



FTAO webinar 8 November: Update on the implementation of the EU Organic Regulation and the worrying changes of "Group Certification".

## 1. ATTENDANCE

Position	Person	Organization	Attendance (✓,x)
Executive Director, Coordinator	Sergi Corbalán	FTAO	✓
Regulatory Manager, Presenter	Emanuele Busacca	IFOAM-EU	✓
Certification Assistant 1	Estefanie Serrano	SPP Global	✓
Certification Assistant 2	Rebeca Valdés	SPP Global	✓

*\*A total of 14 participants attended the workshop, which could not be identified due to the fact that there was no previous round of presentations.*

## 2. MATTERS DISCUSSED

### EXPLANATORY NOTE:

*The texts reflected in this Minutes are annotated by SPP Global, they do not necessarily reflect the opinion or the information that SPP Global has.*

### a. Objective

The objective of the seminar was to briefly remind the background and to update the different organizations about the current panorama of group certification; as well, to discuss possible courses of actions to face the approval of some criteria in the new Organic Regulation of the European Union proposal.

### b. Background and update on the new Organic Regulation of the European Union

- In June 2018 the new EU Organic Regulation was published. Between June 2018 and this year secondary legislation of this Organic Regulation has been developing.
- The date for primary and secondary legislation to enter into force, both in the European Union and for third countries supplying organic products to the EU, is January 2021.
- According to group certification reports published this year by different Certifiers, some important numbers and figures on group certification stand out:
- Around the world there are about 2.5 million organic products, this taking into account developing countries, where operate almost 6,000 groups with a total of 4.5 million hectares of organic area. These groups are certified under the group modality.
- Currently in the European Union, each small producer must be certified separately and must pay for the corresponding inspection to its external control entity.
- In contrast, thanks to group certification, several small producers in OECD countries can join forces and organize themselves as a group, so they can have a single certificate and a single



internal control system for all. This greatly facilitates bureaucracy of records and administration of group certification, and reduce spent time on external inspections and cost of certification itself.

- Under the EU Organic Regulation, there are millions of organic producers worldwide working with the group certification scheme. The main products certified under this modality are coffee and cocoa, but also sugar, honey, cotton, aromatic plants, tropical fruits and many others.
- The average farm size of farmers in the groups is 1 to 4 hectares, so they are really small producers.
- Including the group certification of schemes such as Fair Trade, Rain Forest Alliance, etc., we can calculate about 5.6 million group producer certifications.
- There are mainly 3 macro regions where group certification is currently applied, in which there are different characteristics:
- In Latin America, the typical size of a producer group is 80-200 members, so it is not that big<sup>1</sup>. They are generally self-organized groups, mainly producers who have organized themselves into cooperatives. On the other hand, in Africa the typical size can be between 300-10,000 producers<sup>2</sup>; usually in these groups the trader, processor or exporter, organize the supply chain, the internal control system, marketing, and the group organization; everything is in hands of the traders. In Asia the situation is almost the same as in Africa, the typical size is between 300-10,000 producers and the producer group organization is also coordinated by traders or exporters.
- In summary, in the current group of certified operators under group modality there are two types of organizations: one is the groups organized by farmers themselves (cooperatives, association of producers, federation of cooperatives) and the other is the groups managed by traders or exporters, where the trader is responsible for marketing, management with the control entity, administration and the internal control system of the producer group.
- According to current regulations, group certification is only allowed for developing countries, as defined by the Organization for Economic Co-operation and Development (OECD), and specifically only small farms can be part of the group. Currently this system still supports the certification of larger farms, processors and/or exporters. The main difference is that larger farms, processors and exporters must be inspected by the external control entity on a mandatory basis once a year, while small farms are not inspected annually.
- For group certification groups, group farms must be geographically close (geographical proximity). Parallel to this, producers may be organized by themselves and must formally establish themselves as a group; however, formally, they are not a legal entity, but they may also be based on written agreements or contracts.
- When the group is certified, the product can be sold as organic only through the group; a producer who is part of the group cannot sell his products independently. In this way, there is a union of producers to sell in the market, where the main requirement is that the group has an Internal Control System. The external control entity is responsible for verifying the efficiency or effectiveness of such a system.
- For the year 2021, there will be some changes in aspects mentioned above.

<sup>1</sup> Not according to SPP Global data, our averages are above 500 producers.

<sup>2</sup> In the case of the SPP we have Organizations with tens or even one of hundreds of thousands of members.



### Group Certification will be allowed in the European Union

The first of these is that group certification will be permitted throughout the European Union and not only in developing countries; which means that it will also be able to apply in the EU or in the United States, where this system has not been applied until now.

### Sales volume or farm size limits for Small Farmers

On the other hand, group certification should be made up only of small farmers, who should respect it:

- Limits based on sales volume (turnover of annual organic production not exceeding EUR 25 000)<sup>3</sup>.
- Size limits of the holding (5 hectares, 0.5 hectares for greenhouses, or 15 hectares for permanent pasture only)<sup>4</sup>.

These two criteria mean that only farmers can be part of the certification group and specifically only small producers.

