Study on agricultural interbranch organisations (IBOs) in the EU

AGRI-2015-EVAL-13

National Legislation and Actions concerning IBOs

SPAIN

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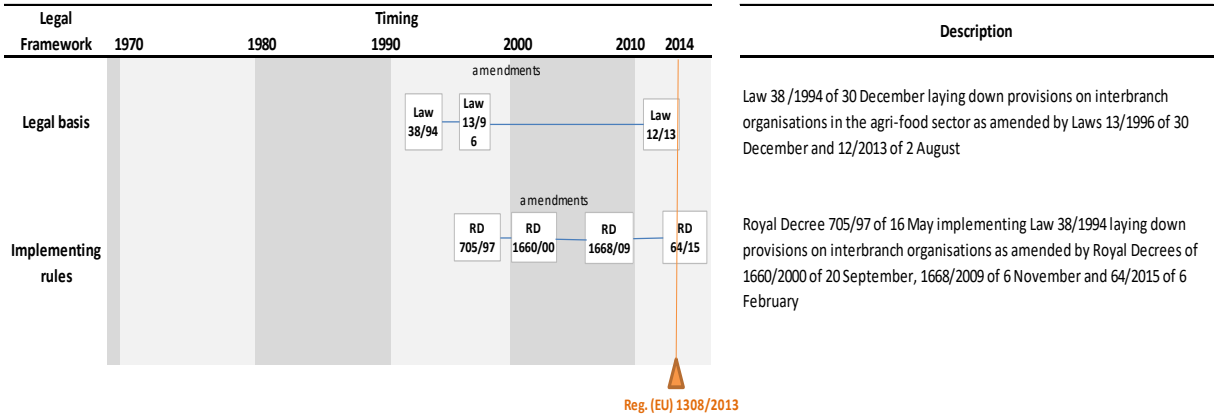
***Section 1**: National legislation pursuant to Articles 157- IBOs, 158- Recognition of IBOs, 159 and 162 – Recognition of IBOs in the olive oil, table olives and tobacco sectors and 163- Recognition of IBOs in the milk and milk products sector of the CMO Regulation*

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



Source: Compiled by Arcadia International E.E.I.G.

Summary of national legislation on IBOs

In Spain the establishment of national rules governing IBOs dates back to 1994. **Law 38/1994** of 30 December 1994 is the first act that the Spanish legislator adopted in this area. Said law provides for a **general framework** for the setting, the recognition and the functioning of IBOs in the agri-food sector at national level.

Since its entry into force, Law 38/1994 has been amended twice. Notably, **Law 13/1996** of 30 December 1996 introduced a few changes as regards the conditions and the requirements for the recognition of IBOs at national level and the approval of their agreements. On the other hand, more recently, **Law 12/2013** of 2 August 2013 laying down measures to improve the functioning of the food chain, has reviewed, among others, the national regime applicable to IBOs in order to ensure alignment with the new requirements of the new Common Market Organisation which was under discussion at that time of its adoption.

The general legal framework laid down by Law 38/1994 and its subsequent amendments is currently supplemented by **implementing rules**. Royal Decree 2070/1995 of 22 December 1995 originally contained technical provisions ensuring the application of Law 38/1994. However, due to the introduction of several significant amendments following the adoption of this act, **Royal Decree 705/1997** eventually replaced it. This legal act has been also subject to some amendments which have been introduced by Royal Decrees 1660/2000, 1668/2009 and 64/2015.

It must be noted that the legal framework governing IBOs at national level may coexist with legislation adopted by the Autonomous Communities of which Spain consists. Amongst them, Andalusia (2005), the Basque Countries (1996), Castilla La Mancha (2006), Castilla and León (2014), and Catalonia (2015) have legislation in place regulating the recognition and the functioning of IBOs with regional dimension/scope. In

this respect, it is worth noting that MAGRAMA keeps track of the legislation developed at the level of the Autonomous Communities with a view to ensuring that the latter is compatible with national provisions. In general, IBOs' legislation of the Autonomous Communities mirrors national legislation. The recent framework adopted by Catalonia makes exception to that as it would not be completely in line with the provisions of Law 38/1994 and implementing acts. For this reason, contacts and exchanges of views are currently taking place between the central and the regional competent authorities in the country.

IBOs: definition, objectives and legal status

Pursuant to Article 2 Law 38/1994 (as amended by Law 12/2013), under Spanish law an IBO is currently defined as any organisation with national scope or with a geographical coverage broader than the territory of an Autonomous Community which is composed by organisations representing food production, processing and/or wholesale/retail, regardless of the legal nature of the members of the latter.

IBOs may pursue **one or more of the activities/objectives** listed by Article 3 Law 38/1994 (as amended by Law 12/2013). The latter has substantially broadened the spectrum of the activities that IBOs may conduct, which now includes:

a) Monitor the proper functioning of the food chain and encourage the adherence to good practices in the business relations that take place between their members;
b) Carrying out actions aimed at improving market knowledge, efficiency and transparency namely by sharing information and studies of relevance to its members;
c) Developing methods and instruments to improve product quality at all stages of production, processing and distribution;
d) Promotion of research and development programmes fostering innovation in the relevant sector;
e) Improving the coordination between the different operators involved in the marketing of new products, notably through the performance of research activities and market studies;
f) Designing campaigns to raise awareness and promote food products as well as initiatives aimed at providing consumers with relevant information concerning those products;
g) Providing information and perform studies and other actions necessary to adjust and improve food production in order to meet market requirements and consumers expectations;
h) Protecting and promoting organic agriculture, integrated production and any other production method that respects the environments as well as products recognised under quality schemes;
i) Drawing up of standard contracts in the agri-food sector that are compatible with national and EU competition law;
j) Promoting the adoption of measures to regulate the offer in accordance with national and EU competition law;
k) Conducting collective negotiations on price whenever mandatory contracts are in place in accordance with EU law;
l) Developing methods for the control and optimal use of veterinary drugs, plant protection products and other production factors with a view to guaranteeing product quality and environmental protection,
m) Carrying out initiatives that ultimately aim at a better protection of the environment;

