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Harmonization of EU and US Organic Regulations – Grower Groups **Draft paper version 9**

The Alliance for Organic Integrity (AOI) is a US registered 501.c.3 non-profit organization, founded in 2019. It brings together all those around the World who share the goal of protecting and enhancing the quality and integrity of the organic guarantee being provided to consumers. It works on developing and sharing best organic practices, harmonizing organic platforms and developing additional tools to prevent fraud.¹

Both the EU and US/NOP are developing rules for, among other areas, Groups of Operators (Grower Groups or GG's) and we are very concerned that the measures proposed are diverging, both from each other and from the [IFOAM-OI Guidance](#)². If unaddressed this will cause undue costs, confusion and complications especially for the many GG's that seek both EU and US markets.

This paper aims to address the consultations of both the EU and the US/NOP and therefore has recommendations for both regulatory frameworks. Some of the explanations are of a general nature and common to both. The recommendations are clearly headed as either for the EU or US/NOP or both.

Our Alliance consultation process on Harmonization is ongoing so, with the comment period for the US/NOP proposed rule being October 5th, our submission may have developed further beyond this current draft.

Over-arching Comments:

- A. **Recommendation for both EU and US/NOP** – It is critical that US/NOP and EU GG rules seek a more harmonized approach. There are currently close to 6,000 organic grower groups with approximately 80% of all certified organic farmers worldwide in these structures. Many export to both EU and US³. New rules should avoid that the same farmers fall under two different regimes, so as to both ensure best practice, while also easing the bureaucratic burden for the huge numbers of smallholder, peasant and subsistence farmers – some of the poorest in the world – organized in this way in the exporting countries of the Global South. So, it is critical that these rules do not become divergent or stray away from the IFOAM-OI guidance, which has been the global basis for regulating organic GG's and is based on a long history of consulting with all stakeholders on best practice. Ideally, there

1 <http://alliancefororganicintegrity.bio/>

2 https://www.ifoam.bio/sites/default/files/2020-08/IFOAMOEI_GroupCertification_18August2020_02.pdf

3 A substantial part is also certified to other regulations like JAZ (Japan), fair trade, Rainforest Alliance.

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should be one set of requirements, globally – each GG, one internal control system (ICS), one name, one address, one set of records, one support and marketing structure.

- B. **Recommendation for both EU and US/NOP** – It is also critical that any new proposed GG rules do not harm existing credible GG's. It should be recognized that the majority of EU and US imports from the Global South is from smallholder farmers organized in grower groups. Only a minority of current GG's are self-organized. It should also be recognized that the purpose of GG's is not only to demonstrate compliance but also stimulate internal development. The organic premium needs to pay for access to training and similar inputs, and should not have to be diverted to cover unnecessary extra costs and arbitrary bureaucratic structures. This not only allows for better income and improvement of livelihoods, but also for continuous improvement and, for example, adaptation to climate change.

We strongly recommend that EU and US/NOP rules should recognize and reinforce these central tenants, and ensure that this model is preserved for such smallholders.

List of Specific Concerns and Recommendations:

1. **Annual inspection rates:**

US/NOP 205.403(a)(2)iii and EU Draft IR Art. 7(e). We strongly urge US and EU to take a common approach to re-inspection rates, and maintain the (currently adopted) IFOAM-OI requirement for re-inspection rates as the basis for minimal numbers. Also, having one number, whether 1.4√ or 5%, undermines the importance of risk assessment by the GG and external inspection. Further, the selection of the farms to be visited and the quality of the re-inspection are far more important than a lower or higher exact number (see below).

Recommendation for both EU and US/NOP - Keep 1.0√ for normal⁴, 1.2√ for medium risk and 1.4√ for high-risk situations as minimum re-inspection rates (may be higher), based on risk assessment.

Recommendation for US/NOP - A minimum of 10 re-inspections per GG is acceptable when the risk assessment is low. (US recommended to include this).

How farms are selected for re-inspection:

Recommendation for both EU and US/NOP: Approximately half of farmers are selected based on being high-risk and the other half at random, including diverse geographical locations.

4 The EU to refrain from the 5% - this would lead to a lower number of re-inspections up to 400 farmer size while 200-500 is a very common size; see FIBL (2019): Group Certification. Internal Control Systems in Organic Agriculture: Significance, Opportunities and Challenges: <https://orgprints.org/35159/>.

Regarding GG own risk assessment:

Recommendation for both EU and US/NOP: GG are to have their own (updated) risk assessment and the internal inspections are to refer to it. The GG ICS's internal risk assessment is also evaluated and confirmed during the external audit.

On re-inspection, auditing techniques:

Recommendation for both EU and US/NOP: Mention witness and compliance audits as usual techniques for re-inspections.

On residue sampling:

The US/NOP does not have any provision on residue sampling, the EU has. The EU introduces a very high rate of sampling, 2%. Experience thus far has learnt that 2-3 samples per GG based on risk assessment is sufficient. GG do not have the funds to pay for 10 (500 farmers) or 40 samples (2000 farmers) every year.

Recommendation for both EU and US/NOP; both to refer to residue testing based on risk assessment. Best is not to set absolute numbers. If felt necessary, then we suggest a minimum of 2-3 per year, with higher numbers based on documented risk assessment.

(We recommend language stressing **approximate** percentages or numbers opposed to strict numbers, as this allows for some needed flexibility based on performance and compliance opposed to strict numbers, that may encourage manipulation).

