

Study on agricultural interbranch organisations (IBOs) in the EU

AGRI-2015-EVAL-13

National Legislation and Actions concerning IBOs

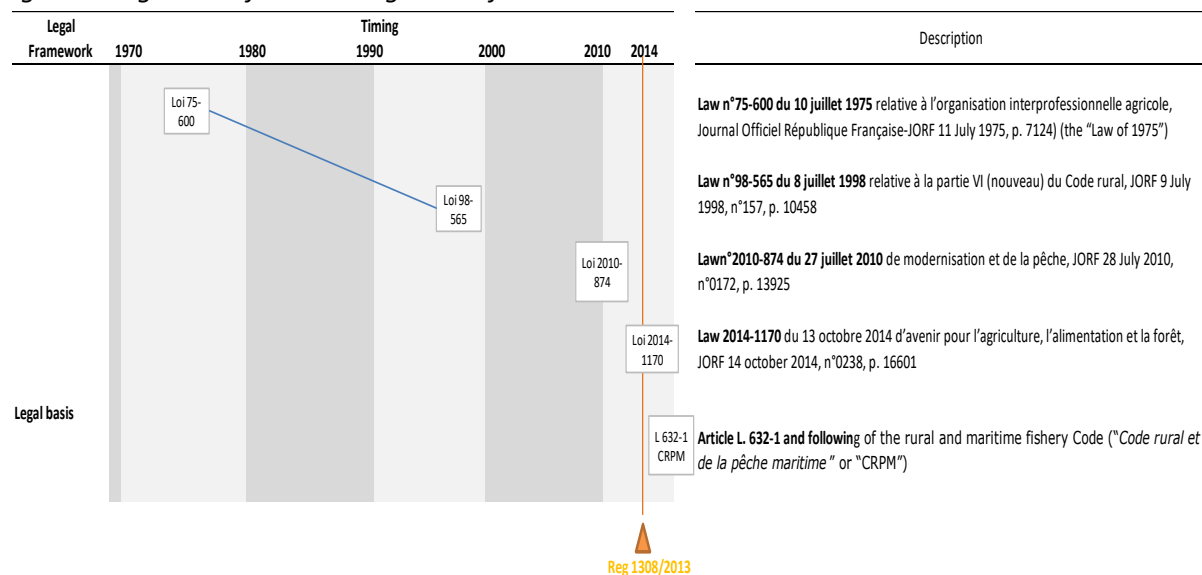
FRANCE

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 does not 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 France



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

Summary of national legislation on IBOs

Interbranch organisations (IBOs) (in French "organisations interprofessionnelles") are subject to detailed national rules including legislation, government and ministerial decrees and other implementing measures as well as significant administrative practice. (See for instance the « Instruction technique DGPE/SDC/2016-231 of 16 March 2016 (N° NOR AGRT1607672J) pour l'extension des accords conclus au sein des organisations interprofessionnelles agricole »).

The legislative and regulatory provisions set out in the present fiche are also the subject of extensive case law from French administrative and judicial courts. The present fiche does not address such case law in a detailed or systematic way but some selected precedents are discussed in the analytical part of the report.

IBOs have existed in France for nearly one century with a broad variety of forms and purposes. As of today, 63 recognised IBOs are operating in France (the list of French IBOs is provided under (Section 3).

Until 1975, French IBOs were established *ad hoc*.

The first national rules on interbranch organisations were adopted in 1975 (**Loi n°75-600 du 10 juillet 1975** relative à l'organisation interprofessionnelle agricole, Journal Officiel République Française-JORF 11 July 1975, p. 7124) (the "Law of 1975"). The Law of 1975, later modified, was repealed in 1998 (**Loi n°98-565 du 8 juillet 1998** relative à la partie VI (nouveau) du Code rural, JORF 9 July 1998, n°157, p. 10458).

Another – ongoing- case concerns the application of European Union public procurement rules to the award of contracts by IBOs in the conduct of their public services activities was recently referred to the Court of Justice (C-155/16 pending) by the highest judicial court has referred (Pourvoi 14-13540, ECLI:FR:CCASS:2016:CO00249).

With regard to the above developments, it remains to be seen how the Court ruling in the case *Beaudout*, C-25/14 and C-26/14, may be extended to IBOs and what the Court interpretation will be in C-155/16. The application to IBOs of either of these cases could have a significant impact on the functioning and governance of French IBOs in particular as transparency and the publicity of IBO expenditure are identified as recurrent issues.

IBOs: Definition, objectives and legal status

French law provides no strict definition of an IBO but refers to “*groupings constituted by professional organisations, at their sole initiative, representing agricultural production and, as the case may be, the processing, the trading and the retailing*” (article L.632-1 CRPM).

Recognised IBOs may regroup their individual member organisation by activity, create organised sections responsible for one or more product(s), and also associate representatives of consumers or employees (ie.g. Unions of employees).

IBOs established by law or regulation and recognised under article 157 CMO (i.e. subject to decree 2014-572 above) may, in addition to their right to request the competent authority to modify provisions applicable to them, also adopt new articles of association in their statutes. These changes may be adopted by a majority of two thirds of the members of their deliberative body and the unanimity of the professional branches of the IBO. Such new articles of association are notified to the administrative authority competent for the product in question and their filing in the competent district government representative (“*préfecture*”) are published in the official journal, along with the list of the provisions removed following the adoption of the new IBO articles of association (L.632-9 §§2-4 CRPM).

IBOs subject to law, regulations or court rulings prior to 5 July 1980 keep their existing prerogatives and may not be required to join a wider IBO. Furthermore the extended agreement of wider IBOs may not apply to such IBOs existing prior to 5 July 1980 (L.632-10 CRPM).

Transfers without counterparty of the assets and debt of agricultural interprofessional organisation to recognised IBOs having the same activities are “exempted from stamp duty, registration tax, real estate publicity tax” and from the contribution of real estate safety (L.632-11 CRPM).

