

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

**AGRI-2015-EVAL-13**

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

### **MALTA**

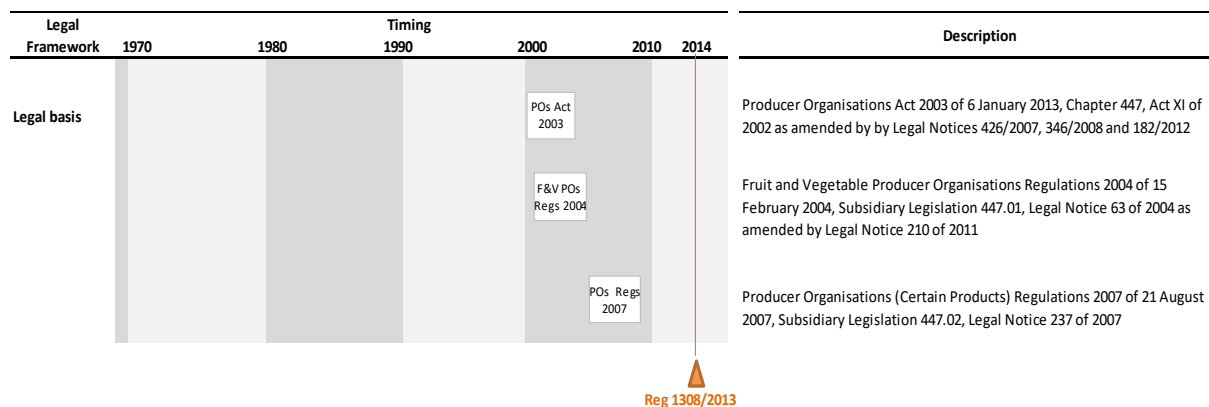
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[Section 1: National legislation pursuant to Articles 157- IBOs, 158- Recognition of IBOs, 159 and 162 – Recognition of IBOs in the olive oil, table olives and tobacco sectors and 163- Recognition of IBOs in the milk and milk products sector of the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

Figure 1: Legal basis for the recognition of IBOs in Malta



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

**Summary of national legislation on IBOs**

Malta established its first general legislative framework governing IBOs in 2002- 2003 by adopting the **Producer Organisations Act (POA)** of 6 January 2003 (CAP 447). Besides laying down provisions on the establishment and the functioning of producer organisations in the agri-food sector, this act lays down as well **general requirements** for the official recognition of cross-sectoral organisations as IBOs at national level and for the monitoring of their performance. Additionally, it contains a legal basis (Article 19) for the adoption of implementing rules concerning, inter alia, the criteria for recognition and representativeness of IBOs, the identification of product categories in relation to which IBOs may be established and the amount of sanctions to be imposed on IBOs that violate the legal requirements that are applicable to them.

Through the adoption of implementing legislation, notably the **Fruit and Vegetable Producer Organisations Regulations (F&V PORs)** of 15 February 2004 (S.L. 447.01), Malta has subsequently introduced **specific requirements** for the recognition and the functioning of IBOs in the fruits and vegetables sector.

Finally, further implementing rules - i.e. **Producer Organisations Regulations (PORs)** of 21 August 2007 (S.L. 447.02) – were adopted in 2007 in order to regulate the setting of producer organisations for specific products such as potatoes, pigmeat, poultry, traditional cheese, honey and rabbit meat. However, these rules refer to IBOs only to a limited extent.

Whilst the legislative framework currently in force in Malta appears to have been amended to take into account the adoption of Regulation (EC) No 1234/2007 on the common organisation of agricultural markets, no legislative adjustment have occurred to date following the entry into force of Regulation (EU) No 1308/2013. National competent authorities are planning to ensure **full alignment** with the latter regulation in **2016**.

