

Study on agricultural interbranch organisations (IBOs) in the EU

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National Legislation and Actions concerning IBOs

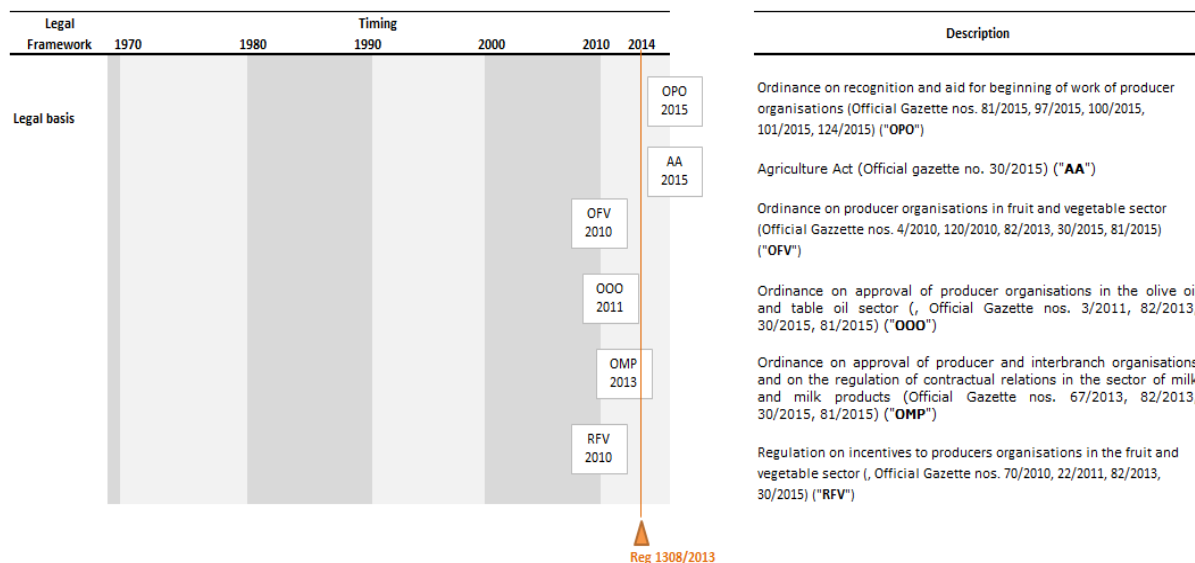
CROATIA

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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 IBOs recognition in Croatia



Source: Compiled By Arcadia International and Schoenherr Rechtsanwaelte

Summary of national legislation on IBOs

In Croatia the legal framework regulating IBOs is laid down by (a) the Ordinance on recognition and aid for the establishment of producer organisations (*Pravilnik o priznavanju i potporama za početak rada proizvođačkih organizacija*, Official Gazette nos. 81/2015, 97/2015, 100/2015, 101/2015, 124/2015; hereinafter: the "**Ordinance**") and (b) the Agriculture Act (*Zakon o poljoprivredi*, Official gazette no. 30/2015; hereinafter: the "**Agriculture Act**").

- The Ordinance was published on 22 July 2015 and entered into force on 30 July 2015. The Ordinance lays down general rules as to the establishment procedure, recognition, official supervision and withdrawal of recognition of producer organisations, associations of producer organisations and IBOs. The provisions thereof are a verbatim transposition of Chapter III of Regulation (EU) No 1308/2013. This applies especially as regards provisions governing IBOs, which refer directly to certain provisions of the EU Regulation in question.
- The Agriculture Act was published on 17 March 2015 and entered into force on the following day. The Agriculture Act determines only the sanctions for non-compliance with EU and national provisions regulating producer organisations, associations of producer organisations and IBOs.

Prior to the adoption of the Ordinance and the Agriculture Act, producer organisations, associations of producer organisations and IBOs were regulated by the following legal acts:

- (a) Ordinance on approval of producer organisations and IBOs and on the regulation of contractual relations in the sector of milk and milk products (*Pravilnik o priznavanju proizvođačkih i međusektorskih organizacija te o uređenju ugovornih odnosa u sektoru mlijeka i liječnih proizvoda*, Official Gazette nos. 67/2013, 82/2013, 30/2015, 81/2015; hereinafter: "**Milk Ordinance**"). It should be noted that whilst the provisions of the Milk Ordinance laying down rules on recognition of producer organisations and IBOs have been completely repealed, **provisions regulating contractual negotiations by producer organisations are still in force**;
- (b) Ordinance on producer organisations in fruit and vegetables sector (*Pravilnik o proizvođačkim organizacijama u sektoru voća i povrća*, Official Gazette nos. 4/2010, 120/2010, 82/2013, 30/2015, 81/2015);
- (c) Ordinance on approval of producer organisations in the olive oil and table oil sector (*Pravilnik o priznavanju proizvođačkih organizacija u sektoru maslinovog ulja i stolnih maslina*, Official Gazette nos. 3/2011, 82/2013, 30/2015, 81/2015);
- (d) Regulation on incentives to producers organisations in the fruit and vegetables sector (*Uredba o potporama proizvodnih organizacija u sektoru voća i povrća*, Official Gazette nos. 70/2010, 22/2011, 82/2013, 30/2015).