Objectives

Article L632-1 lists the possible objectives that any IBO may pursue. The list includes 8 different objectives which is a shorter list than the one of Regulation (EU) 1308/2013. However, it can be observed that both lists group the same objectives. There is no significant difference between the list of the French Code Rural and Regulation (EU) 1308/2013.

This article indicates that the list presented is not exhaustive in the sense that other objectives may be included in the statutes of the IBOs. These "other" objectives are then validated or refused during the recognition process.

Agreements and other activities promoted by IBOs

IBOs may define template contracts, which may be extended by administrative decision, and can include standard clauses on the determination of prices, delivery schedules, contract duration, the principle of floor prices, the review of sales conditions in case of high seasonal variations of agricultural raw materials prices, as well as the regulation of volumes with a view to adjust offer to demand. IBOs may also provide for the monitoring of transactions implementing such template contracts and establish good practices (which may not be subject to extension) (L.632-2-1 §2 CRPM).

IBOs may also establish and communicate market index to reflect trends as well as any such data having the potential to give indications on the sector (L.632-2-1 §3 CRPM).

IBOs may adopt labelling rules regarding the country of origin of products whereas such requirements are not subject to extension (L.632-2-1 §4 CRPM).

Separately, IBOs may join efforts in so-called federations to fulfil their goals as provided under national or European Union rules. An IBO may also authorise another IBO to act on its behalf for designated goals (L.632-2-2 CRPM).

IBOs can also be consulted on policy orientations of the supply chain in which they are active (L.632-2-1 §1 CRPM). No additional information on which body(ies) can consult the IBOs and the procedure to be applied is provided.

Legal status

The past or current French legislation doesn't specify any obligation with regard to the legal status of the IBO. Most of them are using Law 1901 for the creation of associations and their legal status is based on this Law 1901.

General French law provisions are silent on the question of the legal personality of IBOs. The provisions establishing individual IBOs state in most cases that the IBO is granted civil personality ("*personnalité civile*"), i.e. can act in court in order to defend their interests. In at least one case, the highest French administrative court has relied on a general provision of 1944 reinstating legal order in France to find that the relevant IBO held civil personality (CE, 7 February 1975, ECLI:FR:CESJS:1975:83254.19750207).

While upholding the legal standing of IBOs to initiate legal proceedings (for instance IBO for Gruyère against a supermarket chain, Cass Com, 23 October 2007, action 0612022), Courts nevertheless verify that IBO initiated court proceedings are within the said IBO actual scope. In at least one case, a court has denied the right of an IBO to act beyond the scope of its interests (see for instance rejection of the legal standing of the IBO GNIS ("*Groupe national interprofessionnel des semences, graines et plantes*") to act as a civil party in a criminal action regarding the illegal marketing of certain seeds, Cass Crim, 8 January 2008, action 0780534).

Courts have also made the distinction between holding civil personality and the related legal standing and the fact that IBOs are not associations in the meaning of article 11 1. of the European Convention for Human Rights including, the right to withdraw from an Association (see for instance Court of appeal of Angers, 21 janvier 2002, RG: 2000/02439).

IBOs recognition and monitoring

Study on agricultural interbranch organisations (IBOs) in the EU

National Legislation and Actions concerning IBOs - FRANCE

IBO which represent a "*significant part*" of the relevant sectors of activities may be recognised as IBOs by "*the competent administrative authority following an opinion of the Higher council of orientation and coordination de agricultural and diet economy*" (L. 632-1 CRPM).

The recognition as IBO may be either at the national level or at the level of an area of production, by identified product or group of products and if the grouping pursues the objectives contained in article 157 1. c) and 3. c) CMO or, for products outside the CMO Regulation, similar objectives listed as 1° to 8° in article L. 632-1 CRPM.

Recognition requires that the articles of association of the IBO provide for the designation of a mediation body for resolution of disputes between the IBO member organisations arising in the course of IBO activities (Article L-632-1-3 CRPM).

Sector specific IBO recognition rules are provided for fishing and aquaculture (article L-632-1-1 CRPM) and for forestry and wood products (article L-632-1-2 CRPM).

Only one IBO may be recognised by product or group of products. If a national IBO is recognised, corresponding regional grouping constitute committees and are represented that national IBO. Implicitly such regional groupings are not recognised as IBOs.

However, in derogation to the above principle regional IBOs may be recognised in the wine sector (as defined in L.632-2 I §2 CRPM) or in the case of agricultural products or foodstuffs under the same protected designations such as a designations of controlled origin ("*appellations d'origine contrôlée*", "*AOC*"), protected geographical indications (PGI), or of a common label, conformity certification or eco-certification.

IBOs established by law or regulation and existing as of 11 July 1975 may, at their request, benefit from the provisions of article L.632-2-1 to L. 632-7 CRPM (L.632-9 CRPM).

The conditions of recognition of IBOs have been interpreted broadly by French courts to the effect that any legal vehicle may be recognised as IBO provided the criteria of representativeness are satisfied (for instance a Union, CE 18 February 1994 *Chambre syndicale des centres agréés d'abattage et de conditionnement des produits de basse-cour*, ECLI:FR:CESSR:1994:103617.19940218) and even if some members of the organisation are not direct operators themselves (CE 15 mars 2000, *Union nationale des professionnels horticoles*, ECLI:FR:CESSR:2000:201495.20000315). The above quoted case law is selected from commentaries and is evidence that the recognition of IBOs is routinely challenged by operators, groups of operators or competing organisations (see also most recently, CE 15 February 2016, ECLI:FR:CESSR:2016:389313.20160215).

Recognition procedure

The recognition of IBOs is regulated by article R. 632-1 to R.632-4-1 CRPM.

