

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

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National Legislation and Actions concerning IBOs

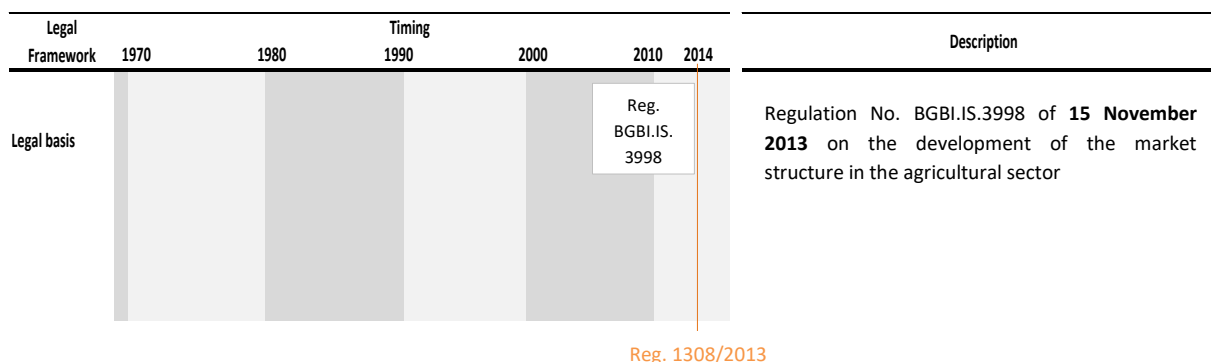
GERMANY

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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 Germany



Source: Compiled by LEI – Wageningen UR

Summary of national legislation on IBOs

Germany has a basic national legislation in place with regard to IBOs. Germany’s current legislative framework in this area provides for the establishment of IBOs and producer organisations in the same regulation and includes some special rules for wine, milk and milk products, and bioethanol (relevant for producer organisations).

Regulation BGBl.IS.3998 (“Agrarmarktstrukturverordnung”) of 15 November 2013 on the development of the market structure in the agricultural domain lays down provisions for the formal recognition of branch organisations as IBOs and for the monitoring of their performance. The regulation has been modestly changed on 18 June 2014 (Article 6 of Regulation BGBl.IS.798 of 18 June 2014).

Based on Section 1, Paragraph 1, Regulation BGBl.IS.3998 appears to have been overall modelled taking into account requirements set by prior EU legislation governing common market organisation, namely Regulation (EC) No 1234/2007, rather than Regulation (EU) No 1308/2013. The German regulation does not allow for the establishment of branch organisation in the wine sector but adds rabbits, wool and medicinal plants in Annex 2 to the list of agricultural sectors where IBOs could be active. IBOs cannot be recognised in the wine sector due to the fact that one structure is already in place (the Deutsches Weininstituts - DWI, or German Wine Institute which is managing the German Wine Fund) for activities that IBOs could cover and therefore authorities do not want competition between the existing structures and a newly recognised IBO.

IBOs: definition, objectives and legal status

Regulation BGBl.IS.3998 does not provide a definition of a branch organisation other than the definition of the goals (paragraph 12) and membership (paragraph 13) of branch organisations in Section 3. In general branch organisations are to improve mutual

understanding among firms within a certain agricultural sector and to pursue shared interests in developing the sector. More specifically, a branch organisation could pursue the following goals:

1. *Market research and marketing;*
2. *Improvement of producing, processing and sales;*
3. *Support of good agricultural practices; and*
4. *Improvement of product quality, i.e. organic agriculture and regional products.*

The regulation is also quite specific on what a branch organisation is not allowed to do:

1. *Produce, process or sell agricultural products;*
2. *Make price agreements and similar acts with the same purpose;*
3. *Distort normal trading conditions; and*
4. *Perform activities which are not in line with the CAP or the otherwise proper functioning of the European common market.*

The legal status of a branch organisation is either a legal entity under private or public law or an association under private law.

IBOs recognition and monitoring

Recognition

Juris GmbH, a privatised entity, provides services to the German Ministry of Justice and Consumer Protection with the granting of formal recognition to IBOs in the agricultural sector. **Section 1, paragraphs 2-4** of Regulation No BGBl.I.3998 lays down provisions concerning procedures for the recognition of IBOs.