### Geographical proximity and legal personality

Other criteria to be applied for 2021 emphasize that farmers must have geographical proximity and each group must be legally constituted and confirm a legal personality. Even if these details and requirements of group certification are not well defined by EU members, there is a trend towards a rather critical outlook.

### New marketing scheme

The various changes will also affect the way of marketing from 2021 onwards. Today the European Union recognizes the legislation of third countries, but it also recognizes its own control system. The list of third countries includes 13 countries, including USA, Japan, South Korea, Argentina, New Zealand, Australia, among others. In all other countries there are control entities that are recognized by the European Commission to operate outside the EU.

Control entities evaluating outside the European Union take into account a standard that is equivalent (not identical) to EU regulation and that is also adapted to different situations.

The import regime from 2021 will be based on two main systems, there will be trade agreements with third countries, but there will no longer be equivalence agreements. In previous years, the Commission only negotiated with the government of the third country. From 2015 all agreements must be trade agreements, which means that they must also be accepted/adopted by the European Parliament and the European Council. As a result, it will be more complicated to have trade agreements in the future, compared to the equivalence agreements that were previously in place.

The second system will be similar to the one that exists today. Control entities will be recognized to certify and work in third countries, but they will have to apply the regulation as laid down in the EU.

In this so-called compliance approach, EU regulation will be applied almost identically inside and outside the European Union; this is the main difference compared to the current regulation, where control entities may have some flexibility.

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<sup>3</sup> Regulation (EU) 2018/848 of the European Parliament and of the Council.

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While there will again be little flexibility with respect to the use of products, substances, pesticides or fertilizers and for extraordinary circumstances, this compliance approach will reduce the current permissiveness of certification entities.

Number limit of producers in the certification group.

The main problems raised in the next regulation is the 500 producer's maximum limit. The European Commission and member states want to put this limit for group certification.

The fact that each 500 producers group must create a legal entity, and so, form an internal control system, will increase the difficulty of the organizations to continue under this certification system, not only in terms of costs, but also in bureaucratic process for the group legal conformation. It is also important to note that there are not always the competencies or ability in each group to create the internal control system.

Taking into account the 500 producer limit along with a new legal identity, requirement that each group must create, it will be difficult to help existing groups adapt to the new regulation, so some groups may give up and give up group certification and therefore organic certification as unfeasible.

The last point is that the proposed secondary regulation is mainly in the hands of the Commission and the EU Member States, which will decide on the general and specific control rules on this issue. The problem is that the commission and EU members may not have experience in group certification or may define the new rules considering only their specific national situation.

It is important to stress that none of the certification groups in the European Union exceeds the limit of producers proposed in the secondary regulation and each group currently has its own legal entity; therefore, the secondary regulation would not be detrimental to groups in the European Union. While it is legitimate for EU members to propose these criteria taking into account their national situation, there is a great risk for other countries of not complying and not being able to be certified under the group modality.

The conflict brought by this secondary regulation proposal is that, if this secondary regulation is approved in the EU, it must also be respected outside the European Union, a situation that could not be complied with in most cases.

**c. Comments or clarifications of doubts**

Today in a 10,000 producer's cooperative, the legal entity is the cooperative. However, if the requirements are applied strictly in accordance with the proposed regulation, this same cooperative will have to form 20 new groups including 500 farmers and each group will have to create a legal entity. A legal entity is a cooperative or a company that is incorporated with a legal personality, and which is not based solely on written agreement with the farmers.

**d. Windows of opportunity and actions to be carried out**

Two main problems are the size of the group (having a maximum of 500 farmers per group), and the fact that these groups will have to form separate legal entities.

One of the main concerns is that the regulation will be elaborated and approved by the member states of the European Union, who are not necessarily familiar with the practice of group certification and who will probably formulate these rules in a theoretical way, without understanding that this new legislation will bring in reality an excessive bureaucratization of the certification process.

The new regulation will be normal in the European Union, so there is a risk that there will be less interest on the part of member states in what happens outside the EU.



During the period from January to June 2019, the commission has produced a first draft to be discussed with the member states. The draft was submitted less than a month ago, at the end of September, with the intention of closing the discussion as soon as possible; however, there is still time to influence the decision-making process.

The final decision is expected in January or February. IFOAEM EU is currently trying to communicate with states members of the EU (Ministers of Agriculture) and with the Commission, in order to influence their decisions, and above all, to convince them that this approach will bring many obstacles outside the European Union. The window of opportunity is doing something from the third countries concerned, by communicating their concern in some way.

It should be noted that other Directors General of the European Commission are also closely following these debates, especially those relating to trade and international cooperation, which may be a little more open to understanding the damage that the new regulation may cause to small producers and to commercial transactions around the world.

IFOAM would find it useful if organizations or governments from a perspective outside the Commission or the European Union shared their concern in this regard. It is also necessary to mention that all this secondary legislation always goes through public consultations and that parliament could be involved in this process of secondary legislation.

#### e. *Agreements and/or final comments*

Third country organizations and EU institutions will make proposals and communiqués to raise awareness of the real impact this new regulation will have on the certification of small producer groups worldwide.