Applications for recognition should be addressed to the ministry of agriculture and include the article of associations of the relevant IBO.

The ministry of agriculture coordinates the assessment of the application with the ministries of the economy and of budget, may obtain any additional information from the applicant and request a related opinion from the Higher Council of orientation and

coordination of agricultural and foodstuff economy ("*Conseil supérieur d'orientation et de coordination de l'économie agricole et alimentaire*").

A recognition decision is adopted by ministerial decree.

The withdrawal of recognition must be preceded by a letter of formal notice sent by registered mail with proof of delivery indicating the reasons why the withdrawal of the IBO recognition is being considered along with an invitation to present observations within two months.

Monitoring

Every year, IBOs supply the administrative authorities competent for their activities:

- Their financial statements;
- Their annual report and the report of the IBO General Assembly;
- The assessment of the implementation of each extended agreement; and
- All other requested data within the relevant authority control powers (L.632-8-1 CRPM).

IBOs agreement and extension of rules

IBOs may draw template contracts, which may be extended by administrative decision, and can include standard clauses on the determination of prices (how the prices are set-up only), delivery schedules, contract duration, the review of sales conditions in case of high seasonal variations of agricultural raw materials prices, as well as the regulation of volumes with a view to adjust offer to demand. IBOs may also provide for the monitoring of transactions implementing such template contracts and establish good practices (which may not be subject to extension) (L.632-2-1 §2 CRPM).

IBOs may also establish and communicate market index to reflect trends as well as any such data having the potential to give indications on the sector (L.632-2-1 §3 CRPM).

IBOs may adopt labelling rules regarding the country of origin of products whereas such requirements are not subject to extension (L.632-2-1 §4 CRPM).

Separately, IBOs may join efforts in so-called federations to fulfil their goals as provided under national or European Union rules. An IBO may also authorise another IBO to act on its behalf for designated goals (L.632-2-2 CRPM).

Agreements concluded by a recognised IBO extended in full or in part and for defined period of time by the competent administrative authority provided such agreements "*provide common actions or aiming toward a common interest within the general interest and compatible with European Union legislation*" (L.632-3 CRPM).

Agreements eligible for extension must be adopted by a unanimous decision of the members of the relevant IBO and subject to the said agreement compliance with applicable European Union law (L. 632-4 §1 CRPM). The adoption of agreements within the IBO and the application of the unanimity rules are subject to further detailed rules (L. 632-4 §6 CRPM).

If the agreement for which the extension is requested includes a template contract under L.632-2-1 CRPM or the sale of agricultural products under L.631-24 CRPM, the competent administrative authority may request an opinion of the French competition council. The agreement may be extended if the French competition council has not replied within two months (L. 632-4 §8 CRPM).

The competent administrative authority must respond to the application for extension within two months (three months in case of referral to the French competition council) following its submission (L. 632-4 §9 CRPM). The deadline is suspended accordingly if additional data is necessary or if a notification is made to the Commission on the basis of Directive (EU) 2015/1535 (procedure for the provision of information in the field of technical regulations and of rules on information society services).

Passed the two (or three) month deadline, the extension is deemed accepted (L. 632-4 §10 CRPM). Extension refusals must state reasons (L. 632-4 §11 CRPM).

When the extension is granted, *"the measures provided are binding for all members of the professions constituting the IBO"* (L. 632-4 §7 CRPM).

Extended IBO Agreements are exempted from the national rules implementing article 101 and 102 TFUE (L. 632-5 CRPM).

Transactions related to but in breach of extended agreements are considered null and void and IBOs, along with each of the member professional organisations are deemed to have legal interest in applying for such invalidation in court (L. 632-7 §1 CRPM). In such situation, the lowest judicial court (*"juge d'instance"*) may also award the IBO an indemnity ranging from 76.22 EUR and the full compensation of the damage suffered (L. 632-7 §2 CRPM). The above rights are without prejudice to the application of other rules.

The rules on the extension of IBOs agreements have been regularly litigated and are generally broadly interpreted by French Courts. The Conseil d'Etat (French highest administrative court) has thus considered that the objectives pursued by IBO agreements were not limited to that listed in the law (see for instance CE 25 July 1980, ECLI:FR:CESSR:1980:15442.19800725 and ECLI:FR:CESSR:1980:17655.19800725) or that an IBO agreement imposing labelling requirements on fruits and duly consulted with the European Commission could be extended without a prior consultation of producers of the relevant area (CE 3rd April 1998, ECLI:FR:CESSR:1998:174074.19980403). However, the Court of Cassation (highest judicial court) has found that national authorities had no competence to extend IBO agreements where European Union had already exhaustively harmonised production or marketing requirements (Cass com, 23 October 2001, actions 0010631 and 0010632).

Procedure applicable to the extension of IBO agreements

The extension of IBO agreements is regulated by article D.632-4-2 to D.632-4-4 CRPM (as introduced by Decree 2015-226 of 26 February 2015 on agreement extensions (*"Décret 2015-226 du 26 février 2015 relatif aux modalités d'extension des accords conclus par les organisations interprofessionnelles agricoles"*, JORF 28 February 2015, n°50, p.3942)) for the purpose of articles 164 and 165 CMO.

These rules require the submission by the relevant IBO to the minister of agriculture of a formal request for the extension for each relevant agreement adopted within the said

IBO. The minister of the economy is automatically consulted and the extension of an agreement is decided jointly by a regulation signed by both ministers. The ministers of budget (for wines and spirits) and the minister of overseas (for oversea IBOs) are consulted and sign extension decisions as relevant.

The competent administrative authority must respond to the application for extension within two months (three months in case of referral to the French competition council) following its submission (L. 632-4 §9 CRPM). The deadline is suspended accordingly if additional data is necessary or if a notification is made to the Commission on the basis of directive 98/34 (information procedure in the area of norms and technical regulations and rules relevant to information society).

