

Study on agricultural inter branch organisations (IBOs) in the EU

AGRI-2015-EVAL-13

National Legislation and Actions concerning IBOs

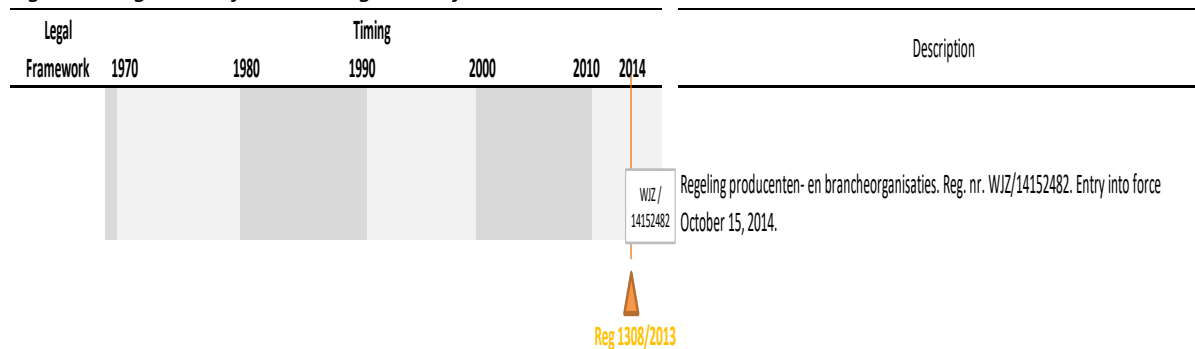
The Netherlands

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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 the Netherlands



Source: Compiled by LEI – Wageningen UR

Summary of national legislation on IBOs

Legislation governing IBOs in the Netherlands is laid down in the regulation “Regeling producenten- en brancheorganisaties”¹ (Reg. nr. WJZ / 14152482; signed October 10, 2014; in force from October 15, 2014) which is a Ministerial Regulation (hereafter: “*The National Regulation*”). The regulation applies to producer organisations, unions of producer organisation and interbranch organisations as defined in Regulation (EU) No 1308/2013. This regulation has not been changed since its entry into force.

Contrary to the EU Regulation the Dutch regulation does not apply to producer organisations or unions of producer organisations in the Fruit and Vegetables sector. These organisations are governed in a separate act “*Regeling uitvoering GMO groenten en fruit*” (nr. WJZ/13150516, signed December 2, 2013; in force since January 1, 2014, and amended several times), based on Regulation (EC) No 1234/2007, and national law.

Regarding interbranch organisations, the National Regulation permits the recognition of IBOs as referred to in articles 157 paragraph 1 and 3, and article 163 of the CMO Regulation. At the moment 7 IBOs have been recognised in several sectors including dairy, arable products (cereals, sugar, potatoes and other arable products), veal, eggs, and poultry meat.

The National Regulation implies that there is no specific provision in the law for the establishment of IBOs in the olive oil and table olives and tobacco sectors as the growing of these products is not relevant to the Netherlands.

The National Regulation allows for the extension of the rules to non-members provided that the extension criteria have been met. At this moment (May 2, 2016) the first decisions to allow for the extension of rules to non-members for the IBOs in Cereals, Sugar and Potatoes and other arable products has just been made. This decision is published in the “*Staatscourant*” (the official publication journal of the government) at

¹ Available at: <http://wetten.overheid.nl/BWBR0035634/2015-10-07/0/>

the end of April 2016.² Since the introduction of the regulation in October 2014 there have been no court rulings or cases against IBOs, and no changes to the legislation.

IBOs: definition, objectives and legal status

Formally a recognised organisation is defined in the National Regulation as “a producer organisation, a union of producer organisations, or a branch organisation that is recognised as such by the Minister, 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”. (see Article 1:1 of the National Regulation; translated from Dutch)

For the objectives of IBOs in the Netherlands, the National Regulation refers fully to the objectives specified in the CMO regulation under point c of article 157(1), or the activities as referred to in point c of article 157(3). In practice, the IBOs that exist in the Netherlands focus mainly on improving knowledge and financing research to the benefit of the relevant sectors, strengthening the economic competitiveness and innovation, and ensuring product quality throughout the supply chain. Although other objectives, like forecasting of production potential and the provision of independent market information were also mentioned. From the side of the government, the promotion of research at the interest of all its members and the promotion of common interests of the partners is seen as the main objective of the IBOs, although all the objectives listed in the Regulation are allowed.

