strong appeal to the relevant authorities and legislative powers of the European Commission and its member states for the regulation for the certification of organic products to be formulated in such a way that it does not seriously affect the participation of small organized organic producers from different continents in the European market and, in this way, to avoid a debacle in the survival of hundreds of thousands of people and damage a production, commercialization, and consumption model that has historically made beneficial and significant ecological and economic contributions to all citizens of the world and the environmental balance of the planet.

Firstly, we would like to point out that the participation of these producers in the European market has been one of the few effective means for millions of small producer families in the world to start and continue having a decent income, as well as the possibility of sustainable development of community, local, national, and regional economies. Thus small organic producers are a factor in mitigating the problems of rural impoverishment and migration, environmental devastation and even illicit crops.

Secondly, we call for awareness of the considerable positive impact that small environmentally sound producers, particularly organic ones, have had on environmental conservation and preservation, cleaning and restoration of the soil, groundwater and air quality in production areas, as significant positive contributions to the global ecosystem and world population.

Thirdly, these organised small producers are the main suppliers of a number of key products – including crops none other than coffee, tea and cocoa, which have been an essential part of the European market's consumption patterns for more than a hundred years. A strong European processing and marketing industry of these products now exists, and continues to grow with promise. It is currently an essential part of European culture and economy. Small organic farmers in the global South, in particular, have been the main suppliers of organic versions of this produce in Europe.

in recent years Small organic producers of the global South (Latin America/Caribbean, Africa, Asia) have suffered a very strong blow with the pollution caused by the marketing and indiscriminate application of agrochemicals such as glyphosate, chlorpyrifos, etc. In addition, consumer protection legislation has drastically changed the permitted levels of elements such as Cadmium, in the case of cocoa. These phenomena have sharply increased production, quality control, and organic certification costs for the small producer groups, despite small producers not being at the root of toxic elements being present in produce.

Therefore, we ask the European Commission that the secondary regulations being formulated take into account our situation and concerns, based on the probable effects, particularly with respect to those articles applicable to 'operator group' regulation certification. This certification modality for these small producers has been the only way to access organic markets, since it allows direct and indirect costs of certification to be reduced enough to permit economic viability of their activity.

We are convinced that the regulations approved and in the process of being approved by the European Commission aim to generate greater security and credibility for consumers of organic products in the European Union. We wholeheartedly subscribe to these objectives as a high priority, even for the sake of small organic producers and the entire global organic sector. However, we believe that some of the measures adopted and proposed may have an unintended and unnecessary negative effect, and we therefore suggest that they be reviewed and adjusted.

In particular, we have the following concerns:

1. Legal requirements for 'operator groups' to be certified

Regulation EU 2018/848, to be enforced as of 01/01/2021 (Art. 61), specifies the requirements for the applicability of certification of operators groups in its Article 36.

One of these requirements is that operators groups be certified (producers with processing and marketing activities, according to point 36.1.a) have their own legal status (point 36.1.d) and that they include only of members that comply with maximum unit size criteria (point 36.1.b).

The current regulatory framework (EU 834/2007; EU No. 889/2008, etc.) does not have this restriction. In other words, currently those producers who exceed the unit size criteria, though they must be certified individually, can be part of the group of operators to be certified.

Certification of operator groups is currently carried out on the basis of Internal Control Systems, regardless of the legal makeup of the organization or group in question. With the new regulation changes, both elements, i.e., certification coverage and legal membership are directly linked.

In accordance with paragraph 36.1.a, we understand that these provisions are not intended to require operator groups engaged in processing and marketing activities - in addition to primary production - to have separate certificates for their production, processing and marketing activities. However, in the international discussion forums on the interpretation of Regulation EU 2018/848, we have seen confirmation of the fear that in practice the law can be interpreted in this way, which is why clarification is required at the level of the Secondary Regulation under discussion.

On the other hand, we validate the intention of this regulation of the European Commission that the producers groups end up being owners of their organic certificate and that the certificate of the producers cannot be in the hands of the marketer/exporter, for the sake of basic producer rights and their democratic structures and to avoid the possibility of fraud in the traceability of the product flow.

