



Study on agricultural interbranch organisations in the EU

This report has been prepared by Arcadia International,
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**Study on
agricultural interbranch
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ACRONYMS

Member States/countries

AT: Austria	IE: Ireland
BE: Belgium	IT: Italy
BG: Bulgaria	LT: Lithuania
CY: Cyprus	LU: Luxembourg
CZ: Czech Republic	LV: Latvia
DE: Germany	MT: Malta
DK: Denmark	NL: Netherlands
EE: Estonia	PL: Poland
EL: Greece	PT: Portugal
ES: Spain	RO: Romania
FI: Finland	SE: Sweden
FR: France	SI: Slovenia
HR: Croatia	SK: Slovakia
HU: Hungary	UK: United Kingdom

Acronyms

AC	Autorité de la concurrence
ACOFA	Central Agency of Intervention Bodies in agricultural sector
AFE	Almazaras Federadas de España
AGCM	National Competition and Market Authority
AIBS	Association Interprofessionnelle de la Betterave et du Sucre
AMTF	Agricultural Market Task Force
ANIC	Association nationale interprofessionnelle du champignon de couche
ANICC	Association Nationale Interprofessionnelle du Champignon de Couche
ANIERAC	Asociación Nacional de industriales envasadores e refinadores de aceites comestibles
ANIFELT	Association Nationale Interprofessionnelle des Fruits et Légumes Transformés
ANIVIT	Association nationale interprofessionnelle du champignon de couche
ANPROGAPOR	Anprogapor Asociación Nacional de Productores de Ganado Porcino
AOC	Appellation d'origine contrôlée
APO	Association of producer organisations

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ARVALIS	Institut technique au service des agriculteurs et des filières
ASAJA	Asociación Agraria de Jóvenes Agricultores
ASBL	Association sans but lucratif
ASICI	Asociación interprofesional del cerdo ibérico
ASOLIVA	Asociación española de la industria e del comercio exportador de aceites de oliva y aceites de orujo
ASP	Agency of Services and payments
ASP	Single Agency of Payment
BIP	Bureau interprofessionnel du pruneau
BNIC	Bureau interprofessionnel du cognac
BRVE	Bureau de répartition des vins et eaux-de-vie
CAE	Cooperativas Agro-alimentarias
CAP	Common Agriculture Policy
CEDECARNE	Butchers and individual meat retailer
CEE	Communauté économique européenne
CETIOM	Centre Technique Interprofessionnel des Oléagineux Métropolitains
CGB	General Confederation of Beet producers
CICAR	Comité Interprofessionnel du Canard à Rôtir
CID	Comité interprofessionnel de la dinde
CIPS	Comité Interprofessionnel des Productions Saccharifères
CIVA	Comité Interprofessionnel des Vins d'Alsace
CIVB	Comité Interprofessionnel des vins de Bordeaux
CIVC	Comité interprofessionnel du vin de Champagne
CIVCP	Comité interprofessionnel des vins de Côte-de-Provence
CIVDN	Comité interprofessionnel des vins doux naturels et des liqueurs d'appellation contrôlée.
CIVRB	Conseil interprofessionnel du vin de la région de Bergerac
CLIF	Comité de liaison des sociétés interprofessionnelles des fruits et légumes
CMO	Common Market Organisation
CNASEA	Centre national pour l'aménagement des structures des exploitations agricoles
CNC	National Competition Commission
CNIEL	Centre National Interprofessionnel de l'Economie Laitière
CNIV	Comité National Interprofessionnel des Vins
COAG	Coordinadora de Organizaciones de Agricultores
COM	Common Organisation of Agricultural Markets
CPCS	Comité Paritaire interprofessionnel de la canne et du sucre
CPPGA	Cabinet for Planning, Policy and General Administration
CRIEL	Centre Régional Interprofessionnel de l'Economie laitière

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CS	Case study
CTIFL	Centre Technique Interprofessionnel des Fruits et Légumes
CV	Contribution volontaire
CVO	Contribution volontaire obligatoire
DB	Database
DEFRA	Department for Environment, Food and Rural Affairs (the UK)
DG AGRI	Directorate General Agriculture and Rural Development
DGCCRF	French Government's Competition Consumption and Fraud Repression General Directorate
E.E.I.G.	European Economic Interest Grouping
e.g.	exempli gratia
EAGGF	European Agricultural Guidance and Guarantee Fund
EC	European Commission
EU	European Union
EUR	Euro
F&V	Fruits & Vegetables
FAO	Food and Agriculture Organization
FCB	National Federation of beet Cooperatives
FGVB	Fédération des Grands Vins de Bordeaux
FICT	Butchers association
FIOM	Fonds d'Intervention et d'Organisation des produits de la pêche Maritime
FIRS	Fonds d'Orientation et de Régularisation du Marché du Sucre
FNSEA	Fédération Nationale des Syndicats d'Exploitant Agricole
FNVBL	Fédération des négociants de vin de Bordeaux et de Libourne
FORMA	Fonds d'Orientation et de Régularisation des Marchés Agricoles
GIs	Geographical indications
GNIL	Groupement national interprofessionnel linier
GNIPB	Groupement national interprofessionnel de la production betteravière
GNIS	Groupement national interprofessionnel des semences et plants
IAOE	Organización Interprofesional del Aceite de Oliva Español
IBO	Interbranch organisation
INAPORC	Interprofession nationale porcine
INFOLIVA	Private oil mill associations
INTERBEV	Association Nationale Interprofessionnelle du Bétail et des Viandes
INTERCEREALES	interprofession représentative des céréales à savoir blé tendre, blé dur, orge, maïs, avoine, triticale, seigle, sorgho et riz

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INTERFEL	Interprofession des fruits et légumes frais
INTERLAIT	Société interprofessionnelle du Lait et de ses dérivés
INTERPORC	Asociación Interprofesional del Porcino de Capa Blanca
IVB	Interprofessionele Vereniging voor het Belgisch vlees
IVCC	Institut des Vins de Consommation Courante
JRC	Joint Research Centre
KO	Kick off
LEI	Landbouw Economisch Instituut (Agricultural Economics Institute) (NL)
LOA	Loi d'orientation agricole /French Law of agricultural orientation
LTIA	Long-term interbranch agreements
LTO	Dutch Farmers organisation
M	Month
MAGRAMA	Ministerio de Agricultura, Alimentación y Medio Ambiente
MHKSZ	Hungarian Cooling System and Packaging Union
MMB	Milk Marketing Board
MS	Member State
NCA	National Competent Authority
NMV	Dutch Dairy Farmers Union
NZO	Dutch Dairy Processors Organisation
ODEADOM	Office de Développement de l'Economie Agricole d'Outre-mer
ODG	Organisme de Défense et de Gestion
OFIMER	Office national Interprofessionnel de la pêche maritime et de l'aquaculture
OFIVAL	Office national Interprofessionnel de la Viande, de l'Elevage et de l'aviculture
ONI	Office national interprofessionnel du blé
ONIA	Office national industrielle de l'azote
ONIB	National Interbranch Office of wheat
ONIBEV	Office National Interprofessionnel du Bétail et des Viandes
ONIC	Office national interprofessionnel des céréales
ONIDOL	Organisation nationale interprofessionnelle des graines et fruits oléagineux
ONIEP	Office de l'Elevage
ONIFLHOR	Office National Interprofessionnel des Fruits, des Légumes et de l'Horticulture
ONIGC	Office Interprofessionnel des Grandes Cultures
ONILAIT	Office National Interprofessionnel du Lait et des Produits Laitiers
ONIOL	Office National Interprofessionnel des Oléagineux, Protéagineux et cultures textiles
ONIPPAM	Office National Interprofessionnel des Plantes à Parfum, Aromatiques et Médicinales

ONIVIN	Office national interprofessionnel des vins
ONIVIT	Office national interprofessionnel des vins de table
PAs	Producer associations
PDO	Protected Designation of Origin
PGI	Protected Geographical Indication
POs	Producer organisations
Q	Question
QCP	Quality control plan
QNV	Quantité normalement vinifiée
R&D	Research and Development
sCMO	Single Common Market Organisation
SIBEV	Société interprofessionnelles du bétail et des viandes
SIOFA	Syndicat Interprofessionnel des Oléagineux et des Fluides Alimentaires
SIPA	Sociétés d'Intensification et de Production Agricole
SME	Small and Medium size Enterprises
SNFS	National Union of Sugar Manufacturers
SNIPOT	Société Nationale Interprofessionnelle de la Pomme de Terre
SONITO	Société Nationale Interprofessionnelle de la Tomate
TFEU	Treaty on the Functioning of the European Union
ToR	Terms of Reference
UNILEC	Union nationale interprofessionnelle des légumes de conserve
UPA	Unión de Pequeños Agricultores y Ganaderos
USA	United States of America
VINIFLHOR	Office national interprofessionnel des fruits, des légumes et de l'horticulture
WP	Work Package
WTO	World Trade Organization
WUR	Wageningen University and Research Centre

ABSTRACT

The study provides a comprehensive inventory of existing recognised interbranch organisations (IBOs) across all 28 Member States and the rules applicable to them under EU and national law. The study further examines the impact of IBOs on the markets where they operate with respect to its objectives and the benefits for producers stemming from the participation in the IBO. It also illustrates the conditions which enable a good functioning of the IBO.

The study is based on evidence gathered from existing literature, interviews with senior policy officials within the European Commission and national competent authorities, interviews with IBOs representatives, a survey of all recognised IBOs, and five case studies.

The analysis shows that 19 Member States have adopted national rules on the recognition and functioning of IBOs. In June 2016, 123 recognised IBOs, four of them solely recognised only under national rules, are active in eight different Member States but their total number is growing. Of all factors considered, internal organisation of the IBO appears less important for its proper functioning. The working principles (such as dialogue and consensus) within the IBO and the relations between the IBOs and other actors of the supply chain (private stakeholders or public authorities) are the main pillars underpinning a good governance of such organisations.

Cette étude présente un inventaire complet de toutes les organisations interprofessionnelles reconnues au sein de l'Union Européenne (28 Etats membres) ainsi que les législations européennes et nationales en la matière. De plus, l'étude analyse les conditions d'un bon fonctionnement de ces organisations interprofessionnelles, leurs impacts sur les filières agricoles et agroalimentaires en s'attardant, plus particulièrement, sur les bénéfices de ce type d'organisation pour les producteurs et les acteurs de la production primaire.

L'étude est basée sur une collecte d'information consistant, tout d'abord, en une analyse bibliographique, une série d'entretiens avec la Commission européenne, les autorités compétentes nationales, et les représentants d'organisations interprofessionnelles. Ensuite, cinq organisations interprofessionnelles ont fait l'objet d'une étude de cas individuelle afin d'analyser, en détail, leur fonctionnement.

L'analyse montre que 19 Etats membres ont adopté une législation nationale en matière de reconnaissance et fonctionnement des interprofessions. Au 1^{er} juin 2016, 123 organisations interprofessionnelles sont reconnues dans huit Etats membres dont 4 sur la base exclusive du droit national. Ce nombre continue d'augmenter à un rythme régulier. Toutes considérations faites, l'organisation interne des organisations interprofessionnelles n'est pas un élément déterminant à leur bon fonctionnement. Ce qui compte ce sont les liens relationnels (le dialogue, la recherche du consensus) entre, d'abord, les membres de l'organisation et, ensuite, avec les autres acteurs de la filière. Enfin la reconnaissance officielle des interprofessions crée les conditions du dialogue entre filières et pouvoirs publics.

INTRODUCTION

1.1. Context of the study

Interbranch organisations in the agricultural sectors exist for more than 50 years in some European countries. They drew the European institutions' attention in the mid-eighties. The Commission adopted a Communication on interbranch organisations' future role and functions under the Common Agricultural Policy (CAP) regulatory regime in 1990¹.

According to the Communication, interbranch organisations may be defined in practical terms as "*the relationships woven between the various occupational categories involved in the production, marketing and - where appropriate - processing of any given agricultural product or product group*".

The Communication describes these relations as vertical rather than horizontal and distinguishes them from horizontal cooperation such as those of producer organisations (POs) and associations of producer organisations (APOs) which aim at promoting the concentration of supply of agricultural products and its adaptation to market requirements.

The Commission further underlined in its Communication that developing inter-branch cooperation in agriculture can *inter alia* help "*to improve the profitability of farming by strengthening marketing coordination and exploiting qualitative and/or regional characteristics*".

Initially, the Commission did not see it fit at this stage to envisage the extension of interbranch cooperation to all agricultural sectors as under the previous CAP provisions as regards recognition of interbranch organisations were present in the sectoral CMOs for olive oil, fruits and vegetables, and tobacco only.

The move to cover interbranch activities for *all* agricultural sectors was only done 23 years later, when **Regulation (EU) No 1308/2013**² acknowledged interbranch organisations to play an important part in allowing dialogue between actors in the supply chain and in promoting best practices and market transparency. Regulation (EU) No 1308/2013 thus developed common provisions for the recognition of inter-branch organisations for all sectors and stipulated clearly which advantages, e.g. certain derogations from the EU competition rules, follow from the recognition status. Limited sector specificities remain however, such as special requirements in the milk and milk products sector or the obligation for mandatory recognition of interbranch organisations in certain sectors (e.g. tobacco).

Following the entry into force of Regulation (EU) No 1308/2013, the Directorate General for Agriculture and Rural Development of the European Commission (DG AGRI) considered that **the review of the existing legal framework for interbranch organisations and future policy development in this area would benefit from a study providing an overview of the current situation and activities of IBOs across all 28 EU MS.**

Against this background, DG AGRI commissioned a "*Study on agricultural interbranch organisations in the EU*" that started in December 2015 for a duration of 11 months.

¹ Commission Communication to the Council on Organizations and agreements linking different branches of within the agricultural sector, Commission of the European Communities, SEC (90) 562, Brussels, 26 October 1990.

² Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, in OJ L 347, 20.12.2013, p. 671–854.

1.2. Objectives and scope

In the context of the study, “*IBOs*” means **all organisations formally recognised as IBOs** by the Member States according to present (Regulation (EU) No 1308/2013) or former **CAP legislations. These recognised interbranch organisations will be marked throughout the study as “IBOs”**. Based on the information provided by Member States, the study also includes a limited number of IBOs, which do not fall under the scope of Regulation (EU) No 1308/2013, but are recognised solely under national rules.

The study will examine the state of IBOs in the context of the Common Agricultural Policy, in particular the Common Market Organisation. As mentioned in the tender specifications³, the **main objectives of the study** are to:

- **Provide a comprehensive inventory of the respective rules applicable to IBOs under national law (national legislation)** based on the most relevant available data (Theme 1);
- **Present an inventory and a comprehensive description of the current existing IBOs** in the EU28 MS (Theme 2); and
- **Examine the role IBOs play in the food value chain, the economic, legal, social, and policy-related factors influencing their functioning, and the benefits offered by IBOs for agricultural products** (Theme 3).

The objectives translate into two main parts, of descriptive or analytical nature:

- The **descriptive part** providing an inventory of existing IBOs and of the respective national legislation in all EU MS; and
- The analytical **part consisting of an analysis of the functioning and benefits of IBOs**, examined on the basis of five selected case studies of IBOs in different sectors and MSs as well as desk research and analysis of the most recent literature on this topic.

In order to fulfil the above mentioned objectives, the study will focus on IBOs within the meaning of Article 157 of Regulation (EU) No 1308/2013, i.e. formally recognised IBOs, including IBOs which have been recognised under former CAP legislation. These IBOs gather representatives of the production as well as processing and/or distribution side of the food supply chain and enable a dialogue between these food chain operators. By bringing operators of the various stages of the supply chain together, the cooperation within IBOs is vertical in nature.

The study will also consider **other forms of vertical cooperation** between producers and other stages of the food supply chain recognised in the CAP legislation (such as “agreements within the trade” in the sugar sector, based on Article 125 of Regulation (EU) No 1308/2013. These agreements are presented under Theme 1 of the study.

Various other vertical organisations exist within the supply chain. In some Member States some private (interbranch) entities carry out similar functions as IBOs without having ever requested for recognition⁴. Sometimes public entities are involved in activities in the interest of the entire food supply chain. The study will consider such vertical cooperation or activities by public bodies in their appropriate context under Theme 3 of the study.

³ Available on the DG AGRI website at: http://ec.europa.eu/agriculture/index_fr.htm

⁴ In the context of the study, these organisations are called “*non-recognised IBOs*”

The study will look and refer to **horizontal cooperation** between producers in producer organisations (POs) or associations of producer organisations, (APOs) only to a limited extent and where necessary to contrast them with the cooperation in IBOs

For certain sectors, Regulation (EU) No 1308/2013 contains specific rules, e.g. the explicit possibility of contractual negotiations in the sectors of olive oil, beef/veal and certain arable crops as well as milk

The results of this study will be used by DG AGRI itself and by the other Commission departments with an interest in this subject. In addition it can be envisaged that the results of the study could be used by the Member States and stakeholders concerned with interbranch organisations in the EU.

This report presents the situation on 01 June 2016.

1.3. General approach to the study

This chapter presents the overall approach to the study based on the work carried out, comprising the definition of the empirical approach to the study (i.e. methodologies and analytical tools), the data collection and validation.

1.3.1. Methodological approach

The consolidated methodology is organised in a sequence approach which is divided in four work packages.⁵



The methodology addresses throughout these work packages the three themes on which this assignment focuses.

Table 1: The 3 themes

	Description	Type
1	Overview of national legislation and Member State action on IBOs	Descriptive
2	Inventory of existing IBOs across EU countries	
3	Analysis of the functioning and benefits of IBOs (for selected case studies)	Descriptive and Analytical

A number of methodologies were used in the conduct of this study. They are briefly described below.

Data collection addressing the descriptive part of the study

This data collection process targeted two complementary objectives:

- Theme 1 consists of an overview of national legislation and Member States action in relation to IBOs. This theme examines and catalogues the national laws on the

⁵ For a more detailed description, see section 2.2.6 of the tender specifications, http://ec.europa.eu/agriculture/calls-for-tender/tender-documents/2015/216343/specs_en.pdf

recognition and operation of IBOs in all EU MS, including specific arrangements for transnational IBOs, if any.

- Theme 2 provides an inventory of IBOs in all EU MS, with a description of their respective situation, evolution and role in the market(s) concerned.

For **Theme 1**, the data collection was initiated through the NCAs that have been invited to complete a survey which the Commission addressed to MS in 2015 and in which the Commission inquired about legislation on IBOs, the number of IBOs in each MS and their representation of their respective sector.

In case data gaps were observed, individual NCAs were invited to complete and validate the data set. National literature has also been used to validate and triangulate legal information. Contacts with individual NCAs were kept until all required information was provided.

It should be noted that the Commission survey has focused on existing national legislation on IBOs (pursuant to Article 157 of Regulation (EU) No 1308/2013) though did not include any questions related to the “*other forms of cooperation*” within the supply chain (e.g. agreements within the trade – Article 125 of Regulation (EU) No 1308/2013). Therefore, contacts (via face-to-face meetings, email exchanges and phone calls) with MS NCAs have been established to identify whether or not other types of agreements exist at MS level. Additional interviews have been conducted with NCAs on the reasons why IBOs have not been recognised in a particular MS.

For **Theme 2**, the preliminary inventory of IBOs recognised in each MS was compiled based on responses to the Commission survey. Individual contacts with IBOs have been made to complete the data set. The required characteristics of these IBOs may not all have been described in the responses provided by MS to the Commission survey of 2015 and therefore data gaps were identified. Whenever necessary, NCAs were asked to solicit participation of IBOs in the data collection, in case no reply was provided. In order to increase the response rate, IBOs have been contacted in their national languages.

Data collection addressing the analytical part of the study (Theme 3)

The collection of information took mainly three forms:

- Literature review (scientific and grey);
- Case studies (5) based on field visits: face-to-face and phone interviews (6 to 8 interviews per case study); and
- Interviews with key actors in the supply chain and with IBO representatives.

The case studies have provided insights on the role, functioning and effects of IBOs within the food supply chain in different sectors and different MS. The analysis served to measure to what extent IBOs achieve the objectives they pursue and members obtain benefits from their actions (**Theme 3**). The scope of a case study is a specific IBO in a given MS, meaning one specific organisation of a given sector within one Member State.

The number of case studies may be considered as rather low with a view to drawing conclusions that may suit all situations (sector, supply chain structure, geographic coverage, etc.). For this reason, the selection of the case studies and the methodology for their implementation has been developed with particular care so as to optimise extrapolation of results whenever possible.

The final selection of IBOs that have been subject to case studies reads as follows:

- IAOE (Olive oil in Spain);
- INTERPORC (Pig meat in Spain);
- CIVB (Wine of Bordeaux in France);
- ZuivelNL (Milk and milk products in the NL); and
- FruitVeb (F&V in Hungary).

Literature review and desk research

The objective of this methodology was to gather as much data and literature as possible relevant to the different study themes. The literature review was dynamic in that it was updated with information coming to light throughout the project. With the exception of studies of inter-professional associations in France, there seem to be relatively few studies that specifically analyse interbranch organisations. However, related (grey) literature, e.g. on cooperatives and producer organisations (POs), notes the importance of IBOs and their potential roles.

Field visits

The field visits for each selected case study were based on group interviews with both members and non-members of the selected IBOs. The interview guidelines were adapted to the objectives, mandates and missions of the individual IBOs. Interviews were conducted in the national language. This guaranteed full understanding, fostered co-operation amongst stakeholders and also ensures that secondary data and literature produced in the local language were accessible to the study team.

For each case study the following interviews have been conducted:

- First interview with the NCA;
- Second interview with the coordination body of the IBO;
- Following interviews or group interviews with each of the supply chain actors that are individual members of IBO; and
- Finally, one interview or a group interview with non-members of the IBO from the same supply chain, whenever relevant.

Additional interviews (in addition to case studies interviews)

Additional interviews were performed in the context of the data collection for Theme 2. When initially contacted by email, each director of an existing IBOs has been invited to complete the IBO sheet relevant for its organisation but also to share its experience as regard the functioning of its organisation via a phone interview with the study team. Additional face-to-face interviews have been conducted with key actors of IBOs, mainly in France.

1.4. Structure of the report

In addition to this initial part, this report is structured as follows:

- **Part 2:** The EU policy framework for interbranch organisations;
- **Part 3:** Overview of national legislation and Member State action on IBOs (Theme 1);
- **Part 4:** An inventory of existing IBOs across EU countries (Theme 2); and
- **Part 5:** Analysis of the functioning and benefits of IBOs (Theme 3).

PART 2: THE EU POLICY FRAMEWORK FOR INTERBRANCH ORGANISATIONS

The primary production sector is playing a key role in the economic and social development of rural areas. Still today, half of the EU population lives in rural areas.⁶ Farmers are contributing towards the supply of high-quality and safe food products and the protection of biodiversity and the natural environment, which they are increasingly required to respect.

At the same time, farmers face **numerous challenges**. These include a still relatively limited number of young people choosing farming as a profession, the need to ensure constant modernisation of agricultural techniques, machinery and equipment as well as the economic role that primary production plays within today's agro-food chain. With regard to the latter, farmers are generally viewed as a relatively weak link within the agro-food supply chain due to their relatively small scale as opposed to other downstream actors, such as manufacturers, processors and retailers, with farmers' economic weakness often resulting in **limited bargaining power** and **reduced competitiveness** for the sector as a whole⁷.

This considered, since the establishment of a common agricultural policy, the EU has been trying to remedy this unbalance within the agro-food chain, namely by **strengthening farmers' position** on the market through different policy instruments, including the establishment of producer organisations (**POs**), **producer groups or cooperatives** (horizontal cooperation), but also interbranch organisations (**IBOs**) (vertical cooperation) which create benefits also for farmers by establishing a dialogue between the various food chain actors with a view to fostering marketing coordination, improving knowledge, exploring marketing potentials and many other tasks.

In that context, it is important to highlight that IBOs have to be seen as a rather specific grouping of actors in comparison to other forms, in particular horizontal types of cooperation (POs, producers groups, cooperatives). IBOs are structures which are neither involved in price setting nor price negotiation.

POs are economic organisations whose objectives are stipulated in Article 152 of Regulation (EU) No 1308/2013 and include, amongst the others, adapting production to market needs (both in terms of quantity and quality), concentrating supply and marketing members' production, optimising production costs and streamlining producer prices. Conversely, IBOs are actors not involved in price setting or price negotiation⁸ as they do not sell products nor negotiate contracts with other parties of the supply chain, see in particular Article 158 (1) d of Regulation (EU) No 1308/2013, which prevents IBOs from engaging in production, processing or trade and Article 210(4) clarifies that agreements of IBOs cannot entail price or quota fixation. Their main objective is to work on collective projects that would benefit all members of the organisation and the food supply chain.

The volatility of prices, the high cost of inputs and the instability of international markets that have been further highlighted by the 2007-2008 food crisis have reduced the competitiveness and profitability of the overall food sector of the primary sector in particular and led to greater volatility of prices paid to producers. In addition to that, lack of transparency as regards price formation and potentially unfair and anticompetitive

⁶ The EU's Common Agricultural Policy (CAP): for our food, for our countryside, for our environment – A partnership between Europe and farmers, European Commission, 2014, in particular p- 10.

⁷ Swinnen, J. F., & Vandeplas, A. (2014). Price transmission and market power in modern agricultural value chains.

⁸ See Article 158 par. 1 (d) of Regulation (EU) 1308/2013 that stipulates that IBOs do not, themselves, engage in production, processing or trade.

commercial practices lead to market distortions and asymmetries in bargaining power in the supply chain.⁹

Against that background, the European Commission decided to tackle this issue and in 2009 published its Communication "*A better functioning food supply chain*".¹⁰ Since then several additional initiatives have emerged delving deeper into the analysis and identifying the real issues that affect the functioning of the agro-food supply chain.

Other EU institutions have joined the initiatives that the European Commission has put in place. The Council, the European Parliament and the Economic and Social Committee which, thorough statements, decisions and reports, have consistently highlighted the severity and global extent of this problem while stressing the needs for Member States to take action to address this social and economic problem¹¹. The decision of June 2015 to renew the mandate of the **High Level Forum (HLF) for a Better Functioning Food Supply Chain**¹² is the most recent step taken by the European Commission to seek solutions to ensure greater price transparency, improve competitiveness, prevent abuse of bargaining power in negotiations and procurement, and encourage self-regulation. It will hold discussions around a wide range of topics of relevance to the food supply chain, including competitiveness, business-to-business commercial practices, internal market, sustainability, innovation, and food prices. The HLF will be operational until December 2019.

The HLF bases itself on the work of the earlier HLF, which operated from 2010 to 2014, and significantly contributed to a better understanding of the major factors determining the competitiveness of the whole food supply chain. It recognised *inter alia*, the need for greater consistency between all policy areas affecting the EU food chain. Core issues were discussed also within dedicated expert platforms on B2B relations, the competitiveness of the agro-food industry and the European Food Prices Monitoring Tool.¹³ Amongst the different initiatives and actions undertaken, the 2011 paper, by some of the members of the B2B Platform, merits attention. The paper sets out the principles of good practices applying to vertical relations within the agri-food chain¹⁴, whose implementation the Forum closely followed over the period 2013-2014.

As a response to the difficult situation for certain agricultural markets in 2015, the European Commission set up an expert group in January 2016, the **Agricultural Market Task Force (AMTF)**. The mandate of the AMTF is to discuss relevant issues, such as market transparency, access for farmers to financial instruments and futures markets to hedge price risks, options for arranging contractual relations within the chain and legal possibilities for organising farmers' collective actions; all of these with a view to

⁹ See: http://www.magrama.gob.es/es/alimentacion/temas/ley-de-medidas-para-mejorar-el-funcionamiento-de-la-cadena-alimentaria/Ley_12-2013_de_2_agosto-EN_tcm7-297949.pdf

¹⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A better functioning food supply chain in Europe COM (2009) 591 final.

¹¹ For instance, Council of the European Union, Presidency Conclusions on the Commission Communication "A better functioning food supply chain in Europe", 8124/10, 29 March 2010; European Parliament Resolution of 7 September 2010 on fair revenues for farmers: A better functioning food supply chain in Europe OJ C 308 E, 20.10.2011, p. 22 as well as Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — A better functioning food supply chain in Europe' COM (2009) 591, OJ C 48, 15.2.2011, p. 145.

¹² Commission Decision of 1 June 2015 establishing the High Level Forum for a better functioning food supply chain, in OJ C 179, 2.6.2015, p. 3.

¹³ http://ec.europa.eu/enterprise/sectors/food/competitiveness/forum_food/index_en.htm

¹⁴ Vertical relationships in the Food Supply Chain: Principles of Good Practice, 29 November 2011 is available at: http://ec.europa.eu/enterprise/sectors/food/files/competitiveness/good_practices_en.pdf

improving the position of farmers in the food chain. The AMTF conducts regular thematic meetings on these topics and aims to complete its work towards the end of 2016.¹⁵

2.1. IBOs in the context of the Common Agricultural Policy and the Common Market Organisation

2.1.1. History

The first law related to the recognition of IBOs has been adopted in France in 1975 in response to the 1973 crisis. The Law 1975 states that "*the agreements reached within the framework of an interbranch organisation must be compatible with the rules of the European Community*". However in the absence of an EU legal framework to delimit the EU intervention field, litigations at the European Court of Justice are numerous. Therefore French authorities provided a memorandum to the European Commission in 1985. In response the Commission communication of 1990 "recognised" inter-branch organisations. However, instead of adopting a horizontal legislation across agricultural sectors, the Commission proposed a sectoral adaptation of the "*interprofessional*" principles through common market organisations (CMOs). Therefore the successive reforms of the **CMO for tobacco**¹⁶ (in 1992), the **fruit and vegetable CMO**¹⁷ (in 1996), **the wine CMO**¹⁸ (in 1999), and the **olive oil CMO**¹⁹ (in 2004) have been opportunities to introduce the first provisions related to IBOs recognitions and working conditions.

Regulation (EC) No 1234/2007, the so-called Single Common Market Regulation, includes provisions regarding the general recognition criteria and formalises the role of producer groups and inter-branch organisations (see Chapter II). Article 123 provides possibility for MS to recognise IBOs in the olive oil and table olives sector and in the tobacco sector. Article 126 introduces payment of subscription by non-members for the tobacco sector (similar to the current extension of rules according to Article 164 and 165 of Regulation (EU) No 1308/2013).

The new Common Market Organisation **Regulation (EU) No 1308/2013**²⁰ gives a central role to POs and to IBOs from now on extended to every agricultural sectors covered by the CMO. New provisions are included in the CMO *regulation where Member State may decide to formally recognise "Producer Organisations" or "Interbranch organisations"*²¹ in a range of sectors, as mentioned in article 1 par. 2 of the regulation.

Over twenty years after the Commission's Communication mentioned above, IBOs are formally part of the CAP regulatory regime for all sectors. Effectively, Regulation (EU) No 1308/2013 acknowledges the key role that IBOs may play in:

- Fostering dialogue between the different actors of the supply chain;
- Promoting best practices; and
- Ensuring marketing transparency (recital 132).

¹⁵ The webpage of the AMTF contains issue papers and presentation on the topics of market transparency, futures markets and financial instruments, contractualisation, collective self-help, risk management and climate change. See http://ec.europa.eu/agriculture/agri-markets-task-force/index_en.htm

¹⁶ Council Regulation (EEC) No 2077/92 of 30 June 1992 concerning inter-branch organisations and agreements in the tobacco sector

¹⁷ Council Regulation (EC) No. 2200/96 on the common organization of the market in fruit and vegetables.

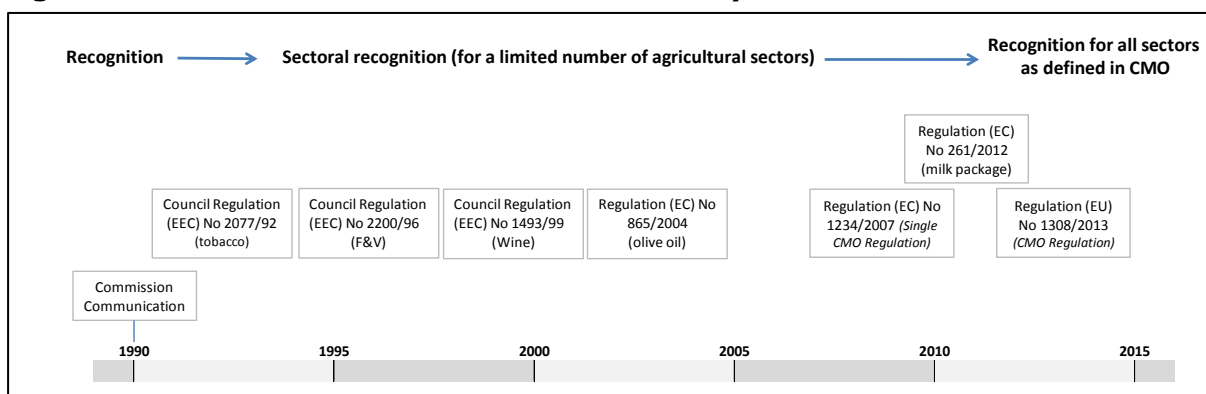
¹⁸ Council Regulation (EC) No 1493/99 on the common organisation of the market in wine

¹⁹ Regulation (EC) No 865/2004 of 29 April 2004 on the common organisation of the market in olive oil and table olives and amending Regulation (EEC) No 827/68

²⁰ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.

²¹ Voluntary recognition of interbranch organisations by Member State except for sectors where recognition is already mandatory (olive oil and table olives, and tobacco).

Figure 1: IBOs in the context of the CAP – history



Source: Arcadia International

2.1.2. Provisions in Regulation (EU) No 1308/2013

Title II of Regulation (EU) No 1308/2013 deals with rules concerning marketing and producer organisations.

For the purpose of the study which focuses on IBOs, but also considers other vertical cooperation forms and – to a limited extent – cooperation of a horizontal nature, chapter II and III of that Title are relevant.

Chapter III contains general provisions for producer organisations and interbranch organisations.

Due to the fact that Regulation (EU) No 1308/2013 often contains sector specific provisions in various chapter of the Regulation, provisions relevant for IBOS and other cooperation forms will be found also outside the general chapter. Chapter II deals with specific sectors such as sugar, milk and milk products as well as wine.

The following section presents a brief overview about the main provisions, emphasizing in particular the interplay between EU Regulation and national legislation as well as division of competence between the EU and the Member States. A distinction is made between provisions relevant for IBOs and those pertaining to other forms of cooperation, in particular horizontal cooperation.

2.1.2.1. Provisions relating to IBOs

Conditions for the recognition of IBOs: The core element of this chapter is the **requirement of recognition**. The status of a recognised IBO grants the IBO certain privileges, e.g. in the form that agreements of IBOs might be extended by the Member State to non-members, Article 164 and that IBOs can avail of competition derogations under certain conditions see Article 210.

Recognition of an IBO is Member States' competence and has to be decided by the national competent authority upon request. The Member State is in general free to decide on the recognition of an IBO (see Article 157 Regulation (EU) No 1308/2013, the Member State 'may' on request recognise IBOs). It is only for certain sectors, namely the olive oil, table olives and the tobacco sector that recognition is mandatory ("shall" recognise, see Article 159 Regulation (EU) No 1308/2013).

Further, while the Member State is responsible for the recognition, it should inform the European Commission about it. According to Article 158 Regulation (EU) No 1308/2013, the Member State needs to inform the Commission by 31 March of each year of every decision to grant, refuse or withdraw recognition taken during the previous calendar year.

Most importantly, the Member State will have to respect the requirements which Regulation (EU) No 1308/2013 lays down specific rules concerning the **recognition of IBOs** and **their activities** of an IBO. More precisely, **Article 157 par. 1** Regulation (EU)

No 1308/2013 sets out that, upon request, Member States may recognise IBOs in a specific sector listed in Article 1 par.2.

Member States may grant recognition to IBOs that fulfil the following general conditions:

- Gather representatives of economic activities linked to the production and to at least one of the following stages of the supply chain: the processing of or trade in, including distribution of, products in one or more sectors;
- Result from the initiative of all or some of the organisations or associations that constitute them;
- Pursue, in the interest of their members and of consumers, a specific goal, which may include, among others, the following activities:
 - improving the knowledge and the transparency of the production and the market through the publication of relevant statistical data in an aggregated form as well as via the analysis of future market developments;
 - Performance of market research and economic studies in order to improve product marketing;
 - Exploring potential markets for export;
 - Drawing up standard contract in compliance with EU rules for the supply of agricultural and processed products in the context of business-to-business relations;
 - Conducting research aimed at innovating, optimizing and improving the production with a view to adjusting to the market requirements;
 - Ensuring compliance with food safety, animal health and animal welfare requirements as well as protection of the environment and of natural resources also by seeking ways to reduce the use of veterinary and plant protection products; and
 - Exploiting the potential offered by organic farming as well as by EU quality schemes.

In addition to the general criteria set by Article 157 par.1, **Article 158** of the Regulation lays down **additional conditions** that IBOs must meet in order to enjoy the status of recognised entities. In particular, they must:

- Carry out their activities in one or more regions in the territory concerned;
- Account for a significant share of the economic activities referred to in point (a) of Article 157 par. 1; and
- Not engage themselves in production, processing or trade, with the sole exception of IBOs established in the olive oil, table olives and tobacco sectors pursuant to Article 162 Regulation (EU) No 1308/2013.

Specific conditions apply to the following sectors: olive oil and table olives (Article 162), tobacco (Article 162), milk and milk products (Article 157 par. 3 and 163);

Procedural requirements related to the recognition status: The Regulation also contains **procedural** and **enforcement rules** with regard to recognition of IBOs by Member States (Article 158 par. 5). In particular, national competent authorities must:

- Take a decision whether or not to grant recognition within four months from when the application that request it is lodged together with all relevant supporting documents;
- Carry out the necessary checks to verify that IBOs are effectively complying with the conditions set in the Regulation and impose penalties foreseen by national law - including, where necessary, the withdrawal of the recognition - whenever non-compliances or irregularities have been ascertained;
- Withdraw the recognition if the conditions laid down in the Regulation are no longer met; and

- Inform the Commission, by 31 March of each year, of any decision to grant, refuse or withdraw recognition taken during the previous calendar year.

Regulation (EU) No 2016/232 with regard to certain aspects of producer cooperation also deals with IBOs and stipulates details on the notification obligations of Member States. It also deals with transnational IBOs.²²

Privileges resulting from the status of recognition: Regulation (EU) No 1308/2013 provides that a recognised IBO enjoys certain prerogatives with regard to the supply management for certain sectors,

- Availing of the possibility to extend its rules to non-members and
- Relying on derogations from the competition rules under certain conditions.

Rules for supply management: Regulation (EU) No 1308/2013 provides that recognised interbranch organisations might be allowed to apply certain supply management measures in specified sectors. Upon request of a recognised IBO, a Member State might be allowed, for a limited period of time, to lay down binding rules for the supply of **cheese** (Article 150) or **ham** (Article 172) with status of protected designations of origin (PDO) or protected geographical indications (PGI).

While for these two sectors, also producer organisations may file a similar request, in the **wine sector**, it is mainly IBOs which may lay down marketing rules to improve and stabilise the common market in wine, Article 167. Like for cheese and ham, it is only recognised IBOs which lay down the respective rules.

By derogating from the regime described above, Regulation (EU) No 1308/2013 provides an **obligation** upon Member States to **grant recognition** to IBOs whenever an application is submitted in the context of certain specific sectors. These sectors are olive oil, table olives and tobacco (Article 159 point (b)).

Extension of rules, Article 164: Like POs and their associations, IBOs operating in a specific economic area of a Member State may request the national authorities of the latter to **extend to operators that are not members** - with binding effects though for a limited period of time - some of the agreements, decisions or concerted practices applicable to them. In accordance with Article 164 par. 4, such agreements, decisions or practices may concern several activities, including, but not only, production and market reports, production rules stricter than EU or national law, drawing up of standard contracts, measures to protect organic farming and products under quality schemes.

For rules applying to an IBO to be extended to non-members, the IBO in question must be **representative** of the production, of the trade or of the processing of a product or a product category in the relevant economic area of the concerned Member State. More precisely, it must account for at least 2/3 of the total volume of the relevant activity in said area (Article 164 par. 1 and par. 3 point (a) (ii)).

When decisions involving the extension of rules are taken, Member States must ensure that they are subject to adequate publication and promptly notified to the European Commission (Article 164 par. 4 and 5). Whilst adopting decisions of the type under consideration, Member States, following consultation with relevant stakeholders, may as well require non-members to pay all or part of the financial contributions provided by IBO members (Article 165).

²² Commission Delegated Regulation (EU) 2016/232 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to certain aspects of producer cooperation, OJ L 44 of 19.2.2016, p. 1.

Derogations from the competition rules: Article 210 CMO Regulation contains a specific provision only available to recognised IBs to avail of certain derogations from the competition rules, following a notification of the relevant IBO agreement to the European Commission. This provision will be described in greater detail in Chapter 2.2 on IBOs in the context of competition to place it in the wider context of the relationship between agriculture and competition law.

2.1.2.2. Provisions on agreements within the trade for the sugar sector

Articles 125 and 127 lay down rules related to **mandatory sugar sector agreements**. Article 125 lists obligations as regard pre-sowing delivery contracts the details of which listed in point 6 of Section A of Part II of Annex II and in Annex X.

Article 127 presents requirements as regard delivery contracts that shall conform to the purchase terms laid down in Annex XI.

2.1.2.3. Provisions on horizontal cooperation forms

Regulation (EU) No 1308/2013 contains several provisions on horizontal cooperation forms between farmers.

- Articles 152, 154 and 156 contain the requirements for the recognition of producer organisations and associations of producer organisations;
- Article 160 provides that producer organisations in the fruit and vegetable sector either engage in production planning, concentration of supply or optimisation of production costs within the meaning of Article 152 (1) c) i, ii, iii of Regulation (EU) No 1308/2013. Producer members shall be required to market their entire production concerned through the producer organisation;
- Article 149 provides for the possibility of contractual negotiations (joint sales) by recognised POs for milk and milk products; and
- Articles 169, 170 and 171 provide for the possibility of contractual negotiations by recognised POs on behalf of their members for certain sectors other than milk and milk products and sugar. Article 169 concerns the olive oil sector, Article 170 the beef and veal sector; and Article 171 is dedicated to certain arable crops.

2.1.2.4. General provisions

While not directly referring to producer or IBOs, Regulation (EU) No 1308/2013 contains provisions which are/can be relevant for the analysis. Article 168 of Regulation (EU) No 1308/2013 allows MS to decide that deliveries of products from a sector listed in Article 1(2), other than milk and milk products and sugar by a producer to a processor must be covered by a written contract between the parties. IBOs can be instrumental for such task by drafting standard contracts. This has been acknowledged as one of the objectives of an IBO in Article 157 (1) (c) (v) Regulation (EU) No 1308/2013.

For the milk sector, Article 148 lays down provisions for the situation where a Member State decides that every delivery of raw milk in its territory by a farmer to a processor of raw milk must be covered by a written contract and/or decides that first purchasers must make a written offer for a contract for the delivery of raw milk by the farmers.

As stated above, Article 125 and 125 of Regulation (EU) No 1308/2013 provide for details of agreements within the trade and delivery contracts between individual sellers and buyers.

Lastly, Articles 173, 174 and 175 Regulation (EU) No 1308/2013 empower the European Commission to adopt delegated and implementing acts also, but not only, with reference to those provisions governing the recognition, the activities and the functioning of IBOs.

2.2. IBOs in the context of the EU policy on competition

As the CAP, EU policy in the area of competition may be considered as one of the key drivers of the European economic integration and, in particular, of the establishment of the single market. Indeed, antitrust rules have been present in EU's founding texts since the early days of the European Economic Community²³ and are presently enshrined in Articles 101 and 102 TFEU.

Article 101 par. 1 TFEU considers incompatible with the internal market, and thus prohibits, all **agreements between undertakings, decisions by associations of undertakings** and **concerted practices** that may affect trade between Member States and that have as their object or effect the prevention, the restriction or the distortion of competition within the internal market.

Agreements and practices involving the fixing of prices or of other trade conditions, limiting or controlling production or markets and resulting in the sharing of markets or sources of supply are only some examples of conducts that are considered, in principle, as not compliant with EU antitrust policy.

Agreements, decisions and practices put in place in breach of this provision are deemed as **automatically void** (Article 101 par. 2 TFEU).

The provisions illustrated above, however, do not apply to agreements, decisions and practices or categories of them whenever the latter meet the following four conditions (Article 101 par. 3):

- Contribute towards the improvement of the production or the distribution of goods or the promotion of technical or economic progress;
- Provide consumers with a fair share of the resulting benefits;
- Avoid the application to the concerned undertakings of restrictions that are not necessary for the attainment of these objectives; and
- Avoid the possibility for such undertakings to eliminate competition in respect of a substantial part of the products in question.

Article 102 TFEU prohibits the abuse by one or more undertakings of a **dominant position** within the internal market, or in a substantial part of it, to the extent to which such a conduct affects the trade between Member States. In accordance with this provision, an abuse of a dominant position may take place whenever the concerned undertaking, for instance, imposes, directly or indirectly, unfair purchase or selling prices or other unfair trade conditions; limits production, markets or technical development, thereby bringing prejudice to consumers; or applies different conditions to equivalent transactions with other trading partners, thus placing them at a competitive disadvantage.

The European Commission ensures the application of Articles 101 and 102 TFEU and, for this purpose, EU law provides it with certain investigating powers besides the possibility of inflicting sanctions. National competition authorities and national courts can also apply the Treaty provisions. Procedural rules for the correct application of EU antitrust provisions are laid down in Regulation (EC) No 1/2003.²⁴

As regards State aid, **Article 107 par. 1 TFEU** considers incompatible with EU law any aid granted by a Member State or through State resources in any form, which distorts or threatens competition by favouring certain undertakings or the production of certain goods to the extent that it affects the trade between Member States. Article 107 par. 2 and 3 lists, respectively State aid that are deemed compatible by law and those that may be regarded as such.

²³ Articles 81 and 82 of the Treaty establishing the European Economic Community (1957).

²⁴ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1.

2.3. Balancing EU competition policy and CAP

Article 42 TFEU confers on the EU legislator (the European Parliament and the Council) the power to determine the extent to which competition rules apply to the production of and trade in agricultural products. More precisely, according to **Article 42 TFEU** the EU legislator determines the extent of the application of competition rules to the agricultural sector, taking into account the objectives of the Common Agricultural Policy (hereinafter the "CAP objectives") set out in **Article 39 TFEU**. According to the Court of Justice that provision recognises the precedence of the objectives of the agricultural policy over the aims of the Treaty in relation to competition.