There is no specific reference in the National Regulation to the legal status of the IBO, except for the obligation to provide with the application the number that the Chamber of Commerce has given to the organisation or to its members if these are available. The administration of the IBO should be in accordance with article 52 of General Law on State Taxes “*Algemene wet inzake rijksbelastingen*”³.

In practice, the existing IBOs in the Netherlands all have the legal status of “*Stichting*” (foundation) or “*Vereniging*” (association). The foundation is the most common legal form.

Rules on recognition of IBOs and monitoring

Rules of recognition of IBOs

With the request for recognition as IBO, the following has to be filed (see Article 4:3 of the National Regulation):

- a) the statutes;
- b) a description of the sector as referred to in article 1, paragraph 2 of the CMO Regulation, in which the IBO is active;
- c) a description of the objective or objectives as referred to in point c of article 157(1) or when relevant the activity or activities referred to in point c of article 157(3) of the CMO Regulation;
- d) a statement that the IBO has knowledge of article 210 of the CMO Regulation (on Agreements and concerted practices of recognised interbranch organisations);
- e) the name and domicile of the IBO;
- f) the unique numbers given to the IBO by the Chamber of Commerce or to the members of the IBO when available;
- g) the names of the Members of the Board of the IBO;

² <https://zoek.officielebekendmakingen.nl/stcrt-2016-23394.html>

³ Available at : http://wetten.overheid.nl/BWBR0002320/2016-04-01#HoofdstukVIII_Afdeling2_Artikel52

- h) a confirmation that the administration of the IBO will be in accordance to the provisions laid down in article 52, first paragraph, of the General Law on State Taxes; and
- i) the reasons for the request for recognition.

The application forms can be downloaded from the website of RVO (Netherlands Enterprise Agency of the Ministry of Economic Affairs) at <http://www.rvo.nl/file/formulier-aanvraag-erkenning-brancheorganisatiedoc-0>.

The relevant criteria for the establishment of representativeness in the decision to recognise an IBO is 25%. The significant share of the economic activities referred to in point (c) of Article 158(1), (the processing of or trade in, including distribution of, products in one or more sectors), the national law stipulates that the significant share of the activities within the relevant stages of production, processing or trade should at least be 25% for producers and 25% for distributors, processors or traders (See article 4:2 of the National Regulation). According to the Ministry of Economic Affairs, the Netherlands was one of the first Member States to implement a specific regulation on the implementation of Regulation (EU) No 1308/2013. The EU Regulation does not provide a specific threshold for the representativeness in each of the stages of the supply chain. Therefore, the Ministry – after consulting relevant experts – has decided to put the threshold at 25%, for recognition of the IBO. For extension of the rules to non-members the threshold criteria is at least two thirds in line with article 164 of the EU Regulation.

The applications are processed by the Ministry of Economic Affairs. The Ministry checks on the criteria and decides on whether or not to recognise an IBO as such. The decisions are communicated to the respective applicants and published in the Staatscourant (the official publication journal of the government)⁴.

With the recognition of IBOs in the Netherlands, the issue of the fixed list of products was seen as particularly prominent. This concerns the fixed list of products of article 1 of the EU Regulation. In the arable sector the farmers, processors and other parties involved wished to establish one IBO (for arable products). The main reason was that much of the tasks and financial reserves that were transferred from the former Commodity board for Arable Products cannot easily be divided between different products. The overarching BO Akkerbouw argues that much of the work is in the common interest of arable farmers irrespective of the products produces at the time. Note that arable farmers in the Netherlands generally rotate land between several products. This was however considered as not conform to the EU Regulation. The ministry has expressed its concern and intention to work on a solution together with the applicants.⁵ Finally, as mentioned, three separate IBOs were established. The BO Akkerbouw (Arable products) does still exist (but is not recognised) and coordinates the activities of the recognised IBOs. A same situation applies to eggs and poultry products, which also has an overarching coordinating organisation AVINED.