n) Promoting the effectiveness of the different stages of the food chain through actions that aim at improving energy efficiency, reducing the impact on the environment or limit food waste all along the chain;
o) Developing and carrying out training activities to the benefit of all operators in the food chain to ensure competitiveness of agricultural farms, food businesses and staff as well as attracting qualified young staff in the food chain;
p) Carrying out studies on sustainable production methods and market trends, including in relation to prices and costs which, provided that they are objective, transparent and verifiable and having regard of EU provisions that may apply to a specific sector, may be used as a benchmark for price fixing in the context of private contractual agreements;
q) Developing and implementing training activities with a view to ensuring better professional qualifications and prospects for those working in the agri-food sector.
r) Any other activity that EU law may foresee.

As regards IBOs' legal status, national law considers them as **private and non-profit organisations** with a self-standing legal personality.

IBOs' recognition and monitoring

The **Ministry for Agriculture, Food and the Environment,** commonly known under the Spanish acronym **MAGRAMA,** is the national authority responsible for granting recognition as an IBOs to the organisations interested in acquiring this status.

In Spain, national law allows for the recognition of **only one IBO for sector or product**. However, for this purpose products recognised under quality schemes are considered as different from those having the same or similar nature as set by Article 5 par. 1 and 2 Law 38/1994 (as amended by Law 12/2013).

In order to obtain recognition, applicant organisations must meet **certain legal requirements** which are set in Article 4 par. 1 and 2 Law 38/1994 (as amended by Law 12/2013). As a result, IBOs must:

1) Have their own **legal personality as** far as the pursuit of their objectives as an IBO is concerned and **do not pursue any profit**;
2) Prove that, within the geographical area and the sector in which they operate, they represent **at least 51%** of the concerned production with regard to each of the professional branches that form the IBO;
3) Cover, in principle, all the relevant production chain **at national level**;
4) Have **statutes** that fully conform with the requirements set by national law to this end.

In relation to **statutes**, applicant organisations must ensure that these founding acts:

1) Regulate the **modalities of accession of new members** as well as situations involving **membership withdrawal**;
2) Guarantee the **right to be an IBO's member** to any organisation which

   a) At national level is willing to comply with their provisions, provided that it proves that it represents at least 10% of the professional branch to which it belongs;

   b) At a level of an Autonomy Community proves that it represents at least 50% of the relevant professional branch in that territory, provided that it accounts at least for 3% of the final production at national level or 8% of the final production at the level of the concerned Autonomous Community.

3) **Bind all IBO's members** to comply with the agreements developed and agreed within the IBO;
4) Provide for the **equal participation** of the production sector, on the one hand, and the processing and distribution sectors, on the other, in the governance of the IBO.

Requests for recognition by applicant organisations must be submitted to MAGRAMA detailing their objectives and the activities foreseen or planned. Such requests must be accompanied by some supporting documents, which include, for instance, the full list of members forming the IBO, evidence as regards their level of representativeness as required under national law as well as copy of statutes and internal regulations (Article 6 par. 1 Law 38/1994 and Article 2 Annex to Royal Decree 705/1997).

MAGRAMA must take the decision on the recognition within 90 days from the receipt of the request. The decision, duly justified and in the form of a **ministerial order**, will be notified to the applicant organisation and published in the *Boletin Oficial del Estado,* the national official journal (Article 8 par. 1 and 3 Annex to Royal Decree 705/1997).

The recognition of IBOs is systematically documented in a **register,** which is managed and kept up-to-date by MAGRAMA. Agreements promoted by IBOs that are notified to MAGRAMA are also subject to registration (Article 14 Law 38/1994 and Article 19-22 Annex to Royal Decree 705/1997).

Pursuant to Article 11 Law 38/1994 (as amended by Law 12/2013), MAGRAMA may also **withdraw** the recognition from an IBO, whenever the latter ceases to comply with any of the legal requirements set in Article 4. In addition to that, withdrawal of recognition may concern any IBO that has not carried out any of the activities that such entities may pursue in accordance with national law for **three years with no interruption.** Any decision involving the withdrawal of recognition is to be taken only after that the IBO in question is given a proper hearing. Withdrawals, as recognitions, are also subject to registration in the IBO register managed by MAGRAMA as well as to publication in the national official journal pursuant to Article 9 par. 3 Annex to Royal Decree 705/1997.

Prior to any decision concerning the granting of recognition and its withdrawal, MAGRAMA must consult the **General Council for IBOs** (Article 15 par. 3 a) and b) Law 38/1994). This body, which has a broad consultative function in the context of the implementation of Law 38/1994 and its subsequent amendments, may sit in plenary or in a standing committee. In accordance with the most recent modifications introduced by Law 12/2013 as regards the composition of its plenary setting, the General Council for IBOs is chaired by the General Secretary for Agriculture and Food and consists of representatives of the following authorities and organisations:

- Ministry of Agriculture, Food and Environment;
- Ministry of Economy and Competitiveness;
- Ministry of Health, Welfare and Equality;
- Autonomous Communities;
- Agricultural organisations;
- Agricultural and fishery cooperatives;
- Recognised fishery producer organisations;
- Industry and trade organisations in the food chain;
- Consumers' organisations (Article 15 par. 2 Law 38/1994 as amended by Law 13/2013).