Expected effects and consequences:

- 1.1 Small producers' organisations in countries outside Europe vary greatly in the size of members' production units and members who are not part of these organisations from the organisational structure would have to be expelled. This would be unfair to historical members of these organisations and would make these operator groups less economically viable, with a possible decrease in the supply of certified products.

- 1.2 This regulation could imply, as has been mentioned in spaces of discussion of the Secondary Regulations, that producers who are not subject to organic certification could not be part of the Internal Control Systems either, which is currently allowed. This increases the obligation of the disintegration of the current membership of the organizations in certain cases.
- 1.3 Apparently, second or third level producer organisations (Associations, Cooperatives, Federations, Confederations, etc) could not be directly certified, because their members are not themselves producers, without the first or second level associations. If Regulation EU 2018/848 were interpreted literally, it would affect a large number of organised small producer organisations, built up through long and strenuous historical processes. These organizational structures would be forced to certify each of their base organizations separately, which would multiply the corresponding legal, fiscal and administrative costs of certification, reaching a level of unfeasibility of organic certification valid in the European market.
- 1.4 If the new Regulation were interpreted in such a way that operator groups engaged in processing and marketing activities would have to have separate certificates for each activity, these organisations would have to incur significantly higher direct and indirect costs in order to obtain the various corresponding certificates, seriously affecting their economy.

Proposals:

- 1.1 We propose to specify in the Secondary Regulations that external certification can be based on Internal Control Systems, not necessarily on the legal makeup of the producer organization.
- 1.2 In addition, we ask that it be specified that internal control systems can cover second and third level organisations, including their basic organisations and producers, without the need for individual certificates for each group.
- 1.3 We also request that any ambiguity that may lead to mistakenly requiring separate certificates for the processing and marketing processes of operator groups be removed.

2. Operator group member characteristics

The maximum unit size criteria of EU Regulation 2018/848 (point 36.1.b) specify that group members must have i) production cost greater than 2% of turnover, with a maximum EUR 25,000 annual organic production turnover or that their production unit ('holding') does not exceed 5 ha, 0.5 ha of greenhouses or 15 ha of permanent pastures.

In discussing the interpretation of this part of the article, controversies have come up over whether these are cumulative or independent criteria. In the Spanish version analysed, there is a clear reference to independence, as the word 'or' is used between the two criteria. However, confusion has arisen regarding the application of these criteria.

Practically we see that in organic operator groups there are producers who have a land area and a business value greater than what parameters indicate – because they handle high productivity crops with very low profit margins and high production and living costs, such as bananas. These are producers who also need to be able to achieve an economy of scale through their organizations or cooperatives in order to be economically sustainable.

Recently international forums on the possible provisions of the secondary regulation to Regulation EU 2018/848 discuss the European Commission's intention to limit the number of members in producer groups to be certified. Initially the figure mentioned was 500 producers maximum and recently it is said to be 1,000 producers maximum.

Unlike Europe, in the different continents of the Global South (Latin America and the Caribbean, Africa and Asia) there are multiple organizations with several thousand members, including tens

of thousands and hundreds of thousands of producers. Often these are small, micro, and even nano-producer organizations. The makeup of these second- and third-level organizations is generally due to a historical consolidation process that has precisely allowed these producers to access export markets and generate added value for their products and to ensure a dignified living and a healthy environment.

We understand that the European Commission seeks to improve the quality and prestige of certification for the benefit of consumer and organic market players themselves. However, we find that the cost of this measure, in terms of negative socio-economic impact in other regions of the world, would not justify or compensate for the negative consequences. We are convinced that the quality and reliability of certification does not depend in the first place on the number of operators involved.

Expected impact and consequences:

- 2.1 Not being able to be part of small producer organizations, these producers of high value and/or low margin productivity products would have to leave their organization and would have to be certified and marketed individually, which would not be economically viable. The most successful small-scale producers would even be forced to leave the cooperative sphere and turn to private intermediaries because they do not have a large enough scale to make a direct sale. This would lead to the economic unfeasibility of these producers.
- 2.2 If a limit of 1,000 producers per organisation is applied, hundreds of thousands of small producer families could see their ability to export their products to the EU market affected. Larger organizations would have to break up their organization into fragments and thus multiply their expenses – not only for certification, but also for organizational, administrative and fiscal costs. The operational burden involved in a transition to adjusted organizational models would have a paralyzing effect that does not respond to the local and historical realities and needs of these operator groups. These measures reduce efficiency and the possibility of benefiting small and micro producers from economies of scale.