Negative decisions are taken by the minister of agriculture on its own initiative or at the request of other ministers.

The content and conditions of the formal request for extension was introduced by a ministerial decree ("*Arrêté du 26 février 2015 relatif aux demandes d'extension des accords conclus dans le cadre d'une organisation interprofessionnelle reconnue*", JORF 28 February 2015, n°50, p.3946).

A request for extension of an IBO agreement must contain:

1. The request for extension (with designation of annexes of the agreement concerned as the case may be);
2. The original of the executed agreement with each page, including the annexes, initialled by the parties to the agreement;
3. An explanatory note of the relevant activities. For agreements involving a CVO, a provisional budget for the relevant time period must be included. Objective economic justifications for payments term adjustments (wine sector), data necessary for the examination of template contracts and regulatory measures are subject to separate explanatory notes;
4. The demonstration of the IBO representativeness (in line with article 164 CMO, or in the case of cheese with protected designation of origin or protected geographical indication, under article 150 CMO);
5. Minutes of the meeting of the IBO decision making body having adopted the agreement, including an express reference to the agreement and its content, signed by its president or director as appropriate;
6. Information regarding the notification of the agreement to the Commission under article 210 CMO (notification for antitrust purposes), as relevant;
7. A report on the IBO activities including the presentation, as the case may be, of a past agreement having been extended (together with a report supported by figures on related actions having been delegated), an activity report and the IBO full financial accounts;
8. The completed information form attached as annex 1 to the ministerial decree; and
9. In the wine, cheese or ham sectors, the assessment of the measures regarding the regulation of supply.

Public authorities may request any additional document and set a deadline for its production.

In reference to the consultation of interested parties required by article 165 CMO, the same ministerial decree provides for the publication of the IBO agreement for which an extension is applied for "*during three weeks*" in the official bulletin of the agriculture ministry. Comments of interested parties must be addressed in writing or electronically within the three weeks provided for the consultation (article 3).

Rules on financing and financial control

Collection of IBO mandatory contributions

Recognised IBOs are "*entitled to collect, on all members of their constituting professions*" fees resulting from extended agreements. Notwithstanding their mandatory nature, IBOs fees remain private claims (L.632-6 §1 CRPM). Such fees are so-called "mandatory voluntary fees" (in French "*cotisations volontaires obligatoires*"), further "CVO".

In case of fees established on the basis of a statement of the person concerned; if the debtor has failed to file such a statement, the IBO may, following a formal notice with a deadline of one month, conduct an ex officio fees in line with the conditions of the agreement (L.632-6 §3 CRPM). The agreement may also provide for costs related to the failure to provide such statements (L.632-6 §4 CRPM).

The French Government may provide IBOs with the data necessary for the calculation of their fees, subject to the conclusion of a convention on such transfer of data (L.632-7 §6 CRPM).

Implementing rules allow IBOs to refer cases of unpaid contributions for which it hold an enforceable title (such as a Court decision) to the competent Customs office and request, in duly substantiated cases, the so-called blockage ("*blocage*") of the debtor's products found in customs until the said contributions are paid (articles R. 632-8-1 to R. 632-8-9 CRPM). Circumstantial evidence suggests that the proportion of unpaid contributions is incidental (under 1%) and that payment issues are resolved without recourse to the above provisions.

Financial control of IBOs

Decree 55-733 provides that IBOs that are « authorised to collect taxes, fees or voluntary contributions » are subject to the economic and financial control of the State. The control covers « the economic activity and the financial management » of the organisation concerned for the purpose of « analysing risks and of evaluating performance » and is conducted by the Ministry of Finance. The Ministry of Finance appoints an agent in charge of control (« agent chargé de l'exercice du contrôle ») with broad powers to access or request any data or documents for the purpose of the duty of control.

The control agent is invited to each General Assembly and is consulted on each projected decision of the IBO.

Separately, IBOs are required to supply every year to the administrative authorities competent for their activities:

- Their financial statements;
- Their annual report and the report of the IBO General Assembly;
- The assessment of the implementation of each extended agreement; and
- All other requested data within the relevant authority control powers (L.632-8-1 CRPM).

The economic and financial control of CONTRIBUTION collecting IBOs is further provided in a ministerial decree of 21 June 2010 on the State economic and financial control on IBOs ("*Arrêté du 21 juin 2010 précisant les modalités d'exercice du contrôle économique et financier de l'Etat sur les organisations interprofessionnelles agricoles*", JORF 29 June 2010, n°20, p.11643), as modified.

Under these rules, public authorities responsible for the control (further the "Controller") of IBOs collecting taxes, fees or CONTRIBUTIONS are invited to and may participate in meetings of the IBO decision making bodies. The same public authorities may also require any additional data or documents and make any observation or recommendation.

The above powers are deemed to be exclusively in connection with the economic activity and financial management of IBOs and only concern decisions having a potential impact on the IBOs annual accounts. In this connection, an agreement may be concluded between the Controller and the president of the relevant IBO.

Rules on representativeness

As regard representativeness, as mentioned already above, the French legislation differentiates between **representativeness at recognition level and in the context of requests for extension of rules.**

At recognition, grouping of actors can be recognised by competent authorities if they include professional organisations representing primary production and, depending on the cases, processing and/or trade and/or retail, if they represent a significant part of these activity sectors (Article L632-1 of French Code Rural).

For the extension of rules, representativeness of IBOs is assessed taking into account the economic structure of each sector. The volumes taken into account are those produced, processed or marketed by professional operators which are likely to enforce the obligations under the agreements. In addition, when determining the proportion of the volume of production or marketing or processing of the product or products concerned presents practical problems, the IBO is considered as representative if it represents two-thirds of these operators or of their turnover (L. 632-4 second paragraph CRPM).