Following recognition, IBOs must keep **records** of their members and of the agreements promoted between them. In particular, records concerning IBOs' membership must provide detailed information as to the identity of their members, the professional branch to which they belong, the level of representativeness, dates of admission and withdrawal. Similarly, records concerning agreements must provide information on the support, expressed in percentage terms, obtained by each professional branch forming the IBO (Article 16 par. 1 Royal Decree 705/1997).

In accordance with Article 6 par. 2 Law 38/1994 (as amended by Law 12/2013), IBOs must submit to MAGRAMA, no later than 30 April of each year, a set of documents and other relevant information, including:

- The activity report concerning the previous year of activity;
- The level of representativeness ensured by the IBO at the end of the previous year of activity;
- The budget of the previous year of activity duly audited as well as of incomes and expenses of the current year of activity.

In order to ensure appropriate monitoring and follow-up of recognised IBOs, MAGRAMA may perform any inspection or control which may deem necessary (Article 16 par. 2 Royal Decree 705/1997). Under Spanish law, the violation of national provisions governing recognition and functioning of IBOs is considered as an **administrative offence**. Depending on the seriousness of the violation, offences are classified in three categories, namely minor, serious and very serious offences (Article 12 Law 38/1994 as amended by Law 12/2013).

Delays in the submission to MAGRAMA of documents required by national law for the purposes of or following recognition and the non-payment of financial contribution up to 6,000 EUR following the extension of rules in accordance with national law are regarded as **minor offences**. These violations may be subject to warnings or financial penalties up to 3,000 EUR (Articles 12 par. 2 and 13 par. 1 a) Law 38/1994 as amended by Law 12/2013).

Conducts involving the perpetration of more than two minor violations over one calendar year, the non-notification to MAGRAMA of agreements promoted by an IBO and the non-payment of financial contribution ranging from a minimum of 6,000 EUR to a maximum of 60,000 EUR following the extension of rules in accordance with national law are, instead, examples of **serious offences**. As such, they may be punished with the infliction of financial penalties ranging from a minimum of 3,001 EUR up to 150,000 EUR. The temporary suspension of the IBO's recognition up to one year may also be imposed as an ancillary sanction (Articles 12 par. 3 and 13 par. 1 b) Law 38/1994 as amended by Law 12/2013).

Finally, examples of conducts that national law considers as **very serious offences** are:

- Perpetration of more than two serious violations over one calendar year;
- The performance of activities contrary to those that national and EU law allow IBOs to undertake;
- The non-payment of financial contribution of a value higher than 60,000 EUR; and
- The unjustified refusal to admit into an IBO the organisations which may be entitled to pursuant to national law.

For such cases, the infliction of a financial penalty ranging from 150,001 EUR up to 3,000,000 may be imposed, in addition to the temporary suspension of the recognition from one year up to three. The withdrawal of the recognition is also foreseen as an

ancillary sanction (Article 12 par. 4 and 13 par. 1 c) Law 38/1994 as amended by Law 12 /2013).

For cases of non-payment of financial contribution following the extension of rules to non-members, the concerned IBO must refer any of such cases to the competent authorities, supplying, where necessary, the supporting documents required by Article 12 par. 5 Law 38/1994 (as amended by Law 12/2013).

The inclusion of cases involving non-payment of financial contribution under the conducts punishable with administrative sanctions is one of the most important novelties recently introduced by Law 12/2013. Indeed, one of the recitals of this law refers to recent problems faced by IBOs in enforcing regularly approved extensions of rules on financing with particular regard to IBOs at the level of Autonomous Communities or representing products protected under quality schemes.

IBOs' agreements: approval and extension of rules

In relation to **agreements** that IBOs may promote between its members, Spanish law stipulates the general principle whereby these entities must make sure that such agreements and, more in the general, their activities comply with the norms and principles set out in national and EU competition law (Article 7 par. 1 Law 38/1994, as amended by Law 13/2013).

Agreements covering one or more of the activities that IBOs may perform based on national law **must be notified** to MAGRAMA within **one month from their conclusion** and accompanied from documents attesting the support, expressed in percentage terms, obtained by the different professional branch concerned (Article 7 par. 2 Law 38/1994 as amended by Law 13/1996).

Following the adoption of an agreement, the IBO that has promoted it may request MAGRAMA to approve, by ministerial order, the extension of all or some of its rules to operators that are not its members. The granting of an extension is, however, subject to the fulfilment of **specific conditions** and namely that:

a) The request of an extension of rules must relate to one or more of the activities that IBOs may perform under national or EU law;
b) The agreement in relation to which the extension of rules is sought for must be supported by **at least 50%** of each professional branch forming the IBO;
c) The IBO that requests the extension of rules must represent **at least 75%** of the concerned production (Article 8, par. 1 and 2 Law 38/1994 as amended by Law 12/2013).

Further to that, Spanish law clarifies that the rules governing the approval of agreements promoted by IBOs is without prejudice to the applicable provisions of national and EU competition law (Article 8 par. 4 Law 38/1994 as amended by Law 12/2013).

The ministerial order approving the extension of rules of an agreement promoted by an IBO will determine the duration of that extension. In no case, the duration may exceed **5 years or marketing campaigns** (Article 8 par. 5 Law 38/1994 as amended by Law 12/2013).

The approval of the extension of rules of agreements promoted by IBOs that represent a general sector (e.g. fruits and vegetables) will be binding also on recognised IBOs that focus on specific products within that sector (e.g. strawberries) at national and Autonomous Community levels (Article 8 par. 5 Law 38/1994 as amended by Law 12/2013).

