

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

**AGRI-2015-EVAL-13**

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

### **POLAND**

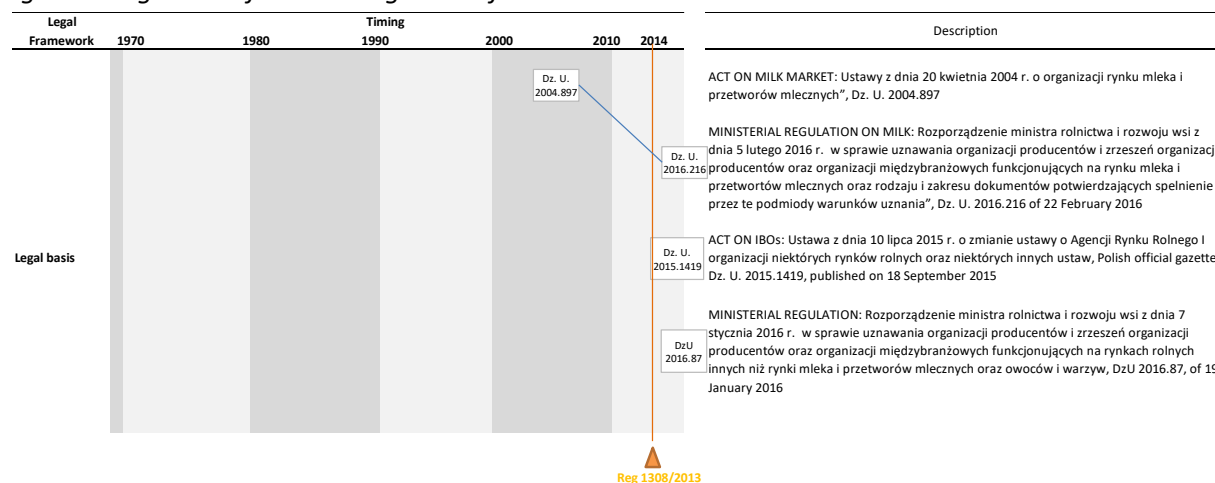
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**Section 1: National legislation pursuant to Articles 157-IBOs, 158-Recognition of IBOs, 159 and 162-Recognition of IBOs in the olive oil, table olives and tobacco sectors and 163-Recognition of IBOs in the milk and milk products sector of the CMO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

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



Source: Compiled by Arcadia International

**Summary of national legislation on IBOs**

Rules on the establishment and recognition of Interbranch organisations (IBOs) (in Polish "organizacji międzybranżowych") were introduced into Polish law by the act of 10 July 2015 ("Ustawa z dnia 10 lipca 2015 r. o zmianie ustawy o Agencji Rynku Rolnego i organizacji niektórych rynków rolnych oraz niektórych innych ustaw", Polish official gazette, Dz. U. 2015.1419, published on 18 September 2015) ("Act on IBOs"). The Act on IBOs introduces a new chapter in the existing Act on Agricultural Market Agency (further "Act on Agricultural Market Agency" or "AMA").

The ministerial regulation on the recognition of producers organisations and of IBOs of agricultural markets other than milk, milk products and fruits and vegetables adopted certain applicable requirements ("rozporządzenie ministra rolnictwa i rozwoju wsi z dnia 7 stycznia 2016 r. w sprawie uznawania organizacji producentów i zrzeszeń organizacji producentów oraz organizacji międzybranżowych funkcjonujących na rynkach rolnych innych niż rynki mleka i przetworów mlecznych oraz owoców i warzyw", DzU 2016.87, of 19 January 2016) (further the "Ministerial Regulation" or "MR").