Consistently confirmed through the successive reforms of the EU founding texts,²⁵ the provision recalled above is somehow symptomatic of the difficulties involved in finding a balance between the policy objectives of EU antitrust rules and those that CAP must pursue involves. The case law of the European Court of Justice explains the existing tension between the ones and the others, referring that «*the authors of the Treaty were aware that the simultaneous pursuit of those two objectives might, at certain times and in certain circumstances, prove difficult; hence the priority of the agricultural policy over the objectives of the Treaty in the field of competition and the power of the Council to decide to what extent the competition rules are to be applied in the agricultural sector*».²⁶ While the Court did not call into question that the maintenance of effective competition is also one of the objectives of CAP²⁷, it underlined the precedence of the objectives of agricultural policy over the aims of the Treaty in relation to competition in several cases.²⁸

Against this background, the EU legislator has made use of this legal basis by adopting in this area Regulation (EEC) No 26/62 on the application of competition rules to production and trade of agricultural products²⁹ subsequently replaced by Regulation (EC) No 1184/2006 and its successive modifications.³⁰ In this context, EU legislation sets out the principle in Article 206 of Regulation (EU) No 1308/2013 whereby competition rules apply to agricultural agreements save as otherwise provided in the Regulation. General derogations from the application of the competition rules are contained in **Articles 206-210 Regulation (EU) No 1308/2013, sector specific one in Articles 169-171 for the olive oil, beef/veal and certain arable crops sectors which are complemented** by Commission guidelines for these sectors.³¹

For IBOs, Article 210 Regulation (EU) No 1308/2013 lists the conditions by virtue of which agreements, decisions and concerted practices put in place by IBOs may be **exempted** from the general prohibition set in Article 101 par. 1 TFEU.

For this purpose, agreements, decisions and practices must be attributable to IBOs performing one of the activities listed under Article 157 par. 1 point (c) (or Article 157 par. 3 point (c) for IBOs in the milk and milk products sector and Article 162 for those established in the olive oil, table olives and tobacco sectors).

²⁵ Article 42 of the Treaty establishing the European Economic Community (1957) and Article 36 of the Treaty establishing the European Community (1992) both mirror the wording of the corresponding TFEU provision.

²⁶ Judgment *Federal Republic of Germany v Council of the European Union*, C-280/93, EU:C:1994:367, points. 60 and 61.

²⁷ Judgment *Milk Marque Ltd and National Farmers' Union*, C-137/00, EU:C:2003:429.

²⁸ Judgment in *Maizena*, 139/79, EU:C:1980:250, paragraph 23; Judgment in *Germany v. Council*, C-280/93, EU:C:1994:367, paragraph 61.

²⁹ Council Regulation (EEC) No 26/62 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products in OJ L 30, 20.04.1962, p. 1275.

³⁰ Council Regulation (EC) No 1184/2006 of 24 July 2006 applying certain rules of competition to the production of, and trade in, agricultural products, in OJ L 214, 4.8.2006, p. 7.

³¹ Commission Notice — Guidelines on the application of the specific rules set out in Articles 169, 170 and 171 of the CMO Regulation for the olive oil, beef and veal and arable crops sectors, OJ C 431, 22.12.2015, p. 1.

From a procedural point of view, all agreements, decisions or practices fulfilling said conditions must be notified to the European Commission and not to put into effect until the two-month scrutiny period that follows the notification is elapsed (Article 210 par. 2 and 3). If, by the end of the scrutiny period, the Commission finds that the conditions required for benefitting from a derogation are not fulfilled, it sets out these findings.

There are, however, cases for which the Regulation rules out the possibility of granting an exemption, considering them, *per se*, incompatible with EU law. Article 210 par. 4 includes under this category agreements or practices which:

- May lead to the partitioning of markets within the EU in any form;
- May affect the sound operation of the market organisation;
- May create distortions of competition which are not essential to achieving the objectives of the CAP pursued by the IBO activity;
- Entail the fixing of prices or the fixing of quotas; and
- May create discrimination or eliminate competition in respect of a substantial proportion of the products in question.

Finally, **Article 211** of Regulation (EU) No 1308/2013 stipulates the application of EU State aid rules as enshrined in **Articles 107 to 109 TFEU** to the production of, and trade in, agricultural products, with the exception of the payments performed by Member States pursuant to and in conformity with:

- The measures provided for in the regulation which are partly or wholly financed by the EU; or
- National payments for reindeer in Finland and Sweden (Article 213), for the sugar sector in Finland (Article 214), for apiculture (Article 215), for distillation of wine in case of crisis (Article 216), for distribution of products to children (Article 217) and for nuts (Article 218).

In conclusion, the following table summarises all articles of the TFEU and CMO Regulation that have to be considered under the scope of this study.

Table 2: EU legislation addressing IBOs and other forms of cooperation and contracts between producers and other levels in the food supply chains

Legal act	Legal Act	Contents
General provisions		
TFEU	Treaty provisions related to agriculture	<p>Article 39 - Overall objectives that CAP must pursue</p> <p>Article 40 - Establishment of CMO and nature of measures that may adopted in this context</p> <p>Article 42 - Legal basis empowering the EU legislator to determine the extent to which competition rules apply to production of and trade in agricultural products</p> <p>Article 43 - Legal basis for the adoption of legislative acts implementing CAP.</p>
	Treaty provisions on competition	<p>Article 101 - Declares incompatible with EU law undertakings' agreements, decisions and practices that have the object or the effect to prevent, restrict or distort competition in the internal market</p> <p>Article 102 - Declares incompatible with EU law the abuse of a dominant position by one or more undertaking within the internal market, or in a substantial part of it, insofar as such a conduct affects intra-EU trade</p> <p>Article 106 - MS actions</p> <p>Article 107 - Declares incompatible with EU law any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens competition by favouring certain undertakings or the production of certain goods insofar as it affects the trade between Member States.</p>
Provisions related to IBOs		
Reg. (EU) No 1308/2013		Article 157 - Principles and conditions governing voluntary recognition of IBOs by MS
		Article 158 - Additional conditions and procedural rules governing IBOs' recognition by MS
		Article 159 - Cases in which IBOs recognition by MS is mandatory (olive oils and table olives sector and the tobacco sector)
		Articles 157 par. 3, 163 - Specific requirements applying to voluntary recognition of IBOs by MS in certain sectors
		Article 162 - Additional objectives of IBOs in olive oils and table olives sector and the tobacco sector)
		Articles 164 and 165 - Rules for the extension by MS of agreements, decisions and practices adopted by IBOs, including decisions on financing, to operators that are not members
		Article 210 - Conditions under which agreements, decisions and practices put in place by IBOs may be exempted from Article 101 TFEU.
	Supply management	<p>Article 150 and 172- Regulation of supply of cheese and ham with a PDO/PGI (applies to IBOs, but also to POs or group of operators)</p> <p>Article 167 - Possibility for MS to adopt, under certain conditions, domestic marketing rules for regulating the supply of wines (to be specified to which type of entities it could apply in particular following decisions by IBOs).</p>
Provisions related to other vertical cooperation, agreements within trade in sugar		
Reg. (EU) No 1308/2013		Articles 125 and 127 - Sugar sector agreements and delivery contracts

Legal act	Legal Act	Contents
Provisions related to contractual negotiations		
Reg. (EU) No 1308/2013		Articles 169, 170 and 171 - Contractual negotiations in the olive oil sector, beef and veal sector and for certain arable crops Articles 149 - Contractual negotiations in the milk and milk products sector
Provisions related to contractual relations		
Reg. (EU) No 1308/2013		Article 148 - Contractual relations in the milk and milk products sector Article 168 - Contractual relations in respect of agricultural products from a sector listed in Article 1 par. 2 other than milk and milk products and sugar.
Empowerment new rules		
Reg. (EU) No 1308/2013		Articles 173, 174 and 175 - Legal basis for the adoption of delegated and implementing acts concerning, among others, the recognition and the operation of IBOs
State aids rules		
		Article 211 - Application of Article 107 to 109 TFEU to the production of, and trade in, agricultural products
		Articles 213, 214, 215, 216, 217 and 218 - Situations in which State aid provisions enshrined in TFEU do not apply.
Antitrust rules		
		Art. 206 - Application of Article 101 to 106 TFEU to agriculture
		Art. 209 - Exceptions for the objectives of the CAP and farmers and their associations from the application of Article 101 (1) TFEU.

Source: compiled by Arcadia International

PART 3: OVERVIEW OF NATIONAL LEGISLATION AND MEMBER STATE ACTIONS ON IBOS (THEME 1)

Currently, the majority of EU Member States (19) have in place national rules governing the recognition and the functioning of IBOs. France is the Member State that first adopted national legislation in this area (1975). Other Member States that have introduced rules at a relatively early stage are Spain (1994), Portugal (1997), Italy (1998) and Greece (1999). Germany (2013), Latvia (2013) and the Netherlands (2014) are the Member States that, most recently, have passed, for the very first time, national legislation in this area.

The implementation of legislation on IBOs in the 19 Member States that adopted such legislation varies significantly, if one considers, in particular, the number of IBOs that have been recognised in these Member States. Effectively, only in **eight Member States** (namely France, Greece, Hungary, Italy, the Netherlands, Spain, Portugal and Romania) have IBOs been formally recognised by the competent authorities and are currently performing the activities for which they have been set up.

Based on the information collected during the execution of this study, the current scenario is unlikely to change in the near future. Indeed, in the remaining **eleven Member States** (notably Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Germany, Latvia, Malta, Poland and Slovakia) that have national rules on IBOs, due to different reasons, there seem to be no plans to grant IBO recognition to any organisation operating in the agri-food sector in the short term.

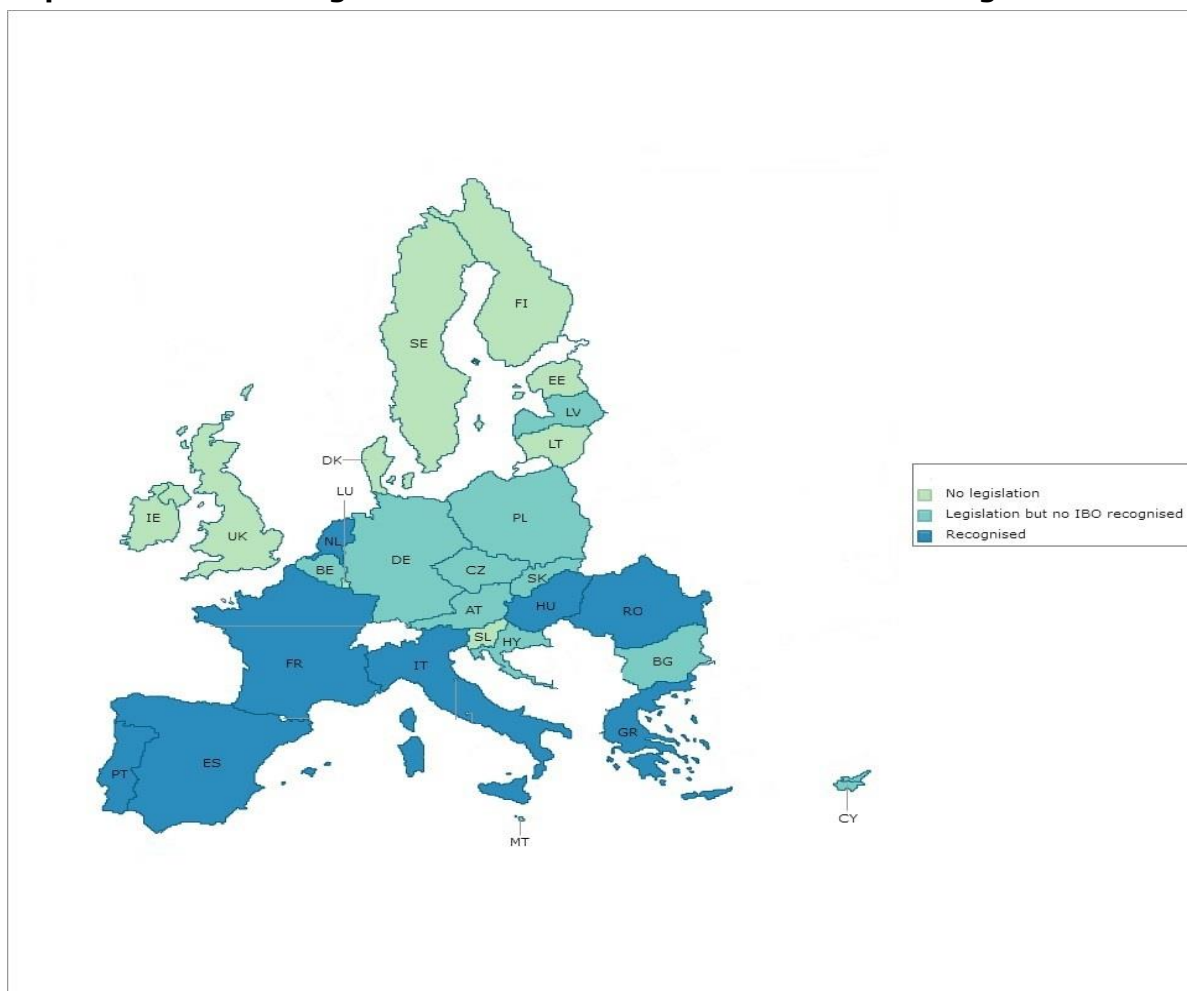
Finally, in **nine Member States** (namely Denmark, Estonia, Finland, Ireland, Lithuania, Luxembourg, Slovenia, Sweden and the United Kingdom), presently, there is no framework for the establishment of IBOs in the agri-food sector. The reasons behind the lack of a dedicated set of provisions in the legal order of those Member States are examined in Section 3.4 of this report.

Figure 1 provides an overview of the current situation in the EU as regards the existence of national legislation on IBOs at Member State level as well as its level of implementation.

The following sections provide:

- An in-depth comparative analysis of Member States' national legislation regulating IBOs (Section 3.1);
- An assessment of the level of implementation of national legislation on IBOs with regard to those Member States that have formally recognised organisations to that effect (Section 3.2);
- An insight on the reasons why presently in a majority of Member States there are no entities recognised as IBOs despite the existence of national legislation (Section 3.3);
- An analysis of the reasons why in nine Member States there is currently no legislation on IBOs (Section 3.4); and
- An overview of the implementation in all twenty-eight EU Member States of other relevant provisions that Regulation (EU) No 1308/2013 contains with a view to fostering cooperation between the stakeholders of the production chain of specific agricultural products (Section 3.5).

Figure 2: Legislation on IBOs at Member State level and its level of implementation taking into account existence or absence of recognised IBOs



Source: compiled by Arcadia International

3.1. Mapping of national legislation on IBOs across the EU

This Section intends to provide an **in-depth comparative analysis** of the main features of national legislation on IBOs in those Member States where such a framework is currently in place, taking into account EU provisions and requirements as a starting point.

3.1.1. Historical evolution of national legislation relating to IBOs

As referred earlier on, France is the first Member State that adopted a national framework on IBOs (1975), whilst the Netherlands is the latest one (2014). Overall, based on the year of the adoption of the first national legislation on IBOs, Member States may be grouped in **three main clusters**:

- 1975: France;
- 1994-2004: Spain, Portugal, Italy, Greece, Romania, Cyprus, Malta, Poland and Belgium (Wallonia);
- 2005-2014: Bulgaria, Belgium (Flanders), Croatia, Austria, Czech Republic, Slovakia, Hungary, Germany, Latvia and the Netherlands.

The reasons for the adoption of a dedicated framework for IBOs at national level at a given moment in time vary from one Member State to another. In France, for instance, in 1975 the national Parliament introduced a law governing the recognition of IBOs mainly

to lay down a proper legal framework for an area that until then had been regulated only to a limited extent and where public and private entities had long coexisted.

On the other hand, in Spain, rules aimed at fostering vertical cooperation in the different agri-food sectors already existed before a specific national framework was established in 1994, although they were dealt with under legislation regulating contracts in the agri-food sector. The legislature opted then for giving such rules more prominence and, to this end, designed a dedicated single framework, taking the French legislative experience as a model.

In Portugal, the development of national legislation on IBOs was mainly prompted by the establishment of EU rules in this area through the adoption of Regulation (EC) 2200/1996 on the common organisation of fruits and vegetables. Likewise, the intention of business operators in the milk and milk products sector to structure their vertical cooperation in a more efficient manner contributed towards the definition of a national framework during the last years of the past century.

More recently, the adoption of Regulation (EU) No 1308/2013 on the common market organisation of agricultural products is to be regarded as the main factor that prompted the establishment of national rules in the Netherlands in 2014.

Following the adoption of the first legal framework for IBOs at national level, almost all Member States have subsequently reviewed it. Only Latvia is an exception in this respect.

With regard to the **number of national acts regulating IBOs**, this also varies from one Member State to another one. In eight Member States (namely, Cyprus, Czech Republic, France, Germany, Hungary, Italy, Latvia and the Netherlands) - which account for nearly half of the Member States with national legislation on IBOs - the rules for the recognition and the functioning of these entities are laid down in a **single legislative act**.

On the other hand, Belgium and Portugal are the two Member States with the **highest number of legal acts** (6) setting rules for IBOs. As regards Belgium, this situation may be explained considering that the legislative competence in this area is held by the regions. Over time, both Wallonia and Flanders have adopted three legal acts each. Regarding Portugal, the high number of legal acts currently in force at national level is justified by the fact that this Member State has developed a set of specific rules for the setting up of IBOs in the forestry sector, in addition to a more general framework at national level for the recognition of these organisations in the agri-food sector.

National vs. regional legislation

Due to the specificities of the administrative structure of certain Member States, national legislation on IBOs may coexist with **regional legislation**. In the context of the study, two relevant examples were identified in this regard.

- In Spain, national legislation on IBOs currently coexists with legislation adopted by certain Autonomous Communities, namely Andalusia (2005), Basque Countries (1996), Castilla La Mancha (2006), Castilla and León (2014) and Catalonia (2015). With the sole exception of Catalonia, the legislation adopted by the Spanish Autonomous Communities in the area of IBOs largely mirrors the rule set at national level; and
- In Italy, the Region Emilia-Romagna adopted a regional legal framework for IBOs in 2000. Unlike Spain, however, in Italy the national competent authorities are of the view that, under national law, regions do not hold any legislative power in this area and, thus, have been consistently questioning the legitimacy of the regional framework adopted by Emilia-Romagna as well as the recognitions that this Region has granted to a few IBOs.

Current legislative developments

Four Member States (Cyprus, Latvia, Malta and Slovakia) are currently **reviewing the existing national framework** for IBOs. Interestingly, these are all Member States where IBOs have not been recognised to date.

In Cyprus, for instance, the legislature is currently examining a draft legislative text to be adopted in 2016, which aims at simplifying the recognition procedure and facilitating the establishment of IBOs in the agri-food sector.

Slovakia has also embarked upon a legislative review of national rules on IBOs with a view to extending the possibility of establishing IBOs in sectors other than the milk and milk products sector.

In Malta, there are also plans to revise the national framework for IBOs in order to ensure full alignment with the provisions of Regulation (EU) No 1308/2013.

Finally, the competent authorities in Latvia are planning to consult stakeholders in the second half of 2016 on, among others, the need to review rules governing the establishment and recognition of IBOs.

Table 3 provides a detailed overview of the historical evolution of national legislation at Member State level, including the list of acts currently in force and, where relevant, the legislation developments in the pipeline.

Table 3: Historical evolution of national legislation on IBOs in Member States where such legislation exists

MS	Year of adoption of the first national legal act regarding IBOs	Years of adoption of other national legal acts relevant to IBOs	Main legal acts currently in force at national level	Current developments
AT	2011	2012 and 2015	Ordinance on the establishment of IBOs in the wine sector of 23 May 2011 and Ordinance on Framework Conditions for Producers of 3 November 2015	
BE	2004 (Wallonia), 2009 (Flanders)	2013 and 2015 (Wallonia); 2012 and 2014 (Flanders)	Wallonia: Order of 27 May 2004 regarding the common market organisation of fruits and vegetables, Order of 29 August 2013 concerning contractual relations in the milk and milk product sector as amended by Order of 10 December 2015 and Order of 22 January 2015 concerning the recognition of producer organisations, associations of producer organisations and interbranch organisations in other sectors; Flanders: Order of 8 May 2009 concerning the common market organisation of fruits and vegetables as regards the recognition of producer organisations, operational funds and programmes and the granting of financial assistance, Order of 14 December 2012 concerning contractual relations and cooperation in the milk and milk product sector as amended by Order of 6 June 2014 and Order of 31 January 2014 on the recognition of producer and interbranch organisations in other sectors	
BG	2006	2015	Ordinance No 1 of 28 January 2015 on the agreements in the milk sector and on the terms and conditions for recognition of producers organisations, their associations and interbranch organisations in the milk and milk products sector and Ordinance No 12 of 5 May 2015 on the terms and conditions for recognition of producer organisations of agricultural products, associations of producer organisations and interbranch organisations and producer groups	
CY	2002	2004	Law No 164(I)/2002 on Recognition of Agricultural Producers Organisations as amended by Law No 160(I)/2004	Revision of the current legislative framework ongoing with a view to simplifying IBOs' recognition procedure
CZ	2012	2014	Government Regulation No 282/2014 Coll. on certain conditions for the implementation of the common organisation of markets in the milk and milk products sector	
DE	2013	2014	Regulation BGBl.IS.3998 of 15 November 2013 on the development of the market structure in the agricultural sector	
ES	1994	1996, 1997, 2000, 2009, 2013 and 2015	Law 38/1994 of 30 December laying down provisions on interbranch organisations in the agri-food sector as amended by Laws 13/1996 and 12/2013 and Royal Decree 705/1997 of 16 May implementing Law 38/1994 as amended by Royal Decrees 1660/2000, 1668/2009 and 64/2015	
FR	1975	1998, 2010, 2014 and 2015	Articles L632-I and ff. of Rural and Maritime Fishery Code as amended by Order No 2015-128 of 7 October 2015	

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MS	Year of adoption of the first national legal act regarding IBOs	Years of adoption of other national legal acts relevant to IBOs	Main legal acts currently in force at national level	Current developments
GR	1999	2000, 2001, 2005 and 2011	Law No 4015/2011 of 12 November on Agricultural Cooperatives and Producers Organisations, Ministerial Decision No 336178 of 22 March 2000 on rules, conditions and procedures for the recognition and operation of interbranch organisations at national level as amended by Ministerial Decision No 334606 of 31 January 2001 and Ministerial Decision No 63179/2005 on Rules, conditions and procedures for the recognition and operation of interbranch organisations at regional level	
HU	2012	2012, 2013 and 2015	Act XCVII of 2015	
HR	2010	2011, 2013 and 2015	Agriculture Act of 17 March 2015 and Ordinance of 22 July 2015 on recognition and aid for the establishment of producer organisations	
IT	1998	2001, 2003, 2005 and 2015	Law n. 91 of 2 July 2015 converting in law Decree Law 51 of 5 May 2015 laying down urgent provisions for the strengthening of agri-food sectors in crisis, in support of agri-food business operators affected by circumstance of exceptional nature and reorganisation of the ministerial departments	
LV	2013	N/A	Regulation No. 80/2013 laying down procedures for the recognition of producers organisations in the milk and milk products sector and monitoring of their performance	Planning of a stakeholder consultation including on the possibility to expand the scope of IBOs' national legislation to sectors other than dairy
MT	2003	2004 and 2007	Producer Organisations Act of 6 January 2003 as amended by Legal Notices 426 of 2007, 346 of 2008 and 182 of 2012, Fruit and Vegetable Producer Organisations Regulations of 15 February 2004 as amended by Legal Notice 201 of 2011 and Producer Organisations (Certain Products) Regulations of 21 August 2007	
NL	2014	2015	Regulation No. WJZ/14152482 of 10 October 2015 on producer and interbranch organisations	
PL	2004	2015 and 2016	"Act 2004/897 of 20 April 2004 on the organisation of the market in milk and milk products, Ministerial Regulation 2016/216 of 5 February 2016 on the recognition of producer and interbranch organisations in the market of milk and milk products of agricultural markets and the type and scope of documents required for meeting the conditions for recognition, Act 2015/1419 of 10 July 2015 amending Act of 11 March 2004 with the view to introducing provisions on interbranch organisations and Ministerial Regulation 2016/87 of 7 January 2016 on the recognition of producer and interbranch organisations in agricultural markets other than milk, milk products and fruits and vegetables	
PT	1997	1998, 1999, 2001, 2002 and 2008	Law n.123/97 of 13 November laying down the framework for interbranch	

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MS	Year of adoption of the first national legal act regarding IBOs	Years of adoption of other national legal acts relevant to IBOs	Main legal acts currently in force at national level	Current developments
			<p>organisations in the agri-food sector, Order n.967/98 laying down application rules for the regime of interbranch organisations recognition as amended by Order 35/2008 , Decree Law n.376/98 of 24 November laying down the representativeness criteria that national, regional and local organisations must fulfil to adhere to interbranch organisations, Law n.158/99 of 14 September laying down the framework for interbranch organisations in the forestry sector, Decree Law n.316/2001 of 10 December laying down application rules for the recognition, functioning and monitoring of interbranch organisations in the forestry sector, Order n.79/2002 of 22 January laying down representativeness criteria for the recognition of interbranch organisation in the forestry sector as well as equal participation of their members at the level of interbranch organisations' governing bodies</p>	
RO	2001	2008, 2009 and 2010	<p>Government Emergency Ordinance No 103/2008 of 3 September 2008 on the setting of interbranch organisations for agri-food products , Government Decision No 1068/2009 of 23 September 2009 on organisation and functioning of interbranch organisations regarding agri-food products and for the approval of representation criteria, of the procedure for recognition and withdrawal of recognition, of control and monitoring thereof, as well as delegation of duties and Ministerial Order No 143/2010 of 16 June 2010 regarding the members and functioning of the Committee for interbranch organisations in the agri-food sector as well as the procedures for recognition, monitoring and control, withdrawal of recognition, extension of interbranch agreements and delegation of duties of the interbranch organisations</p>	
SK	2012	2015	<p>Law n. 491/2001 on the organisation of the markets in selected agricultural products as amended by Law n. 353/2012 and Government Regulation n. 55/2015 with regard to conditions on the common organisation of the market in milk and milk products</p>	<p>National legislation on the establishment of IBOs in sectors other than milk and milk products is in the pipeline</p>

Source: compiled by Arcadia International

3.1.2. Impact of the adoption of Regulation (EU) No 1308/2013 on national legislation on IBOs

As of 1 January 2014, Regulation (EU) No 1308/2013 has introduced a few major changes to the EU regime concerning IBOs. Amongst them, the possibility to establish such vertical organisations in all agri-food sectors, as opposed to the regime previously in force, stands out as one of the most prominent novelties introduced.

Following the entry into force of the regulation, it can be observed that in the Netherlands the adoption of European legislation has prompted the development of the first ever set of national requirements. Although previous laws were in place since 1950 on the establishment of so-called public statutory organisations ("*Wet op de bedrijfsorganisatie*"), which regulated among other the functioning of the Commodity Boards and which can in part be seen as predecessors of the current IBOs, the Netherlands undertook encompassing legislation only after the adoption of Regulation (EU) No 1308/2013.

Furthermore, nine Member States (notably, Austria, Belgium, Bulgaria, Croatia, France, Germany, Hungary, Italy and Poland) have amended, though to a varying degree, the existing national framework in order to ensure full alignment with its provisions.

In so doing, certain Member States (for instance, Austria, Belgium, Bulgaria, Croatia and Poland) have seized this opportunity to extend the application of rules on IBOs recognition to other agri-food sectors as set by Regulation (EU) No 1308/2013, whilst national legislation previously in force clearly restricted this possibility to a limited number of sectors (mainly, milk and milk products and fruits and vegetables).

On the other hand, in the case of Germany, national legislation provides for the establishment of IBOs in a list of sectors broader than the one set out in Regulation (EU) No 1308/2013.

As already referred above, in Cyprus, Malta and Latvia IBOs' national legislation is currently being reviewed or there are plans to do so in the short-term.

With regard to the Czech Republic and Slovakia, following the entry into force of the new rules on the common organisation of agricultural markets, the legislators of these two countries have introduced minor changes to the legal framework on IBOs applicable at national level. Such changes have therefore not resulted in a full alignment with the provisions of Regulation (EU) No 1308/2013 with national legislation in both countries still regulating for establishment of IBOs only in the milk and milk products sector instead for all agricultural sectors. However, Slovakia is to be included amongst the group of Member States that are planning to introduce amendments to the national framework with a view to ensuring full consistency with applicable EU rules.

Finally, Greece, Portugal, Romania and Spain have not introduced any national rules following the adoption of Regulation (EU) No 1308/2013 and there would be no plans to do so. Indeed, in the case of Spain, the national competent authorities have ensured alignment of the national framework with the new provisions set by the regulation before its formal adoption at EU level. In Portugal, the competent authorities indicated to have carried out an assessment of the national provisions on IBOs against the new regime designed by Regulation (EU) No 1308/2013 for such organisations and concluded that no amendment of the former was needed.

Table 4 provides an overview of the existing national legislation at Member State level prior to and following the adoption of Regulation (EU) No 1308/2013 on the common organisation of markets in agricultural products.

Table 4: Overview of national legislation in place before and after the adoption of Regulation (EU) No 1308/2013, including, where applicable, main changes brought in by legislation adopted after 1 January 2014

MS	National legislation prior to 1 January 2014	National legislation after 1 January 2014	Main changes after 1 January 2014
AT	Yes (only for the milk and milk products and wine sectors)	Yes	Possibility of establishing IBOs in other sectors in line with Art. 157 Regulation (EU) No 1308/2013
BE	Yes (only for dairy and fruits and vegetables sector)	Yes	Possibility of establishing IBOs in other sectors in line with Art. 157 Regulation (EU) No 1308/2013
BG	Yes (only for fruits and vegetables sector)	Yes	Possibility of establishing IBOs in other sectors relevant at national level in line with Art. 157 Regulation EU (No) 1308/2013
CY	Yes	New legislation pending approval	Changes being considered concern, among others, minimum requirements for recognition of IBOs and simplification of recognition procedure
CZ	Yes (only for the milk and milk products sector)	Yes	Repealing of prior legislation with no substantial changes introduced with regard to IBOs
DE	Yes	Yes	Minor changes to the national legal framework for IBOs
ES	Yes	No	N/A
FR	Yes	Yes	Alignment, among others, with Art. 157 and 164 Regulation (EU) No 1308/2013
GR	Yes	No	N/A
HU	Yes	Yes	Alignment, among others, with Art. 157 and 164 Regulation (EU) No 1308/2013
HR	Yes (only for fruits and vegetables, olive oil and table olives, milk and milk sectors)	Yes	Possibility to establish IBOs in all sectors relevant to the national economy in line with Art. 157 Regulation (EU) No 1308/2013
IT	Yes	Yes	Adoption of implementing rules ensuring overall alignment with Regulation (EU) No 1308/2013
LV	Yes (only for the milk and milk product sector)	No	N/A
MT	Yes	No	N/A
NL	No	Yes	First national legal framework for IBOs introducing legal basis for the establishment of such entities in all sectors relevant to the national economy
PL	Yes (only for the milk and milk products sector)	Yes	Possibility of establishing IBOs in all sectors in line with Art. 157 Regulation (EU) No 1308/2013 and adoption of implementing rules for their recognition except for fruits and vegetables
PT	Yes	No	N/A
RO	Yes	No	N/A
SK	Yes (only for milk and milk products sector)	Yes	No substantial changes introduced with regard to IBOs

Source: compiled by Arcadia International

3.1.3. National rules laying down definitions, objectives, legal status and governance requirements for IBOs

Regulation (EU) No 1308/2013 does not provide a specific definition for IBOs as such. It leaves the recognition process of IBOs to Member States' competence, but lays down the certain requirements that these organisations must fulfil in order to be granted recognition at national level.

In this context, Article 157 par. 1 of the regulation stipulates that, upon request, Member States may grant recognition to IBOs in one of the sector listed under Article 1 par. 2 that:

- a) Are constituted of representatives of economic activities linked to the production and to at least one of the following stages of the supply chain: the processing of or trade in, including distribution of, products in one or more sectors;

- b) Are formed on the initiative of all or some of the organisations or associations that constitute them;
- c) Pursue a specific aim taking into account the interests of their members and of consumers, which may include, in particular, one of the twenty-four objectives that the EU legislation lists to this end.³²

These requirements must be read in conjunction with the requirements set out in Article 158 par. 1 of the same regulation pursuant to which IBOs must:

- Carry out their activities in one or more regions in the territory concerned;
- Account for a significant share of the economic activities represented within its membership base; and
- Do not engage themselves in production, processing or trade.

Further requirements are set out for the recognition of IBOs milk and milk products sector in Article 157 par. 3. Similarly, with reference to IBOs in the tobacco, olive oil and table oil sectors, Article 162 foresees a few additional objectives that organisations operating in such sectors can pursue in order to obtain recognition by national competent authorities; however recognition of IBOs in these sectors is mandatory as per Article 159 b) Regulation (EU) No 1308/2013.

As a regulation, Regulation (EU) No 1308/2013 is, by definition, directly applicable at national level without the need for Member States to ensure its transposition. However, , Regulation (EU) No 1308/2013 is silent as to whether and to what extent Member States may adapt EU legislation on IBOs to meet their own needs and/or lay down further requirements with a view, for instance, to defining IBOs or setting their objectives.

Furthermore, EU legislation does not contain any provision as far as the legal status of IBOs³³ and their governance are concerned.

Against this background, the analysis of national legislation on IBOs indicates that several Member States have adjusted to their own needs and/or supplemented the applicable EU provisions.

³² Article 157 par. 1 point c) lists the following objectives that IBOs may pursue: (i) improving knowledge and the transparency of production and the market, including by publication of aggregated statistical data on production costs, prices, including, where appropriate, price indices, volumes and duration of contracts which have been previously concluded, and by providing analyses of potential future market developments at regional, national or international level; (ii) forecasting of production potential, and recording public market prices; (iii) helping to coordinate better the way the products are placed on the market, in particular by means of research and market studies; (iv) exploring potential export markets; (v) without prejudice to Articles 148 and 168, drawing up standard forms of contract, compatible with Union rules, for the sale of agricultural products to purchasers and/or the supply of processed products to distributors and retailers, taking into account the need to achieve fair competitive conditions and to avoid market distortions; (vi) exploiting to a fuller extent the potential of the products, including at the level of market outlets, and developing initiatives to strengthen economic competitiveness and innovation; (vii) providing the information and carrying out the research necessary to innovate, rationalise, improve and adjust production and, where applicable, the processing and marketing, towards products more suited to market requirements and consumer tastes and expectations, in particular with regard to product quality, including the specific characteristics of products with a protected designation of origin or a protected geographical indication, and protection of the environment; (viii) seeking ways of restricting the use of animal-health or plant protection products, better managing other inputs, ensuring product quality and soil and water conservation, promoting food safety, in particular through traceability of products, and improving animal health and welfare; (ix) developing methods and instruments for improving product quality at all stages of production and, where applicable, of processing and marketing; (x) taking all possible actions to uphold, protect and promote organic farming and designations of origin, quality labels and geographical indications; (xi) promoting and carrying out research into integrated, sustainable production or other environmentally sound production methods; (xii) encouraging healthy and responsible consumption of the products on the internal market and/or informing about the harm linked to hazardous consumption patterns; (xiii) promoting consumption of, and/or furnishing information concerning, products on the internal market and external markets; (xiv) contributing to the management of by-products and the reduction and management of waste.

³³ Contrary to Article 154 par. 1 for producer organisations, Regulation (EU) No 1308/2013 does not require the the IBO to be a legal entity.

Definition of IBOs

As to the **definition of IBOs**, over time several Member States (9) have codified their own definitions of IBOs at national level and maintained them in spite of the evolution of EU legislation in this area.

Overall, the majority of definitions codified by Member States reflect the requirement set by EU legislation whereby IBOs must gather organisations or associations representative of the production sector and of at least another stage of the relevant production chain.

However, whilst the national legislation of most Member States (for instance, France, Greece, Portugal, Spain) defines IBOs as organisations operating in the agri-food sector as a whole, national legislation of Bulgaria, Croatia and Slovakia lists the specific sectors/products in which IBOs may be constituted individually (e.g. milk and milk products, eggs, silkworms). In Slovakia, it is worth noting that the relevant definition is contained in a guidance document developed by the national competent authority, which has not the binding force of a legal act.

Consideration should also be given to the fact that certain definitions of IBOs laid down in national legislation present **some peculiarities**.

For instance, the relevant definition provided by Spain legislation makes reference to the geographical coverage - i.e. national or, in any event, broader than the territory of a single Autonomous Community - that IBOs must have for the purpose of recognition pursuant to national law.

On the other hand, the national legislation of certain Member States lays down specific requirements for IBOs' members other than producers, processors and distributors. French and Italian legislation both allow that consumer organisations and trade unions may join IBOs, although Italian legislation specifies that the role of these actors in such a setting is purely consultative. In Portugal, instead, the national legislation provides for the possibility to join IBOs for consumer organisations only. In the Netherlands, although not regulated by law and not formally members of the IBO, trade unions, consumer organisations and other stakeholders may be partners or advisors to the IBO.

Moreover, the national definition currently applicable in Romania defines IBOs in the first place according to their legal status rather than as organisations gathering stakeholders of the agri-food chain ("*legal entities under private law, of public interest, with professional and non-profit nature, recognised by the competent authorities*"). Romania is also the only Member State where national law sets out specific legal requirements for the organisations willing to form an IBO by requiring that they are non-profit associations, with legal personality, set upon the initiative of the representatives of the economic activities from a given agri-food sector.

National legislation in Austria, Italy and the Netherlands explicitly refers to requirements set out in this respect by Regulation (EU) No 1308/2013. In Latvia, where national legislation currently provides for the establishment of IBOs only in the milk and milk products sector pursuant to Regulation (EC) No 1234/2007, the definition set out by that regulation applies.

Currently, only five Member States, notably Belgium, Cyprus, the Czech Republic, Germany and Poland have not laid down specific definitions of IBOs in their national legal framework.

Table 5 provides an overview of definitions of IBOs and requirements for IBOs' members as lay down by Member States' national legislation.

Table 5: Overview of legal definitions and requirements for IBOs' members set out in Member States' national legislation

MS	National definition	Specific requirements for IBOs' members
AT	Organisations complying with applicable EU requirements	No
BE	No	No
BG	Organisations composed by members that are representatives of the production, the processing industry and/or of the wholesale/retail for the following products a) Milk and milk products; b) Cereal and oilseeds; c) Medicinal and aromatic plants; d) Legumes; e) Industrial crops; f) Potatoes; g) Meat and wool; h) Honey and apiculture products; i) Wine grapes; j) Eggs; k) Silkworms; l) Live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage; m) Seeds and seedlings; n) Fruits and vegetables	No
CY	No	No
CZ	No	No
DE	No	No
ES	Any organisation with national scope or with a geographical coverage broader than the territory of an Autonomous Community which is composed by organisations representing food production, processing and/or wholesale/retail, regardless of the legal nature of the members of the latter	No
FR	Groupings constituted by professional organisations, upon their own initiative, representing agricultural production and, as the case may be, the processing, the trading and the retailing	Consumers' organisations and trade unions may integrate IBOs.
GR	Private and non-profit legal entities representing producers and processors and/or distributors of a specific product or group of products from the agricultural, agri-food, forestry and fisheries sector	No
HU	Organisations regulated by the law which represent producers, processors and distributor organisations and that are established according to national legislation governing organisations of public interest and which are recognised by the competent authorities	No
HR	Organisations comprising several or all producer organisations or associations of producer organisations which are constituted of representatives of economic activities linked to the production and to at least one of the following stages of the supply chain: the processing of or trade in, including distribution of the following products(a) fruit and vegetables; (b) processed fruit and vegetable products; (c) sugar; (d) cereals; (e) flax and hemp;(f) wine; (g) tobacco; (h) olive oil and table olives; (i) beef and veal; (j) milk and milk products; (k) pig meat; (l) sheep meat and goat meat; (m) eggs; (n) poultry meat; (o) apiculture products; and (p) other products	No
IT	Any organisation that complies with the applicable EU requirements	Consumer organisations and trade unions of the agri-food sector may integrate IBOs with a consultative role
LV	An inter-branch organisation in the milk and milk product sector is defined pursuant to Article 126b, paragraph 1 of Regulation (EC) No 1234/2007	No
MT	An association made of up representatives of economic activities linked to the production, the trading in and the processing of the product, and may include representatives of any one or more of such economic activities	No
NL	A branch organisation that is recognised by the national competent authorities as referred to in Chapter III, Section 1, of Regulation (EU) No 1308/2013 or the articles 161, first paragraph, or 163, first paragraph, of the same Regulation	No

MS	National definition	Specific requirements for IBOs' members
PL	No	No
PT	Entities consisting of organisations representing producers, processors and/or distributors of a specific agri-food product or group of products as well as consumers	No
RO	Legal entities under private law, of public interest, with professional and non-profit nature, recognised by the competent authorities	Associative forms with legal personality, non-profit, set upon the initiative of the representatives of the economic activities from a given agri-food product sector
SK	An organisation comprising economic operators or professional associations with legal personality whose economic activity is linked to the production of raw milk and with at least another phase of the supply chain, i.e. processing or trade, including distribution	No

Source: compiled by Arcadia International

IBOs' objectives

As far as the **objectives** that IBOs must pursue, all Member States with national legislation in this area have introduced provisions in this respect under national law with the sole exception of the Czech Republic.

The national legislation of most Member States sets out that IBOs must pursue one or more amongst the objectives laid down in:

- Regulation (EU) No 1308/2013 (Belgium, Bulgaria, Croatia, Hungary and the Netherlands);
- Other specific EU legal acts previously in force, such as Regulations (EC) No 1234/2007 and 1182/2007 (Latvia, Malta);
- Relevant CAP provisions enshrined in the Treaty on the Functioning of the EU (Austria); and
- EU law as such (Cyprus, Italy).

In the case of Slovakia, as for the definition of IBOs, objectives of such organisations are listed in a guidance document elaborated by the national competent authorities with regard to the milk and milk product sector. The document expressly refers to the objectives listed in Regulation (EU) No 1308/2013.

As to the remaining Member States (notably, France, Germany, Greece, Portugal, Spain and Romania), national legislation sets out specific objectives that IBOs are allowed to pursue on the respective markets.

In France, the national legislation lists only eight objectives for IBOs, as opposed to the twenty-four currently listed in Regulation (EU) No 1308/2013. However, content wise, there seems to be an overall correspondence between the national and EU legislation. In any event, French legislation stipulates that the competent authorities may supplement the national list of objectives with additional ones when considering requests for recognition.

Currently, Spain appears to have the longest list of objectives set by national legislation. This list is however not to be considered as exhaustive to the extent that it may be supplemented by any specific objective that EU law may envisage.

Germany is the only Member State whose national legislation on IBOs combines a positive list of objectives with a list of negative criteria. The latter one includes activities

that EU law generally prohibits IBOs to conduct such as engaging in production, processing and trading or putting in place anticompetitive practices.

Interestingly, the national legislation in Portugal, Romania and Spain attributes to IBOs also a specific role to play in providing training for staff working in their respective sectors.

Also, Romania is the only Member State where national legislation explicitly foresees that IBOs may be established with the view to representing the interests of their membership before public authorities as well as settling disputes that may arise between their members.

Table 6 provides a detailed overview of the objectives that IBOs may pursue in accordance with Member States' national legislation.

Table 6: Overview of IBOs' objectives pursuant to Member States' national law

MS	Objectives
AT	National legislation does not list IBOs' objectives in detail but refers to the overall objectives of the Common Agricultural Policy set in Article 39 TFEU
BE	National legislation requires IBOs to follow one or more of the the objectives that these entities may pursue in accordance with Regulation (EU) No 1308/2013. However, these may be supplemented by national competent authority when assessing requests for recognition.
BG	National legislation requires IBOs to follow at least one of the the objectives that these entities may pursue in accordance with Regulation (EU) No 1308/2013.
CY	National legislation requires IBOs to follow one or more of the the objectives that these entities may pursue in accordance with EU legislation
CZ	No
DE	National legislation stipulates that IBOs may perform the following activities 1. Market research and marketing; 2. Improvement of producing, processing and sales; 3. Support of good agricultural practices; 4. Improvement of product quality, i.e. organic agriculture and regional products. National legislation prohibits IBOs from undertaking the following activities: 1. Production, processing or trade of agricultural products; 2. Conclusion of agreements involving fixing of prices and similar acts with the same purpose; 3. Distort normal trading conditions; 4. any activity/practice that is not in line with the Common Agricultural Policy or, otherwise, with the proper functioning of the EU market.
ES	National legislation foresees that IBOs must pursue one or more of the following objectives: a) Monitor the proper functioning of the food chain and encourage the adherence to good practices in the business relations that take place between their members; b) Carrying out actions aimed at improving market knowledge, efficiency and transparency namely by sharing information and studies of relevance to its members; c) Developing methods and instruments to improve product quality at all stages of production, processing and distribution; d) Promotion of research and development programmes fostering innovation in the relevant sector; e) Improving the coordination between the different operators involved in the marketing of new products, notably through the performance of research activities and market studies; f) Designing campaigns to raise awareness and promote food products as well as initiatives aimed at providing consumers with relevant information concerning those products; g) Providing information and perform studies and other actions necessary to adjust and improve food production in order to meet market requirements and consumers expectations; h) Protecting and promoting organic agriculture, integrated production and any other production method that respects the environments as well as products recognised under quality schemes; i) Drawing up of standard contracts in the agri-food sector that are compatible with national and EU competition law; j) Promoting the adoption of measures to regulate the offer in accordance with national and EU competition law; k) Conducting collective negotiations on price whenever mandatory contracts are in place in accordance with EU law; l) Developing methods for the control and optimal use of veterinary drugs, plant protection products and other production factors with a view to guaranteeing product quality and environmental protection; m) Carrying out initiatives that ultimately aim at a better protection of the environment; n) Promoting the effectiveness of the different stages of the food chain through actions that aim at improving energy efficiency, reducing the impact on

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MS	Objectives
	the environment or limit food waste all along the chain; o) Developing and carrying out training activities to the benefit of all operators in the food chain to ensure competitiveness of agricultural farms, food businesses and staff as well as attracting qualified young staff in the food chain; p) Carrying out studies on sustainable production methods and market trends, including in relation to prices and costs which, provided that they are objective, transparent and verifiable and having regard of EU provisions that may apply to a specific sector, may be used as a benchmark for price fixing in the context of private contractual agreements; q) Developing and implementing training activities with a view to ensuring better professional qualifications and prospects for those working in the agri-food sector; r) Any other activity that EU law may foresee.
FR	National legislation lists 8 different objectives that IBOs may pursue. Although shorter than the list set in Regulation (EU) No 1308/2013, overall the objectives identified by EU and national law appear to be same. However, the national list is not exhaustive as other objectives may be included in the statutes of the IBOs: their validation/rejection is then made during the recognition process.
GR	National legislation requires IBOs to follow one or more of the following objectives: a) Contributing to the design, formulation and implementation of the strategy and development policies of all activities referred to in par. 1 and, more generally, the institutional support of products in the markets; b) Defining specific issues and promoting the conclusion of agreements amongst members for a limited period or for a certain geographical area or to tackle temporary needs, particularly through the establishment of interbranch agreements or rules of action, codes of conduct or rules of application of concerted practices, provided that these do not conflict with national or EU legislation; c) Contributing to the organisation and management of markets with transparency, better adaptation of products to quality improvement programs, and better coordination of product distribution; d) Strengthening measures for the safety of products, mainly of the agri-food sector, particularly through product checks, for the protection of users and consumers, and the proper management of quality marks issued by the Agency for the Certification and Supervision of Agricultural Products (AGROCERT); e) The development of research, improvement of knowledge, collection of information, towards the orientation of production to products that better respond to market needs, consumer preferences and expectations, in particular as regards the quality of products, soil and water protection and generally respect for the environment; f) The promotion and protection of organic farming and designations of origin, geographical indications and quality labels.
HU	National legislation requires IBOs to follow at least one of amongs the objectives of Regulation (EU) No 1308/2013 which national legislation refers to
HR	National legislation replicates verbatim the objectives that IBOs may pursue in accordance with Regulation (EU) No 1308/2013
IT	National legislation does not list IBOs' objectives in detail but instead refers to those identified by EU law
LV	National law does not list any specific IBOs' objectives but refers instead to those contained in Regulation (EC) No 1234/2007
MT	Only national legislation regulating IBOs in the fruits and vegetables sector contains some provisions in this area which refer to the objectives listed in Regulations (EC) No 1234/2007 and 1182/2007
NL	National legislation requires IBOs to follow one or more of the objectives that such entities may pursue in accordance with Regulation (EU) No 1308/2013
PL	No
PT	Among the objectives that IBOs in the agri-food sector may pursue, national legislation lists the following: a) Contributing towards an improved knowledge and transparency of markets, namely through the production of statistical information and analysis of trends, as well as towards the establishment of contractual relations between the relevant economic operators; b) Promotion of research and development programmes in cooperation with competent authorities responsible for research with a view to innovating and introducing the necessary adjustments that markets may require; c) Organisation of campaigns aimed at the promotion of agri-food products in national or external markets, namely with a view to boosting consumer confidence and entering new markets; d) Ensuring quality control at the stage of production, processing and storage of the final product; e) Encouraging the performance of safety and quality controls; f) Contributing towards the protection of the

MS	Objectives
	environment, notably by designing and implementing solutions that take into account economic as well as environmental sustainability; g) Organisation of actions aimed at ensuring an adequate balance between the offer and the demand in the sector of relevance; h) Contributing towards the certification of the final product. National legislation regulating IBOs in the forestry sector lists these additional objectives: a) Contributing and encouraging the implementation of training programmes aimed at upgrading professional qualifications of staff working in the forestry sector; b) Encouraging reutilisation of forestry products for energy production with a view to ensuring an optimal management of energy sources as well as environmental protection.
RO	National legislation foresees that IBOs may pursue at least two of the following objectives: a) Contributing towards the proper functioning of markets, by promoting certain products taking into account quantitative and qualitative market needs; b) Ensuring the necessary transparency for the proper functioning of the common organisation of agricultural markets; c) Establishing standard contracts compatible with the EU law; d) Contributing towards the decentralised application of national and EU agricultural policies; e) Strengthening food safety, especially by ensuring traceability of products, by acting in the interest of users and consumers; f) Improving knowledge regarding demand and offer, offer concentration and coordination and commercialisation of products of the member producers; g) Establishing a better exploitation of products, especially through marketing and market research, by promoting the products on internal and external markets; h) Participation of the IBO's members in the elaboration of development strategies and programmes for the sector that they represent; i) Establishment of research projects and studies regarding new methods of production, processing, distribution and market evolution; j) Development of methods and instruments necessary to improve the quality of products during the production and processing stages; k) Promoting certain integrated and ecological production practices and technologies that ensure environmental protection; l) Exploiting the potential of organic agriculture and designations of origin, of quality labels and of geographical indications and protecting them; m) Providing member organisations with consultancy and training services and protecting their interests vis-a-vis governmental and state administration bodies, as well as peacefully settling disputes between member organisations; n) Establishing relations and working in cooperation with national and foreign financing entities for contracting credits and implementing certain programmes in order to ensure the development of viable and competitive production units.
SK	National guidelines developed by the competent authorities reproduce the objectives listed in Regulation (EU) No 1308/2013

Source: compiled by Arcadia International

IBOs' legal status and governance

As already referred earlier, EU legislation does not lay down any specific provision with regard to the **legal status** and **governance** of IBOs. On the other hand, national law often regulates these aspects in detail.

