

Study on agricultural interbranch organisations (IBOs) in the EU

AGRI-2015-EVAL-13

National Legislation and Actions concerning IBOs

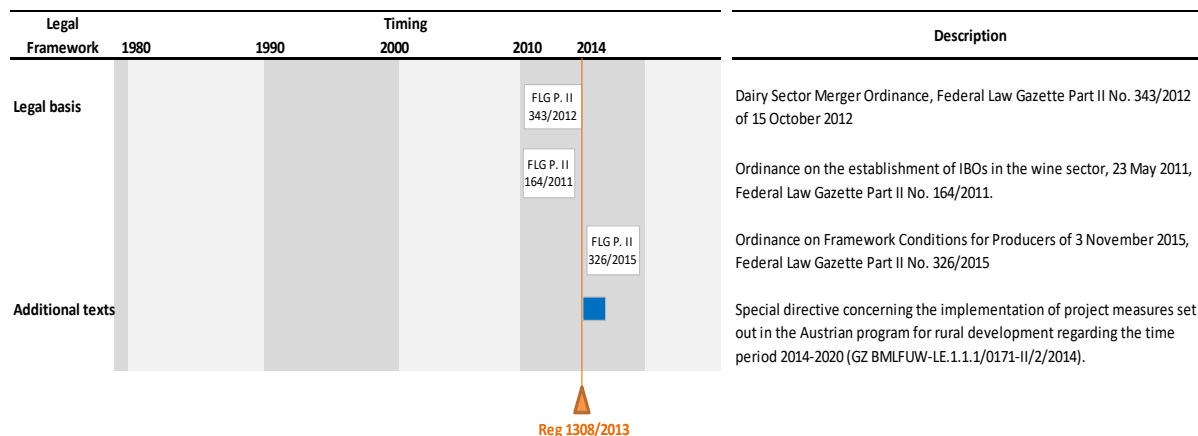
AUSTRIA

Date of last update: 01 June 2016

The information and views set out in this document are those of the author(s) and do not necessarily reflect the official opinion of the Commission. The Commission doesn't guarantee the accuracy of the data included in this fiche. Neither the Commission nor any person acting on the Commission's behalf may be held responsible for the use which may be made of the information contained therein.

[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 Austria



Source: Compiled by Arcadia International and Schönherr Rechtsanwälte GmbH

Summary of national legislation on IBOs

In Austria the **Dairy Sector Merger Ordinance** (Federal Law Gazette Part II No. 343/2012 of 15 October 2012) was the first legislative act establishing rules regarding the recognition of IBOs. As the title makes clear, the Dairy Sector Merger Ordinance and its provisions were limited only to the dairy sector.

In 2015 in order to supplement the rules on IBOs according to Regulation (EU) No. 1308/2013, the Dairy Sector Merger Ordinance was repealed by **Ordinance on Framework Conditions for Producers** of 3 November 2015 (Federal Law Gazette Part II No. 326/2015). The provisions of the Dairy Sector Merger Ordinance regarding IBOs were incorporated in the Ordinance on Framework Conditions for Producers using the identical wording. The only change that occurred in fact concerned the sectoral scope of the national legislation on IBOs as through the adoption of the Ordinance of 2015 its application has been extended to sectors other than the dairy sector.

The Ordinance on Framework Conditions for Producers implements at national level Regulation (EU) No 1308/2013, Regulation (EU) No 511/2012, delegated Regulation (EU) No. 880/2012 and the delegated legal acts and implementing acts of Regulation (EU) No 1308/2013.

The Ordinance applies to all sectors listed in Regulation (EU) No 1308/2013 with the notable **exception of wine**. In fact, in Austria the wine sector has an exceptional position since it suffered a severe crisis during the 1980s. Therefore, a National Wine Committee has been established as a form of cooperation of public law and at the same

time declared to be an IBO pursuant to Article 125 of Regulation (EC) No 1234/2007. Due to its specific legal form, national provisions on IBOs do not apply to said committee. IBOs in the wine sector are regulated in **the Ordinance on the establishment of IBOs in the wine sector** of 23 May 2011 (Federal Law Gazette Part II No. 164/2011).