Rules on financing

Under Spanish law, Article 9 Law 38/1994 (as amended by Law 12/2013) provides the possibility for IBOs to request MAGRAMA to approve the extension of rules governing the financing of their activities to non-members. Such an extension may be granted when the following **conditions** are met:

a) The request of extension of rules on financing concerns an agreement whose rules have been extended in accordance with the relevant provisions of Law 38/1994 as amended by Law 12/2013;
b) The economic contribution imposed on non-members is **proportionate** to the costs incurred for the implementation of the activities of the IBO that must be financed and, at the same time, **does not discriminate** against the members of the IBO.

Under no circumstances, non-members may be required to sustain expenses for the functioning of an IBO that are not directly associated with the cost of the activities performed in the interest of the sector.

Representativeness

As regards representativeness, as already highlighted above, Spanish legislation currently foresees a **minimum level of representativeness** for three different situations:

a) With regard the professional branches forming the IBO (51%) for the purpose of formal recognition of this latter by the national competent authorities;
b) In relation to national and/or regional organisations that are willing to join the IBO pursuant to the relevant provisions that must be contained in its statutes.
c) A higher representativeness threshold, i.e. 75% for each branch forming the IBO, is required if the organisation wants to obtain the extension of rules.

***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*

Article 2 Royal Decree 705/1997 sets out that IBOs recognised by MAGRAMA may benefit from public aid or subsidises that may be foreseen with a view to promoting the attainment of the objectives that these organisations pursue.

In line with the provision mentioned above, national legislation has provided for **co-financing measures** of IBOs for several years from 1998 until 2013. Such measures were intended in the first place to encourage and facilitate the setting of IBOs and the development of actions and initiatives in accordance with the objectives foreseen by national law and by their statutes. In so doing, the measures in question have allowed the establishment of numerous IBOs in various key agri-food sectors immediately after the adoption of the legal framework for IBOs at national level. In recent years, taking into account that most sectors had already well-established IBOs, public support has focussed on specific areas or initiatives. In 2013, for instance, only IBOs' activities regarding research and development were identified as eligible for co-financing. It should be noted that financial incentives for IBOs foreseen at national level have been regularly

subject to notification to and approval by the European Commission.[1] These were national funds and, as such, they were annually included and approved under the General State Budget.

As of 2014 public support towards IBOs stopped as MAGRAMA considered that significant resources had been already earmarked to ensure the uptake of IBOs at national level. Since then no other economic incentives or subsidies have been foreseen and this is evident if one considers the evolution of the budget of certain IBOs (e.g. AIFE, INCERHPAN) which has significantly dropped over the last few years as opposed to the first decade of their existence.

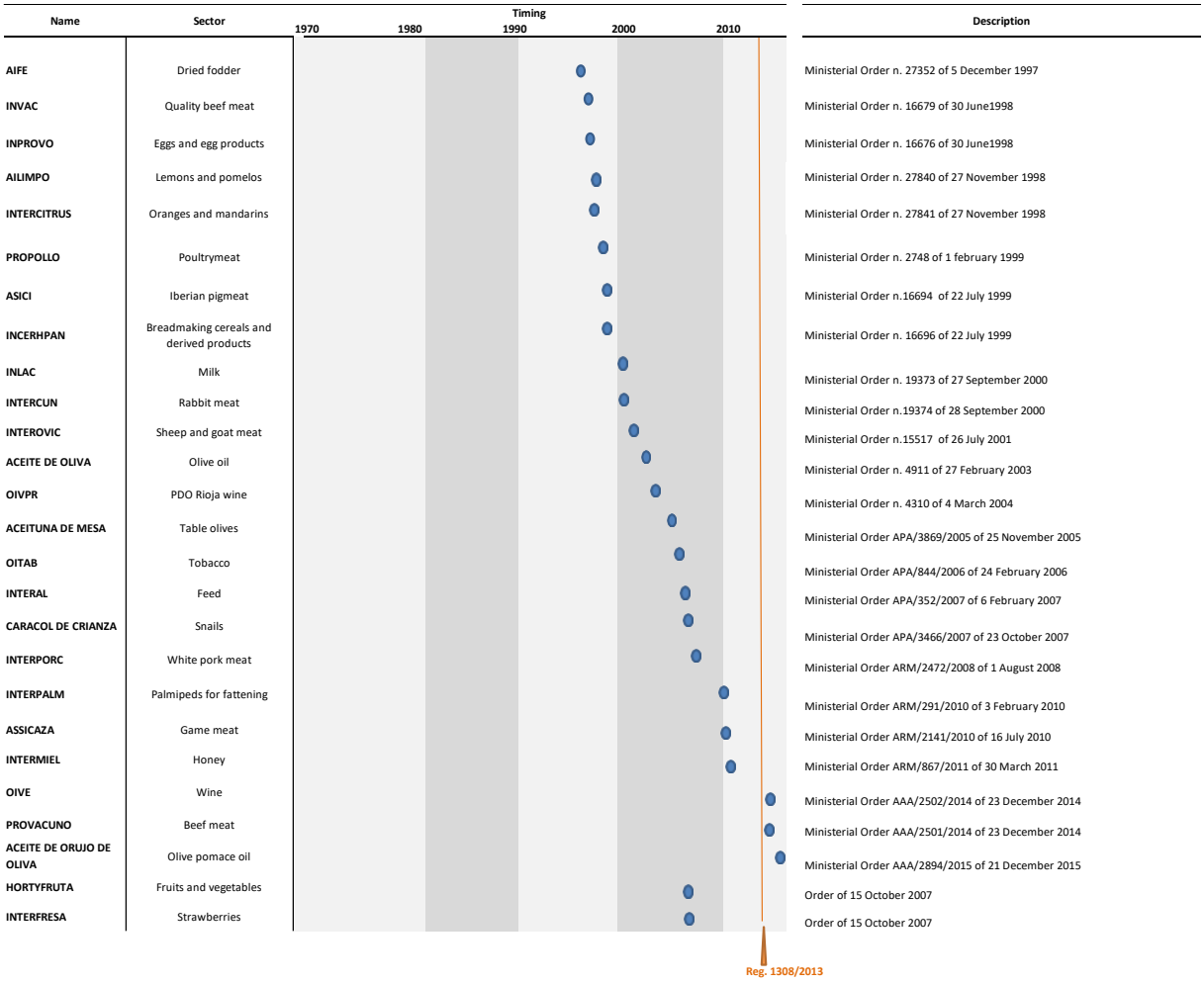
Notwithstanding the above, since they qualify as non-profit organisations under Spanish law IBOs continue to enjoy fiscal incentives that are foreseen by national legislation for this type of entities.

