

# **Study on agricultural interbranch organisations (IBOs) in the EU**

**AGRI-2015-EVAL-13**

## **National Legislation and Actions concerning IBOs**

### **BELGIUM**

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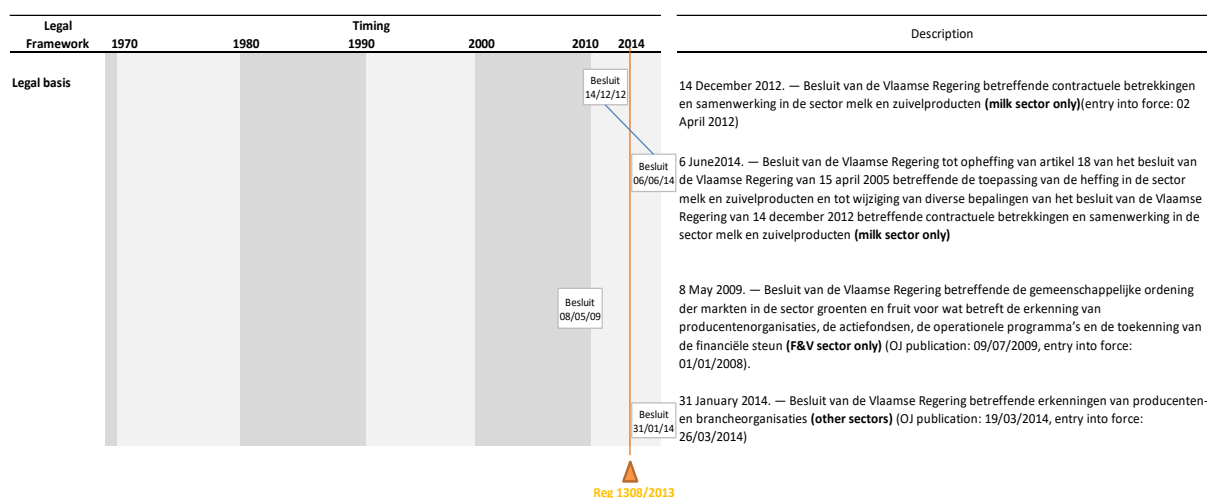
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**Belgium has a decentralised administration for agriculture. Therefore we present here the legislation of both Flanders and Wallonia regions. The German region has no legislation in place.**

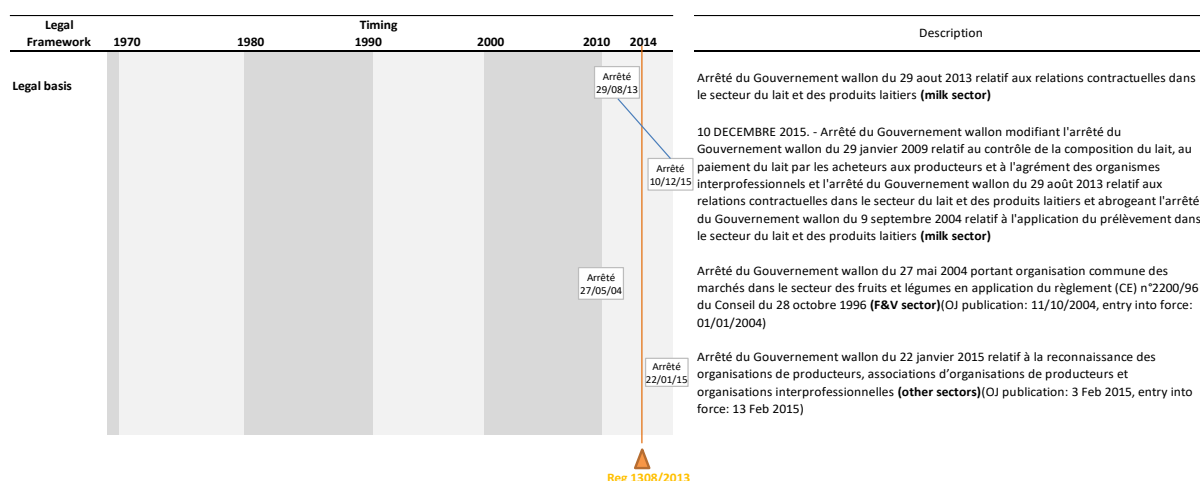
**Section 1: National legislation pursuant to Articles 157-IBOs, 158-Recognition of IBOs, 159 and 162-Recognition of IBOs in the olive oil, table olives and tobacco sectors and 163-Recognition of IBOs in the milk and milk products sector of the CMO Regulation**