Monitoring of the IBOs

Monitoring of the IBOs is twofold. First, yearly before April 1, the IBO has to provide the following information to the Minister:

⁴ Contents of the Staatscourant can also be found at <https://www.officielebekendmakingen.nl/staatscourant>

⁵ See e.g. H.G.J. Kamp (Minister of Economic Affairs), Kaders voor erkenning van producenten- en brancheorganisaties en omgaan met verzoeken tot algemeen verbindend verklaring. Brief aan de Tweede Kamer der Staten-Generaal, 2014-05-28. kst-21501-32-788. <https://zoek.officielebekendmakingen.nl/kst-21501-32-788.html>

- a) a current list of members;
- b) if the IBO rules have been extended under articles 164(1) or 165, a current list of all market participants as represented by the IBO;
- c) the annual report and financial statement;
- d) the current statutes if any changes were made; and
- e) if it concerns an organisations from the sector milk and dairy products, the information as referred to in point f of article 149(2) or 149(6) of the CMO Regulation, if the activities referred to in these articles have been performed.

Second, The Ministry and The Competition Authority (ACM) monitor the activities of the IBOs. Specifically, IBOs are obliged by law to adhere to the rules laid down in articles 152, 153, 154(1), 155, 156, 157(1 and 3), 158(1), 161(1), 163(1), 164(1 and 3 and 4), 165, 209 and 210 of Regulation (EU) No 1308/2013. The role of the ACM is restricted to its normal role of supervisor of the markets.

Rules on the activities and operations of IBOs

As mentioned before, the objectives and activities that IBOs may pursue are in accordance to the Regulation (EU) No 1308/2013. Although for the extension of rules to non-members the National Regulation stipulates explicitly that that does not concern activities that are regulated elsewhere, or is violating the freedom of entrepreneurship in disproportionate manner or is not effective. One example is the use of private quality control systems, which cannot be made compulsory by extension of IBO rules.

Articles 164 and 165 on the extension of rules and compulsory contributions are fully implemented in the Netherlands. In addition the IBO that seeks for extension of the rules and provisions should be recognised and bound by its statutes towards all the market participants subject to the extension to the following (see article 5:3 of the National Law):

- a) The supervision of the compliance with the rule;
- b) The supervision of the payments of the financial contributions; and
- c) The imposing of a sanction against anyone who does not oblige to the rules or does not pay a contribution.

In accordance with the EU Regulation, in the sectors concerned two thirds of the operators in the respective supply chain stages (primary producers, and/or processors or traders) should be represented in the IBO before an extension of the rules or financing can be granted.

Extension of the rules and payments to non-members is possible and has very recently been provisionally granted to BO Cereals, BO Sugar, and BO Potatoes and other products.⁶ Explicitly the activities that are to be pursued relate to the financing of research and innovation. The extension will be granted later – if and only if – the statutes of the regarding IBOs have been changed to the effect that its members are obliged to pay the fees (as this was not yet the case). After the decision a formal period of six weeks during which stakeholders may object to the decision will start. The request of the concerning IBOs have been up for internet consultation between 3 December 2015 and 8 January 2016. There has been a limited number of reactions and objections to the request.

⁶ Kamp, H.G.J. (Minister of Economic Affairs), Voorgenomen besluiten verbindend verklaring onderzoek en innovatie akkerbouwsector en erkenning producenten- en brancheorganisaties. Den Haag, 12 februari 2016. kst-33910-25. <https://zoek.officielebekendmakingen.nl/kst-33910-25.html>

Rules on financing

There are no specific Dutch rules on financing of IBOs (apart from the rules in relation to extension and compulsory payments by non-members). General Law applies as it does to all private organisations and companies.

Representativeness

As already mentioned above, representativeness applies at recognition and when requests for extension of rules are requested. The Ministry – after consulting relevant experts – has decided to put the threshold of representativeness at 25%, for recognition of the IBO for each of the stages of the supply chain present in the IBO. For extension of the rules to non-members the threshold criteria is at least two thirds in line with article 164 of the EU Regulation.

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

Regarding IBOs specifically there is no 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.