With regard to **IBOs' legal status**, in most Member States (notably, in Bulgaria, France, Greece, Hungary, Italy, Spain, the Netherlands, Portugal and Romania), these organisations are generally regarded, under national law, as associations and/or foundations, i.e. **legal persons of public interest or utility under private law**.

In Austria and in Malta, on the other hand, national legislation considers them merely as legal persons without further characterization.

In Cyprus and Croatia, although legislation is silent on this point, the documents required for the purpose of their recognition suggest that IBOs could take on different legal forms, including, for instance, that of a company, a cooperative society, an association or a grouping of economic interest.

On the other hand, the national legislation of five Member States (Belgium, the Czech Republic, Latvia, Poland and Slovakia) does not contain any provision with regard to IBOs' legal status.

A number of Member States associate specific rights and obligations with the status of IBO that certain organisations may acquire. For instance, in France national law

stipulates that competent authorities must consult IBOs whenever they review policies that directly concern the sector in which those organisations operate. French law also recognises to IBOs the right to join up forces under federative or associative structures in order to pursue their objectives in a more effective and efficient manner.

As in France, in Romania, national law stipulates as well the right for IBOs to be consulted by public authorities on policy matters of their interest; in addition to that, IBOs may perform official tasks to the extent to which competent authorities delegate powers to them to that effect.

Finally, in Portugal, national legislation regulating IBOs in the forestry sector provides IBOs with the right to have access to media similarly to any other professional association as well as their duty to cooperate with competent authorities in the implementation of projects or actions concerning the sustainable development of forests.

With regard to **IBOs' governance**, whilst the national legislation of the majority of Member States does not contain any provision in that respect, in Bulgaria, France, Greece, Hungary, Portugal, Spain and Romania national law regulates this area to a varying degree.

In Bulgaria, for instance, because of their nature of legal persons of public interest, national law requires IBOs to set up a General Assembly and an Executive Board as management bodies of the organisation. Similar rules can be found in Romania where the national legislation envisages as well the setting up of an Arbitration and an Audit Panel.

In France, national law allows IBOs to group their members under specialised departments or sections based on common interests, which may focus, for instance, on specific products within a broader product category, besides imposing the setting up of a mediation body to address disputes within their membership.

Furthermore, Greece, Hungary, Portugal, Romania and Spain have all specific rules in place regulating IBOs' access by new members. However, whereas in Greece, Hungary and Romania the national legislation simply foresees that the IBO's statutes must regulate the modalities under which new members may join the organisation, both Portuguese and Spanish legislation recognise a **right to join** to organisations meeting the representativeness criteria that are set by law for this purpose (on this aspect see also below paragraph f). Interestingly, Portugal and Spain are also the only two Member States whose national legislation expressly prescribes IBOs to ensure equal participation of their members at the level of the governing bodies of the organisation.

Table 7 provides an overview of Member States' national legislation with regard to legal status and governance requirements for IBOs.

Table 7: Overview of Member States' national legislation regulating legal status and governance aspects of IBOs

MS	IBOs legal status	Governance requirements
AT	Entities with legal personality	No
BE	No	No
BG	Non-profit associations registered pursuant to the national Non-Profit Legal Persons Act	As any other non-profit association IBO must have a General Assembly and an Executive Board as governing bodies
CY	Not specified though IBOs would be likely to be registered companies or cooperative societies	No
CZ	No	No
DE	Legal persons under private or public law	No
ES	Entities of public interest under private law with their own legal personality distinct from that of their members	National legislation foresees that IBOs' statutes must a) Regulate the modalities of access for new members as well as situations involving the withdrawal from the IBO's

MS	IBOs legal status	Governance requirements
		membership; b) Guarantee IBO's membership to new members that fulfill certain minimum representativeness criteria; c) Make IBOs' agreements and decisions binding on all members; d) Ensure equal participation in the governance of the IBO between the production side, on the one hand, and the remaining stages of the production chain, on the other.
FR	Not specified though most of them have the status of associations in accordance with national law. IBOs may be consulted by public authorities when policies affecting their sector are being reviewed. They may join efforts in federations to pursue their objectives and authorise other IBOs to act on their behalf for the achievement of specific goals.	IBOs' members may be regrouped by activity and cooperate within sections responsible for one or more product(s). National legislation also foresees that IBOs' statutes must foresee the establishment of a mediation body with a view to settling disputes that may arise between IBO's members
GR	Legal persons of public interest under private law	National legislation foresees that IBOs' statutes must regulate the modalities of access for new members
HU	Legal persons of public interest under private law	National legislation stipulates that IBOs must be organisations open to any relevant stakeholder willing to join them
HR	Not specified although they should be subject to the regime that applies depending on their legal form (e.g. association, cooperative, grouping of economic interest)	No
IT	Legal person of public interest under private law	No
LV	No	No
MT	Entities with their own legal personality distinct from that of their members	No
NL	Not specified although in practice they are commonly associations or foundations i.e. legal entities of public interest under private law	No
PL	No	No
PT	Legal persons of public interest under private law. National legislation regulating IBOs in the forestry sector lists rights and obligations of these entities. These include, among others, the possibility to access media similarly to professional associations and the duty to cooperate with competent authorities in the implementation of projects or actions concerning the sustainable development of forests.	National legislation stipulates that IBOs' statutes must a) Guarantee the access to the IBO by any relevant national, regional or local organisation in accordance with the representativeness criteria defined by national law; b) Ensure equal participation of each professional branch taking part in the IBO at the level of its governing bodies; c) Empower the governing bodies of the IBOs to set fees for its members.
RO	Legal persons of public interest under private law with the rights to be a) consulted in relation to definition, orientation and regulation of sectoral policies and b) delegated specific official tasks by competent authorities.	National legislation requires IBOs' statutes to foresee the establishment of the following governing bodies: General Assembly, Board of Directors, Auditor Panel and Arbitration Panel. IBOs' statutes must also comply with certain minimum requirements as regards their contents including, inter alia, provisions defining rights and obligations of the IBOs' members, access to/withdrawal from the IBO

MS	IBOs legal status	Governance requirements
		membership, composition of the governing bodies ensuring equal participation of all members, decision-making procedures and sanctions in case of breach of the provisions of the statutes.
SK	No	No

Source: compiled by Arcadia International

3.1.4. National rules governing IBOs' recognition

As referred earlier on, Regulation (EU) No 1308/2013 sets out a number of requirements with a view to regulating IBOs' recognition by Member States. Amongst them, under this section consideration is given, in particular, to that IBOs:

- May be established in all the agri-food sectors that are listed under Article 1 par. 2 of the regulation (Article 157 par. 1, first sentence) (**sectoral scope**); and
- Must perform their activities in one or more regions within the territory of the Member State concerned (Article 158 par. 1, point b) or in the territory of more than one Member State in the case of transnational IBOs pursuant to Commission's Regulation 2016/232/EU (**geographical scope**).

On the other hand, EU legislation does not contain any provision with regard to the **maximum number of IBOs** that may be recognised at national level.

In addition to that, whenever IBOs are recognised at national level, Article 158 par. 5 of Regulation (EU) No 1308/2013 requires Member States to have in place rules permitting:

- **Withdrawal of recognition**, whenever the conditions for recognition cease to exist;
- **Monitoring of IBOs activities** by means of regular checks aimed at verifying that IBOs duly comply with the conditions of recognition; and
- Application of **sanctions** in the event of non-compliances or irregularities that may be attributable to IBOs in the context of the implementation of the regulation, including the withdrawal of recognition, if necessary.

IBOs' sectoral scope

Regarding **IBOs sectoral scope**, it has already been noted that several Member States - amongst which Austria, Belgium, Bulgaria, Croatia, France, Italy, Hungary, the Netherlands and Poland - have regulated this issue at national level in full accordance with Regulation (EU) No 1308/2013.

National legislation in Germany provides for a list of sectors broader than the list in that Regulation, although it explicitly excludes wine as this product is subject to a specific regulatory regime at national level.

On the other hand, national legislation in Greece, Malta, Portugal, Romania and Spain refers to the possibility of establishing IBOs in the agri-food sector as a whole, however without further defining the specific sub-sectors that may be concerned.

Finally, the national legislation in the Czech Republic, Latvia and Slovakia presently provides for the legal basis for the setting of IBOs solely in the milk and milk products sector.

IBO's geographical scope

Concerning the **geographical scope** within which IBOs may operate, seven Member States appear to have laid down provisions in this area in line with Article 158 par. 1, point (b) of Regulation (EU) No 1308/2013, which allows recognition of IBOs operating in one or more regions in the territory concerned.

As already mentioned above, in Spain the competence for recognising national and regional IBOs lies respectively with the competent authorities of the central government and those of the Autonomous Communities that have developed legislation on IBOs.

In Italy, in spite of the fact that one Region has legislation in place for the recognition of IBOs, the competent authorities at central level are of the view that granting of recognition is their sole competence and have clarified that in the new framework for IBOs that was adopted in 2015.

In Hungary, on the other hand, the national legislation provides for the establishment of IBOs only if they have national relevance. The legislation of Austria, Bulgaria, Cyprus, the Czech Republic, Latvia, Malta and Slovakia does not contain any specific provision in this regard.

In no Member State there seems to exist provisions dealing with the establishment of transnational IBOs.

Number of IBOs

The national legislation of most Member States does not provide for any specific restrictions as to the **maximum number** of IBOs that may be established within a sector or a market segment identifiable via a product or a product category.

In the remaining Member States (i.e. France, Greece, Hungary, Malta, Portugal and Spain), the general rule is that **only one IBO** may be established. However, the national legislation of the Member States under consideration differs considerably as to the relevant sector and/or specific market segment that must be taken into account for this purpose.

Accordingly, national law in France, Greece, Hungary and Portugal stipulates that only one IBO may be set up for each product or product category. On the other hand, Spanish legislation makes reference to the sector or the product category, whilst Maltese law refers only to product category. Finally, in Italy, the national legislation takes into account the whole range of terms (i.e. sector, product and product category).

For the purpose of IBO's recognition and in accordance with the national legislation of France, Portugal and Spain, products that are recognised under EU quality schemes or of a certified quality must be considered as self-standing products as opposed to similar products manufactured through conventional production and processing methods.

Table 8 provides an overview of the sectoral and geographical scope that IBOs may have in accordance with Member States' legislation, in addition to any restriction that national laws impose with regard to the maximum number of IBOs allowed per sector, product and/or product category.

Table 8: Overview of Member States' legislation regulating sectors in which IBOs may be set up, their geographical coverage and the maximum number of such organisations allowed

MS	Sectors	Geographical dimension
AT	All sectors covered by Regulation (EU) No 1308/2013	No
BE	All sectors covered by Regulation (EU) No 1308/2013 except sugar	National and Regional
BG	All sectors covered by Regulation (EU) No 1308/2013 that are relevant to national economy	No
CY	All sectors listed in national legislation	No
CZ	Milk and milk products	No
DE	All sectors that are listed in national legislation with the exception of wine which is subject to a special regime	National and Regional
ES	All agricultural products including animal husbandry, forestry and fishery as well as their processing and	National and Regional

MS	Sectors	Geographical dimension
	marketing	
FR	All sectors covered by Regulation (EU) No 1308/2013, including fishery sector	National and Regional
GR	Agricultural, agri-food, fishery and forestry sectors as defined by national law	National and Regional
HU	All sectors covered by Regulation (EU) No 1308/2013	National
HR	All sectors covered by Regulation (EU) No 1308/2013 that are relevant to national economy	No
IT	All sectors covered by Regulation (EU) No 1308/2013	National and Regional
LV	Milk and milk products	No
MT	Agriculture and fishery sectors as defined by national law	No
NL	All sectors covered by Regulation (EU) No 1308/2013 that are relevant to national economy	National and Regional
PL	All sectors covered by Regulation (EU) No 1308/2013 except fruits and vegetables	No
PT	Agricultural, agri-food and forestry sectors as defined by national law	National and Regional
RO	Agricultural and agri-food sectors as defined by national law	National and Regional
SK	Milk and milk products	No

Source: compiled by Arcadia International

Withdrawal

Most Member States have currently in place provisions empowering competent authorities to **withdraw recognition** from an IBO, whenever the conditions for recognition are no longer fulfilled or in case of non-compliances with legal requirements applying to IBOs. In Greece and Poland the withdrawal of recognition may be used as a sanction against irregularities or non-compliances attributable to IBOs.

Only Austria and Belgium, two Member States with no recognised IBOs at present, have no specific provisions on withdrawal of recognition set in their national legislation.

Monitoring

Most Member States have currently in place provisions enabling competent authorities to supervise IBOs' activities.

In accordance with national legislation, **supervision by competent authorities** may consist of a different activities, which may range from the obligation for IBOs to submit to competent authorities annual activity reports and financial statements (for instance, in France, Greece, the Netherlands, Portugal and Romania) to the performance of on-site inspections (for instance, in Bulgaria, the Czech Republic, Croatia and Spain).

However, the national legislation in Belgium, Germany, Italy, Latvia and Malta does not provide for detailed requirements on how IBOs' monitoring should be performed by competent authorities. Austria, Cyprus and Slovakia are the only Member States where no explicit provisions on IBOs' monitoring by competent authorities exist at present.

Sanctions

In relation to **sanctions for infringements of legal requirements applying to IBOs** and with the exception of the possibility to withdraw recognition, the majority of Member States (Austria, Belgium, Bulgaria, France, Germany, Latvia, Portugal, Romania and Slovakia) appears not to have specific provisions in place for the imposition of financial penalties.

On the other hand, provisions establishing sanctions for non-compliance with requirements applicable to IBOs exist in Croatia, the Czech Republic, Hungary, Italy, Malta, the Netherlands and Spain. However, in Italy, the national legislation sets out the

amount of the applicable financial penalties only for situations involving the violation by non-members of IBOs' rules that are subject to extension. Similar provisions exist also in the Netherlands. The national legislation in Cyprus refers to sanctions as well although it does not specify their nature and amount.

Competent authorities

For sake of completeness, it is worth noting that the legislation of all Member States with a national framework on IBOs clearly identifies the competent authorities that are responsible for granting and withdrawing recognition. Generally, where national legislation provides for sanctions for violation of legal requirements applicable to IBOs, the competent authorities that are in charge of recognition and withdrawal procedures have also enforcement powers.

In the large majority of Member States these functions have been allocated to a **single competent authority**, which is, in most cases, the ministerial entity responsible for agriculture, rural development and/or food policy.

There are, however, some **exceptions**. In Germany, for instance, recognition of IBOs is a competence of the Ministry of Justice and Consumer protection, which is assisted in this task by a privatised entity. In France, the Ministry of Agriculture, Agri-food and Forestry is responsible for recognition of IBOs and is assisted in this task by the Ministry for the Economy and Finance. In the Netherlands, the competent authority for granting IBO's recognition is the Ministry of Economic Affairs. In Poland and in Slovakia, on the other hand, two distinct competent authorities are involved in the recognition procedure of IBOs pursuant to national law. Finally, with regard to Spain, national and regional legislation designate the respective competent authorities, when it comes to recognition of IBOs. The national competent authorities, in particular, run broad consultations on recognition and withdrawal via the General Council for IBOs, a body which is composed by representatives of several other authorities, the Autonomous Communities as well as consumer organisations.

Table 9 provides an overview of the applicable Member States' legislation concerning withdrawal of recognition, sanctions for non-compliances by IBOs and competent authorities for recognition, withdrawal and enforcement.

Table 9: Overview of national provisions with regard to withdrawal of recognition, applicable sanctions in case of violation of legal requirements applying to IBOs and competent authorities responsible for recognition, withdrawal and enforcement

MS	National provisions on withdrawal	Sanctions for violation of IBOs' requirements	Competent Authority
AT	No	No	Agramarkt Austria
BE	No	No	Ministry of Agriculture in both Wallonia and Flanders
BG	Yes	No	Ministry of Agriculture and Food
CY	Yes	Yes though type and amount of sanction is not specified	Ministry of Agriculture, Rural Development and Environment
CZ	Yes	Yes sanctions for the violation of requirements of the common market organisation apply in this case with penalties up to EUR 37,000.	State Agriculture Intervention Fund
DE	Yes	No	Ministry of Justice and Consumer Protection and Juris GmbH
ES	Yes	Yes, depending on the seriousness, they may range from EUR 3 to 3,000,000. For the most serious offences, the withdrawal of recognition is foreseen as an ancillary sanction.	Ministry of Agriculture, Food and Environment (National IBOs) and the competent authorities of the Autonomous Communities with legislation in this area (Regional IBOs)

MS	National provisions on withdrawal	Sanctions for violation of IBOs' requirements	Competent Authority
FR	Yes	No	Ministry of Agriculture, Agri-food and Forestry and Ministry for the Economy and Finance
GR	Yes	No financial sanctions but temporary or permanent withdrawal of recognition may be used for this purpose	Ministry of Rural Development and Food
HU	Yes	Yes. National provisions set out sanctions for violations of EU/national requirements by IBOs and/or for violation of IBOs' rules by members and non-members (including the non-payment of fees).	Ministry of Agriculture
HR	Yes	Yes, depending on the seriousness, they may range from EUR 3,900 to 6,500 approximately.	Ministry of Agriculture
IT	Yes	Yes though national legislation sets them only for the violations of extension of rules by non-members within the range EUR 1,000 to 50,000	Ministry of Agriculture, Food and Forestry
LV	Yes	No	Ministry of Agriculture
MT	Yes	Yes though only national legislation regulating IBOs in the fruits and vegetables sector currently foresees sanctions ranging from a minimum of EUR 1,500 to a maximum of EUR 2,329.37 for any single violation of the national or EU provisions applicable to the concerned IBO	Ministry for Sustainable Development, the Environment and Climate Change
NL	Yes	Yes though national legislation sets them only for the violations of extension of rules and non-payment of fees by non-members	Ministry of Economic Affairs
PL	Yes	No financial sanctions but withdrawal of recognition may be used for this purpose	Local offices of the Agricultural Market Agency and Ministry of Agriculture
PT	Yes	No	Ministry of Agriculture, Forestry and Rural Development
RO	Yes	No	Ministry of Agriculture and Rural Development
SK	Yes	No	Agricultural Paying Agency and Ministry of Agriculture and Rural Development

Source: compiled by Arcadia International

3.1.5. National rules on agreements, decisions and concerted practices by IBOs, including approval by competent authorities and extension of rules and fees to non-members

Regulation (EU) No 1308/2013 does not contain any detailed provisions which content agreements, decisions and concerted practices that IBOs may negotiate within their membership. However, IBOs will be able to conclude agreements or adopt decisions within the objectives they pursue, as exemplified in Article 157 Regulation (EU) No 1308/2013. Limits to the content of IBO agreements are however set by Article 210 (4) which stipulates that IBO agreements cannot entail price fixing, quota allocation and lists other practices which would be considered incompatible with the Union rules.

Article 164 par. 1 allows Member States to extend the rules of an IBO, for a limited period of time, to other operators that are not members of the IBO and that act within its economic area(s), provided that the IBO is considered as representative of the production, the processing or the trade of a given product. For this purpose, economic area is defined as a geographical zone made up of adjoining or neighbouring production regions in which production and marketing conditions are homogenous (Article 164 par. 2).

Article 164 par. 4 specifies for which rules IBOs may request the competent authorities of a Member State to grant an extension. Accordingly, these rules may have different objectives, ranging from production and market reporting, the elaboration of standard contracts, studies to improve product quality to animal health, plant health and food safety. In any event, they must not:

- Cause any damage to other operators in the Member State granting the recognition or at EU level;
- Produce any undesired effects on free competition, thereby complying with Article 210 par. 4; and
- Be incompatible with applicable EU or national law.

Furthermore, extensions of rules granted by Member States are subject to official publication at national level, whilst any decision taken by Member States in this context is to be notified to the European Commission (Article 164 par. 5 and 6).

Finally, whenever the rules of an IBO agreement have been extended in accordance with Article 164, Regulation (EU) No 1308/2013 provides as well for the possibility that, upon request of the concerned IBO, the payment of all or part of the fees intended to cover the costs directly occasioned by the activities undertaken by the IBO is extended to non-members (Article 165).

IBO's agreements

The national legislation of a few Member States (Bulgaria, France, Germany, Greece, Portugal, Romania, Spain and Slovakia) includes some **general provisions** empowering IBOs to negotiate and conclude agreements, decisions and concerted practices. In such a context, the national legislation in Romania stands out as the only one portraying the potential benefits that the implementation of agreements, decisions and concerted practices by IBOs, in fact, may bring about and namely the creation of a stable, predictable and competitive business environment in accordance with consumers' expectations.

Furthermore, the legislation of some countries (Bulgaria, France, Germany, Greece, Spain and Slovakia) clearly defines the boundaries that such agreements must respect in terms, for instance, of competition law and/or overall compatibility with national and EU law. For instance, in Germany national law expressly prohibits IBOs to conclude agreements involving price fixing, whereas, in accordance with Spanish law, IBOs' agreements must be compatible with EU and national competition law and notified to competent authorities one month following their adoption.

No provisions regarding IBOs' agreements are currently laid in the national legislation of five Member States (namely, Austria, Cyprus, Croatia, the Czech Republic and Latvia). In Poland, the current legal framework only provides for the legal basis for the adoption of implementing rules in this area at national level.

Approval of IBOs' agreements by competent authorities

Rules regulating **competent authorities' approval of agreements, decisions and concerted practices concluded by IBOs** appear to exist only in a limited number of Member States.

Portugal and Romania are the Member States with the more detailed framework in this area. In both countries, the national competent authorities may approve only agreements that have the form of standard contracts and joint actions aiming, for instance, at ensuring product quality or environmental protection or at promoting a certain product or sector. Whilst in Portugal agreements approved by the competent authorities are subject to publication in the national official journal, in Romania national law requires a public consultation before any approval is granted.

Spanish legislation, on the other hand, does not specify the agreements that may be subject to approval by the national competent authorities, but simply stipulates that the approval must be given through ministerial order.

France and Greece are the two other Member States where the approval of IBOs' agreements, decisions and concerted practices is regulated to some extent.

Extension of rules to non-members

In several Member States (notably, in Bulgaria, Cyprus, Croatia, the Czech Republic, Germany, Latvia, Poland and Slovakia) the national legislation currently does not lay down any specific provision with regard to the approval by competent authorities of the **extension of rules of IBOs' agreements to non-members**.

The same could be observed in relation to Austria, although the competent authorities of this Member State make a point of the direct applicability of the provisions of Regulation (EU) No 1308/2013. In the case of Belgium and Hungary, the respective national legislation explicitly refers to the applicability of Article 164 Regulation (EU) No 1308/2013.

As to the remaining Member States - i.e. France, Greece, Italy, Malta, the Netherlands, Portugal, Romania and Spain - the respective national legislation has laid down rules that implement and/or further specify the requirements set by EU law as regards the granting of extension of rules.

For instance, in France the national legislation allows the extension of rules of an agreement concluded by an IBO, whenever that agreement meets, at the same time, the following conditions:

- Involves joint actions or serves the interests of the sector as well as the general interest;
- Is compatible with EU law; and
- Is the result of the unanimous decision of all members of the IBO?

Spanish legislation, on the other hand, allows the granting of an extension - in full or in part and, in any event, for no more than 5 years marketing campaigns - provided that the following conditions are simultaneously met:

- The activities covered by the agreement for which the extension is sought are relevant to the general objectives pursued by the IBO;
- The IBO requesting the extension is considered as being representative pursuant to national law (75%); and
- The agreement has obtained the endorsement of the majority of IBOs members that is required by national law (i.e. at least 50% of each professional branch composing the IBO).

Finally, in Italy the extension of IBOs' rules is subject to the verification of the following conditions:

- The agreement for which the extension is sought applies for a limited period of time;
- The IBO meets the representativeness criteria fixed by Article 164 par. 3 (ii) of Regulation (EU) No 1308/2013; and
- The agreement has the support of the majority of IBOs members that is required by national law (85%).

Extension of fees to non-members

Non-members are economic actors present in the different stages of the supply chain which are represented in the IBO but which are not members of the IBO.

Similarly to what observed in relation to the extension of rules, Bulgaria, Croatia, Cyprus, the Czech Republic, Germany, Latvia, Poland and Slovakia do not have any national provision with regard to the **extension of fees to non-members**.

On the other hand, the national legislation in Hungary, the Netherlands and Italy explicitly refers to Article 165 of Regulation (EU) No 1308/2013. Austria does not have any national provisions for the extension of fees, but the competent authorities make a point of the abovementioned provision as being directly applicable. Furthermore, Maltese and Belgian legislation both reflect, to a large extent, the wording of Article 165.

In Greece, Portugal and Spain, which all have adopted legislation on IBOs prior to the entry into force of Regulation (EU) No 1308/2013, the national provisions on the extension of fees are very similar. Overall, national competent authorities may grant the extension of fees only under the following circumstances:

- The extension of fees to non-members is solicited in the context of an IBO agreement that has been approved and whose rules have been extended pursuant to national law; and
- The fees imposed on non-members are proportionate to the costs deriving from the implementation of the activities planned and exclusively intended for their financing.

Also in France, the national legislation allows the extension of fees only in the context of IBOs' agreements whose rules have been extended to non-members. Notwithstanding their mandatory nature, under national law the fees due by non-members to IBOs are regarded as private claims and generally known as "mandatory voluntary fees".

Italy, the Netherlands and Portugal are the only Member States whose national framework provides for **sanctions for the non-payment of fees by non-members**. In Italy, for instance depending on their seriousness, sanctions may range from EUR 1,000 EUR up to 50,000. In Portugal, instead, the national legislation on IBOs in the forestry sector foresees financial penalties from a minimum of EUR 125 up to a maximum of EUR 1,870, if the perpetrator is a natural person or EUR 22,445 in case the conduct is attributable to a legal person. In the Netherlands, the law states that the IBO that wants to have fees extended to non-members must have in its statutes the possibility of imposing sanctions on those who are subject to the mandatory payment in case of non-payment. With the formal application for the extension of fees, the IBO must indicate how it will sanction non-payment. The same applies to extension of rules.

Table 10 provides an overview of Member States' legislation with regard to existing rules on IBOs' agreements, approval of IBOs' agreements by competent authorities and possibility of extending their rules and related fees to non-members.

Table 10: Overview of national provisions regulating IBO's agreements, their approval by competent authority, extension of rules and fees

MS	Rules on IBOs agreements	Approval of agreements by competent authorities	Granting of the extension of rules to non-members by competent authorities	Granting of the extension of fees to non-members by competent authorities	Sanctions for non-members infringing extensions or rules and/or fees
AT	No	No	No though relevant provisions of Regulation (EU) No 1308/2013 are regarded as directly applicable	No though relevant provisions of Regulation (EU) No 1308/2013 are regarded as directly applicable	No
BE	National legislation does not contain any specific requirements for IBOs agreements except for the granting of the extension of rules and fees to non-members by competent authorities	No	National legislation expressly refers to the relevant provisions of Regulation (EU) No 1308/2013 in this respect	National legislation sets out that the fees imposed on non-members a) must be intended solely for the financing of the activities covered by the request of extension submitted by an IBO and b) cannot exceed the total budget foreseen for the implementation of those activities	No
BG	National legislation foresees an obligation for IBOs to notify agreements, decisions and concerted practices to competent authorities so that they can be notified to the European Commission and assessed against the criteria laid down in Article 210 par. 4 Regulation (EU) No 1308/2013	No	No	No	No
CY	No	No	No	No	No
CZ	No	No	No	No	No
DE	National legislation does not contain any specific requirement in this respect with the exception of the activities that national law prohibits IBOs to perform (e.g. agreements or practices involving price fixing)	No	No	No	No

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MS	Rules on IBOs agreements	Approval of agreements by competent authorities	Granting of the extension of rules to non-members by competent authorities	Granting of the extension of fees to non-members by competent authorities	Sanctions for non-members infringing extensions or rules and/or fees
ES	National legislation stipulates that IBOs' agreements must be compatible with EU and national competition law and sets out the obligation for IBOs to notify them to the competent authorities no later than one month from their adoption	IBO's agreements may be approved by competent authorities through ministerial order. Approved agreements are recorded in the national IBOs' register.	National legislation allows such an extension, in full or in part, provided that certain conditions are met, i.e. if the activity/ies covered by the agreement is /are relevant to the general objectives pursued by the IBO and if the criteria regarding the level of support expressed by IBOs' members vis-a-vis the agreement as well as the IBO's minimum representativeness that national law requires for this purpose are complied with. When granted, extensions of rules cannot exceed 5 years or marketing campaigns. They are adopted through ministerial order and published in the national official journal.	National legislation allows so provided that certain conditions are met, i.e. if the extension concerns an agreement that has been approved and whose rules have been extended pursuant to national law and if the fees are proportionate to the costs deriving from the implementation of the activities planned, solely intended for the financing of such activities and do not discriminate against IBO's members	National legislation foresees the application of financial sanctions whenever non-members do not pay the fees that have been extended pursuant to national law. Deepening on the amount of the fees due, the sanctions may range from a minimum of 3 EUR to a maximum of 3,000,000 EUR
FR	National law lists the agreements that can be concluded by IBOs. These include, for instance the elaboration of standard contracts and monitoring of their use, the development and dissemination of statistical information and market trends and the adoption of labelling rules for the provision of country-of-origin information.	Yes	National legislation allows so provided that certain conditions are met, i.e. if the agreement in question involves joint actions or serves the interests of the sector as well as the general interest, is compatible with EU law and has been adopted unanimously by all members of the IBO. Agreements consisting of standard contracts for which an extension is solicited may be subject to scrutiny of the national competition authority before the relevant extension is	National legislation allows so in the context of agreements whose rules have been extended to non-members. Notwithstanding their mandatory nature, IBOs' fees are regarded as private claims under national law and therefore called "mandatory voluntary fees". Competent authorities may provide assistance to IBOs for the calculation of fees.	No

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MS	Rules on IBOs agreements	Approval of agreements by competent authorities	Granting of the extension of rules to non-members by competent authorities	Granting of the extension of fees to non-members by competent authorities	Sanctions for non-members infringing extensions or rules and/or fees
			<p>granted. The granting of an extension takes generally the form of an administrative decision. IBO's agreements for which extensions are granted are not subject to the national rules implementing Articles 101 and 102 TFUE.</p>		
GR	<p>National law foresees the possibility for IBOs to conclude agreements between their members and the obligation for IBOs to notify them to the competent authorities so that the latter can assess them. They must also be notified to the European Commission when required by EU law</p>	<p>IBOs agreements cannot enter into force if the national competent authorities or the European Commission finds them incompatible with national or EU law. To this end, they are notified and assessed by the competent authorities during a two-month period. The assessment considers whether the agreement fulfil a number of conditions, i.e. the functioning of the common market organisation is not affected, competition is not distorted or eliminated with regard to a substantial part of the concerned market, fixing of prices is not involved, overall compatibility with EU or national law is ensured.</p>	<p>National legislation allows such an extension, in full or in part, so provided that certain conditions are met, i.e. if the IBO meets the representativeness requirements set by national law for this purpose, the agreement in question has been adopted unanimously by IBO's members, applies for at least one marketing campaign and does not entail any discrimination or elimination of competition with regard to a substantial part of the market concerned. When granted, extensions of rules cannot exceed 3 years.</p>	<p>National legislation allows the imposition of fees to non-members in the context of an agreement that has been approved whose rules have been extended pursuant to national law. In this case, fees must be proportionate to the costs and benefits of the services provided in the implementation of the agreement and must not cover administrative expenditure</p>	No

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MS	Rules on IBOs agreements	Approval of agreements by competent authorities	Granting of the extension of rules to non-members by competent authorities	Granting of the extension of fees to non-members by competent authorities	Sanctions for non-members infringing extensions or rules and/or fees
HU	National legislation refers to the relevant provisions of Regulation (EU) No 1308/2013 without any further specification	No	National legislation refers to the relevant provisions of Regulation (EU) No 1308/2013 without any further specification	National legislation refers to the relevant provisions of Regulation (EU) No 1308/2013 without any further specification	Yes
HR	No	No	No	No	No
IT	National legislation does not lay down any specific requirements with regard to IBOs' agreements except for the granting of the extension of rules and fees to non-members by competent authorities	No	National legislation allows so provided that certain conditions are met, i.e. if the agreement applies for a limited period of time and is supported by the majority of IBOs members required by national law and if the IBO meets the representativeness criteria fixed by Regulation (EU) No 1308/2013 for this purpose	National legislation allows so with a view to financing IBOs' institutional objectives and, in particular, the promotion of the relevant sector, product or product category. The limits set by Article 165 Regulation (EU) No 1308/2013 apply in this context.	Sanctions in the form of financial penalties may range from 1,000 EUR to 50,000 EUR, having regard to the seriousness of the violation. When a non-member does not comply with IBOs' rules regarding the application of standard contracts that regulate the purchase of agri-food products, the application of a sanction amounting to 10% of the value of the contracts concluded in breach of those rules is envisaged.

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MS	Rules on IBOs agreements	Approval of agreements by competent authorities	Granting of the extension of rules to non-members by competent authorities	Granting of the extension of fees to non-members by competent authorities	Sanctions for non-members infringing extensions or rules and/or fees
LV	No	No	No	No	
MT	National legislation does not lay down any specific requirements with regard to IBOs' agreements except for the granting of the extension of rules and fees to non-members by competent authorities in the fruits and vegetables sector	No	"National legislation allows so provided that certain conditions are met, i.e. if the agreement concerns one of activities identified by national law (e.g. drawing up of standard contracts, adoption of marketing rules, protection of the environment, promotion of organic farming and quality schemes), has been applied for at least one marketing year, its duration does not exceed three marketing years and its implementation does not cause any harm to other business operators in Malta		
NL	National legislation does not foresee any specific requirements with regards to agreements concluded by IBOs except for the granting of the extension of rules and fees to non-members	No	As a general rule, national legislation sets out that the extension of rules of IBOs' agreements may be granted only in case of agreements that pursue IBOs' objectives as listed under Regulation 1308/2013 and provided that the freedom of entrepreneurship is not limited in a disproportionate manner. The extension of private quality schemes is not possible in this context. Also, the relevant provisions of Regulation (EU) No 1308/2013 are explicitly referred to.	National legislation allows so in accordance with the relevant provisions of Regulation (No) 1308/2013	Non-members may be subject to sanctions for the non-payment of the fees that have been extended to them.

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MS	Rules on IBOs agreements	Approval of agreements by competent authorities	Granting of the extension of rules to non-members by competent authorities	Granting of the extension of fees to non-members by competent authorities	Sanctions for non-members infringing extensions or rules and/or fees
PL	Currently national law does not contain any specific requirements in relation to the agreements that IBOs may conclude except for the legal basis for the adoption of national implementing rules with regard to the procedure for the granting of the extension of rules by competent authorities	No	No	No	No
PT	National legislation allows IBOs to conclude agreements between their members	Competent authorities may approve only certain agreements that have the form of a) Standard contracts or b) Joint actions designed, among others, to ensure product quality, environmental protection or the promotion of a certain product or sector. The agreements approved are subject to publication in the national official journal and recorded in the national IBOs' register.	National legislation allows so in relation to agreements approved by competent authorities provided that certain conditions are met, i.e. if the agreement applies at least to one marketing campaign and does not give rise to any market compartmentalisation or practice involving fixing of prices, entail discriminations or eliminate competition with regard to a substantial part of the market concerned as well as if the minimum criteria set by national law for IBO's representativeness and the level of support expressed by the IBOs' members vis-a-vis the agreement are met. National legislation on IBOs in the forestry sector lays down more stringent requirements in this respect.	National legislation allows the imposition of fees to non-members in the context of an agreement that has been approved whose rules have been extended pursuant to national law. In this case, fees must be proportionate to the costs and benefits of the services provided in the implementation of the agreement.	Only national legislation regulating IBOs in the forestry sector foresees sanctions for the violation of rules of IBOs' agreements that have been extended. These may range from a minimum of 125 EUR up to a maximum of 1,870 EUR, if the perpetrator is a natural person; or 22,445 EUR in case the conduct is attributable to a legal person.

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MS	Rules on IBOs agreements	Approval of agreements by competent authorities	Granting of the extension of rules to non-members by competent authorities	Granting of the extension of fees to non-members by competent authorities	Sanctions for non-members infringing extensions or rules and/or fees
RO	National legislation allows IBOs to conclude agreements between their members with a view to facilitating the creation of a stable and predictable business environment by developing a competitive agri-food sector in accordance with consumers' expectations.	National legislation foresees that only certain agreements may be subject to approval by competent authorities and notably agreements that have the form of standard contracts, conventions or joint actions in the context of the objectives that IBOs may pursue. IBOs' agreements for which approval is sought for are subject to public consultation and, if approved, subsequently recorded in the national IBOs' register.	National legislation allows so provided that certain conditions are met, i.e. if the agreement for which extension is sought for covers one of the activities listed under national law (e.g. reporting on the production and market; stricter production rules than those established by EU or national norms; elaboration of standard contracts compatible with EU provisions; development of marketing rules; environmental protection etc.), has been applicable for at least one marketing campaign, applies for a limited period of time and does not impact adversely other operators in Romania or in the EU market. Before granting the extension, competent authorities must run a public consultation.	The competent authorities may grant the extension of fees to non-members whenever an IBO requests so following the extension of rules of one of its agreements	No
SK	National legislation only provides that IBOs' agreements must not be in breach of EU law	No	No	No	No

Source: compiled by Arcadia International

3.1.5. National rules on representativeness

Regulation (EU) No 1308/2013 considers that IBOs must be representative of the economic activities of production, processing and trade. The criterion of **representativeness** is reflected in:

- The requirements governing IBOs recognition and namely the **significant share** of the economic activities represented within the IBO that is required for the purpose of the recognition by the competent authorities of a Member State (Article 158 par. 1 point c); and
- The requirements that regulate the extension of an agreement concluded by an IBO, i.e. the mechanism whereby an IBO's agreement may benefit from an **extension of rules and fees to non-members**, as long as the IBO is considered as representative (Article 164 par. 1).

The concept of "*significant share*" is not further elaborated in EU legislation and, thus, leaves Member States free to define it. In contrast, EU provisions governing extension of rules and fees set out specific requirements with regard to IBO's representativeness.

More precisely, Article 164 par. 3 (a) point (ii) stipulates that an IBO is to be regarded as representative where, in the economic area(s) where it operates, it accounts **at least for two thirds of the volume of production, processing and/or trade of the product(s) concerned**. Moreover, Article 164 par. 3 stipulates that, whenever determining such a proportion gives rise to practical difficulties, Member States may lay down national rules with a view to establishing the level of representativeness required for the granting of an extension of rules. As it will be shown below, some Member States availed of this possibility.

Regulation (EU) No 1308/2013 does not contain any specific provision regulating the access to IBOs by other organisations. Nevertheless, as already referred above, in Spain and Portugal, the national legislation establishes specific representativeness criteria that, if met, guarantee the concerned organisations the **right to join the IBO** of interest.

Representativeness for the purpose of recognition

Several Member States have further elaborated and defined the concept of 'significant share' provided for by Regulation (EU) No 1308/2013 through national provisions. The representativeness criteria laid down under national law appear to vary to a significant extent from one Member State to another and sometimes with different thresholds being set depending on the sector (for instance, Bulgaria and Italy with regard to the establishment of IBOs in the milk and milk products sector).

For instance, the national legislation in Spain currently requires organisations seeking recognition as IBOs to demonstrate that they account for at least 51% of the concerned production with regard to each professional branch part of the IBO within the geographical area where the organisation operates. In Austria the threshold is the same as in Spain, whilst, for instance, in the Netherlands, Greece and Italy is lower (respectively, 25%, 33% and 40%). In Malta, the threshold required by the national legislation governing the establishment of IBOs in the fruits and vegetables sector appears to be the highest in absolute terms (66%).

Recent legislative developments in some Member States in this area seem to point out to the existence of different national approaches. Indeed, in Italy, the recent revision of the legal framework applicable to IBOs (2015) has resulted, among others, in the lowering of the representativeness threshold required for the recognition of such organisations (i.e. from 50% to 40% for IBOs in any agri-food sector other than the milk and milk products sector). Conversely, in Spain, the most recent revision of the national legislation on IBOs (2013) has resulted in an increase of the threshold required for the purpose of IBOs' recognition (i.e. from 35% to 50%).

In certain Member States (Bulgaria, Portugal and Romania), the significant share of the economic activities that is required for the purpose of IBOs' recognition is coupled as necessary with other additional criteria or requirements that, generally, concern the

representativeness of the membership of the IBO to be constituted. Accordingly, in Portugal the membership of IBOs must represent 20% of the total number of economic operators involved in the economic activities covered by the IBO, whilst in Romania one third of the professional organisations that operate in a given sector must be represented in the future IBO.

Finally, in a few Member States (Belgium, Croatia, France, Germany and Poland), the national legislation either simply refers to the relevant provisions of Regulation (EU) No 1308/2013 or mirrors their wording. In Latvia, the representativeness criteria are laid down only with regard to the recognition of IBOs in the milk and milk products sector and modelled on the provisions of Regulation (EU) No 1234/2007.

Representativeness for the purpose of the extension of rules

No national provisions setting representativeness criteria can obviously be found in the national legislation of those Member States that do not allow the extension of rules of IBOs' agreements (i.e. Bulgaria, Cyprus, Croatia, the Czech Republic, Germany, Latvia, Poland and Slovakia). Similarly, no representativeness thresholds appear to have been set by national law in Malta and Romania.

As to the remaining Member States, the legislation of some of them explicitly refers to the relevant provisions of Regulation (EU) No 1308/2013, which means that the threshold of two thirds set in Article 164 par. 3 a) point (ii) applies. This is the case of Belgium, Hungary and the Netherlands. In Austria, the national legislation does not provide for such a reference, but the competent authorities regard the provisions of the regulation as directly applicable.

On the other hand, the national legislation in France, Greece, Italy, Spain and Portugal deviates, to some extent, from the EU regime applicable in this area as it requires the fulfilment of different criteria for the granting of an extension of rules. For instance, in Spain, the national legislation lays down two criteria in this respect and namely that:

- The IBO that requests the extension of rules must represent at least 75% of the concerned production; and
- The agreement in relation to which the extension of rules is sought for must be supported by at least 50% of each professional branch forming the IBO.

In France, the national legislation lays down as well two cumulative criteria in this respect and notably that:

- The IBO that requests the extension must meet the representativeness criteria set in Article 164 par. 3 a) point (ii) Regulation (EU) No 1308/2013. For primary production, these criteria are presumed as being met when the farmers unions accounting at least for 70% of the voting rights for the election of the Chambers of Agriculture³⁴ are involved in the trade organisation directly or through specialised associations that are members of the latter. For the other stages of the production chain, their fulfilment is presumed, as long as the IBO demonstrates that the agreement for which an extension is sought has not been opposed, in the month that follows its publication, by another organisation representing more than one third of the volume of the economic activity concerned; and

³⁴ The French Chambers of Agriculture are self-governing public bodies regulated by national law, which were established for the first time in 1924. Managed by elected representatives from the agriculture and forestry sectors, they operate as a decentralised network comprising 88 Chambers of Agriculture at district level 21 regional Chambers of Agriculture, the Permanent Assembly of Chambers of Agriculture (APCA). The Chambers have 4,200 elected members and about 8,000 permanent staff, among which 175 staff employed by APCA. Following the legislative review of the national Rural Code in 2014, their overall mission is to contribute to the economic, social and environmental improvement of farms and of the relevant production chain; support the development of responsible farming activities as a catalyst of increased job opportunities; and represent farmers' interests before public authorities at national and local level.