*Figure 1: Legal basis for the recognition of IBOs in Belgium-Flanders*



Source: Compiled by Arcadia International E.E.I.G.

*Figure 2: Legal basis for the recognition of IBOs in Belgium-Wallonia*



Source: Compiled by Arcadia International E.E.I.G.

### **Summary of national legislation on IBOs**

Legislation related to agriculture is the responsibility of each of the 2 main regions (Flanders and Wallonia). There is no legislation in the German region. When the legal texts and their references are specific to each of the 2 regions, the structure of the legislation is similar.

In Belgium, there are 3 legal texts providing national rules governing IBOs. The first two ones concern the milk and F&V sectors, when the last one covers all "*other sectors*".

The establishment of national rules related to IBOs in the F&V sector dates back 2004. The rules addressing IBOs in the milk sector entered into force in 2012, and the rules for "*other sectors*" have been established after entry into force of the sCMO Regulation (Early 2014 in Flanders and early 2015 in Wallonia). In the Flanders region only, the milk rules for the milk sector have been reviewed after 2014.

Provisions related to IBOs in general terms are not different from Wallonia to Flanders. Additionally, the legal framework related to "*other sectors*" which has been established after the entry into force of Regulation (EU) No 1308/2013 groups summarises all previous obligations and aligns obligations in all sectors. Therefore we present here obligations as listed in the 2014 and 2015 legislation published by Flanders and Wallonia governments, respectively.

### **IBOs: definition, objectives and legal status**

Belgian legislation defines "*organisations*" as a whole and does not distinguish between PO, APO and IBOs in its definition (Article 1 par. 2).

Chapter II- Section 1 presents common provisions related to the recognition of organisations (of which IBOs) in Belgium.

Article 3 indicates that recognition of organisations can be done in all sectors as defined under Article 1 par. 2 of Regulation 1308/2013 to the exception of the milk, F&V, and sugar sectors. The exceptions for milk and F&V can be understood by the fact that provisions already exist for these 2 sectors. This is not the case for sugar. Additionally, the legislation indicates that the competent authority can recognise organisations per sub-sector (no definition of these sub-sectors is provided).

The objectives of the organisations have to follow the objectives as listed in the CMO Regulation. However, the Ministry can recognise IBO with additional objectives. This analysis is done on a case by case basis when assessing the request for recognition submitted by the organisation.

The objectives that the organisation should pursue are not defined in the Belgian legislation. Article 15 of the legislation indicates that the organisation should follow one or several objectives as listed under Article 157 par. 1 of the CMO Regulation.

The Belgian legislation does not provide any detailed elements related to the legal structure of the organisation. The draft statutes of the organisation have to be provided

to national competent authorities but no specific legal form is required. However it can be mentioned that IBOs can be recognised with actors coming from the 2 different regions. Even if legislation is specific to one of the 2 regions, IBOs can include members from the 2 different regions.

### **IBOs' recognition and monitoring**

According to Article 5 of the legislation, organisations may be recognised if the conditions stated in Regulation (EU) No 1308/2013 are fulfilled.

In order to obtain recognition, organisations must submit the following documents:

1. Statutes of the organisation including organisation and governance of the organisation as well as description of technical and intellectual capacities of the organisation;
2. Any contracts regarding the founding and the activities of the IBO, such as company agreements;
3. A list of the organisation's members specifying their names, addresses and the date at which their membership started; and
4. Detailed documents describing the objectives of the organisation, the actions and projects already in place or foreseen in the near future.