With regard to national competition law, there are no specific derogations or exemptions foreseen for IBOs.

[1] See for instance Commission's authorisation for national aid scheme for IBOs 2007-20013 pursuant to Articles 87 and 88 of the EC Treaty -Cases where the Commission raises no objections, OJ C 89, 24.4.2007, p. 30.

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*

Figure 2: List of recognised IBOs Spain



Source: Compiled by Arcadia International E.E.I.G.

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*

Initially enshrined in **Law 19/1982 regulating agri-food contracts**, national rules governing IBOs gained more prominence only with the adoption of Law 38/1994. It was, however, under Law 9/1982 that **sectoral committees** supervising the implementation of contracts and settling disputes stemming from them were established in different agri-food sectors (e.g. fodder, citrus fruits, pork meat), thereby paving way to the creation of IBOs as we know them today.

Largely inspired by the French experience on IBOs, Law 38/1994 did not produce any concrete effect or impact until implementing rules for recognition of IBOs were passed with the adoption of Royal Decree 705/1997.

Currently, Spain is, after France, the Member State with the highest number of IBOs recognised, i.e., 26 of which 24 with national scope and 2 at regional level).[2] The current number of IBOs together with the existence of a dedicated IBOs' team within the organigram of MAGRAMA are signals of the importance that the Spanish competent authorities attach to these entities in ensuring a certain degree of self-regulation of the product chains that are most relevant to the national market. In this respect, it is important to note that Spain has also in place a detailed legislation for agri-food cooperatives under Law 13/2013. Notwithstanding this, the **cooperative model** has had a slow uptake in this Member State and producer and processor cooperatives are generally perceived as relatively weak players in the food chain.

The vast majority of these entities has been granted recognition by MAGRAMA and thus qualify as **national IBOs**. On the other hand, there are at present only two IBOs recognised at **regional level**, i.e. HORTYFRUTA and INTERFRESA, which both operate on the territory of the Autonomous Community of Andalusia.

Whilst the large majority of IBOs have been recognised over the years that followed the adoption of the national legislation governing IBOs, there have been a few recognitions over the last couple of years (e.g. PROVACUNO, Aceite de Orujo de Oliva, OIVE). With these new IBOs been recognised, all main agricultural sectors in Spain have now an IBO representing them.

According to MAGRAMA, all the key agri-food sectors at national level (e.g. pork meat, eggs, broilers, beef, citrus fruits) presently have their own IBO in place with the sole notable exception of the **fruits and vegetables sector**. Indeed, for a number of reasons, the fruits and vegetables sector has not been able to establish its own national IBO. It should be noted, however, that HORTYFRUTA – which is the IBO officially recognised for the fruits and vegetables sector in the Autonomous Community of Andalusia - has lodged with MAGRAMA a request for recognition at national level.

In addition to that, the **potato sector**, whose representative organisations are concentrated geographically mostly in the Autonomous Community of Castilla and León, has expressed its intention to obtain, first, regional and, then, national recognition as an IBO. In spite of that, the recognition process appears to be at an early stage and has been delayed because of the disagreement between the future members of the IBO as regards the representativeness criteria that should govern the management bodies of the organisation.

Apart from the fruits and vegetables and potato, there are currently no other sectors seeking or willing to obtain recognition as IBOs at national level.

For sake of completeness, it should also be mentioned that, occasionally, third parties may question requests of recognition or recognitions granted by MAGRAMA pursuant to national legislation. This is happened recently in relation to the recognition of OIVE as a national IBO in the wine sector, which was contested by the producer association *Unión de Uniones de Agricultores y Ganaderos* for lacking the level of representativeness as required by nation law. Similarly, the recognition of Aceite de Oliva as an IBO was challenged judicially in the early years of this century by *Coordinadora de Organizaciones de Agricultoures y Ganadero*s, allegedly because the organisation did not ensure the

[2] This number does not take into account the national IBOs recognised under the Common Fishery Policy i.e. AQUAPISCIS an INTERESPADA.

representativeness of the production and the processing/industry branch on equal grounds.

Besides a long track in recognising IBOs, Spain has also some experience in the **withdrawal of recognition** from IBOs that have remained inactive or not pursued the objectives for which they had been set for several consecutive years. The most recent decisions taken by MAGRAMA with a view to revoking recognition have concerned the following IBOs:

- OILE (flax) (March 2011)
- AIPEMA (pears and apples) (March 2011)
- OIHA (dry fig and derived products) (October 2013)
- IVIM (table wines) (October 2013)
- INTERMOSTO (must and grape juice) (October 2013)
- INTERATUN (tuna) (November 2015)

Based on information collected in the context of Theme 2 (Inventory of IBOs) of this study, there seems to be other IBOs that have not performed any significant activity over the last few years and whose recognition may be therefore withdrawn at some stage. INTERCITRUS and INTERMIEL are amongst the national IBOs that may face withdrawal.