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

**POA** defines an IBO as «*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*» (Article 2, third subparagraph).

On the other hand, **POA** does not contain any provision with regard to the objectives that IBOs may pursue. Regarding objectives of IBOs in the fruits and vegetables sector **F&V PORs** makes reference to the activities listed in EU legislation, namely Regulations (EC) No 1234/2007 and No 1182/2007.

Under Maltese law, associations/organisations formally recognised as IBOs by the national competent authorities acquire a distinct legal personality from that of their members (Article 11, par. 1).

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

In accordance with POA, the **Director of Agriculture** (or the Director of Fisheries) (hereinafter, 'the Director') within the national Ministry for Sustainable Development, the Environment and Climate Change is the authority responsible for granting recognition to organisations that are interested in acquiring the status of IBOs (Article 11, par. 1). Whenever an applicant organisation meets the conditions for recognition, the Director of Agriculture must grant it within the three months that follow the lodging of the application (Article 11, par. 2 (a)).

**F&V PORs** lay down **specific criteria** for the recognition of IBOs in the **fruit and vegetables sector**. In particular, the Director will grant recognition as IBOs to applicant organisations provided that they:

- a) carry out their activity in Malta;
- b) represent a significant share in the production of and/or trade in and/or processing of fruits and vegetables or products derived from the latter;
- c) carry out several of the measures foreseen by the relevant provisions regarding IBOs enshrined in Regulations (EC) No 1234/2007 and No 1182/2007;
- d) are not engaged themselves in the production or processing or marketing of fruits and vegetables or derived from their processing;
- e) present evidence that at least 75% of the members of the participating producer organisations are in agreement with the setting up of the IBO.

The same act sets out that, under national law, **only one IBO per product category** can be established (Article 18).

As regards the **representativeness** requirement, an IBO is deemed to fulfil it when it accounts for at least **two thirds** of the production and/or trade and/or processing of the product or products concerned (Article 21, par.2).

Pursuant to POA, any Director's decision involving granting, refusal or withdrawal of the recognition of an IBO must be notified to the Minister within two months from its adoption (Article 11, par. 2 (d)). The Director must also submit an **annual report** to the Minister concerning the activities performed by (producer organisations and) IBOs. Finally, every year, he/she must proceed to the publication of a **list of recognised** (producer organisations and) **IBOs** in the national Gazette. The same type of publicity is to be given to withdrawals of recognition (Article 12, par. 1 and 2).

As administrative acts, Director's decisions involving granting, refusal or withdrawal of the recognition of an IBO by the national competent authority are subject to judicial review. The **Administrative Review Tribunal** is the court competent to hear and determine all appeals against such decisions (Article 18). Appeals must be lodged within 20 days from the notification of the decision

Following recognition, **POA** foresees that the Director must perform **targeted and regular checks** with a view to ascertaining that recognised IBOs and their members duly comply with the conditions for their recognition also while pursuing their mission and performing their activities (Article 11, par 2 (b) and Article 16). For this purpose, he/she must designate, amongst his staff, some inspectors having regard to the suitability of their qualifications, technical knowledge and professional experience in the performance of this type of inspections (Article 17). In case an IBO no longer fulfils the conditions that govern its recognition or should it violate any provision under national law that applies to such entities, the Director must proceed to the withdrawal of the recognition (Article 11, par. 2 (c)).

As regards the violations of the legal requirements to IBOs, **POA** stipulates the general principle whereby IBOs' representatives ('officers') are deemed to be directly liable for said violations and, as such, subject to the administrative sanctions that national law may prescribe (Article 11, par 3). On the other hand, **F&V PORs** determine the minimum (1,500 EUR) and maximum (2,329.37 EUR) amount of financial penalties that can be inflicted on IBOs for any single violation of the national or EU provisions applicable to them. An additional fine (150 EUR per day) may be imposed for each day during which the violation persists (Article 25).