The application together with the documents listed above must be submitted to **Ministry of Agriculture of one of the 2 regions**, which, pursuant to Article 6 of the legislation, is the responsible competent authority for the implementation of Regulation (EU) No 1308/2013.

The ministry has the right to add additional requirements (only based on the procedure) for the recognition of organisations. These additional requirements are defined case by case after initial review of the documents submitted by the applicants.

The Ministry has 4 months to grant or refuse the recognition of the organisation (Article 6). The decision of granting recognition is then published on the OJ.

Monitoring activities are foreseen by the CA (Chapter IV) but legislation doesn't provide any information on how these control and monitoring activities should be conducted.

Finally, Article 27 of the legislation indicates that all organisations recognised before 1 January 2014 which are fulfilling conditions of the 2015 legislation are then recognised pursuant to articles 154 par. 2 and 158 par. 2 of the CMO regulation.

### **IBOs' agreements: approval and extension of rules**

Provisions related to extension of rules are presented under Chapter III, Section 1 and Section 2 of the legislation. CMO regulation (Article 164 par. 1) provisions apply.

The Government has 4 months to accept or reject the request for extension. In case of acceptance, the ministry shall include sanctions and penalties in case of non-respect of the extension by non-members.

In case of request for extension of rules aiming at collecting fees from non-members, Article 21 par. 2 stipulates that the organisation can collect fees to run the projects mentioned in the request but not more. If an extension of rules is requested to cover the costs of a project of 2 million Euros, the maximum amount of fees that can be collected is equal to the budget of the project (2 million Euros)

### **Rules on financing**

The legislation doesn't include any provisions as regard funding and financing of organisations.

### **Rules on representativeness**

The Belgian legislation states in Article 18, that an organisation is considered as representative if criteria listed under Article 164 par. 3 of Regulation 1308/2013 are met.

*Section 2: Other national legislation relevant to activities and operation of IBOs pursuant to Articles 157-IBOs, 158-Recognition of IBOs, 159 (b) and 162-Recognition of IBOs in the olive oil, table olives and tobacco sectors and 163-Recognition of IBOs in the milk and milk products sector of the CMO Regulation*

Not applicable

*Section 3: History and list of IBOs pursuant to Articles 157-IBOs, 158-Recognition of IBOs, 159 (b) and 162-Recognition of IBOs in the olive oil, table olives and tobacco sectors and 163-Recognition of IBOs in the milk and milk products sector of the CMO Regulation*

Not applicable

*Section 4: Use of the available legal framework for IBOs and other forms of cooperation between producers and other stages of the food supply chain established in the context of CMO*

The Belgian legislation as regards the recognition of IBOs is managed by the 2 regions of Wallonia and Flanders. They are both basic legislation in the sense that they integrate EU obligations in the 2 regional laws. No additional provisions have been developed.

This situation can be explained by the fact that this type of organisations and its recognition is not seen as an interesting approach.

There are currently **no recognised IBOs** in Belgium nor requests of recognition pending.

However the term “*interprofession*” is being used in the supply chain. For example the “*Comité Interprofessionel Maraîcher*” is a grouping of vegetables producers only which acts as a producer organisation. Another example in the Walloon region is the “*Fédération Wallonne Horticole*”<sup>1</sup> which group different public and private actors of the supply chain. For example this structure includes the public schools specialised in horticulture and production of vegetables.

A second example is the IVB<sup>2</sup> (Interprofessionele Vereniging voor het Belgisch vlees) which is an association (ASBL) composed of different federal and regional professional associations from all activities of the supply chain (from feed production down to retail). The objectives of the association, its working principles, and its governance are similar to the recognised IBOs, but IVB has never requested recognition. It has to be noticed that several observers from different public authorities (food safety, finance, taxes, and regional ministries) are present in the IVB.

These two examples demonstrate that these inter-branch cooperations are managed by both public and private actors. They are larger in membership than just the economic actors of the chain as they include public authorities and other public bodies (public schools specialised in horticulture). This model of linking private and regional public bodies seems to be the best approach in both Wallonia and Flanders regions. Therefore, due to their structure, their funding (partly public), and their governance, these IBOs can't really be considered as full private organisations. Therefore they could not claim recognition. Additionally as it seems that these structured work well, there is no real reason to request recognition.