According to some stakeholders of the fruits and vegetables sector, in the past INTERCITRUS has been a powerful organisation focussing primarily on promotion besides being one of the first IBOs to be granted the extension of rules to non-members for the financing of its activities. Inactive for several years now mainly due to the progressive reduction of the financial contributions of its members, the IBO General Assembly is expected to vote on the voluntary withdrawal of the recognition during summer 2016. In the meantime, AILIMPO has taken over some of the activities previously conducted by INTERCITRUS.

As to INTERMIEL, this IBO is reported to have undergone some financial difficulties; in addition to that, its basic functioning would be prevented from its statutes, which, for the adoption of any decisions, require the unanimous vote of the IBO's members in all cases.

Because of the already significant degree of implementation of IBOs in Spain, the entry into force of Regulation (EU) No 1308/2013 has had a **relatively limited impact** in this country. Nevertheless, it should be noted that the Spanish authorities have ensured full alignment with provisions of the aforementioned regulation by adopting **Law 12/2013** that amends Law 38/1994. This legislative amendment represents by far the most important modification that the applicable national framework for IBOs has undergone since its establishment. Amongst the **major novelties** introduced with regard to IBOs, Law 12/2013 has:

a) Included **organisations representative of the retail sector** amongst the actors that can form an IBO;
b) Extended the **activities/objectives** that IBOs may pursue in line with those set out by Regulation (EU) No 1308/2013;
c) Increased **the level of representativeness** required by national law for the establishment of an IBO (i.e. at least 51% of the concerned production for each professional branch constituting the IBO as opposed to 35% under the legislation previously in force);
d) Foreseen the possibility to grant the **extension of rules to non-members** in relation to all activities/objectives that IBOs may pursue in accordance with national and EU law.

In relation to the extension of IBOs' rules to non-members, including the obligation for the latter to contribute financially towards the activities performed by the IBO operating in the respective sector, Spain has made use of such a possibility on a regular basis. There are currently **9 extensions of rules** formally approved by MAGRAMA through ministerial order and listed on its website which concern the following IBOs:

- ASSICAZA (wild game);
- Aceite de Oliva (olive oil);
- Aceituna de mesa (table olives);
- ASICI (Iberian pig meat) with 2 extensions currently in place;
- INTERCUN (rabbit meat);
- INLAC (milk and milk products):
- INTEROVIC (sheep and goat meat)
- INTERPORC (pork meat).

Overall, the extension of rules above listed aim at the **collection of fees** from non-members for the pursuit of activities that range from the organisation of promotion campaigns to initiatives aimed at fostering technological innovation, research and development or at improving knowledge and information about production and markets. In line with national law which requires extension of rules not to exceed 5 years or 5 marketing campaigns, most of the extensions of rules currently applicable have a maximum duration of 3 marketing campaigns. In two cases (INTERCUN and Aceite de Oliva), the respective extension applies for 5 marketing campaigns.

In this respect, it should be mentioned that in the past extensions of rules have been requested by, and granted to, other IBOs (for instance, INTERCITRUS, INCERHPAN, PROPOLLO etc.) and that obtaining an extension is a current priority or intention of certain IBOs such as AILIMPO, INPROVO, OIVE and PROVACUNO. As to AILIMPO, this IBO reported having requested already on several occasions the extension to non-members of its standard contract for the purchase of lemons and grapefruit, requests that MAGRAMA has consistently rejected considering that such an extension would unduly restrain the autonomy of the parties in determining the content of the contract to be concluded.

In addition to that, extensions of rules may be also granted by the competent authorities of the Spanish Autonomous Communities that have legislation in place in this area. For instance, the Andalusian IBO HORTYFRUTA has benefited from such extension from 2009 to 2012.

It is of interest to note that for some IBOs the granting of the extension of rules seems to have represented a turning point in their history as a means to ensure greater effectiveness of their action.

In spite of the above, there are situations where requests of extension of rules have given rise to **political and/or legal disputes**. Amongst those, it is worth recalling that in 2012 *Federación Catalana de Industrias Cárnicas* (FECIC) challenged the legitimacy of the extension of rules granted to INTEROVIC, legitimacy that the Supreme Court eventually confirmed. Moreover, the trade association *Unión de Uniones de Agricultores y Ganaderos* has been firmly opposing the extensions of rules solicited by PROVACUNO and OIVE, two of the most recently established IBOs. Some IBOs (for instance, INTEROVIC and Aceite de Oliva) are also involved in legal proceedings for the recovery of fees that were not paid by non-members.

As regards **other forms of cooperation** foreseen in relation to specific products (e.g. milk, wine, cheese and ham covered by EU quality schemes, sugar, live cattle, arable crops, olive oil etc.) under Regulation (EU) No 1308/2013, only the following EU provisions have been implemented at national level to date:

- **Article 125 – Sugar sector agreements and Article 127 Delivery contracts** - In Spain there are currently two major business operators – **AB Azucarera Iberia** and **ACOR** – that are involved in sugar production. The sugar quota that the EU has allocated to Spain is split between them (respectively, approximately 378,480 tonnes in the case of the first company and 120,000 tonnes for the second) pursuant to Ministerial Order ARM/2249/2009. Both companies sign with the relevant trade union growers **pluri-annual written agreements** within the trade, which define the purchase terms of sugar beet to be complied with whilst they are applicable. In addition to that, every marketing year every sugar beet grower signs a delivery contract with one of the business operators mentioned above.