- The agreement in relation to which the extension of rules is sought must be unanimously supported by all IBO members.

Finally, in Italy, the representativeness criteria that the national legislation requires to be met are that:

- The IBO must be representative within the meaning of Article 164 par. 3 a) point (ii) of Regulation (EU) No 1308/2013. The IBO is presumed to be representative if, following the publication of the request of extension by the national competent authorities, there is no opposition from any organisation that can demonstrate to represent more than one third of the economic operators of the sector concerned;
- The rules of the agreement for which the extension is sought for must have been endorsed by at least 85% of the members of each professional branch that forms the IBO, unless the statutes of the organisation foresee higher thresholds.

Table 11 provides an overview of Member States' legislation with regard to representativeness criteria set out at national level with regard to IBOs' recognition, extension of IBOs' rules and access to IBOs' membership by non-members.

Table 11: Overview of national provisions laying down representativeness criteria for the purpose of IBOs' recognition, extension of rules of their agreements and right to access IBOs' membership for non-members.

MS	Recognition	Extension of rules	Right to access an IBO
AT	More than a half of the annual turnover of the national production, processing or marketing within the sector concerned	No but relevant provisions of Regulation (EU) No 1308/2013 are regarded as directly applicable	No
BE	National legislation refers to the relevant provisions of Regulation (EU) No 1308/2013	National legislation refers to the relevant provisions of Regulation 1308/2013	No
BG	For IBOs in the milk and milk products sector: 10% of milk-producing animals on a national level and at least 10% of production and/or market share for milk products. For IBOs in other sectors: one-third of the production and/or trade and/or processing in the respective region of the country or across the country represented by at least three members.	No	No
CY	No	No	No
CZ	National legislation refers to the relevant provisions of Regulation (EU) No 1308/2013	No	No
DE	"National legislation stipulates that IBOs must represent a significant share of the economic activities within the sector at least at a regional scale. However, it is not specified what constitutes a significant share of activities.	No	No
ES	At least 51% of the concerned production with regard to each of the professional branches that form the IBO within the geographical where the organisation operates	National legislation lays down two cumulative criteria in this respect: a) The agreement in relation to which the extension of rules is sought for must be supported by at least 50% of each professional branch forming the IBO; b) The IBO that requests the extension of rules must represent at least 75% of the concerned production.	"National legislation guarantees the right to be an IBO's member to any organisation which a) at national level is willing to comply with their provisions, provided that it proves that it represents at least 10% of the professional branch to which it belongs; b) at a level of an Autonomy Community proves that it represents at least 50% of the relevant professional branch in that territory, provided that it accounts at least for 3% of the final production at national level or 8% of the final production at the level of the concerned Autonomous Community.
FR	National legislation replicates the content of the relevant provisions of Regulation (EU) No 1308/2013	"National legislation lays down two cumulative criteria in this respect: a) The agreement in relation to which the extension of rules is sought for must be unanimously supported by all IBO	NO

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MS	Recognition	Extension of rules	Right to access an IBO
		members; b) The IBO that requests the extension must meet the representativeness criteria set in Regulation (EU) No 1308/2013 (2/3 of volumes). For primary production, these criteria are deemed as met when the farmers unions accounting at least for 70% of the voting rights for the election of the agricultural chambers of agriculture are involved in the trade organisation directly or through specialised associations adhering to these organisations. For the other stages of the production chain, their fulfilment is presumed if the IBO demonstrates that the agreement for which an extension is sought has not been opposed, in the month following its publication, by another organisation representing more than one third of the volume of the economic activity concerned.	
GR	At least one third of the production and/or processing and/or marketing of the products at national level	National legislation lays down two cumulative criteria in this respect: a) The agreement for which the extension is sought for must be approved unanimously by all members of the IBO; b) The IBO must account for at least two thirds of the production and/or processing and/or marketing activities of the product(s) in question at national level.	No
HU	National legislation refers to the relevant provisions of Regulation (EU) No 1308/2013	National legislation refers to the relevant provisions of Regulation (EU) No 1308/2013	No
HR	National legislation replicates and refers to the content of the relevant provisions of Regulation (EU) No 1308/2013	No	No
IT	For IBOs in the milk and milk products sector: In case of organisations operating at national level, the share of the economic activities represented by the IBO must be equal to or higher than 25% of the relevant sector or	National legislation foresees two cumulative criteria in this respect: a) The rules of the agreement for which the	No

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MS	Recognition	Extension of rules	Right to access an IBO
	market segment. For organisations operating in a single economic area, the threshold is 51% with respect to said area and 15% at national level. For IBOs in other sectors: In case of organisations operating at national level, the share must correspond, at least, to 40% of the economic activities of the relevant sector or market segment for each product or product category. In the case of organisations operating within a single economic area, the share of the economic activities must correspond to at least 51% of the respective economic activities in that area and, in any event, to 30% of such activities on a national level	extension is sought for must have been endorsed by at least 85% of the members of each professional branch that forms the IBO, unless the statutes of the organisation foresee higher thresholds; b) The IBO must be representative within the meaning of Regulation (EU) No 1308/2013. The IBO is presumed to be representative if, following the publication of the request of extension by competent authorities, there is no opposition from organisations that can demonstrate to represent more than one third of the economic operators of the sector concerned.	
LV	National legislation implements the relevant provisions of Regulation (EU) No 1234/2007 by foreseeing the following representativeness criteria for the different stages of the relevant production chain: a) in relation to the organisation's members that are milk producers, the sale of at least 500 tonnes of raw milk over the last 12 months; b) in relation to the organisation's members whose activities involve milk processing and production of milk products, the processing of at least 5,000 tonnes of milk over the last 12 months; c) in relation to each member of the organisation whose activities involve the trade in raw milk and milk products, a turnover of at least 142,280 EUR.	No	No
MT	For IBOs in the fruits and vegetables sector: two thirds of the production and/or trade and/or processing of the product or products concerned	No	No
NL	At least 25% of each of the economic activities represented by the IBO	National legislation refers to the relevant provisions of Regulation (EU) No 1308/2013	No
PL	National legislation refers to the relevant provisions of Regulation (EU) No 1308/2013	No	No
PT	For IBOs in the agri-food sector: 20% of the economic operators involved in the production, processing and/or distribution, whilst covering, at least, 20% of the volume of the production, processing and/or distribution of the product(s) in question in the region where they perform their activity. For IBOs in the forestry sector: IBOs must consist of national or regional organisations representing at least two stages of the forestry products' chain, one of which must be the production segment.	National legislation foresees two cumulative criteria in this respect: a) The rules of the agreement for which the extension is sought must have been adopted by qualified majority by the professional branches represented within the IBO; b) The IBO must account for	National legislation lays down the minimum number of producers, processors and distributors that is required by law for an organisation at national, regional and local level to be granted access to the IBO of its interest i.e. a) National level:

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MS	Recognition	Extension of rules	Right to access an IBO
		2/3 of the economic operators involved in the production, processing and/or distribution of the product(s) in question in the region where they perform their activity. For IBOs in the forestry sector, the rules of the agreement subject to extension must have been adopted unanimously.	production: 15%; processing: 25%; trading: 30%. b) Regional level: production: 25%; processing: 20%; trading: 20%. c) Local level: production: 35%; processing: 10%; trading 15%.
RO	National legislation foresees two cumulative criteria in this respect. a) The IBO must represent at least 30% of the total value of the economic activities represented within the IBO within the geographical area where the organisation operates, whilst each professional branch must account at least for 15% of the value of the corresponding economic activity; b) Its establishment must be based upon the initiative of at least one third of the total number of professional organisations that exist within the relevant product sector.	No	No
SK	At least, for a 33% of the relevant economic activities represented within the IBO on a national level within the milk and milk products sector	No	No

Source: compiled by Arcadia International

3.1.6. National rules on financing

Regulation (EU) No 1308/2013 does not foresee any specific provision with regard to the **financing of IBOs** with the exception of the rules governing extension of fees to non-members, Article 165 of Regulation (EU) No 1308/2013. Therefore, in most cases, it is down to national law to define the sources and the modalities of financing of such organisations.

In spite of that, only a few Member States expressly regulate IBOs' financing in their national legal framework. The national legislation in Greece, Italy, Portugal and Spain lays down a **general clause** enabling IBOs to benefit from public aid, fiscal and/or economic incentives with a view to ensuring their establishment and/or pursuing their activities. Legislation in Romania, Greece and Portugal also empowers IBOs to set membership fees to ensure their functioning. Romania appears to be the only Member State where the national legislation allows IBOs to extend membership fees - i.e. fees to be paid simply for being a member of an IBO - to non-members following the granting of an extension of rules. In Romania, the national legislation admits also that IBOs may be beneficiaries of EU funds as well as of donations and sponsorships besides relying on the income deriving from their own activities (e.g. provision of technical services, trainings).

As regards **economic and fiscal incentives**, only the national legislation in Portugal and Spain lays down provisions in that regard. In both Member States, national law recognises to IBOs the same fiscal incentives applying to legal persons of public interest such as associations or foundations. Accordingly, in Portugal IBOs are exempted from taxes concerning radio and television as well as from the payment of any fee for the publication of their statutes in the national official journal.

Concerning **public subsidies**, Portugal is the Member State that has most recently adopted national provisions in this regard in the context of the national Rural Development Programme 2014-2020. The latter identifies IBOs and certain of their activities as potential beneficiaries of public co-funding. The corresponding national programme in Austria also refers to IBOs though no specific budget line has been envisaged for the financing of those organisations. The same applies to Cyprus.

In Spain, the central competent authorities have supported the establishment of IBOs for several years following the introduction of national legislation in this field. Public subsidies, however, stopped in 2014 as the competent authorities considered that sufficient efforts had been deployed in order to facilitate the uptake of IBOs within the national territory.

Table 12 provides an overview of Member States' national legislation with regard to IBOs' financing, ad hoc economic and fiscal incentives and public subsidies.

Table 12: Overview of national provisions relevant to IBO's financing

MS	Financing	Economic and fiscal incentives	Subsidies
AT	No except for the provisions empowering the national Wine Committee to charge fees to its members	No	The National Rural And Development Programme 2014-2020 lists IBOs among the entities that may benefit from public co-funding although no budget has been earmarked
BE	No	No	No
BG	No	No	No
CY	No	No	The National Programme for Rural Development Programme 2014-2020 lists IBOs among the entities that may

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MS	Financing	Economic and fiscal incentives	Subsidies
			benefit from public co-funding
CZ	No	No	No
DE	No	No	No
ES	As a general rule, national legislation provides that IBOs may benefit from public aid or subsidises that may be foreseen with a view to promoting the attainment of the objectives that these organisations pursue.	As non-profit organisations, IBO benefit from fiscal incentives recognised by national law to such entities	No they stopped in 2014 after over fifteen years of public financial support
FR	No	No	No
GR	Besides empowering IBOs to set membership fees, national legislation foresees that these organisations may benefit from financial support that national law may provide for as a means to support the establishment, the functioning and the modernisation of associations and the pursuit of the objectives for which they have been created.	No	The Agriculture and Livestock Fund may, upon decision of its Management Board, finance IBOs which submit a request, with the aim to support their activities
HU	No	No	No
HR	No	No	No
IT	As a general rule, national legislation foresees that recognised IBOs may have access to public funding with a view to pursuing their activities	No	No
LV	No	No	No
MT	No	No	No
NL	No specific rules but national legislation governing private organisations applies to IBOs	No	No
PL	No	No	No
PT	National legislation foresees that IBOs in the agri-food and forestry sectors may be promoted, for instance, by means of fiscal incentives and public subsidies. IBOs' statutes must contain provisions on membership fees.	National legislation IBOs in the forestry sector sets out that IBOs enjoy the same fiscal exemptions and privileges recognised to legal persons of public utility. For instance, IBOs are: a) exempted from taxes concerning radio and TV; b) subject to fees applicable to household for electricity consumption; c) exempted from the payment of any fee for the publication of their statutes in the national official journal. Although specific provisions of the type described are foreseen explicitly only in relation to IBOs in the forestry sector, they	There is a specific budget line for the public co-financing of certain IBOs activities under the National Programme for Rural Development 2014-2020 for the mainland

MS	Financing	Economic and fiscal incentives	Subsidies
		are considered of general application to all IBOs as legal persons of public utility.	
RO	National law stipulates that IBOs may rely on the following sources: a) Membership fees; b) EU funds; c) Incomes deriving from IBO's own activities; d) Donations and sponsorships. Membership fees may be requested also to non-members when an extension of rules has been granted pursuant to national law.	No	No
SK	No	No	No

Source: compiled by Arcadia International

3.1.7. National provisions exempting IBOs from competition law

In none of the Member States analysed specific national provisions regarding IBOs and derogating from competition law could be identified.

3.2. Member States with national legislation on IBOs and recognised IBOs

To date only eight Member States where national legislation on IBOs exists have formally recognised organisations in the agri-food sector. These are France, Greece, Hungary, Italy, Spain, the Netherlands, Portugal and Romania. Under this Section, consideration will be given, in particular, to the following aspects:

- Level of application of the EU and national framework for IBOs, and level of consensus on national policy in this area; and
- National competition cases involving IBOs.

3.2.1. Level of application of the EU and national framework for IBOs

Taking into account the experience of the Member States that have recognised IBOs to date, one can conclude that almost in all of them **EU and national rules** in this area have been applied **to a significant extent**.

Italy constitutes the only notable exception, given the low number (three) of IBOs currently recognised by the competent authorities of this Member State, as opposed to the wide range of agri-food sectors that exist at national level as well as to the size of the country.

According to the Italian authorities, the main reason behind the **limited success of IBOs** at national level primarily lies with the lack of willingness of the organisations representing the different stages of the food chain to join forces under cross-sectoral structures. In particular, conflicts between the organisations representing farmers and agricultural workers' trade unions would have prevented primary producers from benefitting from the establishment of well-performing POs in the first place, which is a prerequisite for the setting IBOs.

3.2.2. National competition cases involving IBOs

From the standpoint of competition law, national case law and administrative practice regarding IBOs seem to exist only in a limited number of Member States where IBOs are recognised and, mainly, in France and in Spain. In Italy, there is only some limited experience in terms of administrative practice.

IBOs and State aid

A first issue revolves around the **qualification of fees** imposed by IBOs on non-members as a State aid because of the extension of their rules. More precisely, mandatory contributions collected from non-members following the extension of an IBO agreement were alleged to constitute State aid within the meaning of article 107 TFEU and, as such, subject to prior notification and approval by the European Commission. This legal issue was extensively debated over three decades before French courts, the European Commission and the Court of Justice, resulting in numerous decisions.

French courts have traditionally held that mandatory contributions do not qualify as State aid (not a State resource). Conversely, in 2008, the Commission took the view that mandatory contributions were public resources that might constitute State aid. It therefore proceeded to adopt several decisions stating that mandatory contributions did constitute State aid in the meaning of article 107 TFEU. The same Commission decisions were subsequently challenged before the Tribunal of the European Union.

Separately, in 2011, the question of the qualification of mandatory contributions as State aid was referred for a preliminary ruling to the **European Court of Justice**. The latter, in a **landmark decision**, found that **mandatory contributions did not constitute State aid**, as long as it is ascertained that, in accordance with Article 107 par. 1 TFEU:

- They do not involve an intervention by the State or through State resources;
- The State intervention is not liable to affect trade between Member States;
- Such an intervention does not confer an advantage on the recipient; and
- It does not distort or threaten to distort competition³⁵

In light of that, the Commission decisions referred to above and the related legal challenges were subsequently dropped.

From the above, it follows that fees imposed by IBOs as a consequence of the extension of rules of their agreements are currently not to be considered as State aid.

IBOs and antitrust rules

IBOs' activities have been also assessed against **antitrust rules**.

In this context, it is worth recalling that the European Commission first established the principle whereby the prohibition of price fixing applies also to IBOs, whilst EU and French courts subsequently confirmed this interpretation (for instance, *BNIC v Clair*, 30 January 1985, 123:83).

The French competition authority (*'Autorité de la concurrence'*, hereinafter '*AC*') has adopted a number of decisions and opinions regarding the application of antitrust rules in the agricultural sector. However, there have been relatively few antitrust decisions of AC applying to IBOs as such.

In 2006, AC rejected a complaint for an alleged restriction of competition against **Bureau national interprofessionnel du Cognac (BNIC)**.³⁶ In this case, the plaintiff argued that the IBO in question was controlling the determination of QNV ("*quantité normalement vinifiée*"), a key criteria influencing the supply of distilled spirit, used as a base to produce Cognac. In reply to the arguments of the plaintiff, AC observed that the determination of QNV was adopted by ministerial decree and that, whilst BNIC had made known to the competent authorities its official position as IBO on the desirable level, that position had not necessarily conditioned the decision of public authorities.

Separately, in the sector of **poultry meat**, AC investigated *ex officio* **price fixing** agreements over the period 2000-2007, including the active participation of the IBOs for

³⁵ Judgment *Doux Elevage*, C-677/11, EU:C:2013:348, in particular paragraphs 25 and 45.

³⁶ Decision n. 06-D-21 of 21 July 2006.

turkey and ducks. In the context of an extended procedure between 2007 and 2015, AC determined that the IBOs concerned had actively contributed to the breach of national and EU antitrust rules by coordinating their economic conduct with a view to removing price uncertainty (although charges against one of the IBOs were subsequently dropped on the ground of insufficient evidence). The other IBO chose not to contest AC findings and was ultimately subject to a 10,000 EUR fine. Based on the evidence gathered on that case, AC concluded that the breach of antitrust rules resulted, in part, from the failure of interbranch cooperation and, thus, that a new IBO should be constituted in line with the provisions of Regulation (EU) No 1308/2013.³⁷

More generally, in 2011 AC also issued an opinion on **the application of antitrust rules to IBOs** whilst reviewing the draft agreements negotiated by the IBO **Conseil interprofessionnel du vin de la région de Bergerac (CIVRB)**³⁸. In so doing, AC opinion provided detailed guidelines that should serve as a reference for all IBOs. In this opinion, amongst others, AC recommended that IBOs do not issue price recommendations and provide reference values in relation to price indexation or revision, which would result in a restriction of the freedom of operators to decide on prices.

Separately, AC annual report of 2012 includes a topical study on competition and agriculture. While that study predates the CMO regulation, it indicates that AC considers IBO to be subject to competition rules but also as instrumental in making improvements in the agricultural sector, including in the field of competition. In this context, AC also points to the need to draft standard contract terms as well as the dissemination of information subject to antitrust prohibitions.

In Spain, only two national IBOs – i.e. **Propollo** (2007-2012)³⁹ and **Inprovo** (2007-2013)⁴⁰ - have been involved in competition cases at national level over the last decade.

The two cases in question are very similar to the extent that both:

- Originated from the food price crisis that hit, among others, the Spanish market in 2007;
- Were initiated *ex officio* by the then **National Competition Commission** (*Comisión Nacional de la Competencia*, hereinafter 'CNC')⁴¹ following complaints by consumer organisations;
- Concerned a violation of the prohibition of formulating **collective recommendation on price fixing** set by national law; and
- Led to the application of **financial sanctions** by CNC (200,000 EUR for Propollo and 100,000 EUR for Inprovo), whose amount was then reduced by the competent administrative court (100,000 EUR and 50,000 EUR, respectively).

In both cases, CNC found that communication activities carried by the IBOs over the summer 2007 (i.e. press release and media statements from the IBOs' representatives) contained explicit references to the amount of price increase likely to affect poultry meat and eggs as a result of the rise of raw material costs. As such, it considered that they

³⁷ Decision n. 15-D-08 of 5 May 2015

³⁸ Opinion n. 11-1-14 of 26 September 2011.

³⁹ Resolution of the Council of the National Competition Commission of 29 September 2009, Expte. S/0044/08 *PROPOLLO*; Judgement of the Sixth Section of Audiencia Nacional of 10 November 2010, *PROPOLLO v. National Competition Commission*, case 06479/2009 and Resolution of the Council of the National Competition Commission of 14 March 2012, VS/0044 *PROPOLLO*.

⁴⁰ Resolution of the Council of the National Competition Commission of 28 September 2009, Expte. S/0055/08 *INPROVO*; Judgement of the Sixth Section of Audiencia Nacional of 13 October 2011, *INPROVO v. National Competition Commission*, case 06820/2009 and Resolution of the Council of the National Competition Commission of 9 January 2013, VS/0044/08 *INPROVO*.

⁴¹ Following a reorganisation of competences at national level, in 2013 CNC was renamed as *Comisión Nacional de los Mercados y la Competencia* (CNMC).

encouraged somehow all the actors of the respective sector to follow a common pattern vis-à-vis price determination and, thus, unduly restricted the principles of freedom of contracts and free competition. Whilst recognising the conduct of the two IBOs as objectively anticompetitive, CNC recognised this was not deliberate but attributable to negligence.

The reduction of the sanctions was granted as, according to the judge of the appeal, CNC did not take duly into account some mitigating factors in the conduct of the two IBOs, such as the absence of the intentionality and the short duration of the anticompetitive practice.

In Italy, the **National Competition and Market Authority** (*Autorità Garante della concorrenza e del mercato*, hereinafter AGCM) has not dealt with any case or complaint involving IBOs in the agri-food sector. It has however been consulted a few times in the past by other public authorities with regard to the lawfulness of agreements concluded between POs and processor organisations involving price fixing. Against this background, AGCM has consistently drawn the attention of the authorities seeking its advice to the restrictive effects that such agreements have on competition.

This view has been restated by AGCM in a report adopted early in 2016 following an investigation on the national milk and milk products sector.⁴² More precisely, following the application of the new regime for the contractual relations in the milk and milk products sector pursuant to Regulation (EU) No 261/2012 (now integrated within Regulation (EU) No 1308/2013), AGCM expressed its support for the recognition of IBOs promoting initiatives aimed at improving the efficiency of the relevant product chain. In this context, AGCM points out that, whilst IBOs cannot fix the economic conditions for product sale, such entities are nevertheless entitled to perform other activities including, for instance, the drawing up of standard contracts.

3.3. Member States with national legislation on IBOs but with no IBOs recognised

The reasons why in the majority of EU Member States, despite the existence of national legislation on IBOs, these organisations have not yet been established are different.

Depending on the national context, the reasons reported as underpinning the lack of recognised IBOs can be overall attributed to:

- a) The preference for **simpler structures**, as opposed to IBOs, for the organisation of, and the cooperation within, the relevant agricultural markets, such as producer cooperatives (for instance, in Austria, Belgium (Wallonia) Cyprus, the Czech Republic, Germany, Latvia and Malta), including the fact that, according to some national stakeholders, the **focus** of competent authorities is on **POs** rather than on IBOs (for instance, in Bulgaria and in Croatia);
- b) The existence of **long-standing** and **influential professional bodies** such as agriculture or commerce chambers that are able provide a wide range of services to their affiliates (for instance, in Austria and in the Czech Republic);
- c) An overall **distrust towards vertical cooperation** in the food supply chain due to historical reasons (for instance, in the Czech Republic, Germany and in Slovakia);
- d) The **lack of knowledge** of the relevant EU framework in this area (for instance, in Bulgaria, Croatia and Poland) and the fear that IBO's activities may **breach competition rules** (for instance, in Belgium and Bulgaria);

⁴² Report n. 25899 of 2 March 2016.

- e) The **lack of understanding of the benefits** that vertical cooperation fostered by IBOs may bring to stakeholders of the food supply chain (for example, in Croatia, Poland as well as in Slovakia);
- f) The perception that the current **EU regime for IBOs is complex and bureaucratic** (for instance, in Croatia, Cyprus, Latvia and Malta) and its results can be ultimately achieved through **less regulated forms of cooperation** (Belgium);
- g) The **lack of public support in terms of economic and financial incentives** associated with the creation of IBOs (for instance, in Bulgaria, the Czech Republic, Latvia and Slovakia); and
- h) The **slow uptake** and the relative **weakness of POs** recognised under Regulation (EU) No 1308/2013 at national level. The existence of POs as a horizontal cooperation form to gather the interests of the production is regarded as a pre-requisite for the establishment of IBOs as vertical cooperation structures within the food supply chain (for instance, in Croatia, Malta and Slovakia).

As regards the stance of national competent authorities towards the establishment of IBOs, this appears to vary across Member States. In Bulgaria and Croatia, on the one hand, the competent authorities generally refer a positive attitude towards IBOs, although, according to some stakeholders, the setting up of these organisations would not be their top priority at present. In Latvia, on the other hand, the competent authorities have maintained a neutral position as regards the establishment of IBOs, as they are of the view that relevant stakeholders must see their creation as beneficial in the first place. In the Czech Republic, finally, some stakeholders regard the approach by competent authorities in this area as too lax, which results in no IBOs being recognised at present in this Member State.

In none of the Member States considered under this section has any request for recognition been submitted to the competent authorities. Only in Bulgaria, following the adoption of implementing rules for IBOs' establishment at national level in 2015, organisations of the tobacco sector have expressed a possible interest in obtaining formal recognition. Other than that, there seem to be no indication that any formal recognition may be granted in 2016.

3.4. Member States with no national legislation on IBOs

In nine Member States there is, as yet, no national legislation on IBOs in the agri-food sector. These Member States are Denmark, Estonia, Finland, Ireland, Lithuania, Luxembourg, Sweden, Slovenia and the United Kingdom. As it will be shown, the reasons behind the absence of a dedicated legal framework in these Member States coincide to a large extent with those justifying the lack of recognised IBOs in Member States with national law in this field.

The reasons provided by both national competent authorities and industry stakeholders to justify the absence of national legislation in this area would seem to be varied and, in particular, to reflect differing priorities and agricultural structures. Overall, five such reasons may be identified.

The first reason not to create legislation for the recognition of IBOs is simply that no stakeholders have expressed interest in being recognised. Therefore, there seems to be a certain reluctance to undertake **the administrative burden associated with IBOs**, notwithstanding that both a harmonised and streamlined procedure for their recognition and a light-touch regulatory regime were declared aims of Regulation (EU) No 1308/2013.⁴³ Concerns to this effect have been expressed, for instance, in the case of

⁴³ See, in particular, Recital (133): “[e]xisting rules on the definition and recognition of producer organisations, their associations, and interbranch organisations should therefore be harmonised, streamlined and extended to provide for

Denmark, Estonia and the United Kingdom. Hence, one could claim that the procedural requirements currently applicable represent a barrier to the establishment of IBOs. In the United Kingdom, the Food and Drink Federation had earlier pointed out further administrative burdens and additional costs to industry as factors inclining against the formal recognition of IBOs in the dairy sector under the Milk Package.⁴⁴

Secondly, in several Member States a preference may be detected for **other structures**, often allied to a strong tradition of cooperatives or other industry bodies.

For example, in Estonia, simpler types of cooperation are considered to be attractive to an older generation, whilst in Denmark and Finland large collection and processing cooperatives have been the structure of choice in the milk and milk products sector.

In Sweden, the various actors of the food chain handle promotion and commercialisation on their own, without the need to give rise to recognised IBOs. For instance, producers and processors are currently working together on a system of voluntary labelling with country of origin on animal products. Sometimes, competent authorities can get involved in various efforts. One recent example is the Action Plan for animal products, which brought together the whole value chain as well as public authorities in a joint effort to increase demand for Swedish meat and milk and milk products. Also, for companies aiming for the export market, the organisation Business Sweden offers some assistance.

Likewise, in the United Kingdom a factor underlying the decision not to proceed with formal recognition of IBOs was the availability of other forms of cooperation.⁴⁵ However, the absence of those forms of cooperation has for some time been identified as an inherent weakness of England's agriculture. As stated in the 2002 Curry Report, the Policy Commission on the Future of Farming and Food that drafted it believes that "[...] *the security of a profitable production base in England depends on a much greater level of collaboration than we have seen historically*".⁴⁶

Thirdly, a **lack of awareness of the relevant EU legislation on horizontal and vertical cooperation** in the agri-food sector is considered to be a reason for the fact that no IBOs have been formally recognised. In this regard, it is worth noting that, in Lithuania, due to historical reasons no POs have been recognised to date as no request has ever been put forward. Against this background, national authorities are promoting basic forms of cooperation between producers, whilst IBOs would be next step. In addition to that, the competent authorities refer that economic operators are not familiar with entities such as IBOs so more time is needed to recognise their tasks and benefits.

Fourthly, issues have also coalesced around **funding**, though with lower emphasis. For example, Lithuania's competent authorities report that the EU financial contribution towards the start-up costs of POs is regarded as a motivating factor whereas the absence of IBOs is attributed to the non-availability of such funding.

possible recognition on request under statutes set out in accordance with this Regulation for certain sectors"; and Recital (142): "[i]n order to ensure that the objectives and responsibilities of producer organisations, associations of producer organisations and interbranch organisations are clearly defined and to contribute to the effectiveness of their actions without imposing an undue administrative burden and without undermining the principle of freedom of association in particular with regard to non-members of such organisations, the power to adopt certain acts should be delegated to the Commission in respect of..."

⁴⁴ Food and Drink Federation (FDF) (2013). *FDF response to DEFRA consultation on producer organisations, the reporting of milk volumes and other EU dairy package options* (FDF: London).

⁴⁵ Department for Environment, Food and Rural Affairs (DEFRA) (2014). *Consultation on the implementation of CAP reform in England: Summary of responses and government response on remaining issues* (DEFRA: London).

⁴⁶ Curry Report (2002). *Report of the Policy Commission on the Future of Farming and Food: Farming and food – a sustainable future* (Policy Commission on the Future of Farming and Food: London).

Fifthly, **competition law** issues similarly come into play. In Slovenia, several stakeholders are concerned that the national competent authorities might regard certain IBOs' activities as a breach of competition law (notwithstanding that Regulation (EU) No 1308/2013 would seem to lay down clear derogations in their favour). In the United Kingdom, however, a wider focus is adopted as opposed to Slovenia, with the National Farmers' Union seeking to ensure that any recognition of IBOs should not "create barriers to the free movement of goods and competition within the internal market".⁴⁷

Over and above these more specific reasons, the experience in several Member States has been that engagement to create IBOs from stakeholders is not forthcoming. Indeed, when, in Estonia, a public consultation was launched on its draft IBO legislation, there was no reaction from stakeholders.

3.5. National implementation of other forms of cooperation in accordance with Regulation (EU) No 1308/2013

Besides specific provision on IBOs, Regulation (EU) No 1308/2013 lays down provisions which should ensure a fair balance between producers and their trading partners or contribute to stabilising the markets and ensuring a fair standard of living for the agricultural community concerned by e.g. allowing for certain supply management rules.. These provisions include:

- Agreements and delivery contracts negotiated by sugar beet growers' organisations and sugar producers (Articles 125 and 127);
- The introduction of marketing rules to improve and stabilise the operations of the common market of wines (Article 167); and
- The regulation of the supply of cheese and ham protected under EU quality schemes (Articles 150 and 172).

With regard to **sugar**, agreements within the trade are currently in place in several Member States (16). Whilst Germany has currently three agreements in place, France and Spain have two and the remaining Member States only one.

With regard to **wine**, only Spain has adopted a national framework to give effect to Article 167 of Regulation (EU) No 1308/2013, although it has not yet been implemented in practice. In Romania, there is an IBO agreement in place to this effect which is similar to the one in force in the sugar sector.

Italy has implemented the provisions of Regulation (EU) No 1308/2013 with regard to the possibility to regulate the **supply of cheese and ham** protected under EU quality schemes. To date it has done so six times, in four cases for national cheeses and in two for hams. France has also made use of these provisions in relation to four cheeses.

Concerning the provisions of Regulation (EU) No 1308/2013 that allow producers organisations to negotiate joint sales on behalf of their members, the Czech Republic, France, Germany and Spain reported volumes covered by such negotiations for 2013 for the **milk and milk products sector**.⁴⁸ In the context of the study, Spain reported relevant data also for 2014.

Also, Regulation (EU) No 1308/2013 lays down provisions with a view to fostering horizontal cooperation between primary producers in order to strengthen their bargaining power versus downstream operators. It does so by providing for the possibility for recognised POs to negotiate agreements, on behalf of their members, concerning contracts for the delivery of raw milk to a processor or a collector (Article 149) as well as

⁴⁷ National Farmers' Union (NFU) 2011. *NFU consultation response: the reform of the CAP towards 2020 – consultation document for impact assessment* (NFU).

⁴⁸ Report from the Commission to the European Parliament and the Council Development of the dairy market situation and the operation of the "Milk Package" provisions, COM(2014) 354 final, 13.06.2014.

for the supply of olive oil (Article 169), live cattle (Article 170) and certain arable crops (Article 171).

Overall, the analysis conducted during the study indicates that the level of implementation of these provisions is still very low in the vast majority of Member States. In certain Member States (for example, France and Portugal), the lack of action in the first two years of application of Regulation (EU) No 1308/2013 has been justified by the lack of EU guidelines with regard to certain provisions (for instance, Articles 169 to 171 of Regulation (EU) No 1308/2013 for contractual negotiations in the olive oil, beef and veal and certain arable crops sectors). Such guidelines were adopted by the European Commission at the end of 2015.⁴⁹

⁴⁹ Commission Notice — Guidelines on the application of the specific rules set out in Articles 169, 170 and 171 of the CMO Regulation for the olive oil, beef and veal and arable crops sectors, OJ C 431, 22.12.2015, p. 1.

Table 13: Overview of sugar agreements currently in place at MS level

MS	Year	Agreement	Delegate	Agreement conditions	Link
BE	2014-2015	Interprofessional agreement	Association des betteraviers Wallons (ABW) and Suikerbiet (Flanders)	Production conditions	<u>Wallonie</u> : http://www.betteravierswallons.be/reglements-accords/accords-interprofessionnels <u>Flanders</u> : http://www.suikerbiet.be/default.html
CZ	2016	Interprofessional agreement	Beet growers and sugar refineries	Basic framework for cooperation expert beet growers and sugar producers	http://eagri.cz/public/web/mze/tiskovy-servis/tiskove-zpravy/x2016_producenti-cukrove-repy-a-provozovatele.html
DE	2011-2012	Interprofessional agreement	North German beet growers (DNZ) and Nordzucker	Applying the quota rule	http://www.nordzucker.de/fileadmin/downloads/Landwirte/2011-12_Branchenvereinbarung.pdf
DE	2016-2017	Interprofessional agreement	North German beet growers (DNZ) and Nordzucker	Applying the quota rule	http://www.agrarheute.com/news/liefervertraege-zuckerrueben-2016-eckpunkte
DE	2017	Interprofessional agreement	Anklamer Anbauerverband , Suiker Unie GmbH & Co.KG- Zuckerfabrik Anklam	Prices and volumes	http://www.topagrar.com/news/Acker-Agrarwetter-Ackernews-Ruebenanbauer-Anklam-Neue-Branchenvereinbarung-ausgehandelt-3531457.html
DK	2015-2016	Cultivation and supply of sugar	Danish sugar beet and Nordic sugar	Quota application	http://www.danskesukkerroedyrkere.dk/nyheder/2010/brancheaftale-for-2011-2014
EL	2016	Ongoing agreement	HSI and Piraeus Bank	Cultivation conditions	http://www.paseges.gr/el/news/Proedros-EBZ:-Aparaithtos-o-exorthologismos-toy-kostoys-paragwghs-zaharhs
ES	2015-2016	Interprofessional agreement	ACOR	Purchase terms	
ES	2016	Interprofessional agreement	AB Azucarera Iberia	Agreement on price	http://www.qcom.es/v_portal/informacion/informacionver.asp?cod=27823&te=2&idage=30572
FI	2015-2016	Agreement on cultivation of sugar beet	Sugar beet cultivation sucros Ltd (Sucros) and MTK/SLC	Cultivation condition / quota application	http://www.sjt.fi/wp-content/uploads/2015/04/Toimialasopimus_2015_3495487_snapshot1.pdf
FR	2014-2015	Interprofessional agreement	Confédération Générale des Planteurs de Betteraves, Syndicat National des Fabricants de Sucre de France, Fédération Nationale des Coopératives de Collecte et de Transformation de la Betterave	Purchase and delivery of beet quota	http://www.snfs.fr/site/images/pdf/AIP201415t_extecomplet.pdf http://cips-france.fr/accord-interprofessionnel/
FR	2015-2016	Interprofessional agreement	Confédération Générale des Planteurs de Betteraves (CGB), Syndicat National des Fabricants de Sucre de France (SNFS), Fédération Nationale des Coopératives de Collecte (FCB) et de Transformation de la Betterave	Purchase and delivery of beet quota	http://www.snfs.fr/site/index.php?option=com_content&view=article&id=105:signature-de-l-accord-interprofessionnel-2015-16-et-2016-17&catid=13&Itemid=140
HR	2016	Interprofessional agreement	Osijek Ltd, Union of farmer	Cultivation conditions	http://www.secerana.com/index.php?option=com

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MS	Year	Agreement	Delegate	Agreement conditions	Link
					m_content&view=article&id=157:modernizacija-proizvodnje&catid=39:frontpage-category&Itemid=141
HU	2016	Interprofessional agreement	Sugar beet growers (CTOSZ) and Sugar producers (CIE)	Quota application	http://www.ctosz.hu/index.php?muvelet=jog_magyar_szakmakoz
IT	2016-2017	Interprofessional agreement	Confederazione Generale dei Bieticoltori Italiani and Eridania Sadam	Applying the quota rule	http://www.anb.it/wp-content/uploads/2016/01/ACCORDO-ERIDANIA-2016-SINTESI.pdf
LT	2016-2017	Interprofessional agreement	Arvi Sugar AB and Nordic Sugar	Quota application	http://www.litfood.lt/paramos-priemones/naujienos/patvirtinti-cukraus-gamintojai-2016-2017-prekybiniams-metams/
PL	2016	Interprofessional agreement	Südzucker Polska, Nordzucker Polska and Krajowa Spółka Cukrowa Pfeifer & Langen Polska , Group Pfeifer & Langen located in Gostyn, Pfeifer & Langen Glinojek	Quota application	http://kzpb.com.pl/files/files/5.%20Porozumienie%20Bran%C5%BCowe%20w%20Polsce%20287957.pdf
RO	2015-2016	Interprofessional agreement	Federation of sugar beet growers Romania (FCSZR), Association of sugar producers in Romania and Association Romania sugar employers	Quota application	http://lege5.ro/Gratuit/gyzdnjzgu/acordul-interprofesional-pentru-sfecla-de-zahar-recoltatanului-de-comercializare-2015-2016-din-25022015
SE	2015-2016	Interprofessional agreement	Swedish beet growers association and Nordic Sugar	Quota application	http://www.betodlarna.se/radoinfo/pdf/Branschavtal_SE_2015.pdf
UK	2010-2015	Interprofessional agreement	NFU and British Sugar	Beet price	https://www.nfuonline.com/sectors/nfu-sugar/nfu-sugar-rh-panel/useful-documents/key-dates-in-the-uk-sugar-industry/

Table 14: Overview of the implementation of provisions regarding other forms of vertical and horizontal cooperation pursuant to Regulation (EU) No 1308/2013

MS	PDO/PGI cheese and ham Art. 150 and 172 - Reg. (EU) No 1308/2013	Milk and milk products - Art. 149 Reg. (EU) No 1308/2013	Wine - Art. 167 Reg. (EU) No 1308/2013	Olive oil - Art. 169 Reg. (EU) No 1308/2013	Live cattle- Art. 170 Reg. (EU) No 1308/2013	Certain arable crops - Art. 171 Reg. (EU) No 1308/2013
AT	National rules exist but have not been implemented to date	No	No although a National Wine Committee has been established in 2011 for the execution of marketing measures pursuant to Regulation (EC) 1234/2007	No	No	No
BE	No	No	No	No	No	No
BG	No	Two producer organisations would have made use of this provision in 2015 though data not yet available	No	No	No	No
CY	No	No	No	No	No	No
CZ	No	In 2013 collective negotiations for delivery contracts covered 445,000 tonnes of cow milk	No	No	No	No
DE	No	In 2013 collective negotiations for delivery contracts covered 11, 158,000 tonnes of cow milk	No	No	No	No
DK	No	No	No	No	No	No
EE	No	No	No	No	No	No
ES	No	For raw cow milk, three recognised producer organisations have made use of this provision in 2014 negotiating delivery contracts for a total volume of 840,413 tonnes. For sheep milk, in 2014 the only recognised producer organisation has negotiated delivery contracts accounting for an overall production volume of 70, 905 tonnes.	National rules have been adopted in order to give effect to this provision but no implementation to date	No	No	No
FI	No	No	No	No	No	No

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MS	PDO/PGI cheese and ham Art. 150 and 172 - Reg. (EU) No 1308/2013	Milk and milk products - Art. 149 Reg. (EU) No 1308/2013	Wine - Art. 167 Reg. (EU) No 1308/2013	Olive oil - Art. 169 Reg. (EU) No 1308/2013	Live cattle- Art. 170 Reg. (EU) No 1308/2013	Certain arable crops - Art. 171 Reg. (EU) No 1308/2013
FR	Implementing rules of these provisions have been adopted for the following <u>PDO cheeses</u> : Beaufort, Comté and Reblochon and for the following <u>PGI cheese</u> : Gruyère	In 2013 collective negotiations of contract deliveries covered 2,689,000 tonnes of cow milk	No	No	No	No
GR	No	No	No	No	No	No
HU	No	No	No	No	No	No
HR	No	No	No	No	No	No
IE	No	No	No	No	No	No
IT	Implementing rules of these provisions have been adopted for the following <u>PDO cheese</u> : Asiago, Grana Padano, Parmigiano Reggiano e Pecorino and for the following <u>PDO hams</u> : Prosciutto San Daniele e Prosciutto di Parma	No	No	No	No	No
LT	No	No	No	No	No	No
LU	No	No	No	No	No	No
LV	No	No	No	No	No	No
MT	No	No	No	No	No	No
NL	No	No	No	No	No	No
PL	No	No	No	No	No	No
PT	No	No	No	No	No	No
RO	No	No	One agreement in place for the current marketing campaign	No	No	No
SE	No	No	No	No	No	No
SI	No	No	No	No	No	No
SK	No	No	No	No	No	No
UK	No	No	No	No	No	No

PART 4: INVENTORY OF EXISTING IBOS ACROSS EU MS (THEME 2)

This chapter presents an inventory of the **IBOs currently recognised at national and regional levels**. It follows the structure of the IBO sheets in order to allow comparison and consultation between this chapter and the individual IBO sheets that are annexed to the report (see Mater DB Theme 2).

Data have been collected through a questionnaire (IBO template) that was sent to all IBOs with an invitation to complete it. IBO sheets were complemented with additional information found in literature where data gaps were observed.

A response rate of nearly 80% was obtained (94 responses). The missing responses are mainly from France from the regional wine IBOs (no direct interest for these IBOs to fill the questionnaire) and from the fact that several IBOs have reported to be inactive or no staff was available to complete the questionnaire.

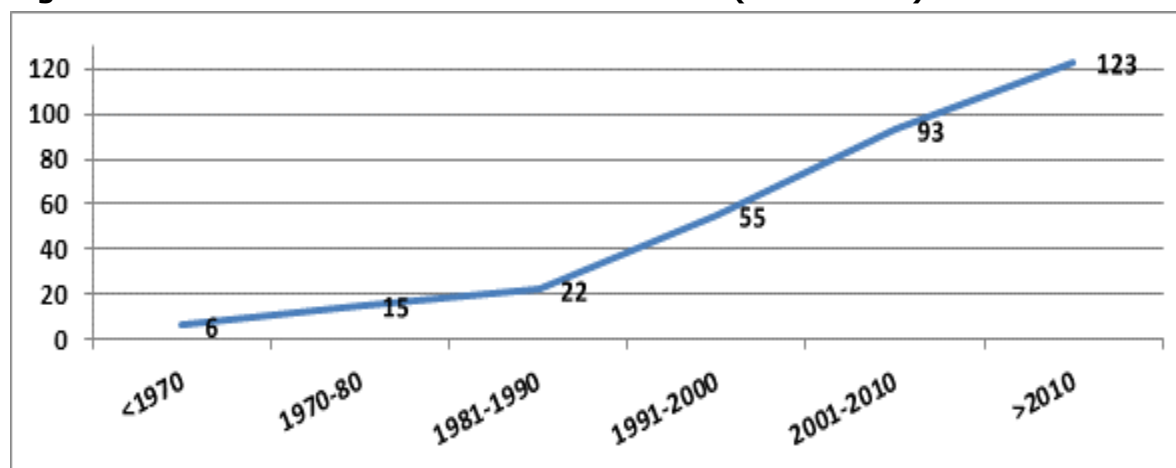
By means of graphs or charts allowing comparisons and descriptive texts, this inventory is presented in several sub-chapters.

4.1. Overview (number of IBOs in the EU, distribution per MS, distribution per sector, geographic coverage: national vs regional)

The data collection leads to the identification of **123 IBOs in the EU as of 1 June 2016** (of which 4 IBOs concern sectors which are not included in Annex I of the CMO. These 4 IBOs are namely the BNIC-Cognac in France, the BNIA-Armagnac in France, INTERAL-animal feed in Spain; and INTEHELIX-other products-snails in Spain).

In Figure 3 the number of IBOs between the period prior to 1970 and the period after 2010 is depicted.

Figure 3: Evolution of number of IBOs in the EU (1970-2016)



Source: Arcadia International

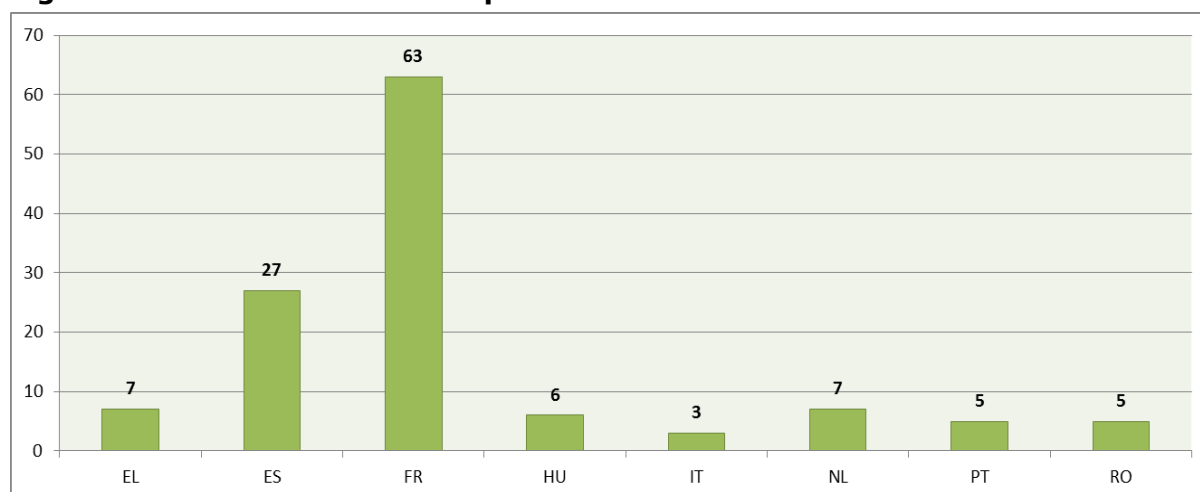
The total number of IBOs in the EU has continued to grow since 1970 and especially after 1980. This is explained by the adoption of Law 75-600 in France and Law 1994 in Spain. Following enforcement of these 2 acts, the number of IBOs has significantly increased during the following 10 years in each of these two countries. Afterwards, the number of IBOs reached a plateau in each of these MSs around 2000. The recognition of IBOs in the EU has gone on at the same pace but in other Member States (Section 4.2).