For production, these conditions are deemed fulfilled when the trade union organisations of farmers representing at least 70% of the vote in elections of chambers of agriculture are involved in the trade organisation directly or through specialised associations adhering to these organisations (L. 632-4 §4 CRPM).

For sectors other than production, these conditions are deemed met if the IBO can demonstrate that the agreement for which the extension is sought has not been opposed (within a month of its publication) by professional organisations representing more than a third of the activity concerned (L. 632-4 §5 CRPM).

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

There is no other specific national legislation than the one presented above in Section 1.

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

Following the adoption of the CMO Regulation 1308/2013, Decree 2014-572 of 2 June 2014 regarding the recognition of the interprofessional organisations (*Décret n°2014-572 du 2 juin 2014 relatif à la reconnaissance des organisations interprofessionnelles*, JORF of 4 June 2014, n°128, p.41) provides recognition of IBOs approved prior to 1st January 2014 (or in the case of IBOs in milk and milk products, approved prior 2 April 2012) as "existing IBOs in the meaning of article 157" CMO (article 1 of Decree 2014-572).

According to the information provided by the French Government at the request of the Commission (see response dated 4 May 2015, received as Ares(2015)1940945 – 07/05/2015), recognition granted by Decree on the basis of article 158 2. CMO and article 163 2. CMO concerns 63 IBOs (the IBOs concerned are identified as "article 158 2. CMO and article 163 2. CMO").

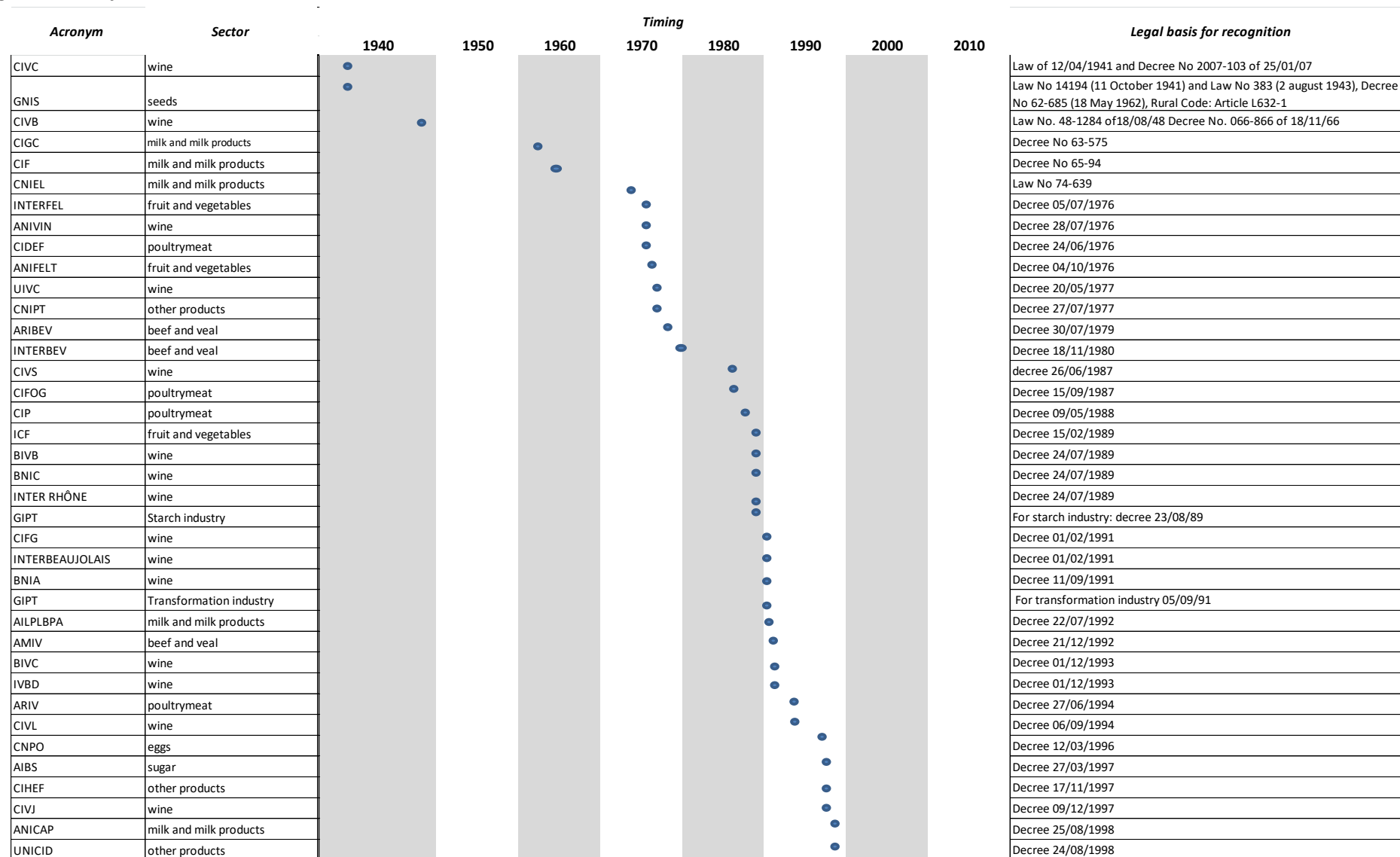
Separately, individual recognition was granted under principles of article 158 4. CMO to the following IBOs (information also provided response dated 4 May 2015, received as Ares(2015)1940945 – 07/05/2015) per law of the minister of agriculture of 3, 19 and 25 June 2014 respectively:

- Comité interprofessionnel du Vin de Bordeaux (CIVB);
- Comité interprofessionnel du Vin de Champagne (CIVC);
- Comité interprofessionnel du Vin d'Alsace (CIVA);
- Groupement National Interprofessionnel des Semences et Plants (GNIS);
- Comité interprofessionnel de gestion du Comté (CIGC); and
- Comité interprofessionnel Cantal Salers (CIF).

