

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

**AGRI-2015-EVAL-13**

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

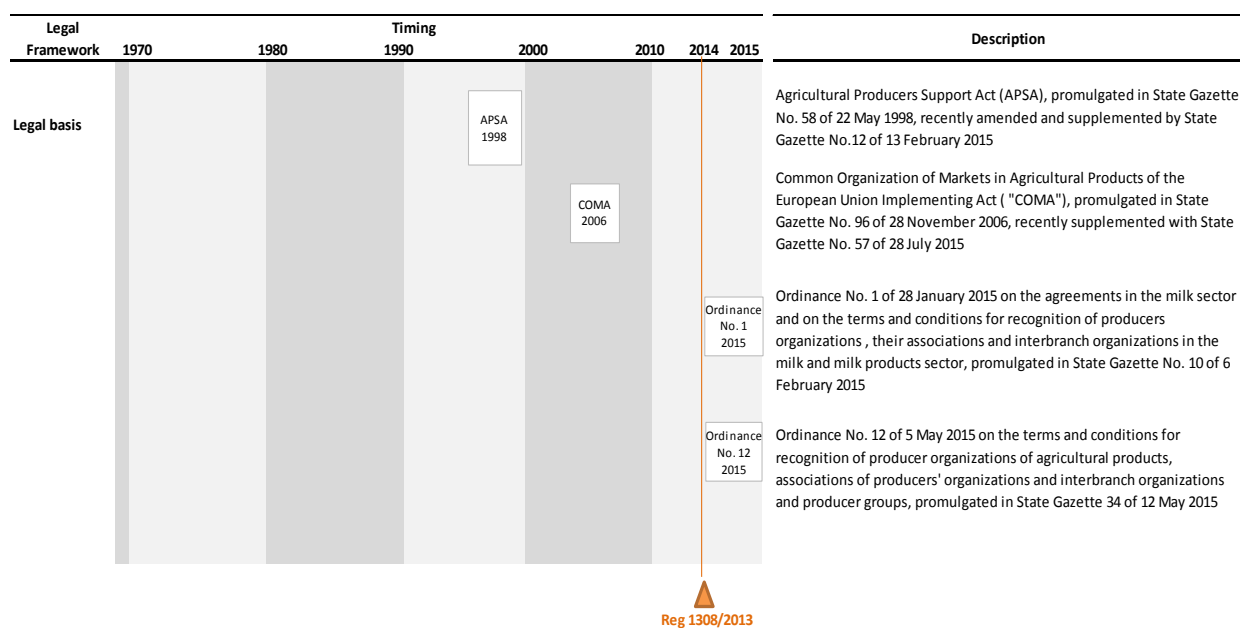
### **BULGARIA**

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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 Bulgaria



Source: Compiled by Arcadia International and Schönherr Rechtsanwälte GmbH

**Summary of national legislation on IBOs**

In Bulgaria the establishment of national rules governing interbranch organisations dates back to 2006 when the national Parliament adopted a supplement to Article 9 of the existing **Agricultural Producers Support Act** (1998). According to this amendment, the Minister of Agriculture and Food had to set, through ordinance, the terms and procedures for recognition of organisations and inter-branch organisations of agricultural producers. Based on this, on 23 March 2006 the Minister issued **Ordinance No 31** on the terms and conditions for the recognition of IBOs of producers, traders and processors of fruits and vegetables. It laid down the **general framework** for the setting, the recognition and the functioning of IBOs in the fruits and vegetables sector only.

In 2013 with a supplement to the Common Organisation of Markets in Agricultural Products of the European Union Implementing Act the Parliament passed new rules governing IBOs.

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 (**Ordinance No 1**) 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 (**Ordinance No 12**) have subsequently supplemented the existing legal framework. Ordinance No 1 is applicable as of 6 February 2015, whilst Ordinance No 12 is effective as of 15 May 2015 and repealed Ordinance No 31 from 2006.

According to national legislation, only non-profit organisations may apply for recognition as IBOs. Under the **Non-profit Legal Persons Act**, associations must be established by three or more persons that jointly pursue non-profit activities. Each association must conduct its activities through its bodies i.e. the General Assembly and the Executive Board. There are two types of associations (i) associations that pursue activities in the interest of the public and (ii) associations that pursue activities to the advantage of their members. Associations may own property. All members are obliged to make property contributions in case there are provisions to that effect in the statute. Further, associations may determine fees that may be requested from their members. All non-profit legal persons must be registered in the register kept by the competent district court. The following elements/circumstances are subject to registration:

- statutory contents of the articles of association/statute;
- address;
- names and positions of persons representing the non-profit legal person;
- definition for conducting activities to the public benefit (if the associations have defined to pursue activities for public profit);
- total number of initial property contributions, if there are provisions to that effect;
- dissolution of the non-profit legal person;
- transformation;
- names, respectively company name and addresses of liquidators;
- deletion of the non-profit legal person.