2. **Single crop (commodity) focus:**

US/NOP is too focused on single crops and single fields. not on whole farm conversion. EU has whole farm conversion in 2018/848 Art.9.2 but allows single fields in 2018/848 Art. 9.7. Single crop, single field certification may be ok for tree crops but it is not ok for annual crops. Whole farm conversion is to be strongly encouraged as a risk mitigation strategy but not to be mandatory.

For risk management purposes:

Recommendation for both EU and US/NOP: the internal and re-inspection of smallholders should be of the whole farm.

Recommendation for US/NOP: USDA should harmonise with EU language in 2018/848, art.36, 1(f) that a Group of Operators (or GG), can deal with different

products but also (EU IR Art.5) a farmer can be a member of one ICS only for per product.

3. **Conflict of interest:**

Not harmonized. Please refer to Recommendation B above, that the ICS is an internal mechanism and that part of its purpose is for farmers to improve. Conflicts of interests, in the wider definition, always exist in groups. It is more realistic and more transparent to require that ICS have policies regarding conflict of interest, that these are identified and managed, with mechanisms in place to ensure decisions are fair and impartial (as described by ISO), and that all this is checked by the external inspector.

Recommendation for both EU and US/NOP: ICS to have policy on conflicts of interest, to be evaluated during the annual external inspection.

Recommendation for EU: Suggest add to DA amending controls Art.1(1)(a)(ii): *‘the management of conflicts of interest’* and change DA amending controls Art.1(1)(a)(h)(vii) verified to *‘managed’* or *‘protected against’*.

Recommendation for US/NOP: Amend 205.201(c)(8). Art.2.2(e) to *‘the number, training and performance is adequate, and any ICS officer’s Conflict of Interest is managed’*.

4. **Storage exemption:**

US/NOP proposes storage exemption for inspection. Storage can be a significant source of contamination, due to mosquito, rodent and insect sprayings. In case only one field of the farm is organic there should be separate storage for organic crops.

Recommendation for US/NOP: Areas where organic products are stored to be part of (internal and external) annual inspection.

Recommendation for both EU and US/NOP, In the case of split operations: organic products to be stored in organic only spaces.

We would encourage EU and US/NOP to re-introduce a very important principle of ICS, group responsibility. **This should be similar to the introduction in USDA 205.400(g)** and rephrasing in EU DA amending controls Art.1(1)(b)(iii)(h)(ii) fifth indent, duty of members to *‘immediately inform the ICS manager on suspected non-compliance in and around their own and other group member’ fields that are to be certified’*

Recommendation for EU: Suggest to copy USDA language **205.201(c)** that the ICS should *describe how training, production and handling inputs, and other resources are procured and provided to all grower group members and personnel.* Their availability is a main strategy to prevent non-compliances.

5. **US/NOP 205.2 – clarifications of new definitions:**

Recommendation for US/NOP:

- a. **Grower Group member** – We recommend (see earlier) expanding the USDA definition to allow for a member to grow more than one crop within the ICS of the GG and be treated as a whole organic farm system that requires crop rotations, etc.,- not just one crop only.
- b. **Grower Group Operation** – We would expand this to also include production of more than a single crop, as members may grow more than one crop for the ICS of the group.
- c. **Grower Group Production Unit** – We suggest this being called a “GG Sub-group” to avoid confusing the proposed GG Production Unit term with EU language that defines production unit as a single operator, or a GG member or even a field.

Recommendation for EU:

- d. Suggest EU to refrain in practice from the term *Group of Operators* and use the term ‘*Grower Group*’ instead, or both switch to ‘**Smallholder Groups**’.

Additionally, for US/NOP – we seek further explanations as why exclude livestock products from being produced by GG’s, as honey is currently one example of such livestock products already being marketed through GG’s?

6. **Legal structures**

We are very concerned about overburdening small farmers **by requiring formal legal structures**, which can be expensive and for which also human resources are lacking.

- In many countries, to incorporate, you need an address, usually a physical office, a board, a manager, a bank account, a tax number, a registration, a business license, an accountant, often an auditor and a lawyer. Even when the GG is not involved in the trading of the certified product. None of these resources are around in the village. Any money should be spent on employing, maintaining a decent ICS, the manager, some field officers, on providing approved inputs, on development, not on running a legal entity. Experience suggests that incorporating the group does not make ICS any stronger. For example, it makes it more difficult to expel members.
- To address this one should insist on support from USAid or EuropeAid to organise and register the groups as legal persons, and then the legal entity needs to be maintained, with all kinds of annual costs. When that is not provided, the requirement cannot be imposed on existing groups.

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- Also, both EU and US/NOP should realise that it will limit the start of new groups when they have to be incorporated from day one. Who will invest in setting up such new incorporated grower groups? Not the smallholder farmers living below the poverty line, for whom group certification was the only affordable way to reach export markets.

Recommendation for EU: Referring to the preamble (6) in the EU IA on controls *‘However, the maximum size should take into consideration that a group of operators should be able to generate sufficient resources to establish an efficient ICS relying on qualified staff’*: regulators shall only enforce the requirement for groups to be a legal personality when sufficient technical and financial support is provided to assist existing and new groups to do so. New groups should get 3 years’ time to finalize the incorporation.

Recommendation for US/NOP: The NOP approach to this question is to define GG’s as a “person” for the purposes of using one organic certificate for the whole group. “Person” is defined in OFPA as including a wide range of options, but does not specifically require them to be legally incorporated, to be accepted as a GG “person”. We strongly support this more NOP flexible approach, *which if we are interpreting this correctly*; the NOP would not necessarily be forcing all GG’s to be legally incorporated, but they could be more informal associations, groups of farmers, as long as there is an identified leadership.

Ends.