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

Commodity board as precursor to IBOs

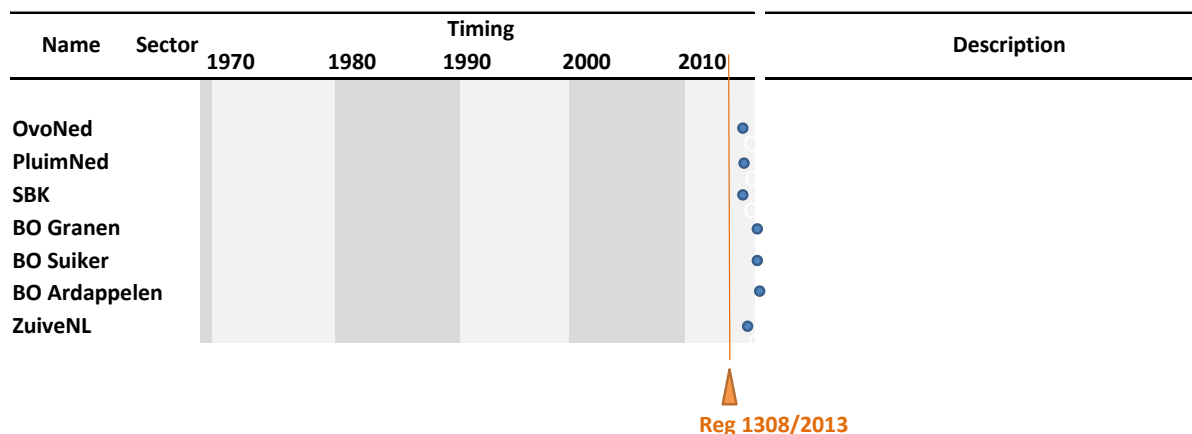
It must be noted that the branch organisations were already existent for a short period of time prior to the recognition and prior to the existence of National Regulation. These organisations were erected to succeed the so-called 'Productschappen' (Commodity boards) which were abolished as from the beginning of 2015. Commodity boards were Dutch public statutory industrial organizations (regulatory industrial organisation) of the companies active in successive stages of the production chain. A marketing board had public task in e.g. implementing some of the rules of the CAP, and thus also the power to levy charges and impose certain rules. At the same time it also acted as an interest group for companies in the industry and as an advisory body for the government. The Commodity boards were among others active in promoting quality improvements, sustainability and innovation, public relations and promotional activities, lay down rules and help to enforce government regulations, and act as a link to the government. These Commodity boards were different from Producer Organisations or Marketing boards in the sense that they did not (jointly) sell products or set prices. Their formation was regulated by the Dutch Constitution and the Industrial Organisation Act ("Wet op de bedrijfsorganisatie", in force since 1950). From the 1954 onwards a large number of

Boards were created, mainly in agricultural and horticultural product supply chains. Each board was headed by an executive committee, of which the members were nominated by the employers' organisations and trade unions. The executive committee comprised of an equal number of representatives from each of these two groups, and the chairman of each board was appointed by the government (SER, 2004). Commodity boards existed for Grains, Seeds and Pulses, Animal Feed, Wine, Dairy Produce, Poultry and eggs, Livestock and Meat, Fish and Fish Products, Horticulture, Margarine, Fats and Oils, and Beverages. Additionally a General Commodity Board for Arable Products existed which combined most of the regulatory and common work of the Commodity boards for Grains, seeds and pulses, Animal feed, and Margarine, fats and oils.

When, in 2012 and 2013 it became clear that the Commodity boards would be abolished some of the members of these organisations (mostly the primary producers, processors and wholesale traders) have been seeking to continue some of their cooperation. The EU Regulation provided the necessary framework. The IBOs have in most cases been a re-continuation of some of the activities of the Commodity boards, with partly the same members. This is why the IBOs have already been working on the formation of an IBO and the application for recognition prior to the official publication of the National Regulation in October 2014.