**Rules on milk and milk products**

Separate rules were adopted regarding the market of milk and milk products. The Act of 20 April 2004 on the organisation of the market in milk and milk products ("Ustawy z dnia 20 kwietnia 2004 r. o organizacji rynku mleka i przetworów mlecznych", Dz. U. 2004.897) (further "Act on milk market"), as in particular amended by the Act on IBOs) served as a base for a separate Ministerial regulation 5 February 2016 on the recognition

of producer organisations and of IBOs on the market of milk and milk products markets and the type and scope of documents proving the satisfaction of the conditions for recognition ("*rozporządzenie ministra rolnictwa i rozwoju wsi z dnia 5 lutego 2016 r. w sprawie uznawania organizacji producentów i zrzeszeń organizacji producentów oraz organizacji międzybranżowych funkcjonujących na rynku mleka i przetworów mlecznych oraz rodzaju i zakresu dokumentów potwierdzających spełnienie przez te podmioty warunków uznania*", Dz. U. 2016.216 of 22 February 2016) (further the "Ministerial Regulation on milk" or "MR milk").

The rules applicable to IBOs in the milk and milk product markets (article 48a to 49 of the Act on milk market) are broadly similar to the general rules applicable to IBOs in other sectors (article 38a to 38 p AMA) but subject to more detailed quantitative benchmarks regarding the number of members and minimum annual production as well as stricter controls by ARR due existing Polish rules.

### ***No rules on IBOs in the market of fruits and vegetables***

The Ministry of Agriculture has confirmed that no implementing rules have been adopted on the recognition of IBOs in the sectors of fruits and vegetables and there seem to be no plans to do so.

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

Polish law provides for IBOs regarding the products set out in article 1 (2) (a) to (h) and (l) to (x) of the CMO Regulation, i.e. not fruits and vegetables.

The Ministry of agriculture considers that IBOs may help improve the value chain and the cooperation between each part of the value chain. Given the absence of IBOs at present, these objectives are currently being pursued with other instruments.

At present, the promotion of trading and quality standards is conducted through the Polish Agricultural Market Agency ("*Agencja Rynku Rolnego*") (further "ARR") along with Polish Rural Development Programme (currently for 2014-2020) (see references below). According to general information from the ARR, it managed as of 2014 nine promotion funds for the following products: milk pigmeat, beef, horsemeat, sheepmeat, cereals and processed cereal products, fruit and vegetables, poultry and fish.

The Polish legislation doesn't include any provisions related to the legal status of IBOs.

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

The Polish law on IBOs introduces several new chapters in the law of Agricultural Market Agency and which designates the Minister of Agriculture and ARR as competent authorities regarding the organisation, recognition and supervision of IBOs.

Applications for the recognition of an IBO in the meaning of article 158 of regulation 1308/2013 should be submitted to the Director of the territorially competent office of the ARR (Region (Voivodship) where the seat of the IBO is located).

The recognition takes place by way of a decision of the territorially competent ARR Director (article 38i AMA). The recognition decision is communicated to the President of

ARR who in turns notifies it to the Minister of Agriculture and to the European Commission (article 38m AMA).

IBOs having received recognition must maintain a publicly available register containing updated detailed information of the IBO recognition and related particulars and provide copies and updates (within 14 days of any changes) to the relevant territorial ARR Director (article 38k AMA).

The data to be kept, updated and communicated to ARR includes :

- (i) the court registration number of the IBO;
- (ii) the name, registered office and address of the IBO;
- (iii) the activities or type of products for which recognition was granted;
- (iv) the names of persons authorised to represent the IBO
- (v) the date and number of the recognition decision and of the withdrawal decision if any;
- (vi) the total number of members with the distinction between physical and legal persons;
- (vii) the date of entry and of withdrawal (of members) into the IBO register;
- (viii) the annual production value.

These data are made publicly available on the ARR page (article 38k AMA).

Specific rules apply to the recognition of IBOs in the milk and milk products sector.

The corresponding provisions for IBOs in the market of milk and milk products are contained in article 48a to 49 of the Act on milk market.