Study on agricultural interbranch organisations (IBOs) in the EU

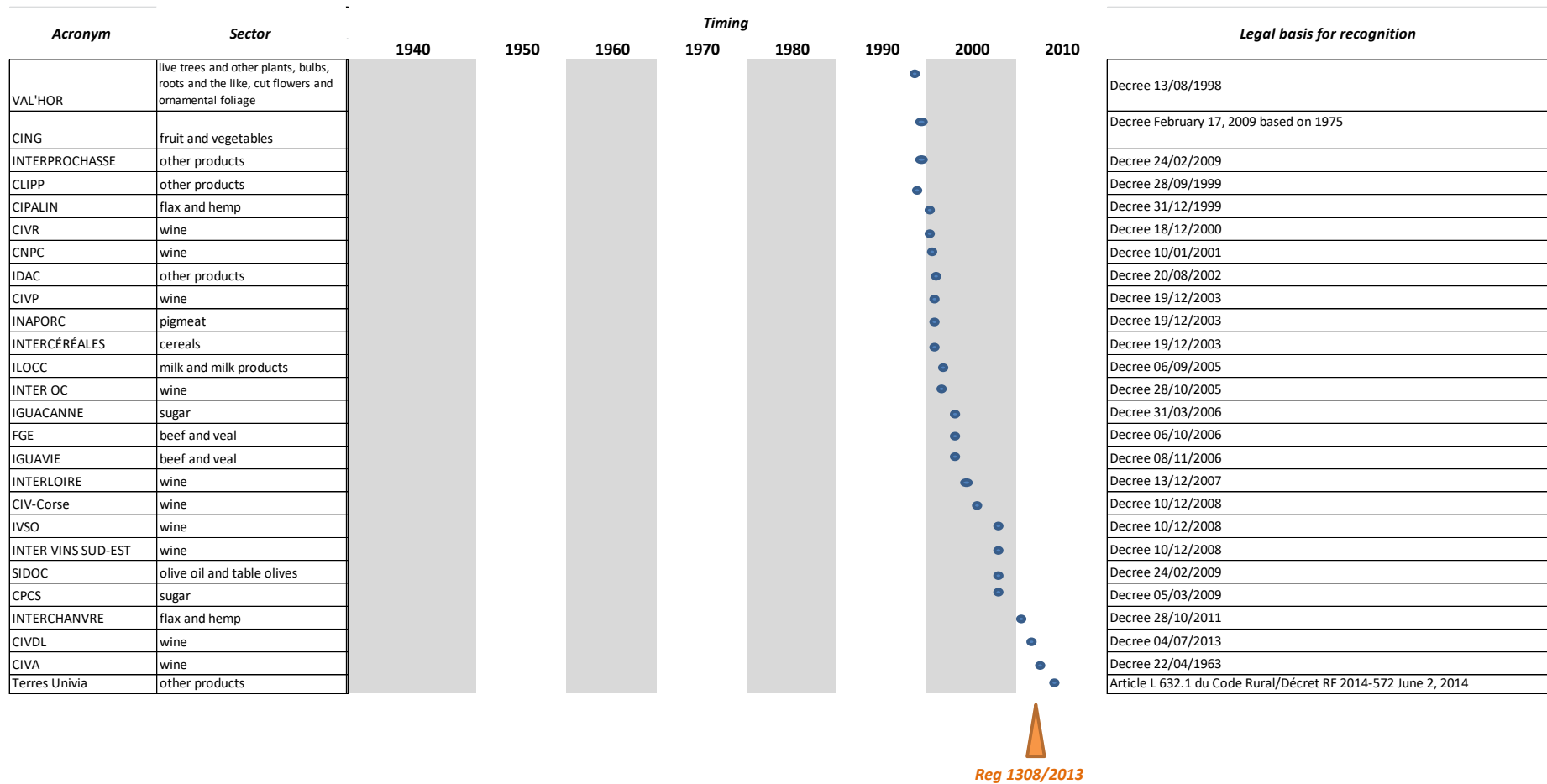
National Legislation and Actions concerning IBOs - FRANCE

Figure 2: List of IBOs in France



Study on agricultural interbranch organisations (IBOs) in the EU

National Legislation and Actions concerning IBOs - FRANCE



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

As French IBOs largely preceded EU rules on IBOs, this topic is mainly addressed separately (see in particular historic overview of French IBOs, fiches of individual IBOs and Theme 3 of the final report).

France has today a total of 63 recognised IBOs. Most of these IBOs have been recognised during the 1980-2005 period. Only 13 IBOs have been recognised during the last 10 years. Only a few withdrawal of recognition have been identified in France since 2006):

- UNIP (protein crops) and ONIDOL (oil crops) have merged to create Terre Univia in 2015 as many problems were similar and that actors were often the same in the two former IBOs;
- INTERMIEL (honey) has ceased its activities in 2013 due to internal conflicts between the different organisations. It seems that a request for recognition of a new IBO has been submitted to Competent authorities in 2015; and
- FIVAL (horses for sport) has been withdrawn in 2012.

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, France is making use of such a possibility for a large majority of IBOs. Only a few IBOs are not using this extension of rules (the 2 IBOs-ARIV and ARIBEV in overseas –Réunion; the CIP (turkey) and INAPORC (pig meat)).

A total of about 70-80 requests for extension is submitted every years to authorities. Requests related to extension of rules to collect CVOs are usually proposed for a period of 3 years when other requests are for a shorter period of time (in general one year).

Over the last 3 year period, requests for extension for collecting CVOs represent about 65% of the total number of request (133 out of a total of 211). In the large majority of cases, a request for extension includes several objectives mixing CVOs and other purposes. Therefore it is not really possible to indicate into details for which objectives the extensions have been requested without analysing in details each individual request.