Proposals:

- 2.1 We propose to specify in the Secondary Regulations that the size and maximum income limits of producers in a group of operators be variable, depending on product characteristics and region of production, possibly to be specified in subsequent legal agreements.
- 2.2 We ask the European Commission not to set a limit on the number of producers that can be part of a single Internal Control System, and above all, of a single legal entity, be it a first, second or third level one.
- 2.3 We propose the European Commission to draw up a set of alternative criteria to assess the quality of internal control systems, based on the good practices existing in different small producer organisations of different sizes around the world.

3. Sample calculation formula for external inspection

Forums on the Secondary Regulation of law EU 2018/848 discuss the European Union's intention to change the formula of calculation of the sample for external inspection, on the part of Certification Organisms, of members of an operator group.

Under the current regulations a sampling formula is applied with the following elements:

- A minimum of 10 operators
- The square root of the number of producers in the group
- The application of a risk factor

The proposal that has been under discussion is to apply 5%, not specifying whether a risk factor would also apply, as is currently the case. In addition, there is apparently an intention to keep the lower limit of 10 operators.

As in the case of limiting the number of producers, we believe that, while greater reliability of certification is sought, the negative impact is disproportionate to the benefits.

As we have pointed out, organisations with large numbers of small producers generally group together producers who need to achieve a large collective scale of operations to achieve adequate and competitive market access.

Alleged permissiveness of organic certification organisms in certifying large groups of small operators has been pointed out in different publications, mainly because of the strong commercial risk involved in an eventual suspension or decertification. We believe that the solution to this problem should not be sought in measures that raise costs to small producers to sky-high levels, but through greater quality control of the work of the Certification Bodies and quality specifications of the Internal Control Systems.

Impact and consequences

- 3.1 Applying a 5% rule instead of the square root would seriously affect operator groups with more than 400 members, with respect to the number of producers to be inspected by the Certification Body, and therefore in terms of costs. For organizations of several thousand producers the increase in sample size and corresponding costs would be exponential and prohibitive.
- 3.2 If a limit of 1,000 producers per entity were to be set, which we believe is undesirable, the effect of this change on the calculation formula for sampling is reduced, but it would still significantly affect groups of 400 to 1,000 producers, decreasing efficiency, competitiveness and, therefore, economic viability.

Proposals

- 3.1 **We propose to keep the current scheme of sample calculation based on the square root method and the application of the appropriate risk factor. Additionally, complementary rules could be established to guarantee the quality of the evaluation performed by the Certification Body as regards the reliability of the Internal Control System of an operator group – such as, for example, greater precision in the application of risk factors.**
- 3.2 **We put to the consideration of the European Commission the need to generate legal instruments that serve as a guide for criteria to accredit the Certification Body of this Regulation for the organic sector. In this way it is possible to homogenize and guarantee the high quality of inspections carried out by the Certification Bodies and avoid unfair competition between these bodies.**

In addition to the above-mentioned proposals, we ask the European Commission to consider the necessary adjustment to Regulation 484 wording of the Secondary Regulation if it turns out to be insufficient.

On the other hand, the small organic producer sector is interested in the new regulation for the sector to have high quality, efficiency and applicability. If some of the articles require further review, analysis and discussion, we suggest that an extension be granted to the current regulatory framework. Small producers are willing to actively collaborate in any revision process and formulation of alternatives to guarantee the credibility and prestige of organic certification in Europe.

We call on the European Commission to take into account the circumstances and living conditions in which small producers in other continents live and produce are not necessarily similar to those of operator group members within the European Community itself, and that the European market needs to be supplied with the produce of these producers and to take joint responsibility for global economic and environmental sustainability. The adaptability of the different provisions of this regulation to different realities is of vital importance for its success, without compromising the reliability of the European organic certification system.

If our considerations are taken into account, the European Commission will avoid a catastrophe in the global segment of small organic producers in several continents.

We reiterate our willingness to clarify our views before any internal body of the European Community, seeking a profoundly constructive dialogue.

16 January 2020

Subscribed:

ORGANIZATION	COUNTRY OR COVERAGE

DRAFT