### **Monitoring of IBOs and withdrawal of recognition**

The territorially competent ARR Director controls recognised IBOs at least once every two years with regard to their compliance with the relevant provisions of European Union law. The inspection is conducted on the basis of the provisions on verification contained in AMA (article 38n AMA).

The territorially competent ARR Director supervises recognised IBOs and, in case the conditions of recognition are no longer satisfied, gives formal notice to the relevant IBO in writing to ensure satisfaction to the conditions of IBO recognition within a deadline of up to 12 months from the date of formal notice, taking into account the scope of the infringement (article 38j 2. AMA). If the situation is not remedied within the prescribed deadline, the competent ARR Director may withdraw the IBO recognition (38j 3. AMA).

### **Recognition procedure for IBOs other than milk (milk products), fruits and vegetables**

The Ministerial Regulation adopted on 7 January 2016 (on the basis of article 38ai 3. AMA) provides that the "*minimum number of members of a producer organisations or IBO should be 5*" (§2 MR).

The application for recognition of an IBO should be addressed to the territorially competent representative of the ARR and contain:

- 1) the IBO name, seat, address, legal form, and number in the national court register;
- 2) the surnames and names of persons empowered to represent the IBO along with the scope of representation capacity, in line with the articles of the IBO; and
- 3) the indication of the products or groups of products in relation to one of the sectors designated in article 1 point 2. Letters a) to h), l) to o) or q) to x) of regulation 1308/2013 for which the IBO is seeking recognition.

(...)

- 6) the name, seat and address of the founding organisations of the IBO with the indication of the respective organisations scope of economic activity as referred to in article 157 point 1 of regulation 1308/2013 (§3 MR).

The application for recognition should also contain

- 1) the copy of the articles of the association of the relevant IBO certified as conform to the original document by an authorised representative of the IBO.

(...)

- 3) the evidence demonstrating that the conditions of article 157 and of article 158 point 1 b) to d) of regulation 1308/2013 are satisfied.

(...)

- 5) information on the IBO activities projected in the first two years following the date of recognition including a description of the scope and content of such activities and the identification of their source of financing.

(§4 MR).

### **Recognition procedure for IBOs in the sector of milk and milk products**

The Ministerial Regulation on milk adopted on 5 February 2016 (on the basis of article 48a Act on milk market) provides the procedure for the recognition of IBOs in the market of milk and milk products. It is essentially the same as the steps and conditions provided in the general IBO recognition procedure contained in the Ministerial regulation of 7 January 2016.

The application for recognition of an IBO should be addressed to the territorially competent representative of the ARR and contain:

- 1) the IBO name, seat, address, legal form, and number in the national court register;
- 2) the surnames and names of persons empowered to represent the IBO along with the scope of representation capacity, in line with the articles of the IBO;
- 3) the indication of the products or groups of products in relation to the sector designated in article 1 point 2. letter p) of regulation 1308/2013 for which the IBO is seeking recognition.

(...)

- 6) the name, seat and address of the founding organisations of the IBO with the indication of the respective organisations scope of economic activity as referred to in article 157 3. of regulation 1308/2013 (§2 MR milk).

The application for recognition should also contain:

- 1) the copy of the articles of the association of the relevant IBO certified as conform to the original document by an authorised representative of the IBO.

(...)

- 3) the evidence demonstrating that the conditions of article 157 3. and of article 163 point 1 b) to d) of regulation 1308/2013 are satisfied presented in form provided on the ARR internet page.

(...)

- 5) information on the IBO activities projected in the first two years following the date of recognition including a description of the scope and content of such activities and the identification of their source of financing.

(§3 MR milk).

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

There are no national rules concerning agreements that may be promoted by IBOs. With The Minister of Agriculture is competent to adopt regulations extending IBO agreements, and criteria of the required level of representativeness in the meaning of article 164 3. Second paragraph of Regulation 1308/2013 (article 38o AMA).