The cradle countries for IBOs, France and Spain, are still in the lead with the number of IBOs (Figure 3). France reported that 63 IBOs are currently recognised within its national

territory. Spain is the second MS for number of IBOs with a total of 27 IBOs⁵⁰. Together, the number of IBOs recognised in France and Spain amounts to 90 (about 73% of the total number). The remaining 23 IBOs are scattered over 6 MS (EL, HU, IT, NL, PT and RO).

It should be noticed that the NL is currently in the process of recognising additional IBOs, in particular in the F&V and ornamental horticulture (live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage) sectors. This report presents the situation as of 01 June 2016.

Figure 4: Total number of IBOs per MS



Source: Arcadia International

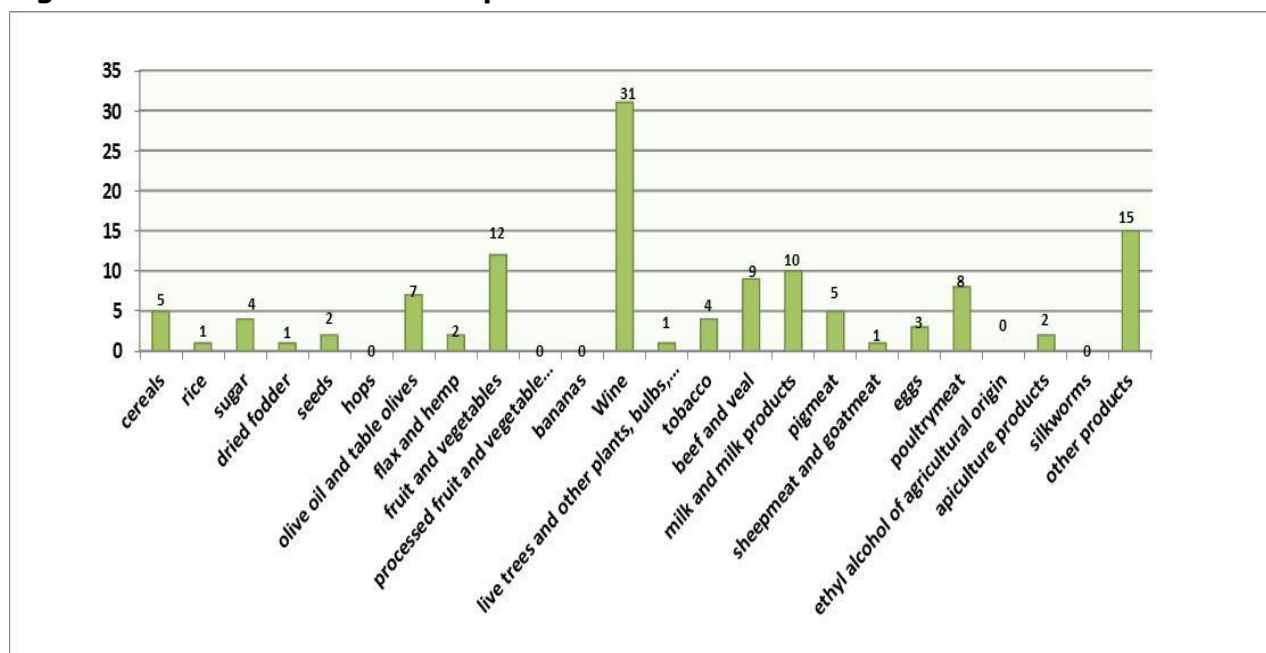
IBOs are currently recognised in 19 different sectors among the 24 listed in Article 1 (2) of Regulation (EU) No 1308/2013 (Figure 4). There are no IBO recognised in the banana⁵¹, ethyl alcohol, hops, and silkworms sectors. A total of 31 IBOs are recognised in the wine sector, representing 25% of the total number of IBOs. These IBOs often have a regional coverage (see below), and as their main objective the marketing of wine products. A total of 13 and 10 IBOs are recognised in the fruit and vegetables sector and in the milk and milk products sector, respectively.

The allocation of sectors for each IBO does not tally with the CMO classification in all cases. Several IBOs can concern groups of products that are not fully aligned to the CMO Annex I classification. IBO representatives were invited to indicate in which sector their IBO was operating. The following figure indicates what IBO respondents reported in their IBO description. For example, there is no "processed F&V products" IBO, while ANIFELT exists in France which could be classified as such. This is explained by the fact that the IBO reported to be part of the fresh F&V sector. Additionally, when an IBO covers several sectors (e.g. regional overseas IBOs), the IBO is allocated to the most important and largest sector within the IBO in question.

⁵⁰ This list also includes the two IBOs that have been recognised by the Andalusian region (Hortyfruta and Interfresa). Organización Interprofesional Agroalimentaria del Higo Seco y Derivados is included, but was not listed on MAGRAMA's website

⁵¹ A French IBO for bananas has been recognised in September 2016.

Figure 5: Total number of IBOs per sector



Source: Arcadia International

The sector “other products” (according to Article 1(2) of the CMO) contains 14 IBOs for a wide variety of products. Table 15 provides the overview. Two IBOs are involved in cider processing.

Table 15: IBOs established for “other products”

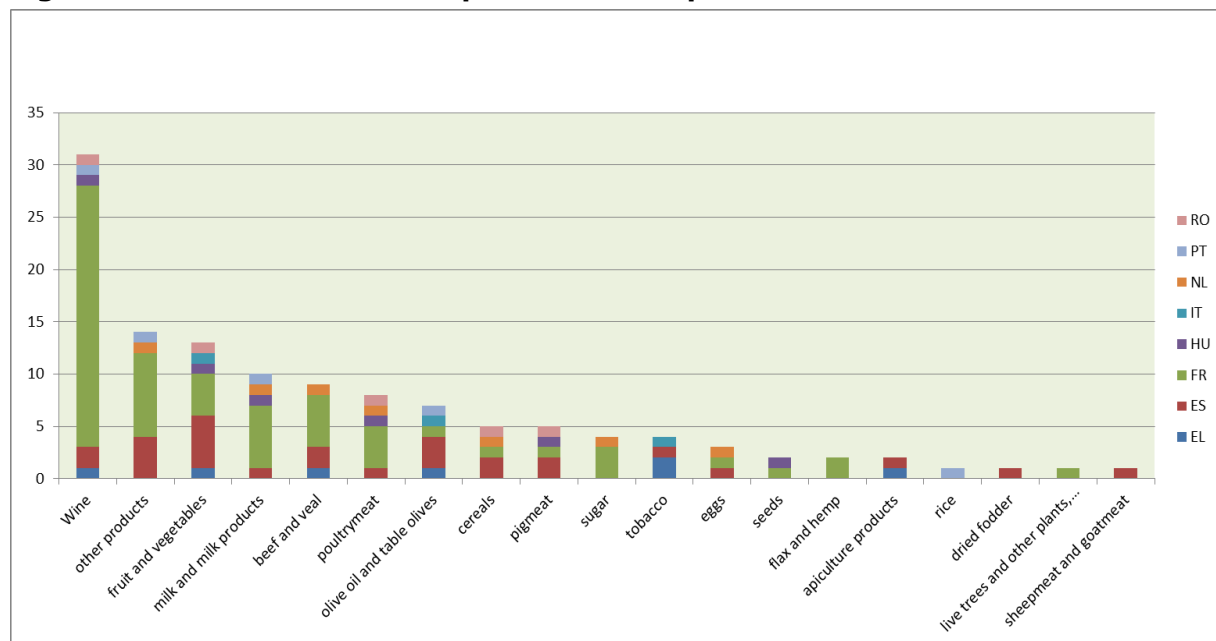
Other products (MS)
Aromatic plants (lavender) and associated products (essential oils) (FR)
Chicory (FR)
Cider (2 IBOs) (FR)
Cork (PT)
Fats products derived from poultry (especially feet webbed birds like ducks, geese), mainly foie gras (ES)
Fresh and frozen wild game meat (deer, boar, roe, mouflon, deer, partridge, rabbit, hare mainly) (ES)
Game (FR)
Oilseeds and protein crops (FR)
Potatoes for human consumption (NC Code: 0701) (FR)
Rabbit (ES)
Seed potatoes, starch potatoes, ware potatoes, potato products (NL)
Snail (ES)
Starch, frozen products, chips, mashed potatoes (FR)
The geographical indications: Calvados , Calvados Pays d’Auge, Pommeau de Normandie , Pommeau de Bretagne, Pommeau du Maine, Cidre Pays d’Auge, Cidre Cornouaille and Poiré Domfront (FR)

Source: Arcadia International

Most IBOs involved in wine are located in France and are regional IBOs. The French IBOs also outnumber other countries in other sectors like milk and milk products, beef and veal, poultry meat, flax and hemp and sugar. At the same time France has IBOs in 13 out of the 20 sectors for which IBOs are established in the EU. In Spain 12 out of those 20 sectors have IBOs. Other countries where IBOs have been established also show a variety of sectors that have IBOs.

Remarkably in the Netherlands no IBOs have been established in the pig sector and the fruit and vegetable sectors yet - both large production sectors. Hungary and Italy have large cereals sector and not yet IBOs present. Additionally, one would expect IBOs for wine, milk and milk products and eggs in Italy based on its production volumes.

Figure 6: Distribution of IBOs per sector and per MS

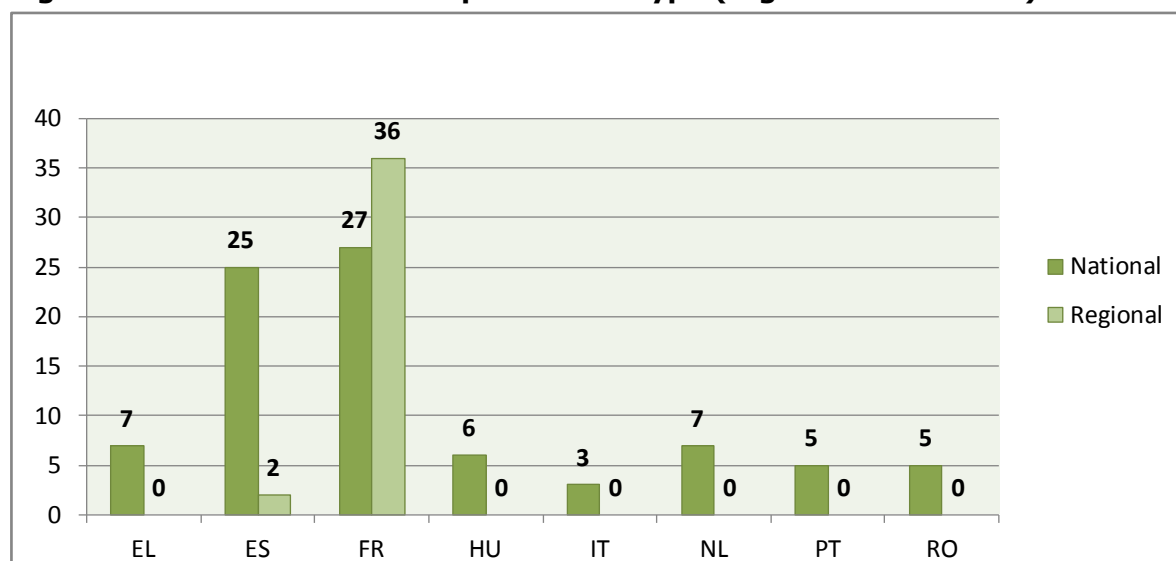


Source: Arcadia International

About 68% of the IBOs are active at country level and 32% are regional. Most of the regional IBOs are located in France (Figure 7) as these IBOs are linked to wines bearing geographical indications (GIs).

The French regional IBOs share common national legislation, whereas in Spain the regional focus is due to the regional recognition of 2 IBOs in Andalusia based on regional legislation.

Figure 7: Distribution of IBOs per MS and type (regional vs national)



Source: Arcadia International

It can also be observed that the number of national IBOs in France and in Spain is quite comparable (25 in Spain and 27 in France).

Table 16 provides an overview of the French regional IBOs involved in wine production per geographic area and grouped per type of GI. It is interesting to observe that different IBOs exist per type of GI.

Table 16: IBOs for wine in France per GI type

Production areas	No of IBOs with GIs	of which both PDO/PGI	of which PDO only	of which PGI only
Alsace Lorraine	2	-	1	1
Champagne	1	-	1	-
Bourgogne Beaujolais Jura	5	-	4	1
Vallée du Rhône Provence	3	-	2	1
Corse	1	1	-	-
Languedoc Roussillon	4	-	2	2
Midi-Pyrénées	2	1	1	-
Aquitaine	4	-	3	1
Charentes Cognac	3	-	2	1
Val de Loire Centre	3	-	2	1

Source: Arcadia International

Demarcating geographic boundaries⁵² of regional IBOs is rather easy in the large majority of cases as a majority of regional IBOs are based on geographical indications (e.g. regional wine IBOs in France). There it is simple to identify e.g. the producers which are in the IBO and the ones which are not. In Spain, the regional IBOs have been recognised by the Autonomous Community of Andalucía and therefore their geographic coverage corresponds to the Andalucía region. In France, several regional IBOs are limited by their territory in the sense that they are based in islands (e.g. Corsica, la Martinique, and la Réunion).

The study does not identify any transnational IBO. However, several interviewees have indicated their interest in creating such transnational organisations especially for the fresh F&V sector. Discussions have already taken place between the different IBOs recognised in that sector, and most of them would favour the creation of a pan European IBO. However, the national and EU legislations were not fully descriptive as regards the possibility to recognise transnational IBOs. The delegated Regulation (EU) No 2016/232⁵³ recently published clarifies the situation and provides provisions that would allow recognition of such type of IBOs. Article 2(c) defines transnational IBOs as “*transnational interbranch organisation*’ means any interbranch organisation of which the members are engaged in production, processing or trade in the products covered by the organisation’s activities in more than one Member State”. This delegated Act also provides modalities and responsibilities of national competent authorities as regards such type of IBOs.

A few IBOs only have seen their recognition withdrawn in the recent years. In France, this is the case of UNIP (protein crops) and ONIDOL (oil crops) that merged to create the IBO named Terre Univia in 2015 in order to optimise resources and staff dedicated to protein and oil crops. This merger of 2 IBOs in one is also explained by the fact that the

⁵² Article 110.2 COM (2011) 626 final/2 mentions that “*economic area shall mean geographic zone made up of adjoining or neighbouring production regions in which production and marketing conditions are homogeneous*”.

⁵³ Commission Delegated Regulation (EU) 2016/232 of 15 December 2015 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to certain aspects of producer cooperation

responsible persons were the same in the two different IBOs. When the new IBO Terre Univia has been officially recognised by authorities, both UNIP and ONIDOL recognitions have been withdrawn.

In the cases listed in Table 17, withdrawal of recognition was due to cessation of activities.

The few cases of withdrawal of recognition due to cessation of activities read as follows.

Table 17: Withdrawal of recognition of IBOs dues to cessation of

MS	IBO (date of withdrawal)
FR	- FIVAL (horses)
	- ANIP (pigeon)
	- INTERMIEL (honey)
	- CNIH (1996)
ES	- OILE (flax) (March 2011)
	- AIPEMA (pears and apples) (March 2011)
	- OIHA (dry fig and derived products) (October 2013)
	- IVIM (table wines) (October 2013)
	- INTERMOSTO (must and grape juice) (October 2013)

Source: Arcadia International

In France, the three above mentioned IBOs (FIVAL, ANIP, and INTERMIEL) do not exist any longer. However it seems that, to the contrary of the ones listed for Spain, French authorities have not officially revoked recognition for these three organisations. Additionally, it is not clear if the two associations which are based on Law 1901 have also been withdrawn. The only clear case of withdrawal of recognition and withdrawal of the legal body (association Law 1901) that has been mentioned during the data collection process is the CNIH (horticulture) back to September 1996.

In addition to these withdrawals, a few IBOs have reported that they are inactive and that no activities are currently ongoing (see Table 18).

Table 18: List of non-active IBOs

MS	IBO
ES	- INTERCITRUS (citrus)
	- INTERMIEL (honey)
EL	- IBO on (Processed) Tobacco
	- IBO on Processed Peaches and Pears

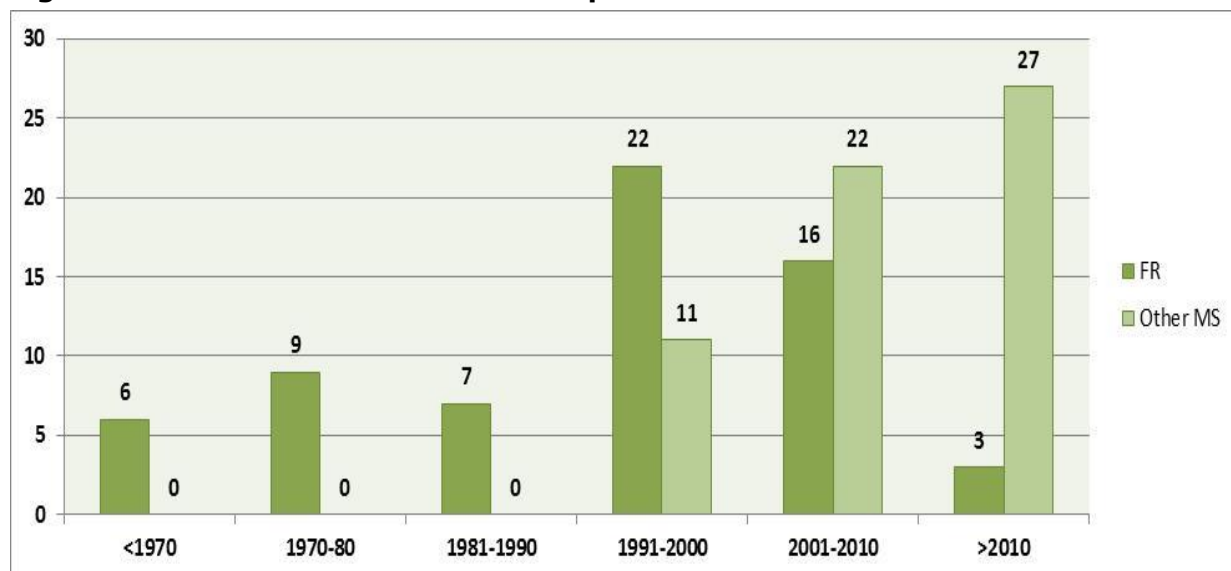
Source: Arcadia International

These two lists (Table 17 and 18) may indicate the difficulties to manage and run IBOs in the honey sector. Interviewees have indicated the specific nature of this sector which is highly fragmented as it is grouping professional honey producers and "amateur" producers. It seems that these two groups of actors have different views on a roadmap for an IBO on honey.

4.2. History of creation and recognition of IBOs

Figure 7 shows the evolution of the recognitions of IBOs in the EU over the time. In the last two decades the number of IBOs increased significantly compared to the period before. In France the growth of the number of IBOs slowed down during the last decade, while in the other MSs the establishment of the IBOs started to take off.

Figure 8: Evolution of number of IBOs per decade in France and other MS

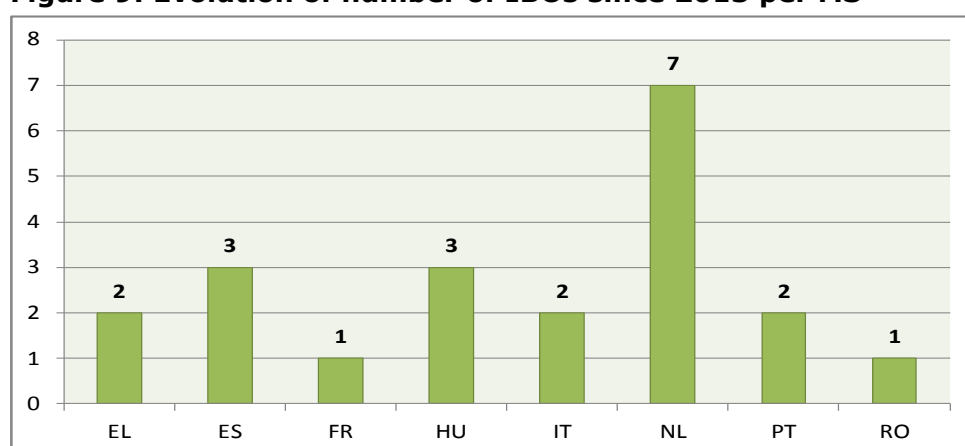


Source: Arcadia International

The first recognition of an IBO outside France dates back to 1994 with the recognition of the wine IBO in Hungary. At that time, there were already 31 IBOs recognised in France. Since then the number of IBOs has continued to grow from 33 in 1994 to 123 (119+4) in 2016.

Out of the 29 IBOs recognised since 2010, 20 were created and recognised after the entry into force of Regulation (EU) No 1308/2013.

Figure 9: Evolution of number of IBOs since 2013 per MS



Source: Arcadia International

About one third of these recent IBOs were created in the Netherlands (Figure 8). Here public branch organisations ("Productschappen"- product - or commodity - boards) were dismantled by the end of 2014 and a new national legal framework for IBOs was established in 2014 based on provisions included in Regulation (EU) No 1308/2013 in

order to allow national recognition of IBOs in the country. More details on the current situation in the Netherlands can be found in the Dutch MS sheets.

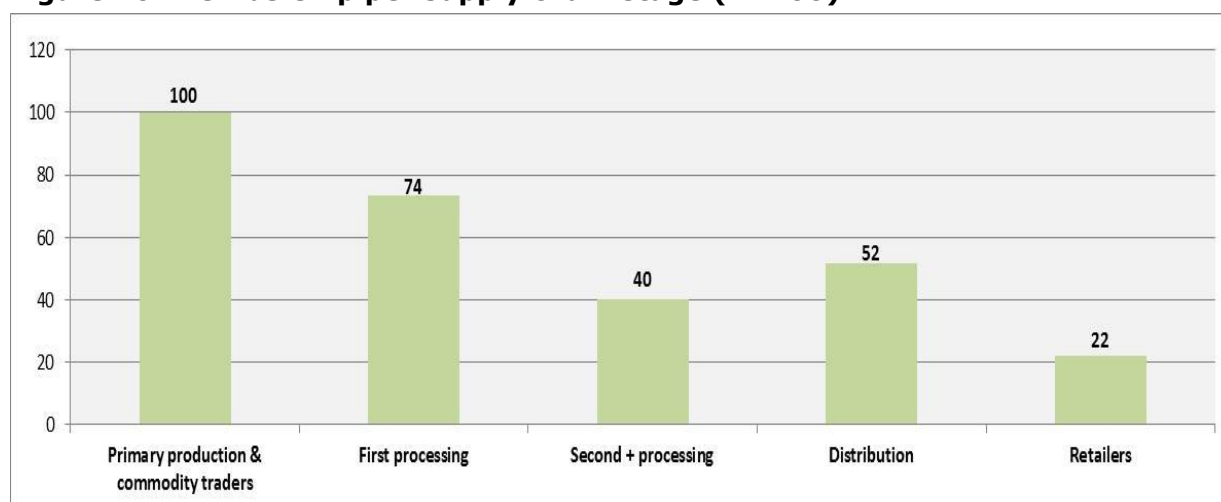
Interviewees and competent authorities have been asked to indicate if new IBOs are expected to be created and recognised in the coming years. In France, a new IBO on honey is under creation for about 2 years already. It seems that negotiations are rather difficult when it comes to the composition of the new organisation, its governance, and its financing (e.g. which type of fees? which actors to pay? and how much?). The Dutch authorities are expected to recognise additional IBOs in 2016, and more particularly for the horticultural sectors (F&V sector and ornamentals sector). Portugal has also recently created new IBOs and additional ones are expected in the near future. In Greece, 3 to 4 new IBOs are expected to be created in the coming 2-3 years⁵⁴. No additional information is available at this time.

4.3. Stages of the supply chain covered by the IBOs

Information on the stages of the supply chain covered is available for 100 IBOs. The allocation of members of IBO to the main supply chain stages (primary production, first processing, second+ processing⁵⁵, distribution, and retail) has revealed to be a difficult task as this categorisation of actors does not fit all structures of the variety of agricultural and food supply chains. For example, the seed or animal feed supply chains are completely different from others and therefore members of IBOs covering these sectors cannot be allocated to the above mentioned categories. The retailers in the seed sector are often the seed companies themselves or agricultural cooperatives which have little in common with food retailers. For wine, the difficulty is to position the traders ("*négociants*"). A wine trader can be a second stage processor (bottling wine) who also sells bottles or only a seller (buying bottles from producers and only selling it). Then some IBOs can act as stockbroker, not really trading in products but facilitating trade between buyers and sellers, however they may be included in commodity trading and distribution.

Few IBOs are involved in supplying farmers by producing inputs like seeds or feed; here they are included in the primary production stage.

Figure 10: Membership per supply chain stage (n=100)



Source: Arcadia International

⁵⁴ According to interviewees

⁵⁵ Second+ processing refers to the second processing (milk to yoghurt, cheese) and any other further processing cycle (example: cheese added on pizzas)

IBOs can be grouped in two main categories⁵⁶: “short IBOs” and “long IBOs”. By “short IBOs” we mean IBOs involving only 2 groups of actors (e.g. primary production and first processing). By “long IBOs” we mean IBOs involving more groups of actors (e.g. primary production, first processing, and second+ and/or distribution and retail).

The analysis of the IBO sheets clearly identifies another segmentation between the IBOs covering one single product category (e.g. wine) (“single-product IBOs”) and others (“multi-product or *sectoral IBOs*”) covering a sector that includes a large number of agricultural crops (e.g. fruit and vegetables, cereals, etc.). In the group of “multi-product IBOs”, one could further segment between the IBOs for one group of crops (e.g. cereals for which supply chains are rather similar) and several groups of crops (e.g. fruit and vegetables). In this last case, actors, supply chains and processes are so different that members of IBO may not know each other⁵⁷.

The presence of modern retailers⁵⁸ in IBOs is limited (see Table 19). On the basis of the analysis of the individual IBO sheets, it can be considered that food retail (modern or traditional or mass caterers) is present in only 13 IBOs. These IBOs are mainly located in France and in Spain. Mass caterers are present in only 2 IBOs in France (INTERBEV and INAPORC).

Table 19: List of IBOs where food retailers are members

MS	Acronym	Sector	Retailers
ES	INTERPALM	Other products (foie gras)	Asociación Sectorial del Hígado Graso
ES	INTERPORC	Pig meat	Confederación Española de Detallistas de la Carne (CEDECARNE)
ES	PROVACUNO	Beef and veal	Confederación Española de Detallistas de la Carne (CEDECARNE)
ES	INTEROVIC	Sheep meat and goat meat	Confederación Española de Detallistas de la Carne (CEDECARNE)
FR	INTERFEL	Fruit and vegetables	Fédération des Entreprises du Commerce et de la Distribution (FCD), Union Nationale des Syndicats de Détaillants en Fruits, Légumes et Primeurs, (UNFD), Restau Co (mass caterers), restauration collective
FR	INTERBEV	Beef and veal	Fédération des Entreprises du Commerce et de la Distribution (FCD), Union Nationale des Syndicats de Détaillants en Fruits, Légumes et Primeurs, (UNFD), Restau Co (mass caterers), restauration collective
FR	ARIV	Poultry meat	Confédération Française de la Boucherie, Boucherie-Charcuterie, Traiteurs (C.F.B.C.T.), Fédération des entreprises du Commerce et de la Distribution (F.C.D.), Confédération Nationale de la Triperie Française (C.N.T.F.), Syndicat de la vitellerie française (S.D.V.F) – Commercialisation veaux de boucherie
FR	ARIBEV	Beef and veal	Trade and Retail Federation (FCD)

⁵⁶ This segmentation is largely used in France, less in other MSs.

⁵⁷ Therefore F&V IBOs are often including crops or groups of crops working groups in their governance.

⁵⁸ Non-traditional or modern retail channel refers to all other formats of retail stores like hyper markets, department stores, discount stores, electric multiple stores, cash and carry stores, speciality stores, online, and direct selling.

MS	Acronym	Sector	Retailers
FR	CIP	Poultry meat	Fédération des Entreprises du Commerce et de la Distribution (FCD)
FR	CNIPT	Other products (potatoes)	Trade and Retail Federation (FCD)
FR	INAPORC	Pig meat	FCD (Fédération du Commerce et de la Distribution), CFBCT (Confédération Française de la Boucherie, Boucherie-Charcuterie Traiteurs), CNCT (mass caterers), RestauCo (mass caterers)
PT	CASA DO ARROZ	rice	APED - Associação Portuguesa Empresas de Distribuição
PT	VINIPTUGAL	wine	Associação Nacional dos Comerciantes, e Exportadores de Vinhos e Bebidas Espirituosas (ANCEVE), Associação de Vinhos e Espirituosas de Portugal (ACIBEV), Associação Nacional de Destiladores de Produtos e Sub-Produtos (AND)

Source: Arcadia International

4.4. Economic importance of the IBOs in the relevant supply chain & representativeness

IBOs were invited to provide statistics and information related to their overall importance (in volume and in value) of the sector in which they are operating, the importance of the different stages of the supply chain, and the representativeness of members of the IBO for each stage of the overall supply chain.

The response rate for this series of questions is rather low as less than 40% of respondents have provided clear evidence.

An additional issue is related to the level of representativeness of IBOs' members of each stage of the supply chain. This estimation has proven to be a difficult task especially for primary production in some Member States. In the majority of cases, IBO members at primary production level are farmers unions or technical committees of such unions (first level membership of the IBO). Therefore it can be said that members of farmers union are members of the IBO via their membership to the union (first level membership of the IBO). However for these cases, it is not clear who can be considered as members of the IBO: those individuals who have a membership card of the union or, alternatively, all individuals who are voting for that union when election for identifying new union committees and representatives takes place, even if the voters do not have a membership of the producer organisation or farmers' union?

The difficulty of establishing representativeness is recognised in the CMO Regulation in Article 164 (3b) as *"However, where, in the case of interbranch organisations, the determination of the proportion of the volume of production, or of trade in, or of processing of the product or products concerned gives rise to practical difficulties, a Member State may lay down national rules for determining the specified level of representativeness referred to in point (a)(ii) of the first subparagraph."* This opportunity to estimate representativeness on other criteria than volumes is applied in some MS. It will be discussed in greater detail under Theme 2.

However, a few conclusions can be drawn from information received from IBOs:

- To the exception of wine producers commercialising products under GIs⁵⁹, representativeness rarely reaches 100%. In the majority of cases, it ranges between 80 and 95%; and
- In general, the level of representativeness is higher in primary production than for the other stages of the supply chain. However, as referred above, there is very little assurance that the statistics provided by IBOs are fully accurate.

4.5. Objectives of the IBOs

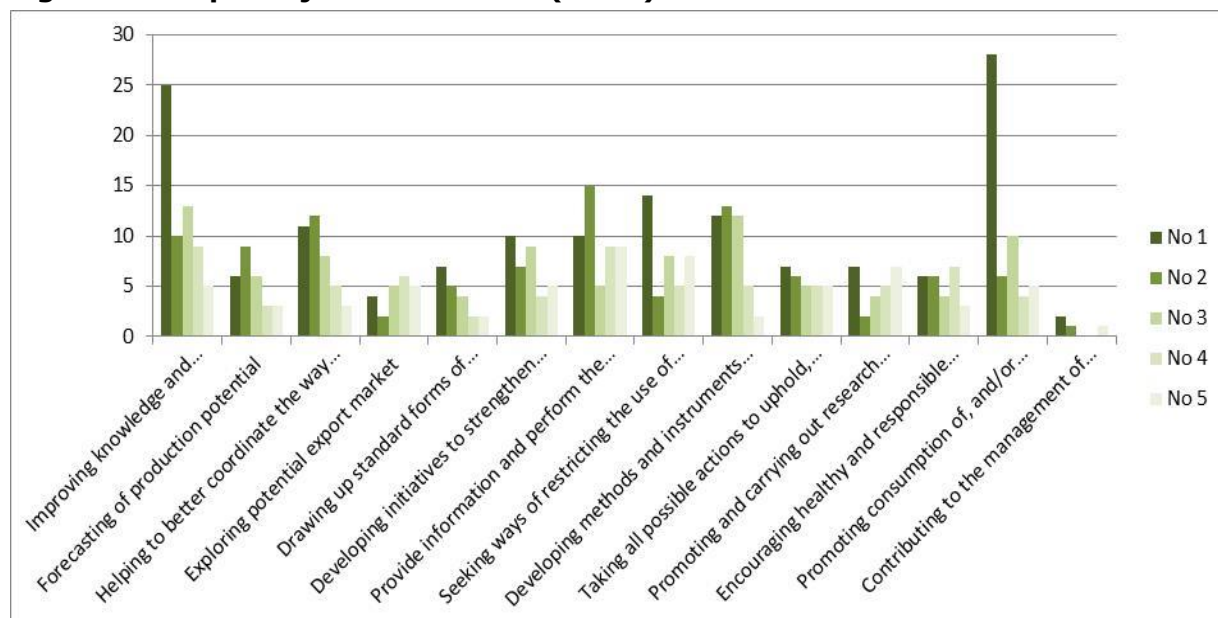
Eighty six IBOs have provided information about their objectives. However, only 59 IBOs have provided their Top 5 objectives. The other IBOs have just indicated their objectives without ranking them.

The following five objectives (Top 5) were mentioned most frequently:

1. Promoting consumption of, and/or furnishing information concerning, products on the internal market and external markets (28 citations);
2. Improving knowledge and transparency of production and market (23 citations);
3. Provide information and perform the necessary research to innovate, rationalise, improve and adjust production and, where applicable, processing and marketing (11 citations);
4. Developing methods and instruments for improving product quality (11 citations); and
5. Developing initiatives to strengthen economic competitiveness and innovation (10 citations).

Figure 11 provides for an overview of all objectives.

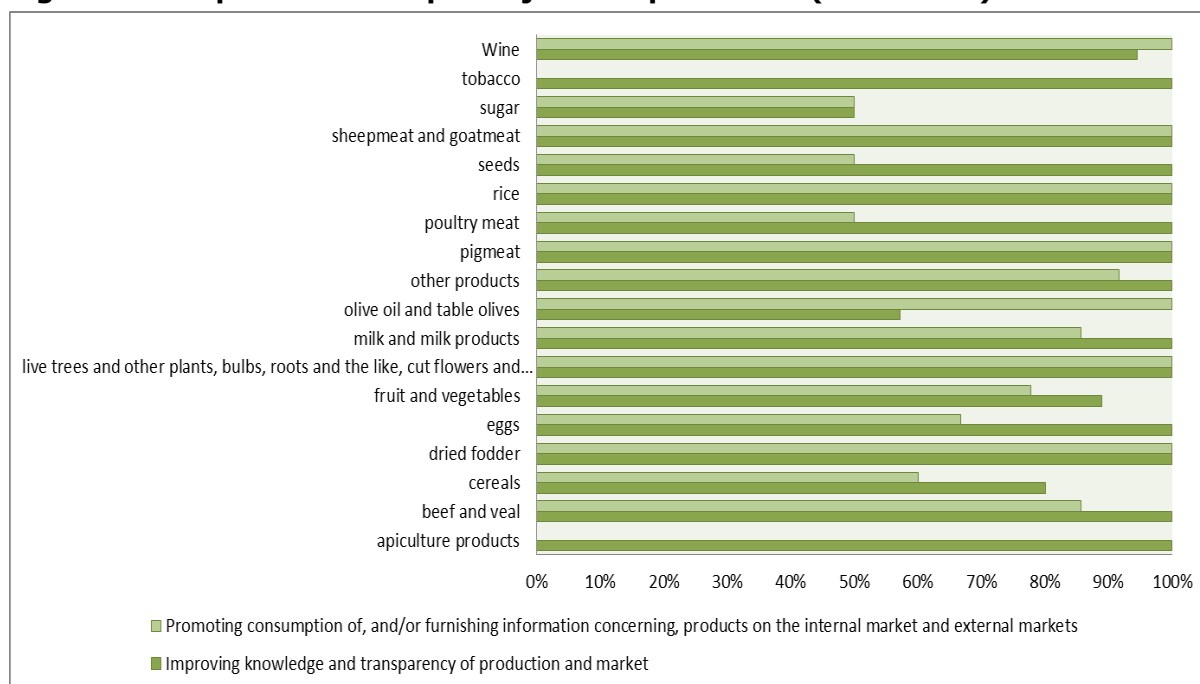
Figure 11: Top 5 objectives of IBOs (n=59)



Source: Arcadia International

Figure 12 shows the percentage of the IBOs per sector that have the objective of improving knowledge and transparency of production and market and/or the objective of promoting consumption of products.

⁵⁹ In wine under GIs, all producers are members of an IBO as they membership to an ODG is mandatory, all producers are *de facto* members of the IBO as ALL ODGs are members (directly or indirectly) of the IBOs.

Figure 12: Importance of top-2 objectives per sector (% of IBOs)


Source: Arcadia International

Table 20 below presents the objectives per MS. It reveals among others the following differences between countries:

- Improving knowledge and transparency of production and market: relevant objective for a large majority of IBOs in all eight Member States;
- Promoting consumption of, and/or furnishing information concerning, products on the internal market and external markets: very relevant objective in Portugal and Spain, for example, but not in the Netherlands;
- Provide information and perform the necessary research to innovate, rationalise, improve and adjust production and, where applicable, processing and marketing: this objective appears to be important in Italy, France and Spain, but much less in Romania, Greece, and the Netherlands;
- Developing methods and instruments for improving product quality: very relevant objective in Greece and France, but not so much in Portugal and The Netherlands; and
- Developing initiatives to strengthen economic competitiveness and innovation: this objective is of relatively low importance in Romania, Spain, Hungary and Portugal.

Table 20: Importance of objectives per MS (% of IBOs)

Objective	EL	ES	FR	HU	IT	NL	PT	RO
Improving knowledge and transparency of production	100	83	92	100	100	100	80	100
Forecasting of production potential	80	42	53	100	33	14	80	75
Helping to better coordinate placing on the market	40	75	82	80	67	0	20	75
Exploring potential export market	60	63	66	60	67	0	60	50
Drawing up standard forms of contract	80	38	42	100	33	10	20	5
Developing initiatives to strengthen competitiveness	100	58	79	6	100	8	6	5

Objective	EL	ES	FR	HU	IT	NL	PT	RO
Provide information and perform the necessary research	40	83	87	80	100	14	80	50
Seeking ways of restricting the use of animal-health or plant protection products	20	58	82	20	67	0	40	50
Developing methods and instruments for improving product quality	100	79	89	60	67	0	40	75
Taking all possible actions to promote organic farming	60	33	79	20	100	43	0	50
Promoting and carrying out research into integrated, sustainable production	100	46	87	0	33	43	40	50
Encouraging healthy and responsible consumption	60	58	66	20	67	14	40	75
Promoting consumption of products	60	83	97	60	67	14	100	75
Contributing to the management of by-products and the reduction of waste	40	13	79	0	67	14	0	50

Source: Arcadia International

The objectives of existing IBOs may have changed over time in order to adapt to changing socio-economic and political environments.

Leangro (2002) points out that most IBOs in the EU were created to promote specific crops, address problems arising between actors of the supply chain, plan production and regulate marketing (including fixing minimum prices). Law 75-600 in France clearly stipulated that one of the major objectives of IBOs was to regulate market and to implement market regulation tools⁶⁰.

A few years down the road, they took on new goals such as promoting consumption, fostering market transparency, and promoting price transparency. In recent years other issues have emerged, namely food safety, traceability and environmental protection. Market regulation and contractual relation objectives have become less predominant with evolution of the CAP (suppression of direct support, of quotas, etc.).

Approximately only one third of 86 IBOs (26) that have answered the questions on their objectives appear to have modified them over time to move to more promotion, marketing, research activities and less market regulation actions. Note, however, that also a third of the existing IBOs was established after 2010.

Last but not least, this analysis is based on the objectives that IBOs could pursue as listed in Regulation (EU) No 1308/2013. Additionally to these objectives, it can be highlighted that IBOs play also a role of lobbyist in the supply chain. This objective has not been included in this analysis.

4.6. Members and non-members⁶¹

4.6.1. Who are the members?

Membership of IBOs is mainly defined pursuant to Article 157 par. 1 a) of Regulation (EU) No 1308/2013 (IBOs "are constituted of representatives of economic activities linked to the production and to at least one of the following stages of the supply chain: the processing of or trade in, including distribution of, products in one or more sectors").

⁶⁰ Lederman T., 2001/2002, « *La situation juridique des interprofessions agricoles et agroalimentaires au regard du droit communautaire* », Mémoire de fin d'études. Institut des hautes études de droit rural et d'économie agricole.

⁶¹ As regards extension of rules

National legislation doesn't include more detailed provisions as regards the types of "organisations" that could be members of IBOs.

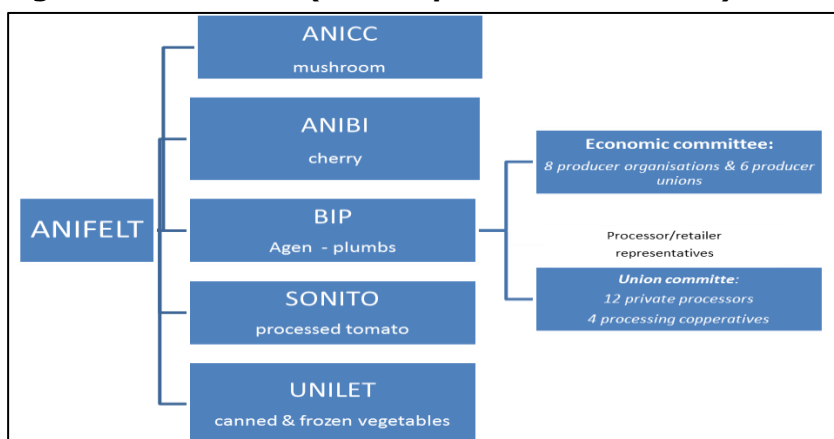
Therefore, membership can take a variety of different forms ranging from:

- **Individual producers** organised in any of the legal forms producers could take. In several Hungarian IBOs members are individual producers (e.g. poultry, livestock and meat, F&V). In France, the CIV Corse is composed of wine producers and of wine traders who have legal personality⁶²;
- **Individual private companies** (e.g. the members of the seed IBO in Hungary are individual private companies that are breeding new varieties and possibly produce seed, then organisations such as cooperatives that produce seeds, and then private seed merchants organised as private companies are also members of the IBO);
- **Sectoral associations** composed of members from the same stage of the supply chain. This is the majority of cases. E.g. in the Netherlands in the case of DairyNL the founding members are the Dutch Dairy Processors Organisation NZO (Nederlandse Zuivel Organisatie) and Dutch Farmers Association LTO (Land- en Tuinbouw Organisatie), while the members of the OVONED IBO in the Dutch eggs sector are farmers Association LTO/NOP, sectoral branch organisation for the trade in eggs ANEVEI and the union of poultry farmers NVP;
- **Farmers unions or their sector committees.**⁶³ In Spain, farmers unions (e.g. COAG, ASAJA) are direct members of several IBOs. In France, farmers unions are present in all national IBOs. The most representative Union (i.e. FNSEA) is indirectly represented in IBOs via its sector committees (e.g. Fédération Nationale des Producteurs de lait-FNPL-milk producers national federation). The minority Unions (e.g. Coordination Rurale, Confédération Paysanne) are members of a few IBOs under their own legal entity. The same holds for the Netherlands, where LTO is present in all IBOs as the largest general farmers association, while smaller farmers unions that are active in a single sector are present in specific IBOs; and
- **Non-recognised IBOs** (only in France) that can be grouped into two main categories:
 - The **regional** ones which implement regional actions mandated by a national IBO (e.g. the *Centre Régionaux Interprofessionnels de l'économie laitière*, implement actions decided by the national IBO CNIEL). They are legally independent from the national IBO, but all their actions are decided by the CNIEL. A similar organisation is in place in INTERBEV, France's meat sector IBO;
 - The **national** ones which are independent structures that may be members of an IB. Such organisations actively implement programmes approved by the IBO as well as additional actions for the activities they represent. The most obvious example of this type of IBOs is ANIFELT, the French IBO on processed F&V, which is composed of 5 members which are each non-recognised IBOs (see Figure 12).

⁶² typically in the form of EARL, "entreprise agricole à responsabilité limitée", for farmers, and SA, "Société Anonyme", or SARL, "Société Anonyme à Responsabilité Limitée", for traders).

⁶³ Farmers unions are also sectoral associations. A different group is proposed here to highlight the importance of farmers Unions in IBOs.

Figure 13: ANIFELT (French processed F&V IBO) structure



Source: ANIFELT web site

ANIFELT's members are non-recognised IBOs that are each working on a different but complementary perimeter. Most of ANIFELT's actions, if not all, are implemented by the members. ANIFELT is coordinating all actions and is the direct link to authorities. The IBO has an overall budget of € [...] million, the bulk of which is managed by its members. ANIFELT manages directly a budget of only € [...] to cover coordination activities.

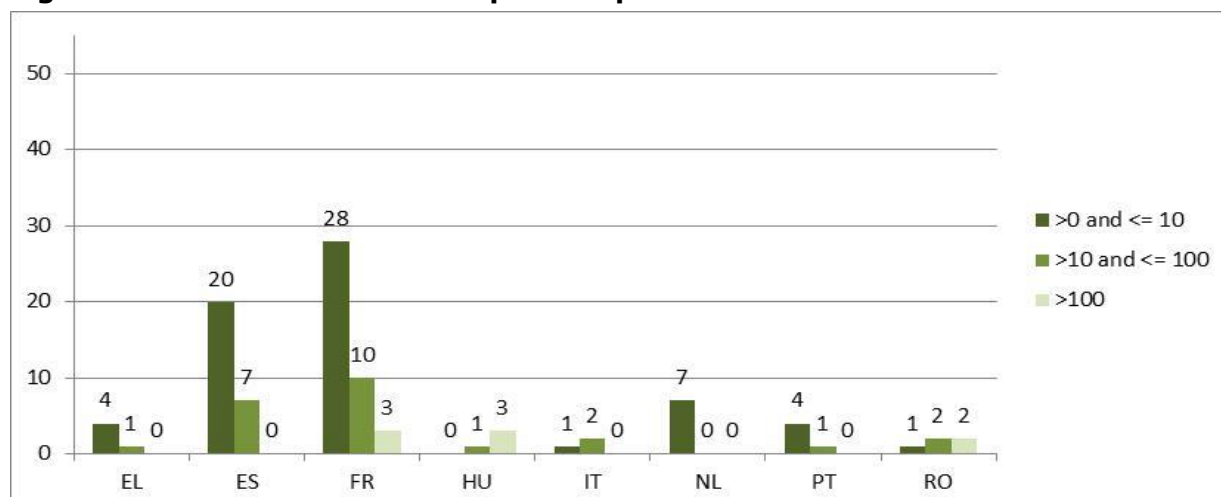
* Throughout the text, square brackets denote information which has been deleted from the text for confidentiality reasons.