- **Article 149 – Contractual negotiations in the milk and milk products sector** – In 2014, three recognised producer organisations negotiated and notified to the national competent authorities, on behalf of their members, contracts for the delivery of **raw cow milk** for an overall production volume of 840,413 tonnes. During the same year, the only recognised producer organisation for **sheep milk** at national level - i.e. Consorcio de Promoción del Ovino, negotiated - on behalf of its members, delivery contracts for an overall production volume of 70,905 tonnes;

- **Article 167 – Marketing rules to improve and stabilise the operation of the common market in wines** – In 2014 through the adoption of **Royal Decree 774/2014** Spain has introduced implementing rules to give effect to this provision at national level. The decree lays down a legal framework under which the Spanish authorities, and namely MAGRAMA, may establish, by ministerial order, rules to regulate the supply of wines and other related products (for instance, grapes and musts). These rules must clearly set out their intended objectives, besides identifying, amongst others, the production areas targeted, the characteristics of the product(s) covered as well as the specific obligations applying to the actors of the wine production chain (Article 4). Marketing rules are to be adopted for one specific campaign, following consultation with the organisations representative of the wine sector and, in particular, with the relevant IBOs (Article 3 par. 1). To date the Royal Decree in question has **not** been **implemented yet** at national level.

***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*

In Spain only two national IBOs – i.e. **PROPOLLO** and **INPROVO** - appear to have been involved in the settling of competition cases at national level over the last decade. The cases in question are very similar to the extent that both:

a) Originated from the **food price crisis** that hit, among others, the Spanish market in **2007**;

b) Concerned a violation of the prohibition of formulating collective recommendation on price fixing set by national law pursuant to Article 1 par. 1 point a) **Law 16/1989** (now replaced by Law 15/2007); and
c) Led to the application of severe financial sanctions by the Spanish competent authority, whose amount was then reduced by the competent administrative court.

The following paragraphs provide a summary of the main facts that gave rise to the cases under consideration as well as of the outcome of the relevant legal proceedings.

PROPOLLO 2007-2102

Over the period July- August 2007 several trade associations in the food sector reported through the national press and media on an imminent rise in food prices as a consequence of a price increase of raw materials. Amongst them, PROPOLLO published a press release on 27 August 2007 whose core message was further elaborated during interviews given by the IBO's President and its Secretary General. Overall, the press release informed competent authorities and consumers of an **impending price increase of poultry meat** in the range of 0,18- 0,20 EUR per Kg, notably due to the rising of prices of certain cereals intended for animal feeding (i.e. barley, wheat and cornflour) accounting approximately for 70% of the production costs. Faced with this situation, the press release concluded for the need for the poultry meat sector to increase its prices similarly to what was occurring in other segments of the food chain (e.g. meat, eggs, dairy products).

These events prompted the intervention *ex officio* of the investigation services of the **National Competition Commission** (**CNC**) (presently, National Commission for Markets and Competition), which opened an inquiry in this respect (EXPTE. S/0044/08/PROPOLLO). The inquiry unfolded over several months and ended in April 2008. The CNC investigation services eventually construed PROPOLLO's conduct as a **collective recommendation involving price fixing,** thus in breach of the national prohibition vis-à-vis practices having as an object or as a concrete or potential effect the prevention, restriction or distortion of competition in the national market or in part of it (**Article 1 par. 1, point a) Law 16/1989)**. The same allegations were also put forward by two national consumer organisations – *Confederación Española de Organizaciones de Amas de Casa, Consumidores y Usuarios* (CEACCU) and *Organización de Consumidores y Usuarios* (OCU) – which lodged formal complaints against several organisations, including PROPOLLO, with CNC.

The investigation services subsequently instituted legal proceedings against PROPOLLO before the **CNC Council,** framing the IBOs' conduct as a **very serious offence** pursuant to national competition law**.** Against this background, the IBO pleaded, among the others, that the only objective of the press release was to raise awareness with the public authorities and the public about the situation that the poultry meat sector was confronted with and that it was part of a broader communication strategy intended to achieve said objective. It also argued that no collective recommendation could be inferred from the tone and the wording of the press release as the latter communication simply warned about the possible repercussions of the price increase of certain cereals on the sector and that no

The CNC Council eventually ruled out the case through its **resolution of 29 September 2009** recognising **PROPOLLO responsible for breaching national competition law** through a collective recommendation on price fixing.

In particular, the Spanish antitrust authority considered that PROPOLLO's press release and the subsequent statements released by the representatives of the IBO contained explicit references to the amount of price increase likely to affect poultry meat. In so doing - the CNC Council held - the IBO, which represented at the time over 90% of the operators of the poultry meat sector, had somehow encouraged all of them to follow a common pattern vis-a-vis price determination and, thus, unduly restricted the principles of freedom of contracts and free competition that should apply in that area. The CNC Council conceded, however, that, although it had to be regarded as **objectively anticompetitive**, it could not be proved that the conduct kept by PROPOLLO ultimately resulted in any actual price increase. Similarly, as regards the subjective element that characterised the conduct in question, the national antitrust authority ruled out that the IBO had deliberately intended to distort competition, considering, instead, that the anticompetitive practice had resulted from mere **negligence**.

Taking into account the above, the CN Council imposed a financial penalty of **200,000 EUR** to be paid by PROPOLLO for the violation of national competition law in addition to requiring the IBO to ensure the publication of the ruling of in the national official journal and in the economic section of the most important national newspapers.