The breakdown between CVOs and other types of request for extension reads as follows.

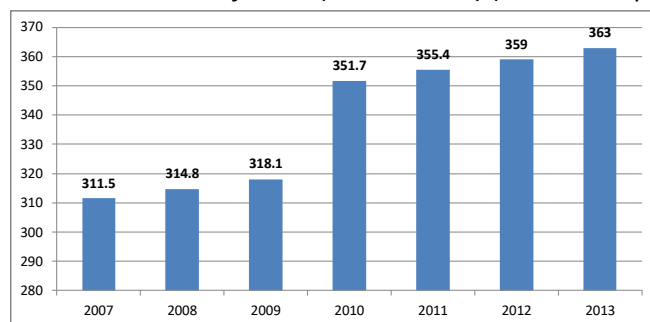
Table 1: Number of extensions of rules granted per year (2013-2016 period)

Year	Total	CVOs	Agreements on quality	Agreements on market management	Others
2016*		4	6		
2015	67	45	7	7	7
2014	60	29	7	19	5
2013	84	59	11	7	6

(*): as of 01 May 2016
Source: DGCCRF website

The CVOs amounts a total of about EUR 350 million per year and has increased constantly. The following evolution has been observed during the last 7 years.

Table 2: Volumes of CVOs (in Mio Euros) (2013-2016 period)



Source: CPO, ITAF 2013 report

It can be observed an increase of 16.5 % over the 2007-2013 period with a significant increase in 2010. This increase may be due to rendering activities that have been taken over from public authorities by IBOs.

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, no agreements nor contractual negotiations have been notified nor recognised by authorities to date. This is mainly explained by the fact that Competent Authorities were waiting for the Guidelines on the application of the specific rules set out in Articles 169, 170 and 171 of the CMO Regulation for the olive oil, beef and veal and arable crops sectors² and the implemented act for sugar³.

[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](#)

There is no readily available database of decisions and cases on the compatibility of IBOs conduct with French and Union competition law. In practice, IBOs have faced two main competition issues.

The first issue is the qualification of mandatory contributions as State aid. Mandatory contributions collected following the extension of an IBO agreement were argued by plaintiffs to constitute state aid in the meaning of article 107 TFUE and thus argued to be subject to prior notification and approval by the Commission. This legal issue was extensively debated over three decades before French courts, the European Commission and the Court of Justice, resulting in numerous decisions.

French courts have traditionally held that mandatory contributions do not qualify as State aid (not a state resource) (see for instance CE, 10 August 2005, ECLI:FR:CESSR:2005:253171.20050810). By contrast in 2008, the Commission took the view that mandatory contributions were public resources which may constitute State aid and proceeded to adopt several decisions finding that such mandatory contributions did

² Available at http://ec.europa.eu/competition/consultations/2015_cmo_regulation/index_en.html

³

[http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/actes_delegues/2016/02783/COM_ADL\(2016\)02783_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/actes_delegues/2016/02783/COM_ADL(2016)02783_EN.pdf)

constitute State aid in the meaning of article 107 TFUE (in particular C(2008)748 of 10 December 2008, C(2011)4376 of 29 June 2011 and C(2011)4973 of 13 July 2011). The same Commissions decisions were challenged before the Tribunal of the European Union (see in particular, T-79/09, T-293/09, T-302/09, T-303/09, T-305/09, T-306/09, T-313/09, T-314/09, T-478/11, T-511/11, T-575/11, T-18/12).

Separately, in 2011, the question of the qualification of mandatory contributions as State aid was referred for a preliminary ruling to the Court of justice which, in a landmark decision, found that mandatory contributions did not constitute State aid (Doux, 30 May 2013, C-677/11, ECLI:EU:C:2013:348). The above mentioned Commission decisions and related legal challenges were subsequently dropped. **It follows that IBO contributions are presently not considered as State aid.**

The second competition law issue faced by IBOs is **antitrust**. While article 101 TFUE prohibits price fixing and equivalent agreement or conduct, article 42 TFUE provides that "*competition rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the European Parliament and the Council within the framework of Article 43(2) [common organisation of agricultural markets] and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 39. [Objectives of the agricultural policy]*".

The principle that the prohibition of price fixing applies also to IBOs was established by the Commission (see for instance decision 26 July 1976, 76/684/CEE, OJUE 21 August 1976, L 231, p.24 regarding the IBO on Armagnac and certain sale prohibitions) confirmed by EU Courts and as well as French courts (See for instance BNIC v Clair, 30 January 1985, 123:83, ECLI:EU:C:1985:33 , regarding minimum prices in Cognac).

Article 210 CMO which is similar to article 176, 177 and 177a of the preceding Regulation (EU) No 1234/2007 has essentially extended the requirement of prior notification of IBO agreements, decisions and concerted practices to IBOs in other sectors, although article 210 CMO reduces the suspensive deadline for the Commission review from three to two months.

The French competition authority ("*Autorité de la concurrence*", further "AC") has adopted a number of decisions and opinions applying antitrust rules in the agricultural sector. However, it is important to distinguish the application of antitrust rules to operators in agriculture and the application of antitrust rules to IBOs. On the one hand there is a significant number of antitrust decisions regarding operators in the sector of agriculture which is not surprising given the volume of agricultural activity in France – this however, does not fall in the scope of present study. On the other hand, there have been relatively few antitrust decisions of the AC applying to IBOs and IBO decisions as such.

In 2006, AC rejected a complaint for restrictions to competition against the IBO national interbranch office of Cognac ("*Bureau national interprofessionnel du Cognac*" or "BNIC" (decision of 06-D-21 of 21 July 2006). Whereas the plaintiff argued BNIC that was controlling the determination of QNV ("*quantité normalement vinifiée*"), a key criteria influencing the supply of distilled spirit, used as a base to produce Cognac. AC observed that the determination of the level QNV was adopted by ministerial decree whereas BNIC has merely submitted to public authorities its official position as IBO on the desirable level of QNV and that these positions had not necessarily or systematically been followed

by public authorities. AC also noted that the plaintiff had also had the opportunity to submit its own views and arguments to the same authorities (but, in the event, had apparently not done so).