The large majority of IBOs are composed of farmers unions at primary level and sectoral associations for the other stages of the supply chain. The ANIFELT type of structure, in one hand, and the direct membership of individual producers or traders are the exception.

When farmers unions are largely present as IBO members, business federations' presence is rare and is limited to a few IBOs (e.g. presence of the Confederation for Small and Medium Enterprises-CGPME in the CNIPT - processed potatoes and ARIBEV (meat in La Réunion) in France).

The number of members per IBO differs a lot, ranging from 4 (the CNIEL in France) to more than 500 (720 members in OICPOPPA, the poultry meat IBO in Romania). The **number of members per IBO is less than 10** in 65% of cases as shown in Figure 13.

Figure 14: Number of members per IBO per MS



Source: Arcadia International

4.6.2. Who are the non-members (in the context of extension of rules)?

An IBO is a grouping of several actors of the supply chain. In nearly all cases, not all actors of the supply chain, from primary production down to retail, are members of the IBO(s). A minimum of two or more stages of the supply chain are present in the IBO. In any case, primary production always has to be present present, as well as one additional stage of the supply chain, which can be either the processing side or distribution or both, see Article 157 Regulation (EU) 1308/2013.

Non-members are economic actors which are part of the stages of the supply chain which are forming the IBO, but which are not represented by the members as they are themselves not members of the IBO members. For example, in the French milk supply chain, milk producers that are members of the Association des Producteurs de Lait Indépendants (APLI) are non-members of the milk IBO called CNIEL as the APLI is not a member of the IBO; and because other producers are represented in the IBO.

These non-members will have to respect the conditions of any agreement which is extended. Extension rules do not apply to stages of the supply chain which are not present in the IBOs.

4.7. Governance of the IBOs

From the analysis of the different IBOs we conclude that the top-level governance in a large majority of IBOs is structured in a similar way. For the lower level governance we have found two different approaches prevailing: governance based on colleges, and flat governance.

4.7.1. Top-governance of the IBOs

The top governance of the IBOs is often built on the same several bodies:

- A **General Assembly** which usually meets once a year. In general, this body is taking decisions on key issues relating to the basis of the IBO, such as changes to the statutes, approval of members of the board of directors and the ratification of certain key decisions taken by the board of directors including the details of extensions of rules;
- A **Board** (of directors) that takes the majority of decisions which involves the economic or financial commitment of the IBO. This includes the approval of proposals developed by the working groups. The board also mandates working groups with dedicated tasks;
- **Working groups** of 2 major forms that could be combined in the same multi-products IBO :
 - Horizontal aspects (promotion, quality, research, etc.); and
 - By crop or group of crops (e.g. F&V).

In their domains, working groups typically analyse the various themes and possible activities, develop strategic plans and propose activities for approval by the board of directors, and oversee the implementation of the approved activities.

- **Experts groups** are set-up at the request of working groups or the board to examine very specific subjects. They are dissolved when their mission is complete.

In general, IBOs are headed by a **president, vice-president(s), secretary and treasurer**. Candidates are proposed by the Board (in most of cases based on a consensus) to the General Assembly that votes. In order to ensure fair representation, rules have been inserted in the statutes of the IBOs. For example, one approach which is often observed in "short IBOs" is that the president and treasurer must come from the same part of the chain (agricultural production or processing) and the vice president and secretary from the other part of the chain. The length of mandate is variable but in

general less than 5 years. Other IBOs have a rotating presidency: if today the president is from the primary sector, next one shall come from another stage of the supply chain.

The day-to-day running of IBOs is taken care of by a manager and, possibly, other staff members. In most of the French IBOs, staff is in place (in the smallest IBOs, only a director is in place; in the largest ones, more than 50 staff can work for the IBO). Staff members attend working group meetings. The manager sits on the board of directors.

4.7.2. Additional governance of the IBOs

The governance presented above describes the structure at the “top” of the IBO only. For other levels in the IBO, two main approaches exist:

- Governance based on “colleges”; and
- Flat governance.

Governance based on “colleges”

In order to set-up workable governance, French IBOs are, for a large majority of them, structured per “**collège**”. Each college represents a professional family (primary production, first processing, second+ processing, distribution or retail). Therefore all members of the IBO which are from the IBO stage are part of the same college. The college is electing representatives who are present in the top governance. This representation is based on 3 main principles: **representativeness**, **parity**, and **unanimity**.

Representativeness is the prerequisite of the legitimacy of IBOs in France. The criterion remains vague and that flexible concept of representativeness is well appreciated, not quantitatively, but qualitatively as it is seen as functional.⁶⁴ More information is presented under Theme 3 (Analysis of the functioning of IBOs).

Parity is secured as each college has the same number of votes at Board and General Assembly levels. This number of votes varies and is decided by individual IBOs.

Unanimity which has to be reached in order to allow IBO agreements to be extended. Unanimity has to be proven before submitting a request for extension of rules to the authorities. If consensus between colleges is not found, agreements cannot be extended. When it relates to multi-product IBOs (e.g. F&V IBOs), unanimity has to be reached for concerned parties only (i.e. in case of a request for extension for an agreement on peaches, unanimity has to be found between peaches representatives in the different colleges, not with other product groups).

This principle of unanimity only applies at the top governance level (general assembly and board). Within colleges, the decision-making process shows variability. Often, a majority of 2/3 is requested to take decision in the colleges.

Flat governance

The organisation in colleges is a French specificity that exists in other French economic and union areas and sectors. It is not specific to IBOs. However, not all French IBOs are organised in colleges. For example, in INTERBEV (meat IBO), each of the 13 member organisations has one voice. This “*flat*” decision making process may lead to difficulties and longer decision making processes at general assembly and board levels, particularly when the number of members is larger. However, as most IBOs have fewer than 10 members, in these IBOs the flat governance model prevails.

IBOs outside France have mostly established governance based on this flat governance. The organisation per college does not exist in the other MS in which IBOs have been recognised. Therefore most of them are based on governance similar to the INTERBEV one.

⁶⁴ Coronel and Liagre; 2006; « *les interprofessions agroalimentaires en France* »; available at: http://www.iram-fr.org/documents/note_redev_interprofession_iram.pdf

For these IBOs, all members of the organisation are represented at the level of the General Assembly and of the Executive Board. The actual number of representatives sitting in such bodies depends on the economic weight that each member has in the context of the organisation.

The number of votes varies as well as the required majority levels. All these elements have been established at the creation of the IBOs and are fully detailed in the statutes.

The principle of unanimity generally does not apply for taking decisions unless it is for request for extension.

Parity is present in several IBOs e.g. OIVE (Olive oil-ES), Ortofrutta Italia (F&V-IT), OIT (tobacco-IT), and Tej Termektanacs (milk and dairy board-HU). The number of votes is the same for each branch of the IBO.

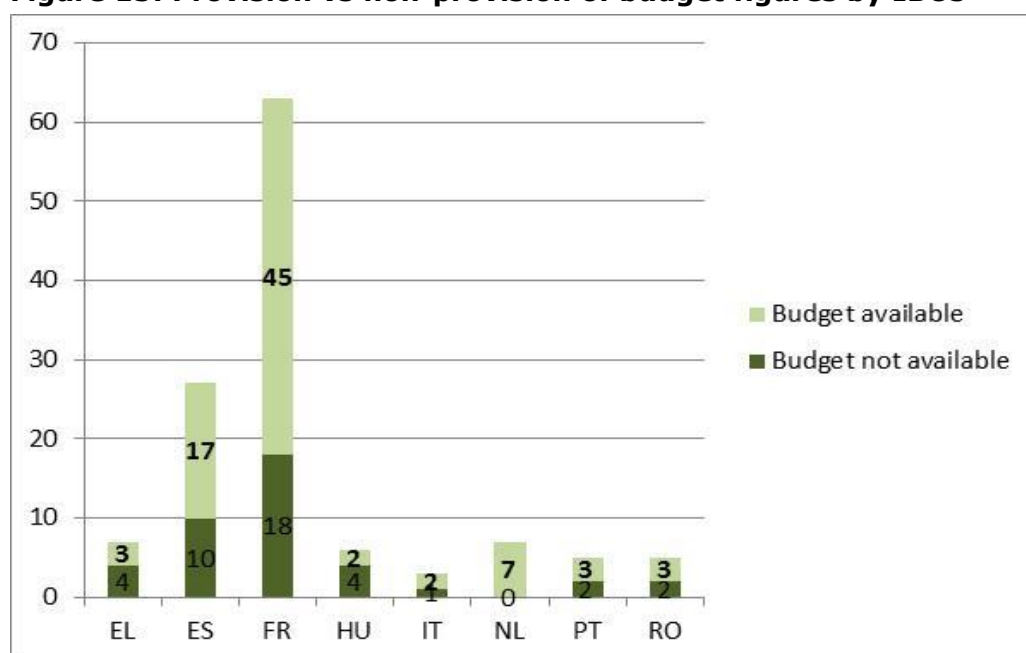
All in all, membership follows a hierarchy with different levels of members:

- First level members which are the ones directly in relation with the top-governance of the IBO and the decision making centres of the organisation. These are direct producers and companies in the case of a flat governance with only one level (Hungarian IBOs, CIV-Corse, Overseas IBOs in France);
- Second level members are economic actors which are members of an association which is member of the IBO. Only the elected representatives of these associations or organisations are in direct contact with the top-governance of the IBO; and
- Third level+ members are members of associations, sections, working groups which are members of the second level members of the IBO. This is for example the case of the ODGs in the CIVB that can be considered as being a third level member of the IBO.

4.7. Funding of IBOs (budget; budget evolution, funding, funding sources, funding evolution)

Seventy two IBOs have provided information regarding their budget and its evolution over time. Their breakdown per MS is presented in Figure 15.

Figure 15: Provision vs non-provision of budget figures by IBOs



Source: Arcadia International

Budget is not available for 51 IBOs. This figure includes the 25 IBOs that have not responded to the IBO questionnaire and 26 IBOs that have responded but considered that budget information is confidential.

About one third (23) of the 72 IBOs from which budget data is available had a budget between EUR 100.000 and EUR 1 million. About a quarter (19) had a budget below EUR 100.000 and 20% (13) had a budget over EUR 10 million (Table 21 and Table 22).

Table 21: Number of IBOs per budget category per Member State

MS	no budget available	Current budget ≤ EUR 100,000	EUR 100,000 < current budget ≤ EUR 1 million	EUR 1 million < current budget ≤ EUR 10 million	current budget > EUR 10 million
EL	4	2	1	0	0
ES	10	7	4	4	2
FR	18	4	14	15	12
HU	4	0	2	0	0
IT	1	2	0	0	0
NL	0	1	5	0	1
PT	2	1	1	1	0
RO	2	3	0	0	0
Total	41	20	27	20	15

Source: Arcadia International

Table 22: IBOs with a yearly budget of more than EUR 10 million

MS	IBO	Sector	Current budget (in K EUR)
ES	[...]		
FR	[...]		
NL	[...]		
ES	[...]		
FR	[...]		
FR	[...]		
FR	[...]		
FR	[...]		
FR	[...]		
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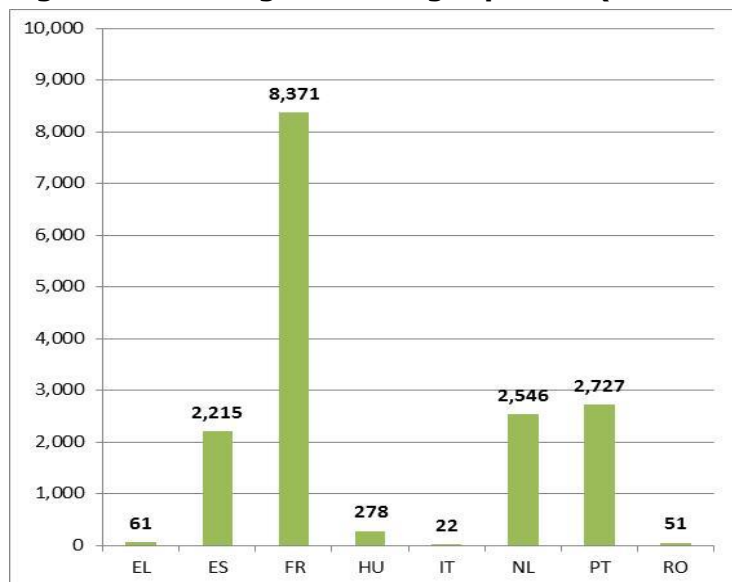
Source: Arcadia International

Out of the [...] IBOs with a budget in excess of EUR 10 million, 10 are located in France (6 of which are regional [...] IBOs), 2 in Spain and one in the Netherlands. For some of the IBOs in the Netherlands with budgets less than 1 million euro in 2015, like [...] it is expected that budgets will increase as extensions of rules and payments have been granted or are applied for in 2016.

The average budget is highest in France (EUR 5.5 million), followed by the Netherlands (EUR 2.3 mio), Spain (EUR 1.5 million), and Romania (EUR 0.9 million) (Figure 15). This is mainly explained by the fact that 10 French IBOs have a budget of more than EUR 10 million per year.

Average current budgets in Hungary, Portugal, Greece, and Italy were less than EUR 100.000.

Figure 16: Average IBO budget per MS (in K EUR)(n=82)

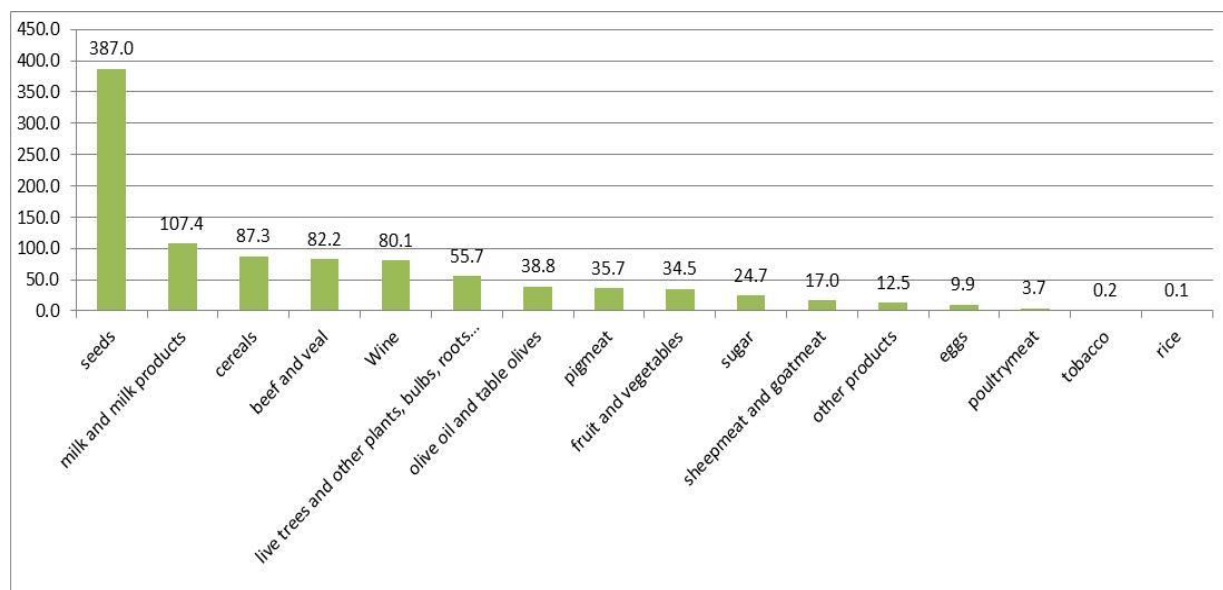


Source: Arcadia International

The average current budget per sector for IBOs for which budget information is available ranges from EUR 0.001 to EUR 13 million (Figure 17). The seed sector has to be considered separately as only one IBO in that sector has provided budget figures, and the budget of that organisation includes fees levied to cover the cost of resource-intensive official tasks performed under delegation (i.e. seed certification).

Average current budgets exceed EUR 8.0 million in the sectors cereals, milk and milk products, wine, and beef and veal. Average current budgets are less than EUR 1.0 million in the sectors dried fodder, rice, tobacco, and poultry meat.

Figure 17: Average current IBO budget per sector



Source: Arcadia International

The average current budget of IBOs with a regional coverage (EUR 7.5 million) is over 50% higher than that of IBOs with a national coverage (EUR 4.8 million). This is explained, again, by the large budget of several French wine IBOs.

From information that has been collected and completed by literature and interviews with stakeholders, it can be assumed that the main source of funding for IBO is membership fees paid directly by members and, when extension of rules applies, by non-members. Members and non-members fees represent about 80 to 90% of the total budget of IBOs.

The second source of funding comes from national and EU subsidies to promotional activities. These subsidies are based on past and current EU regulations⁶⁵ on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries. When the amounts of these grants are rather modest compared to the amount of fees collected, they seem to have been very helpful when starting IBO activities in Spain. Spain was used to provide financial support to newly recognised IBOs for a limited period of time after the establishment of the structure, for the launch of the first activities.

That approach stopped in early 2014, leaving IBOs without subsidies. As most of the Spanish IBOs have never requested extension of rules to collect fees from non-members, the current financial difficulties being faced by some IBOs can be explained by this funding stop by MAGRAMA (13 IBOs have yearly budget of less than €1 million when 6 IBOs only have a budget over €million).

Several IBOs in France are currently carrying out official tasks under authorities' delegation. These tasks are covered by specific CVOs which have been put in place and collected when delegation applies. There is no official figure regarding the amount of these CVOs but French authorities estimate that amount of these CVOs is very high. For example, for animal rendering, those CVOs would amount to €[...] million for all species.⁶⁶ Regarding other tasks there is no figure available.

Other sources on funding that have been reported are coming from services to external parties, and research funds coming from nationally funded projects.

⁶⁵ The current legislation is Regulation Regulations (EU) No 1144/2014 of 22 October 2014

⁶⁶ Source: interviews with stakeholders

4.8. Use of extension of rules

Agreements defined by IBOs are applying to all IBO members. In case of extension of rules these agreements also apply to non-members. Extension (in general, payment of fees by importers) can also be requested and granted to imported products from the same group of products.

Out of a total of 89 IBOs that have replied to the question, only 11 have indicated that **extension applies to imported products** (6 IBOs in Spain and 5 in France, see Table 23). Quite obviously, this point is irrelevant for IBOs based on GIs (it is not possible to import in France "vins de Bordeaux" as all is produced in Bordeaux).

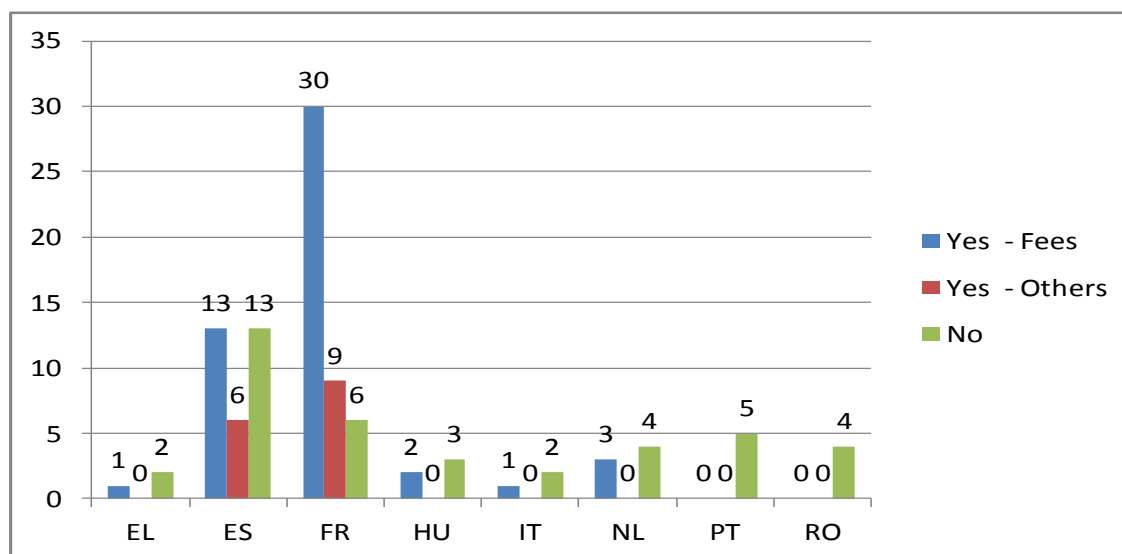
Table 23: IBOs which apply extension to imported products

MS	IBO	Sector
ES	ASICCAZA	other products
ES	IAOE	olive oil and table olives
ES	INLAC	milk and milk products
ES	INTERACEITUNA	olive oil and table olives
ES	INTEROVIC	sheepmeat and goatmeat
ES	INTERPORC	Pigmeat
FR	AILPLBPA	milk and milk products
FR	GNIS	Seeds
FR	INTERBEV	beef and veal
FR	INTERFEL	fruit and vegetables
FR	VAL'HOR	live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage

Source: Arcadia International

When it relates to **extension of agreements to non-members**, 89 IBOs provided a response to the question. 39 respondents indicated that they do not extend agreement to non-members and 50 indicated to use the extension mechanism. Despite all Member States considered under this section have national provisions allowing for approval of IBOs' agreements and extension of their rules and fees to non-members, these mechanisms are used in practice only in some of them. These are France, Spain, Hungary, Italy and the Netherlands (see Figure 18).

Figure 18: Number of IBOs requesting extension per MS (n=89)



Source: Arcadia International

Extension is being applied mainly in France and in Spain. Figure 19 does not provide a full picture of the actual situation as it does not take into account the frequency at which extensions are requested.

France is by far the Member State with the highest average number of extensions of rules granted on annual basis⁶⁷. Effectively, the competent authorities of that Member State receive about 70 to 80 requests for the extension of rules every year. The requests entailing the extension of rules for the purpose of collecting fees are usually proposed for a period of three years, whilst most of the other requests are for a shorter period of time (in general, one year). Over the last three years, requests for extension for collecting fees represent about 65% of the total number of request (i.e. 133 out of 211). In 2015, the number of extensions of rules granted by the French authorities amounted to 67.

In Spain, there are currently nine extensions in force applying to different agri-food sectors, including olive oil, pork and other types of meat and milk and milk products.⁶⁸ Overall, the extensions of rules involves the collection of fees from non-members for the pursuit of certain activities that may range from the organisation of promotion campaigns to initiatives aimed at fostering technological innovation, research and development or at improving knowledge and information about production and markets. In line with national law, which requires extension of rules not to exceed five years/marketing campaigns, most of the extensions of rules currently applicable have a maximum duration of three marketing campaigns. In only two cases (rabbit meat and olive oil), the respective extension applies for five marketing campaigns. Overall, this mechanism has been applied quite regularly in Spain since the adoption of national legislation on IBOs in 1994.

In Italy, the competent authorities have granted the first extension of rules of an IBO agreement only in 2014 in the fruits and vegetables sector (kiwi), despite a national legal framework dating back to 1998. The most recent approval of an extension of rules took place in 2015 and concerned an agreement promoted by the tobacco sector that established a comprehensive framework for the conclusion of cultivation contracts of raw tobacco and minimum quality requirements for such product.

⁶⁷ List available at <http://www.economie.gouv.fr/dgccrf/publications/juridiques/panorama-des-textes/Accords-interprofessionnels>

⁶⁸ List available at <http://www.magrama.gob.es/es/alimentacion/temas/interprofesionales-y-contratos-agroalimentarios-tipo-organizaciones-interprofesionales-agroalimentarias/>

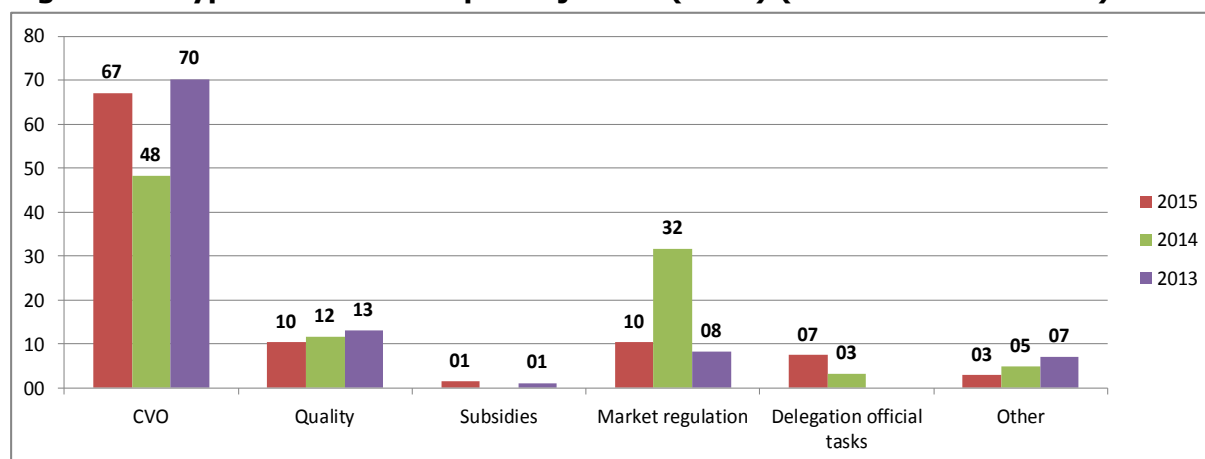
In the Netherlands, which is the Member State with the most recent national framework on IBOs, the mechanism of the extension of rules has already been applied within the sugar, cereals and potato sectors in 2016. In Hungary, the extension of rules has been granted twice over the period 2014-2015 with regard to the wine and milk and milk product sectors.

The use of extension is rather limited in other MSs and not used at by IBOs in Greece, Portugal and in Romania.

Extension of agreements can be granted by competent authorities for collecting fees for a specific project or a group of projects; see Article 165 Regulation 1308/2013⁶⁹. In general each request for extension contains several objectives. This leads to the difficulty to analyse in details the objectives pursued by extensions. In order to identify all objectives included in extension dossiers, it would be required to look into details in each request for extension submitted to authorities, and then approved by authorities.

In order to get some order of magnitudes regarding the use of funding collected via extensions, we have analysed the list of extensions accepted by the French authorities and published on the DGCCRF website⁷⁰, to identify for which objective(s) the request was submitted. This analysis has considered the most recent data for a period of three years (as several requests cover an extension for a three year period).

Figure 19: Type of extensions per objective (in %) (FR-2013-2014-2015)



Source: Compiled by Arcadia International based on information available on the DGCCRF web site

⁶⁹ Article 165 par. 4 of Regulation (EU) No 1308/2013 stipulates that the rules for which extension to other operators may be requested shall have one specific aim as listed in that article (16 different aims/objectives are listed under this article).

⁷⁰ <http://www.economie.gouv.fr/dgccrf/publications/juridiques/panorama-des-textes/Accords-interprofessionnels>

Figure 20 shows that when consulting the title of the extension dossier, it is not possible to assign the request to a specific task/objective in about 60% of cases (CVO + Other)⁷¹.

The following table, which is the single reference presenting a forecast of the use of the fees collected through extensions in France (CVOs) that has been identified during the study, presents a more detailed profile. However, it is still about one-third (EUR 87 million of "others" and EUR 19 million of technical assistance) that does not directly relate to one of the objectives that an IBO could pursue). The exact sampling and list of IBOs included in the summary presented below is not known.

Table 24: Used of CVOs in France – 2010-2011

	Number of IBOs	CVO		Technical assistance	Quality	Research & Development	Marketing	Others
		EUR Million	In %					
Beverage	27	110.66	36.26%	12.23	1.52	2.51	65.66	28.64
Meat	7	50.93	16.69%	0.62	0.55	2.11	23.30	24.23
Seeds	1	43.49	14.25%	1.80	20.97	3.30	5.72	11.70
Field crops	9	40.28	13.20%	1.21	0.76	28.19	11.05	-0.92
Milk products	2	39.83	13.05%	1.37	2.51	3.14	18.26	14.56
Fruits and vegetables	6	19.98	6.55%	1.63	0.60	1.46	7.37	8.92
Total	52	305.19	100.00%	18.86	26.91	40.70	131.36	87.14

Source: compiled by Arcadia International based of statistics from Ministry of Agriculture and Cour des Comptes in France

⁷¹ Article 165 par. 4 of Regulation (EU) No 1308/2013 stipulates that the rules for which extension to other operators may be requested shall have one specific aim as listed in that article (16 different aims/objectives are listed under this article).

PART 5: ANALYSIS OF THE FUNCTIONING AND BENEFITS OF IBOS (THEME 3)

This chapter includes a full analysis of the functioning and benefits of IBOs. It completes the inventory of existing IBOs (Theme 2) and national legislation (Theme 1) in all 28 Member States, with a review and analysis of the role, functioning and effect of IBOs within the food supply chain in different sectors and MS.

The analysis is based on a series of five case studies of existing individual IBOs:

- CIVB (Wine – Bordeaux) in France;
- FruitVeb (Fruit and vegetables) in Hungary;
- IAOE (olive oil) in Spain;
- INTERPORC (pigmeat) in Spain; and
- ZuivelNL (milk) in the Netherlands.

The variability of situations which is presented under Theme 1 and Theme 2, in terms of *i.a.* national legislation, history of recognition of IBOs, structure, organisation of individual IBOs and their maturity, leads to a situation where general conclusions cannot be drawn from the analysis of these few cases only. Therefore in order to complete the analysis, findings from literature review (mainly French literature) are added to sub-chapters which are discussed under this part.

The functioning of the IBOs is analysed with respect to the objectives set out in the CMO Regulation, including general and sector-specific objectives. The analysis is carried out in relation to the CAP objective of viable food production.

Such analysis can only be conducted by considering the overall and specific environments of the supply chain in which the IBO performs. Three specific external elements have been considered as important factors in the analysis as each of them influence the role and functioning of IBOs:

- The first factor is the history of development and recognition of IBOs in different countries;
- Secondly it is important to understand the dynamic of actors and group of actors in the supply chain and to position the IBOs in that overall dynamic. The role of an IBO will be different if a given supply chain is highly concentrated or not, if the number of groupings is high or low, if IBOs are in place for a long time or not (maturity); and
- Contractual relationship between actors is also of key importance in this analysis. The role and functioning of an IBO will again be different in a supply chain where integration between primary production and first processing is high (e.g. most of sectors in Spain, poultry and seed in France, Milk in the Netherlands) compared to supply chains which are not integrated (e.g. F&V).

Therefore in support and in introduction to the analysis, each of these 3 external factors is briefly described below in order to better understand the functioning of the IBOs and the challenges they are facing.

5.1. Key elements to understand the IBOs functioning and their challenges

5.1.1. Lessons from history

This section presents a brief history of the development of vertical cooperation forms in different EU Member States; starting from France and enlarging to many other Member States.

5.1.1.a. IBOs in France

The gestation of vertical organisation in agri-food-chain began about 100 years ago during the 1920s. From then, the evolution of IBOs essentially followed the rhythm of political and economic main events, with at first the *Front populaire* (1936-1938) and the *Régime de Vichy* (1940-1944).

The First World War has strongly impacted agriculture. The importance of human losses was such as it implied to intensify agriculture and to enhance labour productivity. As a consequence, French government set up local "offices" for selecting animal breeds and created an industrial national "office" of the azote in 1920⁷². At the same time, producers' movement grew, especially with the "central office of Landerneau" that sold most of local agricultural supply. Moreover, during the twenties, some specialised cooperation structures appeared – Confederation of the planters of beets, 1921; General Association of Milk 1924, General Confederation of Fruits and Vegetables, 1932; "Interbranch Committee of Wheat Imports", 1933⁷³ - and contributed to find agreements particularly in the context of overproduction (beets, 1922 and 1931 to 1937 for e.g.). These were the first steps towards professional (farmers) and "interbranch" (farmers, processors and traders) organisations. It was also the first steps of self-discipline or self-regulation, most of the time but not systematically under State supervision. The State imposed its presence in the wine sector at the end of this first period with the *Décret-loi* of the 8.08.1935 requiring quota agreements and with the creation of the "Service of alcohol"⁷⁴.

The French "new deal", qualified as "abortive" by Wright (1964, 58), was initially marked by the "irruption of the State in the agricultural economy" in order to develop a modern agriculture for mass production⁷⁵. This approach leads to the creation of the National Interbranch Office of wheat (ONIB) in 1936⁷⁶ that aimed to address the persistent imbalance of French wheat market by intervention on the market (purchase, storage and sale).

During the Second World War, a new reform was implemented with the aim of imposing a hierarchic, quasi-mandatory (in fact) and only horizontal organisation. This reform planned the creation of specialised groups by production. Initially thought under the power of National Corporative Council and syndicates, they have been finally created without any reference to the law of 1940 and organised as vertical organisations under the order of State. On that basis, were created several groups that may be qualified as IBOs: for Cognac (1940)⁷⁷, Champagne (1941)⁷⁸ and sweet wine (1943)⁷⁹, beet sector (1940)⁸⁰, linen (1941)⁸¹, meat (1941)⁸² and cider fruits (1942)⁸³. Because of the war, their mission was focused on management of food shortage.

At the end of war, the context was characterised by the necessity to increase productivity and thus to modernise agriculture. To reach this goal⁸⁴, a plan, called "Plan Monnet", using "Marshall Plan" financing, was established. Therefore the development of interprofessions was reinforced. The 1953 economic crisis led to another State reform⁸⁵

⁷² National Industrial Office of Nitrogen (azote) (ONIA), 1920.

⁷³ The General Confederation of Winemakers was already created in 1907.

⁷⁴ Décret 18.12.1935. Removed in 1985 when skills transferred to ONIVIN and FIRS.

⁷⁵ Danet, 1982, 63

⁷⁶ National Interbranch Office of wheat (ONIB) or Office of Wheat, Law 15.08.1936. Become ONIC in 1940, ONIGC in 2006.

⁷⁷ Loi 27.12.1940, Office of distribution of wines and brandies. Became BNIC (1946).

⁷⁸ Loi 12.04.1941, Interbranch Committee of Wine of Champagne (CIVC).

⁷⁹ Loi 2.04.1943, Interbranch Committee of Protected Origin sweet Wines and Liquors.

⁸⁰ Loi 7.08.1941, National Interbranch Group of Beet Production (GNIPB).

⁸¹ Loi 22.07.1941, National Interbranch Group of linen (GNIL).

⁸² Loi No 14194, 1.10.1941 and n° 383 2.08.1943, National Interbranch Group of Seeds and Plants.

⁸³ Loi 28.07. 1942, National Interbranch Group of Cider Fruits.

⁸⁴ Faure, 1966, 109

⁸⁵ Regulation 53-933, Décret, 30.09.1953.

in which the government opted for the set-up of Intervention Society (*sociétés d'intervention*) on agricultural markets aiming at prices regularisation by purchase, storage and sale action). These organisations were interbranch private bodies but strictly controlled by State⁸⁶: INTERLAIT in milk sector⁸⁷; SIBEV in cattle production⁸⁸; SNIPOT in potatoes sector⁸⁹, IVCC in wine sector⁹⁰; SIOFA for Oleaginous⁹¹; SIPA in poultry sector; SONITO for tomatoes⁹².

The adoption of the CAP in 1962)⁹³ with the European Agricultural Guidance and Guarantee Fund (EAGGF) led to the set-up of the French Guidance and Regularisation Fund of agricultural Markets (FORMA, *Décret* 61-827 29.07.1961) and the beginning of a period during which several reforms have been adopted (1960, 1962, and 1964).⁹⁴ The FORMA⁹⁵, composed by representatives from the agri-food chain and State, was together one of the instrument to distribute European funds from the CAP (e.g. refund and levy) and a sort of supervisor/coordinator of part of the French interbranch system (INTERLAIT, SIBEV and SNIPOT). Progressively, it lost its competencies to the benefit to other State agencies or to private IBOs⁹⁶.

In 1974, the situation of the French interprofessions was not very different than in 1964: State agencies, called "*Offices*" (e.g. FORMA, ONIC, ONIBEV) were co-existing with private interbranch bodies. In early 1975, a new Regulation⁹⁷ was adopted to define a new legal background to the agricultural interprofessions⁹⁸. This law set-up the main principles as regard recognition of interprofessions, the rules for governance, as well as the main objectives that an IBO could pursue. This law also included the possibility for interprofessions to draw agreements that could be extended to non-members.

With the creation of several new interprofessions, state agencies were coexisting with private interprofessions. Thus, once again, the situation is not very different than before even if the government was obviously in favour of a stronger control of state on agri-food chain. The distribution of competencies between the two types of bodies was quite clear. Offices were the national arm of the CAP, thus they controlled the payments, and private interprofessions received part of the European fund via the offices. Interprofessions were supposed to regulate their sector (self-discipline), but offices had originally also the ability to develop or participate to action on the market. The mission of the offices was simplified in 1986 and some tasks were transferred from offices to interprofessions¹⁰⁰.

⁸⁶ Malezieux, 1973, 291-294

⁸⁷ Arrêté 1954 and Loi Laborde 1957. Became ONILAIT in 1999.

⁸⁸ Arrêté 1954. Under the FORMA in 1961 ; became ONIBEV in 1974, OFIVAL in 1983 ; dissolution 1998.

⁸⁹ Arrêté 1954. Under the FORMA in 1961, then under ONIFLHOR in 1983 ; dissolution 1999.

⁹⁰ Décret No 54-437 du 16 avril 1954. Became ONIVIT in 1976.

⁹¹ Arrêté 1955. Became SIDO in 1970.

⁹² Arrêté 1957. We may mention that during this period was also created the Interbranch Comitee of wine of Côte-de-Provence (*Loi* No 56-627, 25.06.1956); the Interbranch National Union for cider (1957) and the Interbranch Union of wine of Beaujolais (*Décret* 25.09.1959).

⁹³ CAP was planned in the Treaty of Rome (25.03.1957) but implemented further: first COM: Fruits and vegetable 1962; Milk 1964.

⁹⁴ Other events have to be mentioned: creation of IBOs in canned vegetables (UNILEC, 1961), button mushroom (ANNIC 1962) and prune (BIP, 1962) that will create, with the SONITO, the IBOS Fruit and vegetable (CLIF 1962).

⁹⁵ It was a state agency : *établissement public à caractère industriel et commercial* (EPCI)

⁹⁶ For example, after the European Sugar CMO established, the Guidance and Regularisation Fund of Sugar was created and recovered skills of FORMA for the sugar market (*Décret* 68-616 9.07.1968). So did in their sectors the Interbranch Society of Oleaginous, Protein Crops and Textile Plants (SIDO, *Arrêté* 12.01.1970) and the Interbranch National Office of Cattle and Meat (ONIBEV, *Décret* 72-1067 1.12.1972).

⁹⁷ Loi n°75-600, 10.07.1975 relative à l'organisation interprofessionnelle agricole.

⁹⁸ It also created the Conseil supérieur d'orientation des productions agricoles CSOPA (see also décret 75-934) and revised the FORMA.

⁹⁹ Chevalier, 1976, §33-37

¹⁰⁰ Loi n°86-1321, 30.12.1986 relative à l'organisation économique en agriculture.

From 1998 until 2009, offices have been suppressed. First the intervention societies were suppressed and their responsibilities were transferred to the offices. Law No 2006-11¹⁰¹ reformed once again the regime of offices and impacted even more the system. The Single Agency of Payment (AUP) was created to carry out main responsibilities of the former offices. This was followed by the creation of the new Agency of Services and payments (ASP) that took over the responsibilities of the AUP and that oversees activities of the newly created National Establishment of Products of Agriculture and Sea (FranceAgriMer) which is one of the four payment agency in France today.

FranceAgrimer has also some responsibilities vis-à-vis private interprofessions. It is responsible for monitoring the markets and provides economic expertise in all sectors of competences (education and monitoring markets¹⁰²) to help operators in their development strategies, and organise dialogue and consultation in the implementation of public policies in consultation with business organisations that are represented on its Board of Directors as well as in the eleven specialised Councils.

History shows that when French Government decided to give a legal background to private IBOs, for example to develop self-discipline rules or standard-contracts, it worked only if the sector was already structured and the different actors ready to work together. Therefore establishing official institution by law (e.g. recognition procedure) or organising legal extension procedure for agreements of IBOs may be a necessary condition, but cannot change the socio-economic reality of the supply chains.

Additionally, it can be highlighted that, over time, public intervention as regards vertical cooperation of supply chain actors has changed several time during the last 80 years. At a certain time, these cooperation structures were public, later they became private. These changes make that, in the working principles, differences between interprofessions and offices are not always so clear. This mixing conception of interprofessions (public vs. private, interprofessions vs. offices) is not the fruit of a theoretical thought but the result of several legal experimentations confronted to actors' behaviours and socio-economic situations. Nevertheless, we must underline that in the volatile and unbalanced context of agri-food chain, the fact that state has always been one of the pillar of the different system of the interprofessions has been one of the main factors of their sustainability¹⁰³ as public authorities have acted/are acting, through these public bodies (e.g. FranceAgrimer), as an interface between the different economic private actors present in IBOs during conflicts.

5.1.1.b. IBOs: a French exception?

Commodity associations which main goal is to act for the common interest of all their different members is often seen as a French particularity. The original idea behind this concept is generally attributed to "interprofessional" organisations in the wine and spirits industry already at the end of the 19th century in order to protect product denominations from usurpation and to build a common industry strategy¹⁰⁴. In the EU, this history is reflected in the number of IBOs that were recognised in the 1990s. From that period, the evolution of the number of IBOs and the comparison between France and other EU MS show that the number of IBOs tends to quickly increase in several EU countries when the number of IBOs in France is stable as IBOs are recognised in nearly all agricultural sectors. During the last 25 years the total number of IBOs has been multiplied by more than two (from 56 to 123:119+4).

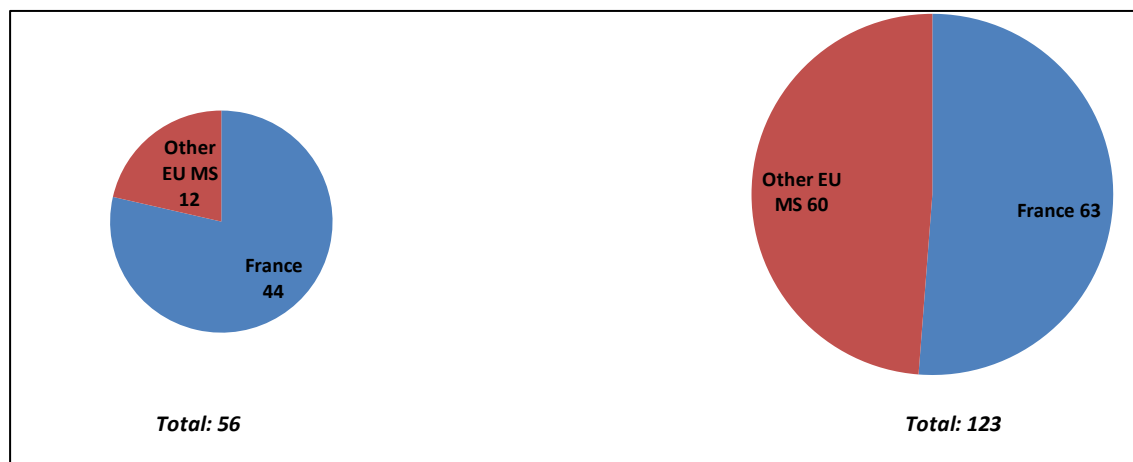
¹⁰¹ Loi No 2006-11, 5.01. 2006 d'orientation agricole ; completed by Décret No 2006-634, 31.05.2006 relatif aux organismes d'intervention agricoles et modifiant le titre II du livre VI du code rural.

¹⁰² FranceAgrimer is responsible for the French Observatory of prices and margins in agriculture and food.

¹⁰³ Statement made by several interviewees and by the French competent authorities.

¹⁰⁴ Cadilhon and al.; 2011; "Commodity associations: a widespread tool for marketing chain management."; Centre for studies and strategic foresight.

Figure 20: Evolution of number of IBOs (France vs. other EU MS) (1990-2016)



Source: Arcadia International

In addition, many EU countries have developed cooperation schemes between actors and commodity associations within the supply chain which are operating together with existing IBOs or not.

In **Spain**, In Spain, the origins of the current IBOs may be traced back to 1932. Indeed, that year, during the short existence of the Second Spanish Republic, the country adopted its first comprehensive legal framework for the regulation of the wine sector. In that context, the legislator had foreseen the establishment of cross-sectoral bodies, known as “**Consejos Reguladores**”, which, composed of representatives of wine growers and exporters, were tasked with setting rules for the production and the marketing of wines protected as designations of origins under the supervision of and following the approval of the competent authorities.

Subsequently, during the last years of Franco’s dictatorship the legal regime governing these bodies was largely reviewed through the adoption of Ley 25/1970, which laid down a new national framework for wine and spirits. In accordance with the new framework, “**Consejos Reguladores**” acquired a hybrid legal status since they were considered as decentralised structures of the country’s Autonomous Communities though subject only to private law.

Following that, the idea of establishing vertical organisations that could facilitate the cooperation between the different actors of the food supply chain started to be publicly debated in Spain only in the late 1970s of the last century, following the instauration of the post-Franco democratic regime. At that time, the country lacked an adequate legal framework that could serve this purpose but, most importantly, did not have a sufficiently organised agri-food sector on which such cooperation could be possibly build on. It was then mostly thanks to the initiative of the public authorities that the notion of “*interbranch agreements*”, as we know them today, made its first appearance in the national legislation in the early 1980s.

More precisely, Ley 19/1982 established an ambitious legal framework for the regulation of contractual relations regarding agricultural products. In so doing, it laid down, among others, requirements for the elaboration of standard purchase contracts and interbranch agreements, by allowing the negotiation of such contracts only where cross-sectoral agreements had been previously finalised. Overall, the legal framework designed by Ley 19/1982 prompted little interest from stakeholders and especially from manufacturers and their representative organisations. For this reason, later legislation no longer linked standard contracts to interbranch agreements.

Ten years later, in the early 1990s, manufacturers and their professional organisations brought back the issue of vertical cooperation within the food supply chain to public attention. Because of the rising economic pressure exerted by retailers, they realised the

benefits that cooperation with primary producers could bring about under these circumstances. This led to the adoption of the first dedicated national framework for IBOs, i.e. Ley 38/1994. Largely modelled on the French experience where IBOs had proved to be valuable platforms for structuring the dialogue between stakeholders of the food supply chain, this legislation has undergone some significant changes over time, although its core principles are still applicable today.

In **the Netherlands**, interprofessional institutions have been developed after the Second World War with the set-up of the "*productschappen*" in between 1954 and 1956, inter-professional organisation recognised under public law to which registration was mandatory. These structures had the same objectives like the (private) IBOs, and, mainly organisation and knowledge of the supply chain (statistics, market survey, rules for quality) combined with social objectives (e.g. professional training, working conditions). The "*productschappen*" had also competencies of co-management of the supply chain meaning that the competent authorities could ask the "*productschappen*" to implement public decisions. These structures can be compared to the French "*Offices*". In early 2010s, the Dutch authorities have decided to suppress the "*productschappen*" in the context of public savings. To replace these public organisations, several IBOs have been created in the last 5 years (as presented under Part 3).