Following the adoption of the CNC Council resolution declaring PROPOLLO's conduct in breach of national competition law, on **20 October 2009** the IBO introduced an appeal before the administrative court competent at national level (*Audiencia Nacional*) with the aim to have that decision declared as illegal and the sanction resulting from it annulled. In the judgement rendered on **10 November 2010**, the court invested with the appeal confirmed in full the legality of the reasoning underpinning the resolution of the CNC Council. Nevertheless, it deemed the sanction inflicted upon the IBO **disproportionate,** having regard to the criteria set by national law for the determination of the sanction (Article 10 Law 16/1989). Taking therefore into account that in the specific case the anticompetitive conduct did not produce any concrete effects in terms of price increase, was attributable to mere negligence and was of short duration, the court opted for a reduction of the financial penalty down to **100,000 EUR**.

The competition case involving PROPOLLO ended with the resolution that the CNC Council adopted on **14 March 2012**. The resolution confirmed that the IBO had complied with the obligations stemming from the legal proceedings in which it was involved, notably the publication of the ruling of the CNC Council resolution and the payment of the financial penalty in the amount established by the administrative judge.

INPROVO 2007-2013

The competition case involving the INPROVO resulted from an *ex officio* inquiry led by CNC investigation services (EXPTE. S/0055/08 INPROVO), in addition to a complaint lodged by the consumer organisation OCU against several organisations, including the IBO.

At the origin of the inquiry there were two press releases that the Spanish IBO circulated to the media on 14 June and 29 August 2007, revealing, respectively, a 20% increase in egg production costs since the beginning of the year and a further 12% rise (equal to 0,15 EUR per dozen of eggs) during the month of August. Both documents pointed out to the rising demand of certain cereals used in animal nutrition as biofuels and, thus, their higher market prices as the reason for the higher production costs reported. Likewise, both of them hinted that consumer prices would necessarily have to reflect such costs.

The CNC Council ruled out the case through its **resolution of 28 September 2009** recognising **INPROVO responsible for breaching national competition law** for formulating a **collective recommendation on price fixing**. In so doing, the national competition authority recognised the conduct kept by the IBO as **objectively**

anticompetitive being, as such, apt to unduly restrict the principles of freedom of contracts and of free competition as regards price determination in the context of the relevant product chain. Also in this case, therefore, the CNC Council did not consider relevant whether or not an actual price increase ensued from the conduct in question in order to consider it illegal. Likewise, it ruled out the existence of any intentionality behind the conduct of the defendant.

Based on above, the competition authority condemned INPROVO to pay a **penalty of 100,000 EUR** besides ensuring adequate publicity of the ruling in the national official journal and in the most important national newspapers.

Following that, INPROVO introduced an **appeal** against the decision of the CNC Council with the *Audiencia Nacional* with a view to having such a decision declared illegal and the the associated sanction anuled. On **13 October 2011** the latter confirmed in full the legal arguments underpinning the resolution of the national competition authority. However, it considered the sanction inflicted on the IBO disproportionate, taking into account mitigating factors such as the absence of concrete effects in terms of price increase and the relatively short duration of the conduct. Based on that, it ordered the financial penalty to be reduced to **50,000 EUR**.

The competition case involving INPROVO ended with the resolution that the CNC Council adopted on **9 January 2013**. The resolution confirmed that the IBO had complied with the obligations stemming from the legal proceedings in which it was involved, notably the publication of the ruling of the CNC Council resolution and the payment of the financial penalty in the amount established by the administrative judge.

Apart from the two competition cases described above, **no further cases or formal complaints** have been brought to the attention of the national competent authorities. Finally, in relation to the application of **Article 210 of Regulation (EU) No 1308/2013** regarding agreements and concerted practices promoted by IBOs, MAGRAMA's policy is to assess the impact that such agreements and practices may have on the market as well as on the sound operation of the market organisation and notify them to the European Commission, as appropriate. As a rule, considering the impact that they generally have within the relevant sector, all agreements or concerted practices promoted by IBOs that are coupled with an extension of rules to non-members are subject to notification at EU level.

For sake of completeness, it should be mentioned that at the level of the Autonomous Communities, there seems to have been only one competition case related to agreements and practices of IBOs over the last decade. The case concerned HORTYFRUTA, one of the two IBOs presently recognised in Andalusia. A summary of the case is provided in the following paragraphs.

HORTYFRUTA 2008

In 2008 the IBO HORTYFRUTA requested the competent authorities of the Autonomous Community of Andalusia the granting of an extension to non-members of the rules of an agreement on quality of certain fresh fruits and vegetables (e.g. tomato, watermelon, melon, cucumber, table grapes etc.). The agreement in question aimed at **limiting the marketing** of the concerned fruits and vegetables **only to those falling under class extra and class I** with a view to safeguarding the image of the relevant sector at regional level as opposed to that of products originating from outside the EU. In accordance with the terms of the agreement, derogations could be envisaged in order to avoid situations involving market shortage and price increase.

Requested to deliver an opinion on the compatibility of the extension of rules sought for by HORTYFRUTA with applicable competition law (notably, Law 6/2007 of the

Autonomous Community of Andalusia), on **23 December 2008** the **Competition Council** of the Spanish region (**CDCA**) concluded that the agreement in question **unduly restrained competition** besides not bringing any tangible added value to the sector (e.g. improved quality of the products at stake) and the consumers.

More precisely, CDCA considered that, by stepping up considerably quality requirements for the marketing of certain fruits and vegetables, the implementation of such an agreement would have limited business operators' market access as well as the consumer choice in the relevant market segment, ultimately resulting in a competitive advantage only for some and not for all businesses. In addition to that, the Andalusian competition authority pointed out that the agreement promoted by HORTYFRUTA did not conain any detailed information on the concrete measures to be adopted to address possible products' shortage and rising of prices, thereby not providing adequate guarantes for the proper functioning of the market.

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