#### **a) Milk and milk products sector**

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

Only non-profit organisations (in the legal form of associations) that are established and registered under the Non-profit Legal Persons Act may apply for recognition as IBOs under Ordinance No 1. National law does not foresee any limitation with respect to the number of IBOs that may be established for each agri-food product/product category.

IBOs have to carry out, at least, one of the activities referred to in Article 157 par. 3 c) of Regulation (EU) No 1308/2013. The respective activities must be included in the IBO's statutes.

An IBO must consist of **members** that are producers of raw milk, representatives of milk processing industry and/or representatives of the wholesale/retail of milk and milk products. Furthermore, all members must own at least 10% of milk-producing animals in

the country and account for at least 10% of production and/or market share for milk products. A member of a recognised IBO cannot join a second IBO under Ordinance No 1.

#### **IBOs: recognition and monitoring**

The **Ministry of Agriculture and Food (MAF)** is the public authority responsible for the recognition of the IBOs. Recognised IBOs must be included in a **public register** established and managed by MAF, and published on its website. Any **change** concerning the IBO's activities and the conditions that have led to its recognition is to be notified to MAF within 14 days from its occurrence.

MAF is responsible for monitoring IBOs' activities and verifying they comply with the conditions for recognition. This is done through **on-site inspections** carried out at least **once a year** or checks performed following written reports and complaints, with anonymous reports and complaints not being considered to this effect. During official controls, IBOs are required to assist MAF in the execution of its tasks and to provide access to their premises, software, and documentation.

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

Pursuant to Article 210 par. 4 of Regulation (EU) No 1308/2013 IBOs must **not participate in agreements, decisions 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 achieve the objectives of the CAP pursued by the IBO;
- 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.

They are obliged to inform MAF about the agreements, decisions or practices in which they intend to participate and MAF must notify the European Commission. IBOs must not proceed with the agreements, decisions and practices before the Commission has expressed its opinion on their compatibility with EU law.

Ordinance No 1 does not provide (neither explicitly, nor implicitly) for extension of rules to non-members.

#### **Rules on financing**

There are no specific rules on financing at national level.

#### **Rules on representativeness**

As mentioned above, all members must own at least 10% of milk-producing animals in the country and account for at least 10% of production and/or market share for milk products. There are no additional specific rules in this regard at national level.

#### **b) Sectors other than milk and milk products:**

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

Ordinance No 12 stipulates requirements for IBOs in the following agricultural **sectors**:

- cereal and oilseeds;
- medicinal and aromatic plants;
- legumes;
- industrial crops;
- potatoes;
- meat and wool;
- honey and bee products;
- wine grapes;
- eggs;
- silkworms;
- live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage;
- seeds and seedlings; and
- fruits and vegetables.

National law does not foresee any limitation with respect to the number of IBOs that may be established for each agri-food product/product category.

##### **IBOs: recognition and monitoring**

In order to be recognised by MAF, IBOs must be registered as **associations** within the meaning of the Non-profit Legal Persons Act and must:

- be created upon initiative of organisations or associations as well as of individual producers, traders, processors operating in the above listed sectors;
- consist of representatives of the production, the trade and/or processing in a given sector;
- pursue a **specific objective** in the interest of their members and users, which corresponds to one or more of the activities set in Article 157 par. 1 c) of Regulation (EU) No 1308/2013 and in Article 162 of the same regulation as regards the tobacco sector;
- operate in **one or more territorial regions** of the country (these must be regions type 2 as defined according to Article 4, par. 3 of the Law on regional development);

- cover at least **one-third** of the production and/or trade and/or processing in the respective region of the country or across the country; and
- have **at least three members**.

MAF may **refuse recognition** if the latter leads to:

- allocation of markets or affecting the proper functioning of the market organisation;
- prices fixing or quotation; and
- discrimination or restriction of the competition in respect of a substantial part of the products.

MAF must rule out on the application for recognition within three months as of the submission of the application. A specially appointed committee performs the assessment as to whether the respective organisation meets the criteria.

Recognised IBOs are to be included in a **register** established and managed by MAF. Any **change** regarding the activities and the conditions that have led to the recognition of the IBO must be notified to the MAF within 14 days from its occurrence. MAF must ensure monitoring through regular **on-site inspections**. Each recognised IBO must be inspected at least **once every three years**. During official controls IBOs are required to assist MAF in the execution of its tasks and to provide access to their premises, software, and documentation.

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

IBOs are obliged to inform MAF about the **agreements, decisions or practices** within the meaning of Article 210 par. 4 of Regulation (EU) No 1308/2013 (see 3 above) in which they intend to participate. MAF must notify the European Commission. IBOs must not proceed with the agreements, decisions and practices before the Commission has expressed its opinion on their compatibility with EU law.

Ordinance No 12 does not provide (neither explicitly, nor implicitly) for extension of rules to non-members.

#### **Rules on financing**

There are no specific rules on financing at national level.