IBOs: definition, objectives and legal status

The Ordinance on Framework Conditions for Producers does not include a **definition of IBO**. As an implementing provision, it only refers to Regulation (EU) No 1308/2013, thus implying that the EU definition of IBO applies at national level as well.

In addition to that, the Ordinance on Framework Conditions for Producers does not list any **objectives** that IBOs may pursue. In this respect, it should be noted that the explanation report accompanying the legislative draft of the Ordinance states that the activities of IBOs can contribute to achieving the objectives set out in Article 39 of the Treaty of the Functioning on the European Union.

Regarding the **legal status of IBOs**, the Ordinance includes no explicit provision. As a rule, IBOs must be **legal persons** in order to be recognised. This follows, for instance, from the list of documents to be submitted together with the application, which includes, *inter alia*, company agreements and statutes (Article 15 par. 1).

IBOs' recognition and monitoring

According to Article 15 par. 2 of the Ordinance on Framework Conditions for Producers, IBOs may be recognised if the conditions stated in Regulation (EU) No 1308/2013 are fulfilled.

In order to obtain recognition, IBOs must submit the following **documents**:

1. Statutes of the organisation;
2. Any contracts regarding the founding and the activities of the IBO, such as company agreements;
3. A list of the organisation's members specifying their names, addresses and the date at which their membership started; and
4. Detailed documents regarding the annual turnover and the total amount of the marketable production of the organisation members.

The application together with the documents listed above must be submitted to **Agrarmarkt Austria (AMA)**, which, pursuant to Article 2 par. 1 of the Ordinance, is the responsible competent authority for the implementation of Regulation (EU) No 1308/2013. AMA is a legal person under public law established by Law of AMA 1992 (Federal Law Gazette Part II No. 376/1992) which was promulgated on 30 June 1992. To the extent that federal law or ordinances based on federal law delegate tasks to AMA, the latter acts as a **federal authority** within the scope of action defined by the relevant legislation.

Regarding the national strategy and the national framework according to Article 36 Regulation (EU) No 1308/2013, these are set by the **Federal Ministry for Agriculture**

and Forestry, Environment and Water management (BMLFUW) (Article 2 par. 3 Ordinance on Framework Conditions for Producers).

IBOs' agreements: approval and extension of rules

There are no national rules concerning agreements that may be promoted by IBOs. With respect to an **extension of rules**, the national legislation does not contain any specific provisions either. Because of the absence of IBOs in Austria so far, national authorities have not dealt with this topic as of yet. Overall, Article 164 of Regulation (EU) No 1308/2013 is regarded as directly applicable in Austria without any national legislative restrictions.

Rules on financing

The Ordinance on Framework Conditions for Producers does not include explicit rules on financing and extension of fees on non-members. Regarding the National Wine Committee, it finances itself by charging fees (Article 5 Ordinance on the establishment of IBOs in the wine sector).

Rules on representativeness

The Ordinance on Framework Conditions for Producers allows the recognition of IBOs provided that the economic activities of their members cover, at the level of the relevant sector, **more than the half of the annual turnover** of the Austrian production, the Austrian processing or their marketing, expressed in Euro (Article 15 par. 2).

[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](#)

BMLFUW issued a special directive concerning the implementation of project measures set out in the **Austrian Program for Rural Development 2014-2020 (GZ BMLFUW-LE.1.1.1/0171-II/2/2014)**. This special directive is designed as sponsoring, among others, IBOs' activities in all sectors. Aim of the program is the improvement of the vertical and horizontal cooperation along the whole food production chain in order to increase the competitiveness and the value of each branch and of the chain as a whole.

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

In Austria there is a long tradition of dialogue between producers, distributors and even public authorities. For more than 100 years producers and distributors have organised themselves through **cooperatives**. Especially milk producers created cooperative companies of which they would acquire shares. These structures have remained in place until today.

Moreover, since the Second World War there have been efforts towards regulating representation of interests in the agricultural sector by law. Therefore, every federal state in Austria has created its own **Chamber of Agriculture** of which every farmer must be member. These Chambers are structured in divisions; based on their remit, professional associations have been established representing the specific interests of their members. Producers and traders are then organised within **Chamber of Commerce**, which are also structured in several divisions ("*Fachverbände*").