The first IBOs were recognised in December 2014 (formal recognition from January 1st 2015). There has been some lobby to recognise the IBOs fast without any additional national legislation. In the end, the national legislation was introduced implementing part of the EU Regulation, but only restricts or supplements the EU Regulation on a limited number of points. It was designed to be a lean law, only addressing those specific issues that are not covered in the EU Regulation. The decisions to recognise the IBOs in the Netherlands have been taken within a few months after the introduction of the National Regulation and the formal application under that law. The exception is the BO Cereals, BO Sugar, and BO Potatoes and other products. These applications initially did not comply as the members wanted to be recognised as one single IBO for arable products (BO Akkerbouw) which proved to be impossible under the EU Regulation (art 1) list of products. Three separate IBOs were then recognised: BO Cereals, BO Sugar, and BO Potatoes and other products. These recognitions followed in February 2015. In the case of arable products, the organisations involved first expressed their wish to become recognised as IBO at the end of 2013. The whole procedure was thus finished in somewhat over one year and within four months after the introduction of the National Regulation. The recognitions are valid until the end of 2020.

Figure 2: List of recognised IBOs in the Netherlands



Source: Compiled by LEI

The following IBOs have been recognised pursuant to Articles 157-IBOs, 158-Recognition of IBOs:

- OvoNed (eggs): 17-12-2014
- PluimNed (poultry): 18-12-2014
- SBK (calves): 17-12-2014
- BO Granen (cereal): 24-02-2015
- BO Suiker (sugar): 24-02-2015
- BO Aardappelen en overige akkerbouwproducten: 24-02-2015

The following IBOs have been recognised pursuant to article 163-Recognition of IBOs in the milk and milk products sector of the CMO Regulation:

- ZuiveNL (dairy): 18-12-2014

No other IBOs were recognised so far. In the horticultural sector, three organisations have filed for recognition of an IBO for fruit and vegetables. GroentenFruitHuis, LTO and fruit producers NFO applied in October 2015. The recognition decision has not been made public yet. The articles 159(b) and 162 have not been implemented further into national law in the Netherlands. All recognitions are published as letters from the Minister of Economic Affairs to the Parliament and published at <https://zoek.officielebekendmakingen.nl/> (see the list of Literature for the relevant documents).

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

No other than described in Section 3.

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

The Authority for Consumers and Markets (ACM) is responsible for the enforcement and monitoring of compliance with the competition law. All the rules of article 210 of the CMO Regulation are fully in force in the Netherlands. Article 101(1) TFEU has been implemented in national competition law "[Mededingingswet](#)" (BWBR0008691).

So far, no cases of non-compliance and no decisions of competition authorities/national courts on the compatibility of IBOs activities or practices with national law have been filed.

Section 6: Literature

Kamp, H.G.J. (Minister of Economic Affairs), Kaders voor erkenning van producenten- en brancheorganisaties en omgaan met verzoeken tot algemeen verbindend verklaring. Brief aan de Tweede Kamer der Staten-Generaal, Den Haag, 28 mei 2014. kst-21501-32-788. <https://zoek.officielebekendmakingen.nl/kst-21501-32-788.html>

Kamp, H.G.J. (Minister of Economic Affairs), Erkenningen op grond van de Regeling producenten- en brancheorganisaties. Den Haag, 19 december 2014. kst-33910-22. <https://zoek.officielebekendmakingen.nl/kst-33910-22.html>

Kamp, H.G.J. (Minister of Economic Affairs), Erkenningen op grond van de Regeling producenten- en brancheorganisaties. kst-33910-23. Den Haag, 24 februari 2015. kst-33910-23. <https://zoek.officielebekendmakingen.nl/kst-33910-23.html>

Kamp, H.G.J. (Minister of Economic Affairs), Voorgenomen besluiten verbindend verklaring onderzoek en innovatie akkerbouwsector en erkenning producenten- en brancheorganisaties. Den Haag, 12 februari 2016. kst-33910-25. <https://zoek.officielebekendmakingen.nl/kst-33910-25.html>

National Regulation: "Regeling producenten- en brancheorganisaties". Reg. nr. WJZ / 14152482. Signed October 10, 2014. Entry into force October 15, 2014. <http://wetten.overheid.nl/BWBR0035634/2015-10-07/0/#>

SER, Social and Economic Council of the Netherlands, Commodity and industrial boards; A means of raising standards in industry. Den Haag ,2004.