Separately, in the sector of poultry meat, AC investigated ex officio price fixing practices over the period 2000-2007, including the active participation of notably the IBOs for turkey and ducks. In the context of an extended procedure between 2007 and 2015, AC determined that the IBOs concerned has actively participated in the breach of French and EU antitrust rules by coordinating their economic conduct with a view to removing price uncertainty (although charges against one of the IBOs were subsequently dropped on the ground of insufficient evidence). The other IBO chose not to contest AC findings and was ultimately subject to the lowest fine of the case (10 000 EUR). The fact of the case as reported in the text of the decision indicates that the relevant IBOs did act as organiser nor played a leading role in price fixing activities.

However, the overall negotiated settlement with commitments reached and formalised in AC decision n°15-D-08 of 5 May 2015 is based on the detailed commitment to establish a new IBO in the poultry sector, in line with the CMO Regulation, within 3 years. In essence, AC concluded based on extensive evidence referred to in its decision that the breach of antitrust rules resulted in part from the failure of interbranch mechanisms and thus that a new IBO was necessary and could be a positive element in supporting competition, with an express and extensive reference to the provisions of the CMO Regulation.

More generally, AC also issued an opinion on the application of antitrust rules to IBOs in the context of the review of the draft agreements of the Bergerac Wine IBO ("*Conseil interprofessionnel du vin de la région de Bergerac*", further CIVRB). AC was consulted on the draft CIVRB agreements by the French Ministry of Agriculture on the basis of article L. 632-4 CRPM. The AC opinion (Avis 11-1-14 of 26 September 2011) provided detailed guidelines which, the AC underlined, should serve as a reference for all IBOs.

The AC opinion addresses in particular standard clauses relevant to the determination of prices, whereas IBOs are called upon to compile and circulate price data only in a manner which excludes the possibility to identify individual operators. AC also recommends IBOs not to issue price recommendations and to not provide reference values in relation to price indexation or revision which would result in remove the freedom of operators to decide on prices.

In the same opinion, AC also accepts the principle of pluri-annual contracts provided they are not an obstacle to market fluidity and provides that payment terms are relevant to antitrust and that derogations of standard payment terms must be justified case by case on the basis of objective economic justifications.

This opinion had been preceded by others opinions in other sectors (for instance, opinion 10-A-28 on draft decrees on contractualisation, opinion 11-A-03 on an IBO agreement in the lamb sector, opinion 11-A-11 on the negotiation of contracts in breeding activities affected by price volatility).

Separately, the AC annual report of 2012 includes a topical study on competition and agriculture ("*étude thématique concurrence et agriculture*"). While that study predates the CMO Regulation, it indicates that AC considers IBO to be subject to competition rules but also as instrumental in making improvements in the agricultural sector, including in the field of competition. In the same study AC also points to the need to promote standard contract terms as well as the dissemination of information (subject to antitrust prohibitions). According to an AC official there are currently no policy statements of AC on the provisions of CMO or article 210 in particular.

Most recently, the Cour of cassation (France highest judicial court) has by decision of 8 December 2015 (Pourvoi 14-19589, ECLI:FR:CCASS:2015:CO01056) referred to the Court of justice prejudicial questions (case C-671/15 pending). It is noteworthy that the Commission had already submitted an *amicus curiae* (http://ec.europa.eu/competition/court/agricultural_sector_observations_fr.pdf) before the Court of Cassation in the same case. The facts of that case concern the fruits and vegetables IBO and predate Regulation (EU) No 1308/2013. Two questions are referred to the Court of Justice. In summary, on the one hand, the Court of the justice is being asked whether agreements and practices of agricultural organisations - including IBOs- are exempted from 101 TFEU from the sole fact that such organisations are pursuing objectives of the Common organisation of markets. In the affirmative, the Court is also being asked whether the objectives of stabilising production prices and of adjusting production to demand (in particular regarding quantity) may be considered as accommodating practices on the collective setting of minimum prices, on the determination of quantities of products being placed on the market and on the exchange of strategic information.

Section 6: Literature

- National Legislation

The key applicable national provisions quoted are accessible here : <https://www.legifrance.gouv.fr> .

In addition, the official bulletin (« bulletin officiel ») of the Ministry of agriculture is a key source regarding the extension of IBO agreements and extension of rules as of 2014.

<https://info.agriculture.gouv.fr/gedei/site/bo-agri/historique>

List of extension of rules prior to 2014 can be found under the CLIAA website:

<http://www.cliaa.com/accord.php>

- National Legislation (extension of rules)

Finally, the DGCCRF website lists also all agreements:

<http://www.economie.gouv.fr/dgccrf/publications/juridiques/panorama-des-textes/Accords-interprofessionnels>

- National competent authorities

Ministry of agriculture <http://agriculture.gouv.fr>

General Council of Foodstuffs, Agriculture and Rural areas ("Conseil général de l'alimentation, de l'agriculture et des espaces ruraux")

<http://agriculture.gouv.fr/le-conseil-general-de-l'alimentation-de-l'agriculture-et-des-espaces-ruraux-cgaaer>

FranceAgrimer <http://www.franceagrimer.fr>

French Competition office ("Autorité de la concurrence")

<http://www.autoritedelaconcurrence.fr/user/index.php>

Fraud and Consumer protection office ("Direction générale de la concurrence, de la consommation et de la répression des fraudes" or "DGCCRF").

<http://www.economie.gouv.fr/dgccrf>

- National IBOs

Comité de liaison (CLIAA) <http://www.cliaa.com/index.php>