In order to apply for recognition, any interested organisation must be duly **registered** in accordance with national law governing the establishment and the functioning of associations and foundations. With a view to submitting an **application for recognition** to the national competent authority, interested organisations must provide information like:

- Details of the applicant organisation (e.g. name, address, email, registration number of the association);
- Evidence of the conformity with applicable legal requirements (e.g. membership covering different stages of the value chain, significant share of the economic activities);
- Full list of the organisation's members;
- Objectives to be pursued and/or the activities to be conducted by the IBO once it is established (e.g. improvement of production and market's knowledge and transparency, promotion of consumption, etc.).

Applicant organisations must also make available a copy of their statutes, proof of their registration in the national register of associations and foundations and copy of their latest annual report. Following an application, the competent authority may decide either to accept or reject it.

A **rejection decision** may be justified whenever the authority deems that the applicant organisation does not fulfil the legal requirements that Regulation No BGBl.I.3998 sets for the purpose of recognition or where the information provided in the application is incorrect.

Monitoring

Section 7 of Regulation BGBl.IS.3998 specifies **monitoring of compliance of recognised IBOs** in the agricultural sector with the requirements that govern their recognition as a responsibility of the German Ministry of Food and Agriculture in collaboration with regional competent authorities (Länder). For this purpose, at least 3% of the recognised IBOs must be checked each year (paragraph 19).

Section 1, paragraph 6 of Regulation BGBl.IS.3998 requires to withdraw the recognition of an IBO when an **infringement of competition law** is observed.

Rules on financing

Regulation BGBl.IS.3998 does not include any German rules on financing of branch organisations.

Rules on representativeness

With respect to membership, a branch organisation should at least represent production and processing or sales, and represent a significant share of activities within the sector at least at a regional scale.

The German regulation does not specify what a significant share of activities is.

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

In Germany the current legislative framework for IBOs is still modelled on Regulation (EC) No 1234/2007 rather than on the regime set by Regulation (EU) No 1308/2013. The alignment to the new Regulation has not been completed yet.

There is no IBO recognised in the German agricultural sector at present and no request of recognition has ever been put forward.

The German legislation could be considered as a “*basic*” one with provisions that have been developed *a minima*. However it can be reported that National Competent Authorities are not against the recognition of IBOs and they are open for recognition of IBOs except in the wine sector in which public organisations are already in charge of promotion actions and other activities that then could be seen as overlap with an IBO.

The German authorities have reported that there are already groupings representing inter branch interest, but that their work is limited, essentially to advisory services for their members without such work entailing cooperation in the definition and implementation of production or marketing rules. Additionally, the Centrale Marketinggesellschaft der Deutschen Agrarwirtschaft (CMA) manages promotion programmes of German food products and has a kind of inter-branch role and approach.

Two sectors include organisations aiming at vertical cooperation between actors. This is wine and sugar. For example, the existence of the Deutsche Wine Institute and the Wine Fund play role of IBOs but these structure are not recognised as IBOs and have no legal basis.

Additionally, the German authorities have stressed in the past that cooperation of this kind, if it were designed – for example, through application of such rules to an entire sector – to restrict competition and freedom of movement, would conflict with the legal principles in Germany. It was reported that extension of rules to collect fees could be seen as “*anti-constitutional*” in Germany.

The supply chain is aware of the principle opportunity to recognise IBOs; but as explained above no request has ever been made to date. The supply chains are already structured with other organisations and cooperatives play an important role in the supply chain. In some key agricultural areas, large cooperatives are present. For example in Bavaria, BayWA is one of the largest cooperative in the EU.

Another reason explaining the lack of interest for recognition of IBOs is link to the fact that promotion of products is mainly seen as function at national level. National operators are seen as being responsible for this action. These structures can apply for funds under the EU Regulation (EU) No 1144/2014 of 22 October 2014 of information provision and promotion measures concerning agricultural products implemented in the internal market and third countries. Therefore stakeholders and supply chain actors consider that there is no need for an additional federal organisation.

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

Regulation No. 80/2013 BGBl.IS.3998 (Agrarmarktstrukturverordnung) on the development of the market structure in the agricultural sector inter alia lays down procedures for the recognition of branch organisations in the agricultural sector and monitoring of their performance.

- Juris GmbH webpage

<http://www.juris.de>