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

Whilst POA does not contain any provision regarding the possibility to extend IBOs' rules to operators that are not their members, **F&V PORs** regulates this aspect to some extent. More precisely, upon request of an IBO, the Director **may make some of its agreements, decisions or concerted practices binding**, for a limited period of time, **on other operators** – individuals as well as groups - in Malta which are not members of the organisation (Article 21, par. 1).

The extension of rules, however, is subject to the fulfilment of certain conditions. Firstly, IBOs' rules must concern one of the following activities:

- a) production and marketing reporting;

- b) drawing up of standard contracts;
- c) marketing rules;
- d) protection of the environment;
- e) measures to promote and exploit the potential of products; and
- f) measures to promote organic farming and quality schemes.

In addition to that, the rules in question must have been in force for at least one marketing year and cannot be made binding for more than three marketing years. Also, they should not cause any harm to other operators in Malta (Article 22).

### **Rules on financing**

In case an extension of rules has been granted and if one or more of the activities listed above are pursued in the general economic interest of the sector concerned, the Director may decide that operators that are not members of the IBO, but benefit from its activities, **contribute financially** towards the functioning of the IBO. Under these circumstances, non-members may be required to pay **all or part of the financial contributions** due by IBO members to the extent that such contributions are intended to cover the costs directly occasioned by the execution of the activities in question (Article 23).

### **Representativeness**

There are no specific rules on representativeness at national level except for those applying to IBOs' recognition.

*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 Regulation*

Despite the existence of a national legal framework on IBOs, **no request** for IBOs' recognition has ever been submitted to competent authorities.

The current absence of recognised IBOs in Malta may be explained taking into account, in the first place, that producer organisations, which are regarded as the starting point for the establishment of IBOs, are relatively weak and developed structures in the country namely the setting up of cooperatives are reputed to serve the required purposes. Whilst there are a few producer organisations currently in place (e.g. wine, tomato processing), it should be noted that several recognitions were withdrawn to producer organisations mainly in the fruit and vegetables sector in 2012-2013 because of their relatively poor governance.

Secondly, the administrative process for recognition of producer organisations as well as IBOs is perceived as highly complex and bureaucratic, thereby deterring stakeholders from engaging with it. In particular, too much information is required from producers in order to be able to partake in the setting of both organisations.

Thirdly, producers' mentality and culture play some role in this context as well. Indeed, producers, who are often individuals of an old age, are generally not keen on having a body/organisation managing their own produce. Therefore, producers tend to prefer to join forces under simpler organisational structures such as **cooperatives**, which are regarded as a cooperation model that functions to a satisfactory extent.

From their side, competent authorities fully recognise the potential benefits that IBOs may bring and would be ready to support and follow up their establishment in the country. It is in this spirit that they are leading on a review of the current legal framework on IBOs at national level in order to ensure full alignment with Regulation (EU) No 1308/2013 and a more detailed set of rules for IBOs' recognition. The **new legislation** in the pipeline, which should be finalised in June 2016, aims in particular at identifying with more clarity competent authorities relevant to IBOs as well as what is expected from producers and other actors of the food chain in this area.

As regards **other forms of cooperation** across the food chain that Regulation (EU) No 1308/2013 foresees for certain products (e.g. sugar, olive, live cattle, certain arable crops), none of this provisions has been implemented in Malta to date.

*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

*Section 6: Literature*

- National Legislation

Producer Organisations Act of 6 January 2003, CAP 447, Act IX of 2002 as amended by Legal Notices 426 of 2007, 346 of 2008 and 182 of 2012  
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8913&l=1>

Fruit and Vegetable Producer Organisations Regulations of 15 February 2004, S.L. 447.01, Legal Notice 63 of 2004 as amended by Legal Notice 201 of 2011  
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11075&l=1>

Producer Organisations (Certain Products) Regulations of 21 August 2007, S.L. 447.02, Legal Notice 237 of 2007  
<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11076&l=1>

- National competent authorities

Official webpage listing national legislation relevant to IBOs

<http://agriculture.gov.mt/en/agric/Pages/legislations.aspx>