The federal government indicates to be in favour of such type of grouping of actors at upstream level in order to further develop a competitive agricultural and food supply chain. On its website, the federal government indicates to be in favour of grouping of actors that could discuss prices and volumes produced collectively<sup>3</sup>.

*Section 5: National practice concerning Article 210 CMO Regulation and decisions of competition authorities/national courts on the compatibility of IBOs activities/practices with national competition law*

Not applicable

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<sup>1</sup> <http://www.fwhnet.be/>

<sup>2</sup> <http://www.ivb-interprof.be/interprofessionele-vereniging-voor-het-belgisch-vlees.html?lang=1>

<sup>3</sup> Source:

[http://diplomatie.belgium.be/fr/politique/coordination\\_affaires\\_europeennes/politique\\_de\\_la\\_belgique\\_au\\_s\\_ein\\_ue/agriculture\\_et\\_peche](http://diplomatie.belgium.be/fr/politique/coordination_affaires_europeennes/politique_de_la_belgique_au_s_ein_ue/agriculture_et_peche)

### Section 6: Literature

- National legislation

14 December 2012. — Besluit van de Vlaamse Regering betreffende contractuele betrekkingen en samenwerking in de sector melk en zuivelproducten (milk sector only)(entry into force: 02 April 2012)

[http://www.etaamb.be/nl/besluit-van-de-vlaamse-regering-van-14-december-2012\\_n2013035011.html](http://www.etaamb.be/nl/besluit-van-de-vlaamse-regering-van-14-december-2012_n2013035011.html)

6 June 2014. — Besluit van de Vlaamse Regering tot opheffing van artikel 18 van het besluit van de Vlaamse Regering van 15 april 2005 betreffende de toepassing van de heffing in de sector melk en zuivelproducten en tot wijziging van diverse bepalingen van het besluit van de Vlaamse Regering van 14 december 2012 betreffende contractuele betrekkingen en samenwerking in de sector melk en zuivelproducten (milk sector only)

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2014060618](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2014060618)

8 May 2009. — Besluit van de Vlaamse Regering betreffende de gemeenschappelijke ordening der markten in de sector groenten en fruit voor wat betreft de erkenning van producentenorganisaties, de actiefondsen, de operationele programma's en de toekenning van de financiële steun (F&V sector only) (OJ publication: 09/07/2009, entry into force: 01/01/2008)

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=2009050824](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2009050824)

31 January 2014. — Besluit van de Vlaamse Regering betreffende erkenningen van producenten- en brancheorganisaties (other sectors) (OJ publication: 19/03/2014, entry into force: 26/03/2014)

<http://codex.vlaanderen.be/Portals/Codex/documenten/1023916.html>

Arrêté du Gouvernement wallon du 29 août 2013 relatif aux relations contractuelles dans le secteur du lait et des produits laitiers (milk sector)

<https://wallex.wallonie.be/index.php?mod=voirdoc&script=wallex2&PAGEDYN=indexBelgiqueLex.html&MBID=2014201464>

Arrêté du Gouvernement wallon du 27 mai 2004 portant organisation commune des marchés dans le secteur des fruits et légumes en application du règlement (CE) n°2200/96 du Conseil du 28 octobre 1996 (F&V sector)(OJ publication: 11/10/2004, entry into force: 01/01/2004)

<http://environnement.wallonie.be/legis/agriculture/aides/aide014.htm>

Arrêté du Gouvernement wallon du 22 janvier 2015 relatif à la reconnaissance des organisations de producteurs, associations d'organisations de producteurs et

organisations interprofessionnelles (other sectors)(OJ publication: 3 Feb 2015, entry into force: 13 Feb 2015)

<http://environnement.wallonie.be/legis/agriculture/code/code006.html>

- National competent authorities

Gouvernement wallon:

<http://gouvernement.wallonie.be/competences-du-gouvernement-wallon/agriculture>

Flanders landbouw and visserij:

<http://lv.vlaanderen.be/nl>