This considered, it can be said that in Austria, there is a **high level of market organisation for agricultural products**.

However, thanks to Regulation (EC) No 1234/2007, which Regulation (EU) No 1308/2013 has repealed, an additional possibility of organising and representing sectoral interests via IBOs has been provided. Regulation (EU) No 1308/2013 has been implemented in Austria through Ordinance on Framework Conditions for Producers (see above Section 2). BMLFUW issued the Ordinance following consultation of the representative organisations in the agriculture sector, *i.e.* the Chambers of Agriculture. In so doing, the Austrian authorities have fulfilled their obligations and set an appropriate framework for the recognition of IBOs.

Whilst national competent authorities appear to be open to establish IBOs as new market organisations in the country and stakeholders tend to agree on the importance of communication and cooperation in the agricultural sector, until now no producer, processor and/or distribution organisation has expressed interest in that respect. Indeed, no application for recognition has ever been submitted to the competent authorities, which results in **no IBO being recognised** at present. Some stakeholders view the high level of market organisation that currently exists in Austria as the main factor preventing producers, suppliers and distributors from applying for IBOs' recognition.

As to **other forms of cooperation** that EU legislation currently foresees, it should be noted that Article 24 of the Ordinance on Framework Conditions for Producers has implemented **Article 150 of Regulation (EU) No 1308/2013** as regards the

regulation of the supply of protected designations of origin and geographical indications (**PDO/PGI**) **cheese or ham**. The national provision in question stipulates that IBOs can request for the application of binding rules for the regulation of the supply of cheese covered by EU quality schemes provided that the requirements laid down in Article 150 of Regulation (EU) No 1308/2013 are met and evidence in that respect is made available to BMLFUW. So far, **no request** has been submitted to the competent authorities.

Concerning marketing rules in order to improve and stabilise the operations of the common market of wines, the Ordinance on the Establishment of IBOs in the wine sector of 23 May 2011, based on Article 125 of Regulation (EC) No 1234/2007 has established a **National Wine Committee**. The Ordinance regulates the establishment of **Regional Wine Committees** (Article 2 par. 1). Their area of responsibility includes market research and execution of marketing measures in cooperation of Österreich Wein Marketing GmbH. The latter drafts guidelines that have to be adopted by the National Wine Committee (Article 3 sub-section 2).

With regard to Articles 125 and 127 of Regulation (EU) No 1308/2013, cooperation between recognised producers and other supply chain actors has not been established in Austria so far. In addition to that, no agreement regarding the delivery of raw milk, the supply of olive oil, live cattle and certain arable crops has been negotiated by recognised producer organisations 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

Dairy Sector Merger Ordinance of 15 October 2012, Federal Law Gazette Part II No. 343/2012

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2012_II_343/BGBLA_2012_II_343.pdf

Ordinance on Framework Conditions for Producers of 03.11.2015 (Federal Law Gazette Part II No. 326/2015)

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2015_II_326/BGBLA_2015_II_326.pdf

Ordinance on the establishment of IBOs in the wine sector of 23.05.2011 (Federal Law Gazette Part II No. 164/2011)

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2011_II_164/BGBLA_2011_II_164.pdf

Law of AMA 1992, promulgated on 30.06.1992 (Federal Law Gazette Part II No. 376/1992)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10007244>

Special directive concerning the implementation of project measures set out in the Austrian program for rural development 2014-2020 (GZ BMLFUW-LE.1.1.1/0171-II/2/2014).

https://www.land-oberoesterreich.gv.at/Mediendateien/Formulare/doc_agrar/Sonderrichtlinie_Projektfoerderung_LE14-20.pdf

- National competent authorities

Agrarmarkt Austria

<https://www.ama.at/Fachliche-Informationen/Milch-und-Milchprodukte/Auslaufen-der-Quotenregelung-Milchpaket/Antrag-auf-Anerkennung-von-Erzeugerorganisationen>

Federal Ministry for Agriculture and Forestry, Environment and Water management (BMLFUW)

<https://www.bmlfuw.gv.at/ministerium.html>