When the conditions set out in the Ministerial Regulation (not yet in place) and the conditions of articles 164 of regulation 1308/2013 are met, the Minister adopts a regulation containing the description of the agreement, the decision or the concerted practice adopted by the IBO, their scope, to whom they apply, designating their economic application with a view to ensure the proper functioning of the market, taking into account the objectives of such agreement, decisions or concerted practices (article 38o 3. AMA).

### **Rules on financing**

The Polish legislation doesn't include any provisions related to the funding of IBOs.

### **Rules on representativeness**

The representativeness for recognition makes reference to Art. 158 par. 1 points b) to d). Therefore the Polish law simply takes into account the "significant share" without further specification.

Concerning representativeness for extension of rules, the mechanism is not foreseen by the Polish law presently.

*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

As already stated above, given the absence of IBOs no budget for IBOs has been established yet.

*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*

According to a representative of the Polish Ministry of Agriculture, no requests or applications regarding the establishment or the recognition of an IBO on the basis of the newly created rules to date.

Circumstantial evidence seems to confirm the low awareness about the existence of IBOs and related provisions.

*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

Act of 11 March 2004 on the Agricultural Market Agency and the organisation of certain agricultural markets ("*Ustawy z dnia 11 marca 2004 o Agencji Rynku Rolnego I organizacji niektórych rynków rolnych*", Polish official gazette, Dz. U. 2004.386), as amended several times

<http://dziennikustaw.gov.pl/DU/2004/s/42/386/1>

(further amended, most recently in 2012, 2014, 2015 and 2016)

Specific amendment of the Act of 11 March 2004 for the purpose of introducing provisions on IBO: Act of 10 July 2015 ("*Ustawa z dnia 10 lipca 2015 r. o zmianie ustawy o Agencji Rynku Rolnego I organizacji niektórych rynków rolnych oraz niektórych innych ustaw*", Polish official gazette, Dz. U. 2015.1419, published on 18 September 2015)

<http://dziennikustaw.gov.pl/DU/2015/1419/1>

Ministerial regulation of 7 January 2016 on the recognition of producer organisations and of IBOs of agricultural markets other than milk, milk products and fruits and vegetables adopted certain applicable requirements (*rozporządzenie ministra rolnictwa i rozwoju wsi z dnia 7 stycznia 2016 r. w sprawie uznawania organizacji producentów i zrzeszeń organizacji producentów oraz organizacji międzybranżowych funkcjonujących na rynkach rolnych innych niż rynki mleka i przetworów mlecznych oraz owoców i warzyw*, DzU 2016.87, of 19 January 2016)

<http://dziennikustaw.gov.pl/DU/2016/87/1>

The Act of 20 April 2004 on the organisation of the market in milk and milk products ("*Ustawy z dnia 20 kwietnia 2004 r. o organizacji rynku mleka i przetworów mlecznych*", Dz. U. 2004.897) (amended and as informally codified)

<http://dziennikustaw.gov.pl/DU/2016/155/1>

Ministerial regulation 5 February 2016 on the recognition of producer organisations and of IBOs on the market of milk and milk products of agricultural markets and the type and scope of documents proving the satisfaction of the conditions for recognition ("*rozporządzenie ministra rolnictwa i rozwoju wsi z dnia 5 lutego 2016 r. w sprawie uznawania organizacji producentów i zrzeszeń organizacji producentów oraz organizacji międzybranżowych funkcjonujących na rynku mleka i przetworów mlecznych oraz rodzaju i zakresu dokumentów potwierdzających spełnienie przez te podmioty warunków uznania*", Dz. U. 2016.216 of 22 February 2016)

<http://dziennikustaw.gov.pl/DU/2016/216/1>

Polish Agricultural Market Agency ("*Agencja Rynku Rolnego*")

<http://www.arr.gov.pl/>

Polish Programme for Rural Development

<http://www.arimr.gov.pl/pomoc-unijna/prow-2014-2020.html>