#### **Rules of representativeness**

There are no specific rules in this regard at national level.

*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*

Bulgaria has adopted its secondary national legislation governing the recognition and functioning of IBOs in the agro-food sector in 2015. This could explain why it is not fully implemented yet and why this form of professional association is still not popular.

According to the national competent authorities; producers, processors and traders are not fully aware of the benefits of IBOs. Although those operators recognise the potential behind IBOs, there is currently no interest for their establishment. Against this background, national competent authorities have turned to agri-food producers to explain them the benefits and advantages of recognised producers' organisations and other types of associations such as IBOs. MAF experts consider the producers' organisations and associations as the necessary base on which IBOs can be developed later on.

In spite of the above, a certain interest for the development of IBOs in the agricultural sector exists. Indeed, following the adoption of the national secondary legislation, late in 2015 the tobacco sector declared its interest to establish an IBO, following which MAF has provided the necessary assistance and information. Recognition of this IBO is still pending as this document is being written.

According to some stakeholders (Association of Meat Processors in Bulgaria and Union of Bulgarian Fruits and Vegetables Processors), the vertical cooperation will be useful for all participants. Absence of such cooperation is due to the limited information in the agri-food sector about its benefits. Furthermore, in order to explain the low interest in establishment of IBOs the same stakeholders refer to:

- (i) the lack of funding, which usually attracts the agri-food producers; and
- (ii) the risk this type of cooperation to be considered by competent authorities as a breach of competition law. Furthermore, they are of the opinion that MAF

concentrates its efforts to promote the producers' organisations due to the possible funding of such organisations from the EU.

Considering the above, it could be concluded that currently in Bulgaria the available legal framework for forms of cooperation **between the producers and the other stages of the food supply chain** is not implemented in practice.

As regards other forms of cooperation pursuant to Regulation (EU) No 1308/2013. Furthermore, in Bulgaria:

- There is no cooperation between recognised producers and other supply chain actors in the sugar sector; and
- There are no recognised producers' organisations negotiating, on behalf of their members, contracts for the supply of olive oil, live cattle and certain arable crops, pursuant to Regulation (EU) No 1308/2013. Moreover, Bulgaria has no cheese and ham products with registered Protected Geographical Indication (**PGI**)/Protected Designation of Origin (**PDO**).

According to MAF, there are two recognised producers' organisations negotiating agreements, on behalf of their members, regarding contracts for the delivery of raw milk to a processor or to a collector pursuant to Article 149 of Regulation (EU) No 1308/2013. They have been recognised in 2015, thus in 2014 there were no notifications pursuant to Article 149 (2) (f) of Regulation (EU) No 1308/2013. The notifications for 2015 will be subject to report to the European Commission in 2016 according to Article 149 par. 8 of Regulation (EU) No 1308/2013.

#### [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 (*N.B. the online version of the legal acts listed under this Section are provided when available*)

Common Organisation of Markets in Agricultural Products of the European Union Implementing Act (promulgated in State Gazette No 96/28 November 2006, effective as of 1 January 2007, recently supplemented with: SG N. 57/28 July 2015; in Bulgarian: Закон за прилагане на Общите организации на пазарите на земеделски продукти на Европейския съюз)

<http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=2875>



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Agricultural Producers Support Act (promulgated in State Gazette No 58/22 May 1998, recently amended and supplemented with: SG No 12/13 February 2015; in Bulgarian: Закон за подпомагане на земеделските производители);

Non-profit Legal Persons Act (promulgated in State Gazette No 81/6 October 2000, effective as of 1 January 2001, supplemented with: SG No 42/5 June 2009; in Bulgarian: Закон за юридическите лица с нестопанска цел);

Foodstuffs Act (promulgated in State Gazette No 90/15 October 1999, recently supplemented with SG No 56/24 July 2015; in Bulgarian: Закон за храните);

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 (issued by the Minister of Agriculture and Food; promulgated in State Gazette No 10 of 6 February 2015, effective as of 6 February 2015; in Bulgarian: Наредба № 1 от 28 януари 2015 г. за договорните отношения в сектора на млякото и условията и реда за признаване на организации на производители, техни асоциации и междубраншови организации в сектора на млякото и млечните продукти);

<http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=91733>

Ordinance No 12 of 5 May 2015 on the terms and conditions for recognition of producer organisations of agricultural products, associations of producers' organisations and interbranch organisations and producer groups (issued by the Minister of Agriculture and Food; promulgated in State Gazette 34/12 May 2015; effective as of 15 May 2015; in Bulgarian: Наредба № 12 от 5 май 2015 г. за условията и реда за признаване на организации на производители на земеделски продукти, асоциации на организации на производители и междубраншови организации и на групи производители).

<http://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=94310>

- National competent authorities

Ministry of Agriculture and Food

(<http://www.mzh.government.bg/mzh/en/Home.aspx>)

- Other sources

Interviews with the representatives of several branch organisations [...]