In **the UK**, there is no interprofessional organisation per sector. Market regulation was based on the "**marketing boards**" during the years 1960s to 1990s before they were disbanded. For example, in milk, the Milk Marketing Board (MMB) was replaced by its four divisions as independent businesses, with the marketing arm taken over by Milk Marque. The Government made it clear at the time that no vertically integrated successor organisation of the European model was desirable, and the UK dairy industry was left without a cooperative structure to assist in protecting it. Many years of consolidation have followed and Milk Marque itself was disbanded in 2000 following a further competition law challenge over the way it set the price for milk.

In **Germany**, there is no comparable system to the French system. The only type of organisation that can be found in the supply chain as regard vertical integration is federations that are providing consultancy (technical, marketing, legal) to their members. In addition, the cooperatives which are very strong in Germany are opposed to the set-up of such type of organisations as they see these as potential threats.

In **Belgium**, several interprofessions exist. They are quite similar to the French ones in term of structure and activities but none of them (e.g. Intersemza for seeds) has requested to be recognised by competent authorities.

In **Denmark**, country in which cooperatives are well developed, interprofession organisations take place in the context of export committee the mission of which is to support promotion of export, as well as research and quality.

In **Ireland**, a marketing cooperative (the "Irish Dairy Board") aims at developing milk and milk products exports; and an interprofessional organisation created by the government is in charge of promoting beef and pig meat at export.

The term "*inter-branch organisations*", "*organisations interprofessionnelles*" or "*organizaciones interprofesionales agrarias*" are not widely used at **international level** and in the Anglo-Saxons countries giving the first impression that this type of vertical arrangements within the agro-food supply chain is an European specificity built on the French model of "inter-professions".

However, literature shows that **organisations that bring together a wide spectrum of interest groups related to a particular commodity or sector in a particular country is rather common in most agricultural countries** being developed or not. They are generally called "*commodity associations/organisations*".

First the French system has gradually been exported in many **Francophone African countries in West-Africa** where the same principles have been promoted, either

through the initiative of French technical assistance or because of promotion by government themselves. For example, in Senegal, there are associations covering peanuts, horticulture, processing tomatoes, milk and fish. One characteristic of the situation in these countries is that the legal status inter-professional associations remains unresolved in many countries.

In the **USA**, many commodity associations or councils cover the entire chain. Examples include the U.S. Apple Association, the American Soybean Association, and the American Sugar Alliance. They have a variety of structures, but do not follow the inter-professional model in that members usually join on an individual basis, although committee members are frequently nominated by state and other associations. The same type of organisations exists in South-Africa

An alternative approach to commodity chain consultation is found in industry discussion forums such as the "*tables-filière*" of **Québec, Canada**. These were developed in the early 1990s as a response to a deficit in Québec's terms of trade for agrifood products. They are less formal arrangements than associations and bring together actors from different sectors of a commodity chain for ad hoc meetings, with the secretariat being provided by the Ministry of Agriculture, Fisheries and Food. Each table-filière consists of representatives of producers, processors, distributors and government agencies. A similar approach has been developed in several countries such as **Brazil** and **other South-American countries**.

Cadilhon and Dedieu¹⁰⁵ have compared the French system with different types of commodity associations providing a first overview of the different type of vertical arrangements in the supply chain. Although commodity associations around the world share similar major objectives, they can be distinguished by the way they function and their relation with public authorities. The main characteristics and governance modalities of several types of associations between actors within the supply chain are presented in the table below.

Table 25: Simplified comparison of different types of commodity associations

	France	USA	South Africa	Canada
Name	Inter-profession	Commodity Council	Commodity forum	Value chain roundtable
Legal status	Not-for-profit association	Not-for-profit association	Not-for-profit organisation	None
Statutory recognition criteria fixed by Government	Yes	No	Yes	Yes
Possibility of extending the decisions of the association to the whole industry	Yes	No	Yes	Yes
Members	Representative associations or unions from the stages of the commodity marketing chain	Representative associations or unions, individual businesses	Individuals representing the different industry actors, including labourers and	Individuals representing industry branches and concerned institutions

¹⁰⁵ Cadilhon and Dedieu. 2011. Commodity associations: a widespread tool for marketing chain management. Centre for studies and strategic foresight. No 31 June 2011

	France	USA	South Africa	Canada
			consumers	
Representativeness in decision making of all the activity sectors that are member	Compulsory to become statutory	No	Necessary for extension of decisions	Decided by the members according to the issue to be handled
Activity sectors of members	Defined by the founding act of the organisation	No limitation	Defined by the founding act of the organisation	Decided by the members according to the issue to be handled
Parity between activity sectors in decision making	Compulsory to become statutory	No	No	No
Mode of decision making	Unanimity for extension of decisions	Majority vote	2/3 majority vote of members and of total production	Consensus
Funding of the organisation	Compulsory levies on the sales of the whole industry, registration fees of members, voluntary levies from members	Registration fees, compulsory levies	Registration fees, compulsory levies, voluntary levies	No own funds

Source: Cadilhon and Dedieu. 2011. *Commodity associations: a widespread tool for marketing chain management. Centre for studies and strategic foresight. No 31 June 2011*

5.1.2. Mapping of groups of actors in the supply chain

In the strict economic sense the market players in the agricultural supply chain are the individual companies or organisations of companies that form the different stages that a product passes through from its beginning at the farm to the final sale to consumers. These companies are in a form of dependency towards each other and transactions between them occur as the product moves along the supply chain. Transactions are governed by markets, contracts and other forms of cooperation.

Although **IBOs do not produce or trade products themselves**, they do play a role in the economic structure of the supply chain. IBOs can influence the economic performance of the supply chain by e.g. publishing aggregated statistical data on prices, volumes and costs of production, helping to improve product quality or the way the products are placed on the market (see objectives of IBOs in the CMO). By means of collective research, production processes and product characteristics are improved, which influences the functioning of the market.

IBOs, besides from the individual companies that constitute the supply chain, are not the only organisations that influence the functioning of the supply chain.

Within the very structure of the supply chain, there are often many forms of cooperation and different types of consultative bodies. These are exerting influence on production and demand:

- **Governments and public bodies** like food safety authorities, competition authorities and customs organisations monitor and control the market and the conduct of the supply chain participants. Numerous non-profit organisations also affect the supply chain;

- **Producer Organisations (POs)** that exist in the EU since 1962, date of the first PO¹⁰⁶. They can group themselves into associations of producer organisations (APOs) and participate in IBOs. POs (unlike IBOs) are economic organisations that assist in the distribution and marketing of products. But like IBOs they also promote a higher quality of products and encourage their members to adopt good environmental practice.¹⁰⁷ Legally recognised POs are eligible for support by EU subsidies for the implementation of their operational programmes in the fruit and vegetable sector;
- **Producer associations and branch organisations** that are **not officially recognised** by authorities. As long as they do not infringe EU or national law, notably competition law, producers may cooperate. Some producer organisations and branch organisations do intentionally not seek for EU or national recognition, as they think that the benefits do not outweigh the costs. As both recognised and non-recognised POs perform comparable activities it is very difficult to establish the benefits of POs and IBOs by just looking at recognised POs and IBOs; and
- **Cooperatives** (POs can also be cooperatives) have emerged in many EU countries, but not to the same extent everywhere. According to Bijman et al (2012) (based on SFC Cooperative Index), in 2010, cooperatives were most prominent in Finland, the Netherlands and Denmark.¹⁰⁸ In Romania, Bulgaria, Luxemburg and Cyprus, no or very few cooperatives are found. The existence of cooperatives has been influenced by social, historical and cultural differences between countries. Gijselinckx and Bussels (2012) explain that trust in political institutions and general trust (trust in people) correlates positively with the membership intensity of cooperatives.¹⁰⁹ A major part of the correlation can be explained by political history. MS that have had a long history of communism display a much lower intensity of cooperative membership than other EU countries. In the EU, the total market share of cooperatives is the highest in dairy, wine, fruit and vegetables and olives. In these sectors the total market share of cooperatives exceeds 35%.

In addition to these collaborative platform that are present in various supply chains, it should also be mentioned the presence of **other inter-branch organisations**, other "*interprofessions*" which are fulfilling the same objectives than IBOs but which have not been recognised by authorities ("**non-recognised IBOs**"). In Belgium, there are so far no recognised IBOs. Yet, the term "*interprofession*" (literally, "interbranch organisation") is widely used in Belgium, including for organisations that are not IBOs in the meaning of this study. For example the "*Comité Interprofessionnel Maraîcher*" is a group of vegetables producers, which acts more as a producer organisation than an IBO. In other cases, the membership, objectives, working principles and governance of the organisation are similar to those of IBOs, but the organisation has never applied for recognition. That is the case for the IVB (Interprofessionele Vereniging voor het Belgisch vlees), which is composed of different federal and regional trade associations from all activities of the supply chain (from feed production down to retail). Moreover, representatives of several public authorities (food safety, finance, taxes, and regional ministries) sit on the IVB as observers.

Another type of interbranch organisations is based on **organisations that are recognised as interprofessional organisation but on a different legal basis than Regulation (EU) No 1308/2013**. In the French sugar sector, the two IBOs (the Association interprofessionnelle de la betterave et du sucre-AIBS for sugar from beets

¹⁰⁶ SICA Saint Pol de Leon - France

¹⁰⁷ http://ec.europa.eu/agriculture/glossary/producer-organisation_en.htm

¹⁰⁸ SFC index: the estimated market share of all cooperatives at farm gate sales level weighted for eight sectors. See Bijman et al, 2012. <https://www.wageningenur.nl/en/show/Support-for-Farmers-Cooperatives.htm>

¹⁰⁹ <https://www.wageningenur.nl/en/show/Support-for-Farmers-Cooperatives.htm>

and the Comité Paritaire interprofessionnel de la canne et du sucre-CPCS for sugar from cane co-exist with the CIPS (Comité Interprofessionnel des Productions Saccharifères). The CIPS was created first by ministerial decree¹¹⁰. Its mission is different from any objective of the IBOs as it is to examine all matters relating to relationships between actors of the sector, and in particular to prepare interbranch agreements based on Law No 68-678¹¹¹, in accordance with Community rules.

In the large majority of cases, these different organisations are working on their own. Collaboration may exist but case by case. An exception has been identified. Non-recognised IBOs can be integrated within IBOs as demonstrated by the example of ANIFELT (frozen fruit and vegetable IBO in France) (see section 5.2).

When considering the overall situation and mapping of the main commodity associations in a given supply chain, it can be observed that the (large) variability of IBOs in terms of organisation and structure which is described under Theme 2 is reduced when the overall organisation of all these associations (recognised and non-recognised IBOs) is considered, as demonstrated by the French example below.

Table 26: Mapping of IBOs and non-recognised IBOs in France

	Wine sector (FR)	Milk sector (FR)	Beef sector (FR)
National	Conseil National Interprofessionnel des vins (CNIV)	Centre national Interprofessionnel de l'Economie Laitière (CNIEL)	Association nationale inter-professionnelle du bétail et des viandes (INTERBEV)
Regional	25 individual IBOs (e.g. CIVA, CIVB, CIVC,...)	13 regional centers (CRIEL)	20 regional committees

In bold, the IBOs pursuant to Article 632-1 of French Code Rural

Finally, the last type of interbranch organisations that could be confused with recognised IBOs pursuant to Article 157, 158 of Regulation (EU) No 1308/2013 is **public interbranch organisations** such as the former "Productschappen" (Commodity boards) in the NL and the Product Councils in Hungary. These structured were performing similar tasks than IBOs but had a public legal basis.

5.1.3. *Contractual relationships between actors within the supply chain*

Lannarelli (2012)¹¹² provides a complete description as regards the development of contracts in the agro-food supply chain. According to the author, who is summarising a vast body of literature, contract farming (or production contracts, or out-grower schemes) can be defined as a system for the production and supply of agricultural and horticultural products by farmers or primary producers under advance contracts. The relationships and cooperation between farmers and the buyers of their output may take 3 main forms:

1. **Spot markets** are governed by immediate market transactions with no prior or post-purchase commitments on the part of buyers or suppliers. Buyers have no prior involvement in terms of what is produced, when it will be available; and the means of productions. In this context, market organisations such as auctions and verbal agreements play an important role in some sectors;
2. At the extreme, there is **vertical integration**, of e.g. production and the first processing stage, where at least two stages of the same supply chain are owned by the same actor, for example, a milk processor that also owns a dairy farm, a wine traders who is also a grape producer; and

¹¹⁰ Décret n°69-308 du 3 avril 1969 Groupement National Interprofessionnel de la Betterave, de la Canne et des industries productrices de sucre et d'alcool (GNIBC)

¹¹¹ Loi n°64-678 du 6 juillet 1964 tendant à définir les principes et les modalités du régime contractuel en agriculture.

¹¹² Iannarelli, A. (2012). Contractual Frameworks and Inter-firm Co-operation in the Agricultural Sector. Unif. L. Rev., 17, 247.

3. In between these two extremes, there are **various types of vertical cooperation, of which contracting is the most common**. Buyers and suppliers remain as distinct, separate actors but agricultural production is supervised by pre-arranged terms in a written contract. Contracting is therefore a *quasi-vertical* integration, an intermediate institutional arrangement which gives buyers the ability to influence and – depending on the contract terms – partially control the production process without owning or managing the farms directly.

One of the objectives of IBOs is to draw up “*standard forms of contract, compatible with Union rules, for the sale of agricultural products to purchasers and/or the supply of processed products to distributors and retailers, taking into account the need to achieve fair competitive conditions and to avoid market distortions*” (See CMO). The rationale for drawing up standard contracts at the level of the EU, the MS or the IBO is as mentioned above that the position of farmers is in many cases weaker than that of processors and/or distributors. Generally, large buyers will impose their own contracts on farmers, in which they naturally protect their own interest first. To ensure a minimum level of certainty and transparency for producers, standard contracts may be used. MS may specifically, “*in the absence of Union legislation on formalised, written contracts, under national contract law, decide to make the use of such contracts compulsory, provided that, in doing so, Union law is respected, and in particular that the proper functioning of the internal market and the common market organisation is respected*”; see Article 148 and 168 of Regulation (EU) No 1308/2013.

The drawing up of **standard contracts** and **interprofessional agreements** has been indicated as an objective by 45% of the IBOs identified in this study. This objective is one of the least mentioned objectives. With the CAP reform and consequent abolishment of quota in several sectors, the activities of IBOs and other interbranch organisations in relation to drawing up standard contracts that are related to the management of the market have decreased. In general, standard contracts are used in all sectors of the study but less so in meat products, milk and cereals than in e.g. wine and tobacco. In general, the benefits of the use of standard contracts are thought to be greater in sectors where the imbalance of power is larger, where cooperatives are less prominent, where risks crop failures are higher, and where transactions costs are higher.

Even without the use of standard contracts that are drawn up by IBOs or governments, transactions and deliveries are managed by **private contracts**. In cooperatives e.g. contracts are used that usually entail that members of the cooperative have a right and/or obligation to deliver their products to the cooperative. The cooperative will in advance determine a price (the contract price) to be paid for the product (given a certain quality). At some point (e.g. when the marketing year is finished) the members receive a share in the net profits of the cooperative. The contract does restrict the freedom of the farmer in some way, but also limits the risks. In any case it should be possible to terminate the contracts within a reasonable period of time and at fair costs, to ensure that contracts do not restrict the functioning of the market or lead to unfair practices in contracts.¹¹³ Besides standard contracts and cooperative agreements, numerous forms of private contracts exist in agriculture. These include delivery contracts to processors and retailers, but also forward and futures contracts.

Contract farming¹¹⁴ (as opposed to a cooperative agreement or the free market) is another form of contracting used in agriculture. Contract farming is a form of economic contract where a private company like a food processor provides farmers with inputs such as seed and the farmer promises to sell his produce exclusively to that company. This also reduces the risk for farmers. Contract farming (and similar contractual arrangements) is – like the efforts of IBOs – another way to increase product quality and

¹¹³ See also article 168 of the CMO and e.g. <http://www.supplychaininitiative.eu/about-initiative/principles-good-practice-vertical-relationships-food-supply-chain-on-principles-of-good-practice-in-vertical-relationships>.

¹¹⁴ Also called “*integration contracts*”

stabilise markets. Full backward vertical integration means that distributors or processors invest themselves in primary production capacity. Farmers in such cases are like employees of the integrated companies, focussing mainly on their task as producer.

In many cases it is not individual firms that enter into contracts with processors or distributors but the POs that they are a member of. In this way POs help to decrease transaction costs. POs have a role in the negotiation of contracts and help to set standard contracts for its members.

The brief introduction to historical considerations as regards the development of IBOs, the dynamics of actors and grouping of actors in the supply chain, and the current commercial relationships between producers and their customers provides insight for the analysis presented below: analysing of the functioning of the IBOs without placing them in the overall supply chain context would not make lead to any robust analysis.

5.2. Analysis of the functioning of IBOs

This sub-section complements and illustrates the inventory of existing IBOs (Theme 2) and national legislations in all 28 Ms (Theme 1), with a full review and analysis of the role, functioning and effect of IBOs within the food supply chain in different sectors and Member States. It is based on the analysis of the 5 case studies and completed with findings from literature review and desk research.

5.2.1. Creation of the IBOs and motivation for establishment

The **creation and request of recognition of IBOs are, often, responses to crisis situation** (e.g. short food shortage during the Second World War for the CIVB in France, economic crisis in Spain, and suppression of the “*productschappen*” in the NL). Literature review and desk research reinforce this finding that economic actors do not decide, naturally, on their own to cooperate. In most of cases, the main trigger is a diagnosis that there is fundamental issue in the supply that should be overcome. The only approach is to set-up a forum in which economics actors can discuss on how to address the problem.

In several MS, the creation of IBOs is linked to the provision of financial support at inception of the organisations. For example, in Spain, national authorities have provided dedicated funding for a limited period of time to encourage the setting up of IBOs and facilitate the fulfilment of the aims of the agri-food interbranch organisations. In Romania, it seems that the creation of several IBOs was linked to the idea that IBOs were going to be financially supported by the EU as for POs but this was not the case.

The initiative to create an IBO often comes from primary production. Often, it is the producers that decide to contact the other stages of the supply chain to create a platform for discussion but not always. External actors have, also, played a significant role in the creation of IBOs too as demonstrated by the old example of CIVB in France and the recent case of ZuivelNL in the Netherlands.

These findings are illustrated by the case studies.

INTERPORC is the IBO which represents products from white breeds of pig (“*cerdo de capa blanca*”) which amounts about [...] % of total Spanish pigmeat production. Impetus for the establishment of INTERPORC came from the production sector; most notably from ANPROGAPOR¹¹⁵ that was subsequently joined and supported by CAE¹¹⁶. Consequently the production sector had to deal with several different interlocutors when it wished to talk with the processing sector. Therefore it took the initiative of creating the IBO. Additionally, the economic crisis in Spain had acted as a general impulse for the creation

¹¹⁵ Asociación Nacional de Productores de Ganado Porcino

¹¹⁶ Cooperativas agroalimentarias de España

and/or development of IBOs in Spain, as with limited assistance from the ministry of Agriculture, actors looked to find their own solutions to issues.

In Spain, IAOE is the IBO which represents all olive oils other than olive-pomace oils ("orujo"). The category represented by IAOE includes extra virgin, virgin and olive oils. There are separate IBOs for olive-pomace oil and table olives (see Theme 2). IAOE was set up in November 2002 and officially recognised at national level in February 2003. The motivations for the establishment of IAOE have been to have a collective approach for promotion and R&D activities (improve oil quality). An additional direct motivation for official recognition was the ability to apply for EU promotional funds, today, in the framework of Regulation (EU) No 1144/2014.

The French CIVB representing "vins de Bordeaux" has been created in 1941 during the Second World War by the government. This IBO has the particularity that it has been created (and then recognised) by law [...]. During the war, it was necessary to coordinate food production and food supply for rationing.

FruitVeB was recognised as an IBO by competent authorities in 2005 in Hungary. However the organisation already existed for several years and collective actions in the fruit and vegetables sectors date back 1990s through the former Products Councils. The main reason for recognition was linked to the potential possibilities to get national and European funding support at adhesion of Hungary to the European Union. Secondly the segmentation of the supply chain was very important at that period and it was necessary to group actors to facilitate common actions between actors of the supply chain and secure cohesion.

The creation and recognition of the ZuivelNL IBO for the milk sector in the Netherlands in 2015 is directly linked to the suppression of the Dutch product boards that was voted by the Dutch government coalition in 2012. Product boards were Dutch public organisation including companies that produce and process a certain product in successive stages of the supply chain. Membership was mandatory. Product boards had a mandate to levy taxes and impose certain rules. At the same time product boards acted as an interest group for companies in the industry and as advisory body to the Dutch government. When the board were abolished, actors in the supply chains considered necessary to continue activities undertaken by public authorities in the product board via IBOs.

5.2.2. Members of IBOs, evolution of membership; and non-members

The analysis of the case studies further demonstrates the variability in terms of number and type of members that was already highlighted under Theme 2.

Among these case studies, FruitVeb is the only IBO that allows membership of individual producers and companies. This may be explained by the fact that no sectoral associations exist at this stage in Hungary. None of the IBOs cover the complete supply chain. Unions are present in the IBOs mainly at primary level (farmers union) when associations of economic actors are members in processing and other stages of the supply chain. Modern retailers (e.g. hypermarket, supermarket) are present in FruitVeb in Hungary only, not in the other 4 case studies. This situation is mainly explained by the fact that modern retailers are self-sufficient due to their economic power. They do not need to "concentrate" to be able to discuss directly with public authorities and with other actors in the supply chain as they are already concentrated through their buying centres.

Evolution in terms of membership is observed in each of the two Spanish case studies. Withdrawal of membership has not been mentioned in any of these case studies leading to the **conclusion that membership is rather stable** in time after the period of set-up of the organisation that could take several years. Desk research and interviews allow identifying a few cases of withdrawal of membership only. The most recent case (early 2016) is the withdrawal of the butchers association (FICT) from INAPORC in France due to different view on the strategy to be developed in order to overcome the current crisis in the sector in France. Additionally, FICT is opposed to mandatory labelling of country of origin when producers favour mandatory labelling.

This stability of membership should not hide a major issue as regards the representativeness of the primary production branch in IBOs in France. Historically, farmers are represented in the IBOs by technical sections of the “*most representative*” farmers’ union: FNSEA (Fédération Nationale des Syndicats d’Exploitant Agricole). During the last 20 years, a few new farmers’ unions have gained importance (more particularly, the Confédération Paysanne and Coordination Rurale). During the last voting at election of “*Chambres d’Agriculture*” these two unions have gathered together about [...]% of farmers vote. For several years, these unions have requested the possibility to join IBOs as members of the primary production “*college*” side by side with FNSEA. [...] . However in 2012, the board of directors of FNSEA decided that minority unions could become members of IBOs. Since then minority farmers’ unions became members of several IBOs (e.g. CNIEL, CIVB, etc.). The presence of minority unions as members of IBOs is still limited.

INTERPORC represents actors at the primary production and processing branches of the chain. Interviewees estimated that overall INTERPORC represents [...]% of the supply chain by volume (both at primary production and first processing levels). All current members were already part of the IBO at creation to the exception of CEDECARNE (butchers and individual meat retailer) that officially joined four years after recognition of INTERPORC in 2012. This adhesion was the result of a specific request of the IBO as it provides a link to consumers and hence possibilities to better communicate on certain issues. Members are national associations of farming organisations (farmers unions), cooperatives, and live animal transporters for primary production; and slaughterhouses, cutting rooms, processors, cooperatives, butcheries, and independent meat retailers. Non-members representing less than [...]% of the total volumes of production and transformation are small farms, slaughterhouses and cutting plants which do not belong to any of the indicated member organisations. Modern retailers are not members of INTERPORC.

The Spanish olive oil IBO IAOE includes actors from primary production, processing (both primary and secondary) and commercialisation (domestic and export) stages of the supply chain. It does not cover wholesalers and modern retailers. Membership has evolved over time as it can be observed that COAG (farmers) and AFE (processors) joined about 10 years after the creation of the organisation (2010 and 2014 respectively) (UPA-farmers joined immediately after the signature of the initial IBO agreement). These delays can be explained by difficulties in agreeing on the overall governance of the organisation (share allocation). Non-members representing less than [...]% of the total volumes of production and transformation are small farms, and a handful of generally small and occasionally medium sized operators which are not members of the IBO members’ associations.

CIVB, as all regional wine IBOs in France, is composed of the wine producers and of the traders (“*négociants*”) and brokers (“*marchants*”). Food distributors and retailers are not present in the IBO. This IBO is typically a “*short IBO*” as discussed under Theme 2, meaning that it includes only 2 stages of the supply chain. Membership has evolved over time as associations members of the CIVB have also evolved. All wine producers are members of the CIVB as they are members of one ODG (“*Organisme de Défense et de Gestion*”) in charge of defining standards as regard quality products. As all ODGs are members of the CIVB, all producers are, indirectly, members too. About 400 traders are represented in the CIVB via their membership to the FNVBL which a member of the CIVB. They represent about [...]% of the volumes traded in Bordeaux. The non-members are traders and brokers which are not members of the FNVBL.

In Hungary, the producer organisations play an important role in FruitVeb. Processors are organised through the MHKSZ which covers [...]% of the Hungarian processing industry. The non-members are small processors. The retail organisations joined FruitVeb, however – at the moment – it seems their aim is mainly information gathering, rather than active participation to the IBO activities. FruitVeb sees this as the first step to facilitate the harmonisation of the whole chain.

The newly created ZuivelNL has two founding pillar member organisations: the Dutch Farmers organisation (LTO) which represents primary producers of agricultural products, among which dairy farms; and the Dutch Dairy Processors Organisation (NZO) which represents dairy processing companies that all together process [...] % of all milk in the Netherlands. The members include all Dutch dairy processors that are farmers' cooperatives. Indirectly, the NZO represents almost all Dutch farmers. In addition, Dutch Dairy Farmers Union (NMV) is also a member. Retailers are not represented in the IBO. The non-members are actors which are not members of any of these IBO members.

5.2.3. Structure and governance

IBOs governance is generally based on two bodies: a board and a general assembly which are both acting as a general supervisor of the organisation. Depending on the importance of the sector(s), several other *ad hoc* bodies are attached to these two bodies (a secretariat which includes the director and the staff of the IBO, regional structures, and technical & marketing committees, etc.). The general assembly groups individuals who have been elected to represent the different members of the IBOs. The board is elected by the general assembly. The president of the IBO is elected by the general assembly. He leads the board and coordinates the work of the secretariat and its staff, through its president.

In addition to this top governance, two different governances exist at lowest level of the structure. The first one which groups actors of the same branch in "*colleges*" and the second which relies more on a flat governance meaning that each IBO member elects separately individuals to the General Assembly based on principles which are defined in the statutes of the organisation. The approach in "*colleges*" is a French specificity that could not be found in other Member States. However it is not specific to IBOs as this type of organisation and governance exists in trade unions.

It may be considered that it is difficult to exchange with all members of the IBO when the number is high. With a large number of members in flat governance, the discussions and decision-making process may be difficult and/or cumbersome.

This exchange of information could even be more complicated when the IBO is a multi-crop IBOs which covers several crops or several groups of crops (e.g. F&V IBOs). One could argue of the need to group in the same organisation peach and lettuces producers. Their activities and their supply chains are different. Even for the same crop (e.g. seed) the breeding and seed marketing approaches are rather crop/species specific. These differences lead to the position of certain interviewees from the supply chain that consider that IBOs should be organised on a crop level instead of a multi-crop approaches as it the case today.

In the case of governance by "*colleges*", interviewees have mentioned that decisions are often taken without voting. It is only when no consensus can be found that a vote takes place. Several French interviewees have mentioned that to their knowledge they have never experienced a vote in writing in their IBO. However the absence of voting doesn't mean that there are no disputes. Interviewees are mentioning that sometimes discussions may take a long period but they often lead to a decision/consensus after exchanges of opinion between the different parties. The culture of IBOs is therefore to search for consensus and avoid as much as possible voting in writing. This search leads to the construction and reinforcement of the relationships between members of the organisation. Literature confirms that search for consensus is often the preferred approach. IBOs need to be governed based on confidence between the partners. However this governance per "*college*" leads to a side effect at lower level in the organisation. When it is recognised that the working and governance procedures at top-governance are well established and described in the statutes of the association, one may question about the decision making process within colleges and at lower level in the organisation. A member placed at level 3 in the governance can certainly take position during working groups and other technical committees but without any guarantees that his view is going to be considered by all layers of the IBO (from the bottom to the top).

This situation can lead to frustrations at low levels.

In general terms, an IBO is said to be functioning well when there is no disputes between members or when they are not known outside the organisation itself. In opposition, when issues are placed in the public debate, questions on the efficiency of the organisation are asked regardless what is being achieved. This means that the efficiency of the organisation mainly reflects the good relationship between all actors in the organisation. Public personal conflicts between individuals or leaders of different "*colleges*" impact the good functioning of the IBO. In these cases, one could say that personal interests have over seeded general interests. Inevitably such issues are present in such type of organisation. What is important is that these issues are not taking too long and that solutions are found as quickly as possible. In that context it is interesting to note that discussions take place before any significant change in the governance and new election. The list of candidates for a new position seems to be discussed before the election takes place. Therefore, elections do not lead to open-conflicts. One may consider that this approach leads to better functioning of the IBO as general assemblies are not subject to personal fights between candidates. In the other hand, it can be considered that this approach relates to a type of "*co-optation*" and that the new representatives of the organisation have been chosen by the old ones.

Governance may also adapt to avoid personal issues. For example, more and more French IBO have inserted in their statutes that presidency has to rotate; meaning that a new president has to be elected from another "*college*" than the "*college*" of the current president.

The governance of the five IBOs under study read as follows.

The Spanish INTERPORC IBO is based on governance with five main bodies: the Standing committee, the General assembly; the board of directors, the executive committee and the working groups. In order to establish good governance, when the president and the treasurer are coming from one part of the chain, the vice president and the secretary shall come from the other part of the supply chain. This guarantees the participation of all stages of the IBO at the top-governance of the IBO. It is interesting to note that these roles rotate at each mandate. The General assembly and the Board of directors are composed each of one member from each member association with a parity (50/50) between primary production and processors sectors. In the General assembly, simple majority must be obtained in each side (production and processing). In the Board, a 2/3 majority of present votes is applied regardless the sectors. In the Executive committee and the working groups, decisions are taken through consensus, no voting foreseen. [...]

All major decisions except one have been taken through consensus without voting procedure. [.....].

The Spanish olive oil IBO IAOE has flat governance. The two main bodies (general assembly and board) are composed of the same 20 members. The General assembly is completed by several observers which have no voting rights. Weight are distributed [...] % for each of the three farmers representatives (COAG, ASAJA, and UPA), [...] % for ACE ([...] % of this is under the primary production allocation, [...] % is under the processing allocation); [...] % shared between the trading associations ANIERAC and ASOLIVA at parity, and the remaining [...] % shared between the private oil mill associations INFOLIVA and AFE. IAOE is headed by a president, vice president, secretary and treasurer. In order to ensure fair representation, the president and treasurer must come from the same part of the chain (production or transformation) and the vice president and secretary from the other part of the chain. The length of mandate is 4 years. It has thus far not necessary to vote for candidates as there has only been one candidate for each post; therefore the appointment of people in these roles have always been agreed through consensus. Only one case of formal voting in the history of IAOE was identified by interviewees. This case related to the details of a promotional campaign for the UK and France in 2012.

The governance of the French CIVB has been established by Law (Decree 66-866) not by the members. It is based on a General assembly (called Council –“*Conseil*”) which is composed of 50 members which have a voting power and a large number of consultative members which have no voting rights. These 50 votes are distributed at parity between the 2 colleges (25 voting rights to the grape producers designated by the Federation des Grands Vins de Bordeaux-FGVB and 25 votes for the Fédération des négociants de vin de Bordeaux et de Libourne-FNVBL). The presidents of FGVB and FNVBL are CIVB council members. CIVB Council members are appointed for a three year term renewable twice. The second main body of the IBO is the Management board (“*Bureau*”) which is designated by the Council and composed, on a parity basis, of a president (implicitly, of CIVB) and a vice-president, a secretary and a deputy secretary, a treasurer, a deputy treasurer, and sixteen members including the co-presidents of the three statutory commissions as well as the presidents of FGVB and of FNVBL. Members of the Management board are elected by secret ballot for three years mandates and must be members of the Council either as producers or traders. [...] The conciliation and the arbitration procedures contained in decree 66-866 and reflected in CIVB articles of association seem to have been used extremely rarely (no recollection from CIVB representatives). Whereas disputes have taken place over the years, there seems to be a clear imperative, widely accepted internally, that CIVB activities require a timely settlement which cannot be accommodated by a formal dispute resolution mechanism. This example demonstrates that consensus is searched for before voting, and therefore voting is organised only when consensus is found between representatives of the 2 colleges in first the Management board and secondly in the Council.

The governance of the Dutch milk IBO (ZuivelNL) is rather similar to the ones presented above as mainly based on a General assembly and a Board which are both supported by several working groups. Due to the recent creation of the IBO, interviewees have indicated that they have no remark to make on the functioning of the governance as they have to see how it will work in the coming years. The Dutch Farmers organisation (LTO), the Dutch Dairy Processors Organisation (NZO) and Dutch Dairy Farmers Union (NMV) are statutory represented in the board of ZuivelNL with respectively two members from LTO, one member from NMV; and two members from NZO. In addition, the board includes one independent member which is the current chairman of the IBO and a permanent advisor to the board assigned by Gemzu which represents dairy trade. As for the previous cases, the working groups are in charge on drafting proposals which are then discussed at the Board level before ratification, for the most important decisions at the General assembly level. It should be noted that the working may profit from several partner organisations that could be associated to the drafting of proposals on a case by case basis (e.g.; cattle breeding, trade in dairy products, etc.).

In Hungary, FruitVeb, the F&V IBO governance seems to be more complex. First the General assembly is the main decision making body. It consists of 59 members (15 from producers, 15 from vegetable producers, 15 from fruit producers, 7 from processors, and 7 from retailers). It meets once a year and vote at single majority. The General assembly is headed by a Presidium composed of 29 members (4 members from each Sector Committee, the Director and the coordinator of the Sector Committee). The Presidium has a mandate of 4 years. Then, the Management Board consisting of 6 members and including the director and managing director. Additionally, the governance includes several committees: audit, ethical, the sector and products committees which are vertical bodies in the organisational structure of the IBO.

5.2.4. Use of extension of rules

The use of extension of rules has become the generality in France when it remains the exception in other MSs (see Theme 2).

France has a large history in using the extension of rules in nearly all sectors. As one of

the few exceptions¹¹⁷, INAPORC is the largest IBO that is not using extension for collecting fees from non-members as it considers that based of its representativeness, there is no need to invest a significant effort and related budget to try to gather some few additional incomes. Therefore we searched for the number of requests that were not rejected by authorities (ministry of agriculture and ministry of finance –DGCCRF). When IBOs representatives were mentioning that there was no rejection of requests, the ministry of agriculture indicated that they are used to reject requests on a regular basis. At a first instance, this information looks contradictory but this can be explained when understanding the mechanisms in place. It seems that most of the IBOs are first presenting informally the text of the requests for extension to the ministry representatives to discuss the content of the extensions and their validity. Then the ministry provides its views on the first drafts. Following, the text is reviewed to secure that when the request is officially submitted, no further issue emerged. Secondly, any draft includes several requests for extension, and then the Ministry can reject the specific demands without rejecting the complete document. Interviewees added that it is rather frequent that extension is granted in general but not for all requirements. Therefore these case studies indicate that negotiations between public authorities and IBOs take place prior to submission of official request for extension.

The CIVB case study in France demonstrates that the procedure to set-up requests of extensions is today well implemented as in place for a long time. Therefore it can be observed that the process is running smoothly and that no severe issues can be observed at CIVB level.

As of June 2016 there is no extension of rules granted in the case of ZuivelNL in the Netherlands. ZuivelNL has been exploring the possibilities of extension of rules but until so far there has not been an approval from the Ministry. Currently a process is underway in which the Ministry and ZuivelNL exchange opinions on the exact criteria that ZuivelNL needs to fulfil. In the past, Dutch Dairymen Board (association of farmers) has been opposing the extension of fees to non-members openly.

In Spain, the two IBOs under case studies are using extension of rules to collect fees from all members of the supply chain. In the context of the olive oil case study (IAOE), it is important to note that interviewees considered the main achievement of the period prior to 2008 was the obtainment of the extension of rules (fees). For interviewees, the main aim of IAOE from the start was to obtain an extension of rules in order to obtain financial contribution from the whole sector. However, this took until 2008 to do this as time was needed to develop the necessary trust between organisations in IAOE and for common interests to be found. It was also clarified that the method of formalising payments took some time to agree, given that not only did the whole sector have to agree on the details, but also the points of controls for payments had to be effective in order for the extension of rules to work.

For INTERPORC in Spain, the process for approving the extension of rules following internal agreement took time; the internally-agreed extension of rules was presented to the ministry in June 2012 but there had to be a public consultation and the process for approval from the ministry took more time. Approval from the Ministry of Agriculture finally came in November 2012. The collection of mandatory contributions therefore started on 1st January 2013, with a quarterly declaration to be used for collecting from operators. A large part of the calendar year 2013 was spent implementing and refining the collection system.

Spanish interviewees from INTERPORC reported that setting up the collection system was a real challenge. While the ministry of agriculture produces statistics data on e.g. the number of animals reared/slaughtered, there is no government agency in the sector which has a register of all operators and production volumes (such an agency does, for

¹¹⁷ Others can be found in the Master DB for Theme 2.

example, exist in the olive oil sector). The identification of operators and their volumes was therefore a significant challenge. INTERPORC has subcontracted a company to obtain this data through the company [...] and to follow up on animal movements so that the mandatory contributions can be collected. The compliance rate for payments under the extension of rules is now in the range of 95-98%. INTERPORC has a legal system for starting proceedings against operators who do not pay the fee and so far has won all cases.

5.2.5. Funding

Theme 2 identifies that several IBOs are facing financial limitations. Funding sources are mainly including annual membership fees, collection of fees via extension, and public support. These sources are rather limited and any significant reduction in any of this source may jeopardise the IBO sustainability as it may affect their ability to carry out all of the activities they would like.

For example, several Spanish IBOs appear endanger their existence by being dependent on public funding (mainly subsidies from MAGRAMA and from promotional activities provided by EU legislation on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries). The reduction/suppression of MAGRAMA subsidies leads to a situation where several IBOs do not have any sufficient financial resources to guarantee the funding of an IBO coordination body. Therefore activities of these IBOs are limited.

FruitVeb in Hungary is not applying the extension of rules mechanism and therefore is facing funding issues.¹¹⁸ The current Zuivel

budget is about [...] euros. This is a limited budget that doesn't allow the implementation of large actions.

When extension of rules is applied, additional revenues are generated by fees collected from non-IBO members. The case studies illustrate the importance of guaranteeing mid-term funding of the organisation. This is a prerequisite before developing other actions and plans.

In Spain, the history of IAOE shows that after a first attempt to establish the IBO that failed, the second attempt started by drafting an agreement between members for defining the payment conditions and the structure of the fees (who was going to pay? and how much?). Then IAOE has asked for extension to MAGRAMA. This clearly shows that IAOE considers that the first necessary steps have to be dedicated to secure mid and long term funding of the organisation. Getting the request for extension accepted by authorities is one thing, but defining and implementing all the required mechanisms to collect the fees is another issue that is perceived as complex (e.g. how to identify all targets in the supply chain?). This process may take significant time. It seems that the objective No 1 of IAOE is to have these mechanisms established.

Similarly, INTERPORC has also decided to secure its funding via extension.

The situation in France is completely different as extension of rules to collect fees (CVOs) is applied on a regular basis for most of the IBOs (see Theme 2). The general approach is based on an agreement between members on who is paying within the IBO which is extended every 3 years on a regular basis. This means that fees are collected every year. These funding mechanisms are in place for several years. In most of cases they have been set-up at the creation of the IBO.

This mechanism leads to several consequences:

- The French "*Cour des Comptes*" has highlighted in its 2010 report that "*about 20% of the CVO fees do not enter into the framework working programmes that*

¹¹⁸ In Hungary, only the milk and wine IBOs are using extension of rules

could be funded by CVOs” meaning that CVOs are collected but not always used for specific projects. Indeed, the structure of the CVOs is not modified every 3 years in order to keep certain stability. Therefore the collection of fees is more related to an overall amount members agree to pay to the IBO without linking the fees to dedicated actions/objectives of the IBO;

- In consequence, the same report mentions that *“financial reserves of IBOs are important”*; and
- The funding mechanisms might not be neutral in the overall governance of the IBOs and in its leadership. Several interviewees have mentioned that the structure of the fees leads to the *“real”* leadership of IBOs: *“the ones who are paying, are the ones who are leading”*. For example, in INTERFEL (French F&V IBO), the modern retail contributes to [...] % of the budget. In the former ONIDOL (oil crop), primary production was contributing to more than [...] % of the CVO. Therefore it can be understood that if primary production is funding the IBO at the level of [...] %, it has the natural authority and leadership of the organisation. In a large majority of IBOs, leadership is often with primary production. The producers have a leading position due that fact that they have been the first to fund the organisation at its creation and during the first years.

5.2.6. Relation between IBOs and national competent authorities

One could consider that relations between IBOs and national competent authorities should be rather limited as IBOs are private associations and the State’s role is limited to define the principle conditions for their recognition and activities. However, it seems that relations between public authority and IBOs and the degree to which public authority are involved in the activities of IBOs differ between Member States. Experience, mainly in France, has shown benefits where the actors of the chain interact regularly and frequently with each other, which involves in particular discussions with the public authorities. It appears that IBOs are best functioning in an environment in which not only the minimum legal requirements for their work have been implemented via a regulatory framework, but where in particular public authorities go beyond and ‘engage’ working with the IBO for the benefit of developing the supply chain, either by discussing legislation and food supply chain related projects, by entering a dialogue on a possible extension of rules and by financing the activities of the IBOs. In fact, the internal structure of the IBO (its organisation) itself is less important for the proper functioning of the IBO. The working principles within the IBO and the relations between representatives of the IBOs, and other actors of the supply chain (being private stakeholders or public authorities) are the main pillars underpinning a good governance of IBOs.

One of the reasons for the development of IBOs is the need to have a well-functioning structure representing the relevant food supply chain able to engage in a dialogue with public authorities. By being recognised, these commodity associations often play an advocacy role to defend the interests of the industry in policy debates. IBOs are clearly advocates of industry interests in policy making circles.

As an example, the IBOs in the F&V sector have indicated during the interviews that they are interested in building an EU transnational IBO for two main reasons. First, to exchange statistics and performing market research at EU level, instead of only at national level; and secondly to be able to **“lobby”** directly at EU level with the body that has recognised it (the European Commission).

Any other form of cooperation/alliance can also lobby but its recognition of being a party in negotiation is lower as it may have difficulties to establish its legitimacy at official level.

In some MS, such as Spain and the Netherlands, relationship between public authorities and IBOs are limited to the strict minimum as defined by law (e.g. process for recognition, for extension, and monitoring). This means that these Member States just provide the necessary legal framework for enabling the functioning of the IBO.

Other Member States go beyond this. For example in Romania, IBOs are consulted on definition, orientation and regulation of sector policies. Portugal stipulates also a special obligation for the public authorities to cooperate with the IBOs so that their goals can be achieved.

Some MS have even supported the creation of IBOs financially (e.g. Spain). This was done via **national funding** coming from CAP Pillar II (funding support for promotional activities). These findings have been slightly reduced over time before their complete suppression in early 2010s.

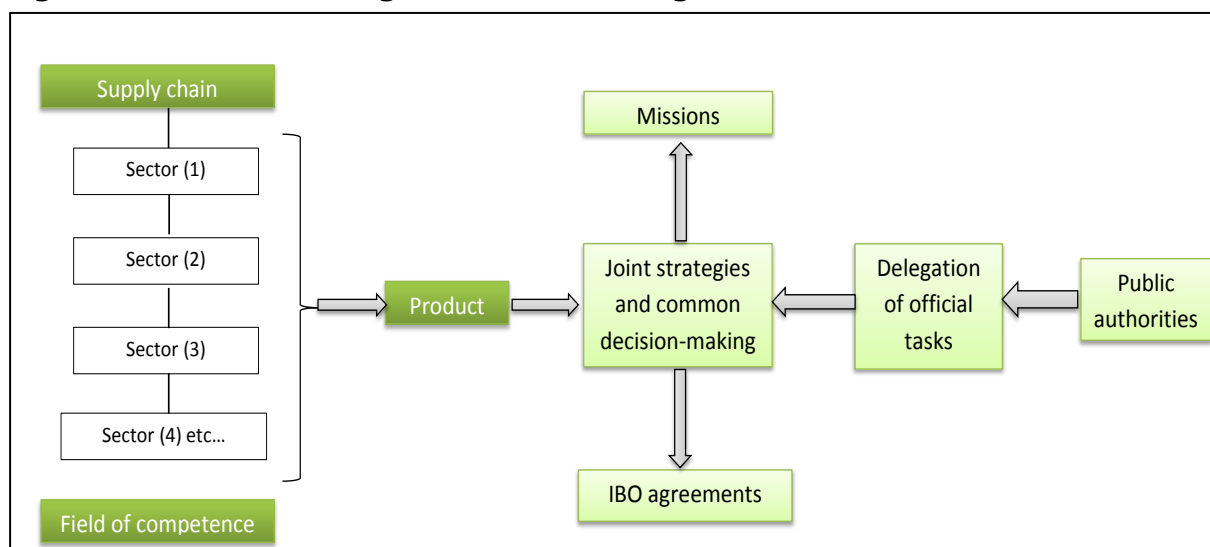
More intense relations exist when a Member State decides to **delegates certain (official and non-official) tasks** to the IBO or allow for the extension of rules.

Theme 2 highlights that public authorities have delegated/are delegating official tasks to IBOs in France only. The legislative developments in 2006 led to the addition of new objectives for IBOs as regard protection against harmful organisms and the implementation of national and Community economic policies. In France, for decades the GNIS has been in charge of seed certification, which is an official task¹¹⁹. This task is performed by the Service Officiel de Certification (SOC) that is a unit integrated in the GNIS organigram. SOC is headed by a ministry representative civil servant.

Other delegations of official tasks can be listed. One of the most recent and important one is concerning animal rendering, which is today a task carried out by animal IBOs in France. Public authorities suggested that this task should be carried out by IBOs instead of official control authorities and other public authorities. Therefore it was proposed to IBOs to take over this task. Negotiations took quite lot of time (several years) before agreement was reached.

These examples illustrate the following scheme indicating the general organisation of IBOs in France where delegation of official tasks takes are integrated in the overall governance of IBOs.

Figure 21: French IBO organisation and delegation of tasks



Source: Rio Y. and Nefusi J.. "Gérer les marchés et la qualité alimentaire: double défi pour les interprofessions". Club Demeter. Cahier 10. Available at: <http://www.clubdemeter.com/pdf/cahier/10.pdf>

¹¹⁹ See Seed Marketing Directives

In addition to official tasks, authorities can transfer some public activities to the private sector via IBOs. The case of the French F&V research centre (CTIFL) illustrates this transfer (see above Section 5.3.1.a).

In conclusion, the delegation of tasks reinforces the relationship between authorities and IBOs. This delegation is applied only in France.

The **extension of rules** is another area that favours regular and close contacts between authorities and IBOs, as it is the State which extends the IBO agreement to non-members. Especially when the number of requests is rather high (e.g. about 80 per year in France), regular contacts between the authorities and the IBOs are likely to take place. The long standing experience with extension has led French authorities to recommend IBOs to discuss the content of the requests together with them before submitting the official version. This allows clarifying certain issues before the official submission.

Delegation of tasks and the interaction when drafting agreements lead to the impression that IBOs and competent authorities are **co-managers of the supply chain**. In France, the umbrella organisation CLIAA clearly mentioned that, in its view, IBOs perform this function.

The close relation between competent authorities and IBOs in France also emerges from that representatives of such public bodies are sometimes even involved in the management of the IBO through their **participation in the board**. For example, at the level of the French IBO CIVB, representatives of public bodies have been taking part in board meetings. As shown under Theme 2, the first 6 IBOs in France have been created by Law and not by stakeholders' initiatives. A representative of the public authorities ("*Commissaire au gouvernement*") used to be present at board level, mainly as an observer but with also decision power (e.g. CIVC-IBO vins de Champagne). His role was to act as a moderator in case of disputes and conflict between the members of the IBOs. In Champagne, his role is also to take position vis-à-vis decisions taken by the IBO and to transfer decisions to the Ministry of Agriculture for validation or refusal of a given decision. [...]. Today, it appears that the CIVC is the single remaining IBO in which a public representative is present in the Board. The Ministry of Agriculture has indicated that the members of the CIVC are still in favour of keeping the "*Commissaire au gouvernement*" as part of the IBO as it acts as a moderator in case of disputes between members.

Finally working principles and habits, based on history, exist between French IBOs and public authorities and **other public organisations** (e.g. offices in France) and also based on the fact that IBOs have been public structures in the past and that certain public organisations (e.g. FranceAgrimer) play a role in the functioning of the IBOs and in the funding of promotional activities.

All in all, the analysis of the relation between public authorities and IBOs shows that a close relationship exists in France but is much more limited in all the other Member States in which IBOs are recognised. The relationship between IBOs and public actors in France leads to consider that IBOs are not perceived merely organisations established by legislation in which economic actors discuss and plan actions or present interests. IBOs are rather part of 'system' or 'concept' to develop the food supply chain positively and to that end continuous working relationships between IBOs and public bodies are essential. This term is often found in French literature and refers to the legislation itself, the IBOs themselves but, also, any working mechanism and relationship that take place between all involved actors of the supply chain.

As mentioned under Part 3, the internal organisational structures of IBOs can take a large variety of forms, what remains (rather) similar are the working procedures. Several French interviews have indicated that these working procedures are driven by legislation and public authorities; and therefore consider that "institutionalisation" of IBOs took place during the last 30 years. This is rather specific to France as there is there a long history of IBOs and therefore of relationship between actors. In all other countries, one

could consider that IBOs are too young to have yet this relationship ("system" or "concept") in place.

5.2.7. Other issues affecting the functioning of IBOs

Size of the IBOs.

IBOs main objective is to promote products of a given supply chain (see Theme 2). Interviewees are of the opinion that IBOs are effective when it is composed of a limited number of market actors who cooperate in order to retain the value added of a specific quality product (e.g. IBO built around the "Comté" cheese). Large IBOs are perceived as less effective as actions are based on consensus reached between a large numbers of actors. Therefore one could promote the re-structuring of IBOs to develop more product-specific structures to replace the large national IBOs which are covering a large number of individual products. Competent authorities may not be of that opinion as a multiplication of the number of IBOs will lead to an increase of the number of contacts in the supply chain. French authorities have indicated that they would privilege to have wider IBOs including all stages of the supply chain rather than only 2 stages, as it is mainly the case today.

Subjects matters to be dealt with by IBOS

Projects that are not including any competitive dimension (between IBO members) are seen to be the easiest to implement. For example a marketing project aiming at developing Bordeaux wine export in China would certainly be well accepted by a large majority of members of the IBO as it would benefit to all producers and traders, even to the ones that are not exporting to China. In contrary, as soon as competitive factors are identified in a given IBO project, these create tensions between members and therefore more difficulties are faced during implementation. For example, French meat producers are in favour of origin labelling when the butchers are opposed to this obligation for economic and trade reasons. This obligation will add value to raw meat and creates burden and additional costs for butchers that will have to adapt their sourcing and selling. In such cases, tensions appear within the IBO.

Transparency issues

Both case studies and literature review reveal additional issues affecting the functioning of IBOs is transparency. When the analysis has shown that activities carried by IBOs helps improving knowledge and the transparency of production and the market, several issues as regards transparency have been mentioned by interviews.

The first issue is related to transparency. When decision making process and the voting rules which are defined in each IBO statute are clear for decision at the board or assembly general levels, several interviewees have indicated that decision making processes are not so clear "lower" in the organisation. When IBOs are organised per college, several interviewees have mentioned that, to their opinion, there is not always clear rules on how decisions should be taken within these colleges.

Other interviewees have also mentioned that day-to-day decision making is done by a limited group of persons and that transparency is not always present for all decisions.

The French "Cour des Comptes" in its reports of 2007 and 2010 has indicated a certain lack of transparency related to the statutes, the content of the IBO agreements, the compiled list of extensions, the structure of the CVO fees (who is paying, how much) which are only available on request at IBO level or at Ministry level. For the "Cour des Comptes", access to these documents should be made more easily. It can be observed that is today easier to get access to some of these documents (since beginning of 2014, all extensions are published on the Ministry of Agriculture website with a link to the agreement file).

The data collection exercise which has been performed during this study also shows that statistics related to market shares of the different actors in the supply chain,

representativeness levels, value of production, etc.... are of sensitive nature and that IBO actors have difficulties to communicate this information. This can be largely explained by the fact that IBOs governance often does not have this information itself; and especially for primary production. IBOs are supposed to demonstrate representativeness of their members (in volume) when requesting extension, but as the large majority of requests for extension are submitted in France that has established a system not linked to production volumes (but on votes at *Chambre d'Agriculture*), IBOs themselves don't know volumes produced and traded by their members at primary level.

Timely withdrawal of inactive IBOs

An additional issue is linked to the fact that national legislations do not include detailed provisions as regards the withdrawal of IBOs. Article 158 of Regulation (EU) No 1308/2013 stipulates that MS shall withdraw recognition in the event of non-compliance or irregularities in the implementation of the measures provided by legislation and if the requirements and conditions for recognition laid down in this Article 158 are not met, however no indications are provided in the case IBOs cease to be active. Under these cases, who should have the responsibility to withdraw the recognition if no request is being sent by the IBO? What should the practical approach to secure that the list of recognised IBOs do not include IBOs that are not active any longer and for years? This leads to the situation that several IBOs are still listed as IBOs but have not any ongoing activities. For example the peach processed IBO in Greece is not active for more than 6 years but it is still recognised.

Time and resources

Another limitation which has been expressed is related to time and resources of members associations, in particular those representing primary producers. In some cases, various meetings of IBOs may occur at the same time, making it impossible for the representatives in question to attend all meetings; though progress still has to be made by the IBO. The situation was noted as being different for associations from the transformation part of the chain which is more likely to call upon people from individual member companies of their association to attend meetings on the behalf of the association. It was also noted that the strain produced from the involvement in multiple IBOs means that representatives of primary producer associations have less time to dedicate to their primary role of defence of their members.

5.3 Benefits and impacts of IBOs

This section aims at identifying and presenting the overall benefits of IBOs to actors in the supply chain and for the overall supply chain. These specific IBO objectives have also to be considered in broader terms in the context of the CAP objectives of viable food production, with a dedicated focus on agricultural income, agricultural productivity and price stability. More specifically this section presents benefits for agricultural producers in e.g. productivity, sustainability, risk management, growth potential; and marketing, also by comparison with alternative governance institutions available to farmers in the food supply chain.

5.3.1. Benefits of IBOs

Analysis reveals that most of stakeholders that have been met during data collection consider that IBOs could have a number of benefits and drawbacks which are presented below in terms of:

- Organisation and governance of the supply chain, relation with authorities;
- Collecting and sharing knowledge, and communication; and
- Sharing responsibilities and risks.

However the assessment of success and consequently the benefits arising from IBOs has to be considered carefully as the variety of situations and organisations may lead that the realisation of benefits is not shown in several cases.

Complexity is added by the very nature of mostly intangible or soft benefits that cannot be measured nor quantified explicitly. A last influential factor, triggered by different types of IBOs in different supply chains (in various compositions), is created by an abundance of expected benefits that don't materialise and therefore cannot be identified easily.

Additionally, the efficiency of an IBO leans on its legitimacy (e.g. effective participation of all members, legitimacy of each group representative transparent mechanisms of decision, funding, etc.). The establishment of such a body is a long and complex process, which requires the identification of common interests and the collective margins of progress. Although IBOs are today of private legal basis, history shows the important role of public authorities in the emergence of inter branch bodies though the funding of some activities (e.g. promotion activities in Spain) and in the durability and sustainability of the system (e.g. FR).

5.3.1.a. Organisation and governance of the supply chain, relation with authorities

IBOs offer a **platform for discussion between actors** within the organisation and create the conditions for collective communication with other partners in the supply chain.

Such type of platforms allows for **better communication between IBOs participants** which are, often, economic partners but, also, competitors. Interest of each group of actors within IBOs differs. Communication is facilitated by the fact that members of IBOs are often associations or organisations in which, already the economic dimension, is less present than at operator/company level. The majority of the interviewees (case studies) believes that the bringing together of the whole sector, hence allowing actors to understand each other better and share concerns is a major intangible advantage of IBOs. This was also reflected by the view of a non-member of INTERPORC. It was also noted that the IBOs for different meat sectors in Spain (including INTERPORC) were holding meetings with the aim of establishing joint strategies for key issues affecting all livestock sectors.

Additional, **this platform creates a focal point for policy dialogue with government and public authorities**. This focal point allows an advocacy role by either making policy proposals to their governments or by commenting on government proposals. For policy makers, IBOs allow appropriate consultation mechanisms at the time of policy formulation. IBOs are the entry point in the supply chain. Dialogue is formalised. This role is "*officialised*" by the fact that IBOs are recognised by public authorities. Evidence from the literature review and the case studies suggest that IBOs do play an important role in policy formulation and are much welcomed by policy-makers, as well as by administrators, who generally prefer to deal with one association rather than many. From this pivot role, IBOs can further disseminate and communicate within the supply chain through its association members. This recognition provides that legitimacy and makes IBOs quite unique as compared to other types of commodity associations which have not the same level of legitimacy as they are recognised officially by authorities. IBO recognition is generally not limited in time (only in the NL, recognition of the newly created IBOs has been granted till 2020 only). Therefore this link between supply chain stakeholders and public authorities is reinforced as continuity is guaranteed. This security leads to an improved understanding between actors on both sides (supply chain vs. authorities) and therefore confidence is reinforced.

Public authorities also benefit from the presence of IBOs in the supply chain in emergency and crisis situations. For example, in the current food safety issue related to the presence of *Avian Influenza* cases in south of France in the poultry sector; public authorities have been able to implement immediately emergency programmes with the implementation support of IBOs that could implement immediate actions. The privileged relationship between public authorities and a given IBO associated with the possibility to extend safety measures to the all actors within the sector provides a robust and immediate response to food safety emergencies and crisis. No other type of commodity associations provides such robust and reliable solution.

The specific and unique relationship between the supply chain and public authorities and the constant discussions between these parties allow discussing about the best approaches in term of allocation of activities within the chain; and especially of official tasks. In 2007, French authorities and animal IBOs discussed about the best approach and most efficient approach as regards the animal rendering official task. Public authorities suggested to IBOs that this task should be managed by IBOs in order to increase efficiency (costs reduction). Then the relevant IBOs reflected on the request and indicated their agreements in taking up the management of this task. Implementation has been associated to extension of an agreement to cover all actors and to secure the funding of such actions.

The most recent case of the technical R&D institute for F&V (the Centre Technique Interprofessionnel des Fruits et Légumes-CTIFL) also demonstrates the capacity of dialogue between public authorities and the supply chains to find arrangements that would benefit both the sector and public authorities, and therefore optimise the management of the supply chain activities. CTIFL is a technical institute that was financed by a governmental fund ("*taxes parafiscales*") for years. Public authorities were of the impression that this type of activities should be better attached closer to the supply chain than to the authorities as the main "*clients*" of the R&D activities are the actors. Therefore the Ministry of agriculture decided to withdraw this tax and proposed to replace it by a CVO claiming that the main advantage is that CVO ceiling is not limited to the contrary to the fiscal tax. Additionally, other R&D institutes (e.g. ARVALIS for cereals) are managed by the cereals IBO (INTERCEREALES) for several years and this approach has shown usefulness. After a long period of (difficult) negotiations between the Ministry of Agriculture and INTERFEL (F&V IBO in France) INTEFREL agreed to take over the funding of the CTIFL via a new CVO in 2015.

Finally the privileged relationship an IBO has with public authorities allows IBOs to act as a guide for the sector as a whole. Longer this relation is, stronger the guidance is. This leads to a French situation where it is difficult to say that there is only private IBOs. In fact, one can observe that in France you have private IBOs and several others that have been public IBOs. The CIVB case study demonstrates this situation. The CIVB was created by Law in 1948 and public authorities were present at board level. This was the same situation was existing at GNIS (seed IBO). In the CIVC ("*vins de Champagne*"), public authorities are still present in the governance of the IBOs and the statutes of the IBO indicates that authorities and ministry of agriculture himself has the right to validate or not decisions taken at IBO level by its leaders. The statutes of these IBOs is currently reviewed (both [...]) but internal negotiations mechanisms remain and actors remain the same. This is further explained under Section 5.1 (French history of IBOs).

5.3.1.b. Collecting and sharing knowledge; and communication

Most of the interviewees have indicated that supply chains have benefited from IBOs activities as regards the **collection and distribution of technical and economic knowledge**. IBOs are centres of expertise which collect technical and economic data, discuss the findings and then distribute this knowledge to members of the IBOs. These actions also lead to "*normalisation*" of production based on development and implementation of technical norms which are reflections that happened in IBOs. This leads to a form of standardisation favourable to the functioning of agricultural "*global*" markets.

Another key benefit of IBOs relies to **improved communication between IBOs members**. By participating to IBOs activities, actors learn to work together and with all actors of the supply chain, from upstream to downstream. Several interviews have indicated that the presence of the agricultural inputs industry (e.g. feed producers, seed industry) within the IBO has helped to better understand their business model and their issues. A given operator in a complex supply chain is communicating with its direct suppliers and clients, and rarely with all actors of the chain. A butcher rarely communicates with a feed producer. IBOs reinforce these communication channels.

These relations can lead to the establishment of contractual links between different operators which are particularly useful for the development of quality oriented products where standards have to be negotiated. Additional, common languages between industry stakeholders can be more easily set-up. Members can discuss issues, exchange views and resolve problems together (by way of example, during the Spanish case study on olive oil-IAOE, the Italian olive oil IBO was presented as a counterfactual situation where the IBO is not as coordinated as the Spanish one and consequently different parts of the chain often spent time disagreeing with each other).

All in all, IBOs strengthen collaboration and coordination between various ranges of the supply chain and externally to the supply chain for domestic and international markets.

5.3.1.c. Sharing risks and profitability

The presence of an IBO in the supply chain allows for fairer distribution of risks. For example, when a promotion campaign is carried out, benefits are for the supply chain and its actors, being members of the IBO or not. However the distribution of these benefits per group of actors or per actor is not known as IBOs are not economic bodies. Evaluation of promotion campaigns is performed done and potential positive economic impacts are identified after the completion of the campaign. However when these economic impacts are quantified (e.g. the promotion campaign leads to a consumption increase of 1.5%) no systems allows to measure how these benefits are distributed per group of actors within the supply chain. One may consider that these benefits are also distributed to the non-members of the IBO which are profiting from the promotion campaign but not funding it if extension was not applied. However one may consider, on a case by case basis, that benefits are not distributed to all actors (regardless if they are members or non-members).

For example, if the promotion campaign objective is to increase sales of Bordeaux wine in China, only the actors that are selling their wine on that market may directly benefit from the campaign if it is successful. Producers in Bordeaux that have never marketed wine in China will not directly benefit from the action, even if indirectly the campaign may lead to an improved recognition of Bordeaux as a trademark, first in China but in other parts of the world too. In these cases, all wine exporters and their producers will indirectly benefit from the action mid-terms.

When a R&D programme aiming at identifying alternative crop protection or fertiliser products to chemicals is conducted, its results first benefit to primary production but also to the complete supply chain actors being members or not of the IBO.

However one may consider that these activities do not profit equally to all producers, and especially to minorities (e.g. alternative agricultures, conservation varieties, etc.). Development of new products and new production techniques led to standardisation of production and to selection of the most competitive farmers who could adapt to standards, then their concentration and ultimately their disappearance.

Same principles apply in case of emerging risks that the supply chain could be confronted to (e.g. new animal disease in the supply chain). In these cases, trust built between IBO members over time is also been seen as a benefit. For example, for several interviewees, this trust has been as a supporting argument to implement an effective traceability system in the agro-food supply chain.

5.3.2. Challenges to fully obtain these benefits

IBOs are confronted to several challenges that may limit obtaining these benefits.

The first main challenge is linked to the concerted management of interests. The analysis of interbranch dynamics identifies the need for collective learning on dialogue for the proper functioning of the supply chains for the interest of all actors. Dialogue is adopted as a means which makes it possible to improve the functioning of the commodity chain. However, the organisation of dialogue has to be preceded by a pre-condition, which is the clarification of the interests of the different categories of actors and the

construction of a common position. This dynamics is ongoing and the formulation of common discussed and agreed positions still remains a big challenge on a good number of commodity chains. Each time a new subject is at stake, an additional *ad hoc* dialogue needs to be established.

Financing of IBOs. Theme 2 and Theme 3 clearly highlight that funding of IBOs management and activities are an issue. Collective actions decided by individual IBOs can only be implemented correctly if the IBO has enough resources to guarantee the correct implementation of these actions which are in general organised on several months or years. For example, funding of R&D activities has to be planned for several years and not only for a few months. IBOs need to have clear view on resources to be expected for a *minima* a period of five years. Funding issues is observed in several countries and in almost all cases membership fees appear inadequate for the IBOs to carry out all activities it would like to implement.

The role and interaction with public authorities. Analysis of the history of IBOs, especially in France, shows that the success of dialogue between actors in the IBOs is partly determined by the role of public authorities. Several interviewees have indicated that dialogue within IBOs between economic actors with different objectives is not always easy. Competitive issues may lead to internal disputes. Public authorities are considered as potential moderators when such types of problems are being faced. Public authorities are often, but not always, associated to these discussions due to the interactions between the IBO and the public authorities especially when IBOs are carrying out activities on the behalf of competent authorities (e.g. seed certification for GNIS in France). They also have interests as an actor or observer but at the same time have to protect the general interest. Its capacity to reconcile the interests of the different actors has been determinant to guarantee the respect of engagements particularly within the framework of the extension of agreements to all actors.

5.3.3. Impacts of IBOs actions and bargaining power within the supply chain

The role that IBOs play in term of **bargaining power** has been discussed during the case studies and the interviews. Upstream actors (mainly farmers and processors) are generally viewed as a relatively weak link in the agro food supply chain as opposed to downstream actors, such as retailers, with operators' economic weakness often resulting in limited bargaining power and reduced competitiveness for the sector as a whole¹²⁰. Evidence reveals the existence of unfair trading practices (UTPs) among different members of the food supply chain within the context of the EU¹²¹.

A significant part of scientific argumentations pursue the assumption that trading practices within the food supply chain can be characterised as being subject to a rather top down hierarchy at the expense of less powerful actors, mainly farmers, suppliers or small retailers^{122,123}.

This considered, since the establishment of a common agriculture policy, the EU has been trying to remedy to this unbalance within the agri-food chain, namely by strengthening

¹²⁰ [Bijman, J. G. Ton, G. Meijerink. 2007. Empowering Small holder Farmers in Markets: National and International Policy Initiatives. WUR: Wageningen.](#)

¹²¹ The present paper follows the thematic division of UTPs conducted by Renda et al. 2014. Its definition of UTPs encompasses: 1) Lack of clarity in contract offer, 2) Lack of written contract, 3) Abuse of economic dependence/bargaining power, 4) Liability disclaimers, 5) Unilateral modification clauses, 6) Terms unreasonably imposing or shifting marks, 7) Unfair use of confidential information, 8) Unfair use of confidential information after contract expiry, 9) Unfair breaking off of negotiation, 10) Unfair contract termination and 11) Refusal to negotiate.

¹²² Morgan, Kevin/Mardsen, Terry/Murdoch Jonathan (2006): *Worlds of food: place, power, and provenance in the food chain*. Oxford: Oxford University Press

¹²³ Konefal, Jason/Mascarenhas, Michael/Hatanaka, Maki (2005): *Governance in the Global Agro-food System: Backlighting the Role of Transnational Supermarket Chains*. In: *Agriculture and Human Values*, 22 (3), 291-302.

farmers' position on the market through different policy instruments, including *i.a.* the establishment of producer organisations (horizontal integration) and IBOs (vertical integration). When several publications discuss the benefits of setting-up POs in the supply chain with regard to bargaining power vis-à-vis other actors (manufacturers, distributors, and retailers)¹²⁴; it seems that very few literature exists that addresses impacts of IBOs on the bargaining power of upstream actors in the agro-food supply chain.

Interviewees met during the study have clearly indicated that, to their opinion, the presence of IBOs in the supply chain has little, if any, impact on asymmetries in bargaining power between actors. This is mainly explained by the fact that IBOs are not involved in price fixing or price negotiations. IBOs are present in the supply chain, but they are not active in any commercial relationship between actors. Commercial and trade negotiations are not taking place in the context of the IBOs. This is a major difference with POs as highlighted by Van Herck in a report for the European Commission in 2014¹²⁵. Van Herck concludes that *"It is well established in the economic literature that individual farmers may benefit from being a member of a PO through different channels (Williamson, 1985). First, by pooling their agricultural output, farmers may strengthen their bargaining power vis-à-vis potential buyers ("downstream") and input suppliers ("upstream"). Second, by pooling their output, farmers may reduce the risks that are associated with farming activities. This includes the price risk, but also the risk of a hold-up by a buyer. Third, by pooling their agricultural output, farmers may gain market access to marketing channels where previously they did not get access to (e.g. delivering to supermarkets) as in some situations (but not in all), buyers prefer to purchase from larger farmers (lower transaction costs). Fourth, by pooling their agricultural output, farmers may be able to benefit from economies of scale. This may allow them to make specific investments, in particularly in assets or services for which the fixed costs are high as by pooling their output they are able to reduce the average fixed cost associated with the investment. In addition, by pooling their output, transaction costs are reduced"*.

There is however a few mechanisms that might enable IBOs' actions to impact bargaining power indirectly. The IBOs can e.g. influence the bargaining power of (part of) its members by drawing up of standard contracts and implementing binding rules, by increasing transparency, by collective promotion and by funding research. Creating transparency may increase the bargaining power of farmers, although it cannot be the task of an IBO to publish real-time and detailed price information. Promotion of (certain) products nationally or internationally may increase demand and therefore create a shortage of supply which could benefit the bargaining power of suppliers. Research efforts may lead to better quality products or products that are better aligned with consumer preferences, also increasing demand for these products. However, the quantitative effects of such measures are very difficult to establish as the IBOs' actions are just few of many actions by many stakeholders.

With the absence of price negotiation activities IBOs can hardly contribute to a better distribution of the margins in the chain in a direct manner. The first step for this would be to understand how margins are distributed between actors and what the mechanisms for any evolution are. IBOs can monitor prices within the supply chain but can hardly work on monitoring actions related to margin distribution as this information is hardly available and members of the supply chain are not ready to present all this information to a forum in which commercial partners but also competitors are present.

¹²⁴ A summary is provided by Van Herck K. 2014. Assessing efficiencies generated by agricultural Producer Organisations. Report for the European Commission (DG COMP). Available at http://ec.europa.eu/competition/sectors/agriculture/overview_en.html

¹²⁵ Van Herck K. 2014. Assessing efficiencies generated by agricultural Producer Organisations. Report for the European Commission (DG COMP).

The research has not identified any studies that have analysed the benefits of being members of an IBO on productivity and on farmers' income. The rationale presented above and the complexity of the subject matter explains this situation. As regards POs, Van Herck adds that *"in general studies do not distinguish between the different channels through which membership of a PO affects farmers' income or productivity (increase in bargaining power, risk reduction, market access or provision of specific services enabled by economies of scale). Often the different channels are interlinked and it is not possible to disentangle the separate impact of the each channel"*

Interviewees met during the study confirmed that to their knowledge they are not aware of any study of that nature. For them, benefits for farmers are indirect and intangible ones coming from the good functioning of the IBO itself, its positioning in the supply chain, collective research, promotion, and increased transparency.

5.3.4. Impacts of IBOs activities as regards CAP objectives

This chapter present the impacts of IBOs activities as regard CAP objectives. This assessment is mainly based on results of four case studies as literature hardly presents evidences in that respect. Due to the recent creation of the milk IBO in the Netherlands, no impact of the actions can be observed as actions have only been initiated recently. The analysis of the activities of each of the remaining four case studies leads to the situation where the main activities performed by these case studies are promotional activities.

Therefore this chapter presents first conclusions regarding the impacts of promotional activities on CAP objectives, before listing other identified benefits per IBO objective.

5.3.5.a. Benefits of promotional activities

It can be concluded that, through a contribution to the maintenance of a fairly steady level of consumption domestically and the opening of new market in other countries, promotional activities contribute to avoidance in adverse effects on **farmer income** and indeed may have had positive impacts on farmer income through the mechanism of volume.

It is difficult to draw conclusions on the impact of promotional campaigns on **income** through the mechanism of price. While the move up the quality scale on the domestic market has potentially had positive impacts in the domestic per unit sales price, it is difficult to understand how these economic benefits are distributed between actors of OBOs (see section on bargaining power above–5.3.3).

Same difficulty exists when it relates to directly connect domestic promotional activities to CAP objectives given that the objectives of the promotional campaigns have been on improving the sector image. That said, a positive sector image may lead to increased consumption which in turn may ultimately have impacts on **farmer income** and **growth**. Globally, while promotional activities may have had some positive impacts on per unit export value which could in turn have positive impacts on **growth** as well as potentially on **farmer income**, evidence for such a connection is more circumstantial than factual.

Additionally, it is reasonable to conclude that there is no connection between the promotional activities and **productivity or price stability**. Similarly, it is difficult to consider promotional activities to be a **risk management** tool; while the provision of market outlets may be considered to reduce risk in the long term, promotional activities cannot be considered a risk management tool.

Interviewees clarified that the main aim of promotional activities in terms of impacts was to create a long term market outlet, the timeline for judging the impact of promotional activities in relation to CAP objectives has then to consider these long term objectives. This assessment should be done a period of minimum 10 years. This was not the case for e.g. INTERPORC pig meat IBO in Spain.

While promotional activities have not improved **sustainability** per se, evidence suggests that they have made domestic consumers more aware of statutory sustainability requirements in the production area.

5.3.5.b. Benefits of other activities

The following table lists the major additional benefits that have been observed and inventoried during the case studies and completed by our expert judgement following literature review. These benefits, mainly of intangible nature, are sorted per IBO activity.

Table 27: Intangible benefits of IBOs as regards CAP objectives

IBO activities	Benefit level of the action and impact on CAP objectives				
	Farmer income	Productivity	Sustainability	Price stability	Risk management
(i)Improving the knowledge and the transparency of the production and the market through the publication of relevant statistical data in an aggregated form as well as via the analysis of future market developments	+	+	+	+	++
(ii)Forecasting of production potential, and recording public market prices	+		+	+	+
(iii)Helping to coordinate better the way the products are placed on the market, in particular by means of research and market studies	+	+	+		+
(iv)Exploring potential export markets			+	+	+
(v)Drawing up standard forms of contract, compatible with Union rules, for the sale of agricultural products to purchasers and/or the supply of processed products to distributors and retailers	+		+	+	+
(vi)Exploiting to a fuller extent the potential of the products , including at the level of market outlets, and developing initiatives to strengthen economic competitiveness and innovation	+		+		+
(vii)Providing the information and carrying out the research necessary to innovate, rationalise, improve and adjust production and, where applicable, the processing and marketing	++	++	++		++
(viii)Seeking ways of restricting the use of animal-health or plant protection products , better managing other inputs, ensuring product quality and soil and water conservation, promoting food safety, in particular through traceability of products, and improving animal health and welfare	++		++		+
(ix)Developing methods and instruments for improving product quality at all stages of	+		++		+

IBO activities	Benefit level of the action and impact on CAP objectives				
	Farmer income	Productivity	Sustainability	Price stability	Risk management
production and, where applicable, of processing and marketing					
x) Taking all possible actions to uphold, protect and promote organic farming and designations of origin, quality labels and geographical indications	+		++		+
xi) Promoting and carrying out research into integrated, sustainable production or other environmentally sound production methods	+		++		+
xii) Encouraging healthy and responsible consumption of the products on the internal market and/or informing about the harm linked to hazardous consumption patterns	+		++		+
(xiii) Promoting consumption of, and/or furnishing information concerning, products on the internal market and external markets	Discussed under 5.3.5.a.				
xiv) Contributing to the management of by-products and the reduction and management of waste.	+		++		+

5.3.6. What makes IBOs unique in the supply chain?

Many vertical associations may co-exist in the supply chain. IBOs are specific and unique for several reasons in comparison to these other forms of cooperation (e.g. cooperatives, POs, APOs), as follows:

- The recognition of the organisation by public authorities provides the IBO a leading role in the supply chain. This recognition set-up a hierarchy in the supply chain. It clearly indicates that public authorities have decided to design the IBO as the primary contact point in the supply chain when it relates to objectives and role of the IBOs;
- The IBO is, also, the entry into the supply chain (at least for stages covered by the IBOs) for competent authorities. In case of crisis (e.g. food safety), the first contact can be the IBO that can further communicate within the chain;
- Relationships in the IBOs are not forced by economic relationships. Members are present in such organisations, not because they have commercial dealings with the other members, but because they find advantages to be represented in an entity which fosters the development of the entire food supply chain. The absence of direct commercial considerations in IBOs and the focus on the 'chain' issues for the benefit of all members provides flexibility in the overall governance of the organisation;
- IBOs produce agreements. These agreements constitute the centrepiece and the symbol of the organisation. Indeed, this agreement materialises the purpose of the organisation and consolidates the common strategies set-up by the members. It sets the "rules of the game" for (part) of the supply chain;
- IBO may ask competent authorities to make their decisions binding and have, therefore, by using the mechanisms of extension, an "associated regulatory power";

- In France IBOs fulfil general interests, in particular via the delegation of public authority tasks (such as certification, etc.).

CONCLUSIONS

This part of the report aims at providing some general conclusions regarding the overall functioning of IBOs.

The research undertaken for this study allows presenting a detailed description of the development of IBOs and an analysis of their functioning in the EU. These conclusions emerge directly from the main findings presented in each of the three study themes.

A continuous grow of the number of IBOs in the EU.

Nineteen MS have developed national legislation dedicated to IBOs. The first legislation was the French Law 75-600 of 1975. The Netherlands and Poland have recently modified their national legal framework to include new provisions as regards the recognition and functioning of IBOs (2014-2015).

Since the adoption of national laws the number of recognised IBOs defined in practical terms as *"the relationships woven between the various occupational categories involved in the production, marketing and - where appropriate - processing of any given agricultural product or product group"* **has been growing.**

By 1 June 2016 **123 IBOs have been recognised by national authorities in 8 different MS (EL, ES, FR, HU, IT, NL, PT, RO).** From an initial analysis, it may be considered that four IBOs concern sectors which are not included in Annex I of the CMO. These 4 IBOs are namely the BNIC-Cognac in France, the BNIA-Armagnac in France, INTERAL-animal feed in Spain; and INTEHELIX-other products-snails in Spain).

The number of IBOs has increased from 56 IBOs in 1990 to 123 (119+4) in 2016. The recognition of additional ones is planned during the second semester (F&V in the NL, banana in FR, 2-3 in EL). In the 1980-1995 period the growth was mainly observed in France. Since then it has concerned 7 other MS (Greece, Hungary, Italy, the Netherlands, Romania, Portugal, and Spain). To date, 8 MSs have recognised IBOs. More than half of the recognised IBOs are located in France (63) for 60 located in the other 7 MS (7 in Greece, 6 in Hungary, 3 in Italy, 27 in Spain, 7 in the Netherlands, 5 in RO, and 5 in Portugal).

From the European Commission recognition of the role and functions of IBOs to Regulation (EU) No 1308/2013

The existence of IBOs voluntarily established on the European market first drew the attention of the European Commission in the mid-eighties. It prompted the Commission to adopt a Communication on IBOs' future role and functions under the Common Agricultural Policy (CAP) regulatory regime in 1990.

During the period 1990-2013, provisions on the recognition and functioning of IBOs were progressively introduced in a limited number of agricultural sectors (olive oil, fruits and vegetables, milk and milk products, and tobacco). The move to cover interbranch activities for all agricultural sectors was only done with adoption of Regulation (EU) No 1308/2013.

Provisions on IBOs included in Regulation (EU) No 1308/2013 are based on a number of key principles, including:

- Recognition of IBOs by national authorities resulting from the initiative of all or some of the organisations or associations that constitute them;
- Recognition is subject to general conditions, and in particular the need for the IBO to gather representatives of economic activities linked to the production and to at least one of the following stages of the supply chain account for a significant share

of the economic activities in the supply chain (representativeness), and do not engage themselves in production, processing or trade¹²⁶;

EU legislation provides that IBOs operating in a specific economic area of a Member State may request the national authorities of the latter to **extend to operators that are not members** - with binding effects though for a limited period of time - some of the agreements, decisions or concerted practices applicable to them. Such agreements, decisions or practices may concern several activities, including, but not only, production and market reports, production rules stricter than EU or national law, drawing up of standard contracts, measures to protect organic farming and products under quality schemes.

The analysis of national legislation at Member States, which was mainly adopted before adoption of Regulation (EU) No 1308/2013, shows that this is based on the same main principles laid down in Regulation (EU) No 1308/2013. Only a few MS have reviewed their legislation to align it to provisions of Regulation (EU) No 1308/2013.

Analysis of the functioning of IBOs in the EU.

IBOs represent a very specific type of vertical cooperation within the agro-food supply chain. They are the **result of a long history and commitments of actors**; in particular of primary producers, often in difficult and very diverse situations (e.g. responses to crisis).

Vertical cooperation and legislation on grouping of actors or on the official recognition of interbranch agreements in the agro-food supply chain **have existed in certain EU Member States for more than 80 years**. One of the first agreements between different actors of the supply chain to be officially recognised concerns sugar and dates back to 1931 in France. Beet producers and sugar factories agreed on rules for fixing prices and for limiting volumes of production in order to overcome overproduction. In Spain, the origins of the current IBOs may be traced back to 1932. In the Netherlands, laws were in place since 1950 on the establishment of so-called public statutory organisations ("*Wet op de bedrijfsorganisatie*") which regulated, amongst the others, the functioning of the Commodity Boards ("*Productschappen*") which can in part be seen as predecessors of the current.

Supply chain organisation (number and type of organisations and cooperations), type and dynamic of actors are specific to each sector and to each MS: what is true in one sector/MS may be false in another one. The functioning of IBOs has to take into consideration these external factors present in the same supply chain. IBOs (when recognised) are, only, one of the component of a given supply chain.

Additionally, **the analysis of the functioning of an IBO depends on the maturity of the organisation**. Recently established IBOs (less than 10 years) may be too young to analyse their full functioning. Finally, **it is difficult to "compare" the functioning of different IBOs and to assert that one national experience may be replicated in other MS as the political, economic and historical context varies significantly**.

The analysis of the case studies and the available literature suggests that **IBOs may play an important role in several areas. They promote dialogue between government and stakeholders, and between actors/stakeholders present in the supply chain. They maintain compliance with trade and other regulations, and support the improvement of the quality and safety of products. Additionally, they supply markets information.**

¹²⁶ To the exception of IBOs in olive oil, olive tables and tobacco sectors.

Conditions for the good functioning of IBOs

On the basis of this analysis, the study identifies conditions that make that an IBO is “working well”. Regardless of the historical facts that have played a significant role in the emergence and in the shaping of IBOs, several main factors ideally need to be present for their optimal functioning:

- **The IBO is a structure which is created on a voluntary basis and is an entity of private nature.** These two characteristics are essential: free initiative from the sector and private status are in fact interrelated as one can hardly go without the other. It is important to highlight that IBOs are created based on initiatives coming from supply chain stakeholders (in most cases, from producers) without any intervention from public authorities during their establishment. These structures need to operate based on mechanisms of private law, completely and freely negotiated by the members of the association. IBOs can only work if the production sector is already structured (i.e. governance and relations between actors are in place) and if the IBO guarantees the representativeness of all its components, and therefore is able to develop a strategic vision shared by the different sensitivities present in the organisation. Legislation promotes these initiatives as the recognition principle provides for an unique position (an official reference) of the organisation within the supply chain;
- **IBO are effective when products or groups of products are clearly identified.** Products of second or third processing are not really manageable in IBOs, especially if ingredients come from very different areas. This can certainly be one of the reasons why second+ processors and retailers are not often members of IBOs.
- **Vision and leadership.** The IBO is set up by organisations who are recognised as leading by the members that they represent, and has a clear objective that and idea about the tasks of the IBO that is warranting the support of potential members from different stages of the supply chain.
- **The IBO is an organisation that groups several “businesses”.** It groups economic actors which are competing on the market but who have decided to join forces in a structure which has no dimension as regards price fixing and price negotiations. Preferably, there is only one IBO per product or group of products to avoid conflicts of competences. Commercial transactions are happening between members of the IBOs but they are not part of the IBO. IBOs have no commercial activities. This specificity differentiates IBOs from other cooperation forms such as e.g. producer organisations, cooperatives, clubs, etc.);
- **IBOs are effective when they focus on collective interests; issues of commercial negotiations between members are kept out of any IBO discussions.** The goals of the IBO are to promote and discuss common interests. These may relate to issues regarding market transactions or trading practices in general, but never are commercial negotiations themselves part of the activities of an IBO. Projects aiming at consolidating the positioning of the complete supply chain via e.g. promotion campaigns of a generic product for export benefit all members.
- **When competing issues are being discussed within IBOs, tensions appear.** Their overall functioning is immediately impacted;
- **The structure of the IBO is less relevant.** It has to be developed in the IBO statutes based on the specificities of the supply chain and it can take various forms as legislation provides flexibility for that. Additionally, the actual legal status and nature (public vs. private) of the IBO are all in all not that relevant for its functioning. What matters is the trust, confidence, and relationship that exists between members and their representatives;

- **IBOs are organisations that are legitimised by and associated to regulatory authorities.** Apart from recognition, the mechanism of extension of rules or fees which results from interbranch agreements plays a pivot role in the (good) functioning of IBOs. What is of critical importance is the full application of the IBO principles consisting in recognition criteria and principles related to extension of rules. It is largely when these two principles are fully applied that IBOs are in a position of good governance and optimal functioning. The application of these principles creates an “*associated regulatory power*” for IBOs. Positive MS attitude towards IBOs are an additional factor of good functioning.
- Additionally; **the regular use of the extension of rules principle leads to the creation of a link between all actors of the supply chain that are present in the IBO and with competent authorities.** It is only when actors are participating to the efforts that IBO objectives can be fully reached. There is a hierarchical relationship of subordination of individuals and any other type of cooperation (e.g. producer organisations, cooperatives, processors, and traders) *vis-à-vis* the collective and central instance of IBOs which is created via the recognition and extension of rules principles. The regular application of extension of rules leads to several other consequences that reinforce the sustainability, funding, and leadership of the IBO in the supply chain. It engages competent authorities as they “*validate*” the agreements (members and non-members of the IBO). This commitment provides credibility to IBOs and positions it as “*the*” privileged interlocutor in the supply chain. This certainly explains the French “*unicity*” principle that only one IBO can be recognised per sector in a given economic sector. With several IBOs in the same sector, this leadership would have to be shared between different parties, and therefore the strength of this principle would be diluted (e.g. olive oil sector in Spain where 3 IBOs coexist). Conflicts exist in the French cider supply chain as 2 IBOs have been recognised: IDAC and UNICID.
- **Clear relation to competition law is also a prerequisite for a good functioning of IBOs.** Competition rules at EU and national level have occasionally conditioned the functioning of IBOs, by casting doubts on the lawfulness of some of the core activities of these organisations, amongst which, for instance, the possibility for an IBO to extend its own rules to non-members.

Against this background, in 2011 the intervention of the European Court of Justice cleared some of such doubts by settling that the mandatory extension of fees to non-members for the financing of IBOs does not constitute State aid, as long as it is ascertained that the specific conditions set by Article 107 par, 1 TFEU do not occur. The case law and/or the administrative practices of a few Member States have also contributed, over time, to drawing the line between activities that IBOs may legitimately pursue and those that, instead, are not permitted as deemed in contravention of antitrust rules.

In this context, the activities that may be construed as price fixing agreements are the practices that national competition authorities have been scrutinising most frequently to date. Notwithstanding this, in certain Member States there seems not to be yet a sufficient degree of legal certainty in this area, which ultimately results in the absence of recognised IBOs and/or low support by public authorities towards the establishment of such organisations¹²⁷.

¹²⁷ In this context Article 210 of Regulation (EU) No 1308/2013 clearly indicates what is never allowed (black list of practices including price fixing). Additionally this is clearance system by the Commission to solve these issues. This system can be used by IBO (and to a certain extent by the MS, who normally is informed by any such notification of the IBO) to get legal certainty of what is possible and not.

In light of the above, ensuring increased legal certainty, at EU as well as national level, regarding the activities that IBOs may undertake without infringing competition law is a desirable step to take with a view to facilitating the setting of IBOs in the EU in the long term.

These pre-requisites for the good functioning of IBOs is the result of an analysis that has taken several decades.

The analysis is largely based on the long experience with IBOs in France, although the experiences in the other MS have contributed to the confirmation of the findings as well. In the majority of the other MS in which IBOs have been recognised, IBOs have been created much more recently. Therefore one could consider that these structures are too recent for performing a full analysis of their functioning.

However it can be observed that **the principle of extension of rules is rarely applied outside France**. This leads to numerous situations where the budget of IBOs is too low to initiate interbranch dynamics or even to cases where IBOs carry out no activities for several years.

The full implementation of these rules is essential to the proper functioning of the IBO, but a few other elements may disrupt its functioning. This study identifies that the most successful IBOs in terms of impact on the supply chain, legitimisation by members and CA, as well as finances, are the ones that are most inclusive terms of the tasks that they perform. **Inclusive IBOs** are lobbyists as well as advocates of their members in the public debate; partners in policy making as well as carrying out delegated tasks; sources of information for members and other stakeholders, and promoting transparency to markets; carrying out collective research and are partners in public-private partnerships (PPP) to the benefit of their members and non-members; carrying out collective promotional activities to the benefit of their members and non-members; they are legitimised by representativeness of their members as well as by recognition in both legal and practical sense by the government; and they are sufficiently financed.

Issues on the functioning of IBOs

The weak representation of some actors (e.g. lack of plurality at primary production level in France, absence of retailers in a large majority of IBOs in all MS) of the supply chain is also an aspect that clearly needs to be addressed. The **issue of representativeness of the primary production branch** has been debated for 10 years in France now. Members of minority producer unions are requesting their presence as members in the IBOs. As they are paying fees via application of extension, they consider they must be given the possibility to express their views within the IBO. For these actors IBOs are working as if they were exclusive clubs. Progresses have been made during the last five years and minority unions have become members of IBOs in a few selected cases.

Only a few IBOs are covering the entire supply chain (from the farm to the table). **IBOs do not cover the complete supply chain**. In most cases, they are composed of 2 branches (primary production and first processing or distribution of agricultural products). Food distributors and retailers are rarely present. From a competent authority point of view, this means that the supply chain is segmented in two major blocks: the IBO, on the one hand, and the distributors/retailers, on the other hand. **This situation does not create the best conditions for discussions and negotiations within the supply chain.**

Transparency is also considered as an issue as regards the functioning of IBOs. This includes internal transparency (e.g. decision making process, publication of statutes online, publication of annual reports) and external transparency (e.g. communication with non-members, other stakeholders; and competent authorities in the supply chain).

Members of IBOs are associations representing various segments of the supply chain (or part of the supply chain). Considering the necessity to ensure broad representation of the sector, this approach makes sense. However, this leads to inevitable problems. The absence or delay in developing of producers' associations in some new MS, and the lack of adequate associations representing minorities are other problems being faced by IBOs.

The real benefits of IBOs are hardly quantifiable, but they are clearly recognised by Members.

The real benefits of IBOs, as regards CAP objectives, over other forms of vertical cooperation are clearly present as mentioned by a large majority of interviewees but under an intangible format. IBOs are entities which are not buying/producing/selling products and which are not involved in price fixing or price negotiations. All discussions revolve around technical and non-economic matters, even if they involve economic actors. Therefore, benefits are indirect and of intangible nature as they are difficult to quantify. Additionally, IBOs seem to have limited bargaining power in the supply chain. To that, it can be responded that if economic actors are present in such types of organisation against payment of fees, they consider that membership is valuable.

IBO: tools for the development of supply chain?

IBOs may play a key role in the functioning of the supply chain, and therefore in developing the food supply chain for the benefit of all actors. However, the vertical cooperation model cannot ensure such developments by itself alone. It is in fact only one amongst the tools that could be implemented in the supply chain. In several MS in which no IBOs are recognised, other types of vertical cooperation exist, according to the description of the current landscape. There is quite a diversity of situations, which might be seen as a sign of adaptation to national situations.

To obtain the benefits of interbranch organisations, components of the legislation (especially possibility of extension of rules and financing) and the conditions of success presented above must be implemented, even if these prerequisites do not provide guarantees of effectiveness. Effective participation of members and real commitment to collaborating must be present. Moderation by public authorities in stakeholders' discussions and disputes could also be seen as a factor of sustainability.

Even if the number of IBOs continues to grow at a regular pace, the full implementation of the "IBO concept" – i.e. the full use of legislative provisions, including extensions of rules and financing to non-members, and the establishment and establishment of close relationship between all actors being economic actors, other stakeholders and public authorities - is still under development. A majority of Spanish and Romanian IBOs have benefitted from national funding via subsidies at recognition. However, they currently suffer from lack of funding as subsidies have been stopped and no extension of rules is in place to date. The olive oil IAOE and INTERPORC IBOs in Spain have therefore considered it necessary to implement the extension of rules mechanisms to secure their long term funding. Finally, the Dutch IBOs have only been recently created and it is difficult to draw conclusions on their efficiency.

All in all, it seems beneficial that Member States reflect on whether IBOs (good) functioning is just brought about by further implementing Regulation (EU) No 1308/2013 or whether further steps are needed (e.g. how to set-up good working principles within the chain) to make the best use of IBOs for contributing to a good functioning of the supply chain. Each MS might thus consider defining the optimal conditions of the national "concept" (full use of all IBO provisions and optimal relationship between actors within and outside the IBOs). Under these conditions, IBOs could constitute efficient tools for vertical cooperation leading to further development of the supply chain.



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