IBOs: definition, objectives and legal status

The Ordinance defines IBOs as an organisation comprising several or all producer organisations or associations of producer organisations which are constituted of representatives of economic activities linked to the production and to at least one of the following stages of the supply chain: the processing of or trade in, including distribution of products in one or more of the following sectors:

- (e) fruit and vegetables;
- (f) processed fruit and vegetable products;
- (g) sugar;
- (h) cereals;
- (i) flax and hemp;
- (j) wine;
- (k) tobacco;
- (l) olive oil and table olives;
- (m) beef and veal;
- (n) milk and milk products;
- (o) pig meat;
- (p) sheep meat and goat meat;
- (q) eggs;
- (r) poultry meat;
- (s) apiculture products; and

- (t) other products (Article 2 par. 5).

The Ordinance does not contain any limitations as regards to the number of potentially recognised IBOs.

Pursuant to Article 8 par. 2 of the Ordinance, an IBO must - while taking account of the interests of its members and of the consumer - pursue a specific aim which may include one or more of the objectives determined in Article 157 par. 1 (c) of Regulation (EU) No 1308/2013.

Notwithstanding the above, in the sector of olive oil and table olives and tobacco, the specific aim referred to in Article 157 par. 1 (c) may also include one of the following aims:

- (a) Concentrating and coordinating supply and marketing of the products of its members;
- (b) Adapting production and processing jointly to the requirements of the market and improving the product; and
- (c) Promoting the rationalisation and improvement of production and processing.

According to the applicable legal framework recognised IBOs are not granted a special legal status. The recognition as an IBO accounts only for a *sui generis* administrative classification that renders it an entity subject to certain rights and obligations. The specific legal status of an IBO will then depend on the legal form of the entity that applies for recognition (for instance, if the legal entity is a cooperative, once recognised the IBO will be subject to the national legal framework governing cooperatives).

Since the Ordinance does not prescribe any requirements as to the legal form of the entity applying for recognition as an IBO, it is the understanding of the Ministry of Agriculture that provisions concerning the legal form of entities applying for recognition as producer organisations should apply to IBOs by analogy. In line with that, any legal person or a clearly defined part of a legal entity may request the recognition if it meets all the prescribed requirements for the recognition (Article 4 par. 1). This appears to be a very vague formulation as there are 10 types of legal persons in the Croatian legal system. However, due to certain statutory particularities of certain forms of legal persons, in practice the respective list will probably be limited to four legal persons, these being:

- (a) Cooperative (*zadruga*);
- (b) Association (*udruga*);
- (c) Economic interest grouping (*gospodarsko interesno udruženje*); and
- (d) Limited liability company (*društvo s ograničenom odgovornošću*).

IBOs' recognition and monitoring

According to Article 8 of the Ordinance the **Ministry of Agriculture** (*Ministarstvo poljoprivrede*) - and more precisely its **Directorate for Agriculture and Food Industry** (*Uprava za poljoprivredu i prehrambenu industriju*) - is the competent authority for the granting of recognition to IBOs.

In order to be granted recognition by the Ministry, IBOs must:

- (a) Pursue activities in one or more of agricultural sectors listed above;
- (b) Carry its activities in one or more regions of a given geographical area;
- (c) Be constituted of representatives of economic activities linked to the production and to at least one of the following stages of the supply chain: the processing of or trade in, including distribution of products in one or more sectors;
- (d) Be formed upon the initiative of all or some of the organisations or associations which constitute it; and
- (e) Pursue a specific aim which may include, in particular, one of the objectives laid down in Article 157 par. 1 (c) of Regulation (EU) No 1308/2013, whilst taking account the interests of its members and those of consumers. Also, in the sector of olive oil and table olives and tobacco, beside the aims determined in Article 157 par. 1 (c) of the CMO Regulation, the three other additional aims referred above may be pursued.

Furthermore, pursuant to Article 8 par. 4 of the Ordinance, an organisation in the milk and milk products sector may be recognised as an IBO if it meets the requirements laid down in Article 163 par. 1 of Regulation (EU) No 1308/2013.

As to the **procedural aspects** of the granting of the recognition, the concerned organisation must submit an official application to the Ministry of Agriculture, a copy of which is contained in Annex II to the Ordinance. The application must be accompanied by documents and information that provide evidence that the requirements listed under points (b) to (e) are met. Apart from that, the Ordinance does not require fulfilment of any other requirements or submission of any other documents. For instance, it contains no rules as regards the legal form that the applicant organisation must have nor does it require submission of documents such as the organisation's statutes.

As to the **supervision of recognised IBOs**, the Agricultural Inspection (*poljoprivredna inspekcija*) must conduct an official inspection at least once a year in order to determine compliance by each IBO with the recognition criteria laid down in Chapter III of Regulation (EU) No 1308/2013 (Article 16). Should any irregularities be identified the inspection will notify the Ministry and recommend the withdrawal of the recognition. Following such a notification or based on other available evidence, the Ministry may withdraw the recognition in line with Article 154 par. 1 (c) and Article 163 par. 3 (d) of Regulation (EU) No 1308/2013 (Article 18).

In addition to the withdrawal of the recognition, pursuant to Article 172 par. 2 of the Agriculture Act a **pecuniary sanction** may be imposed on the concerned IBO ranging from HRK 30,000 to HRK 50,000 (approximately EUR 3,900 to EUR 6,500).

IBOs agreements: approval and extension of rules

No regulation on national level.

Rules on financing

No regulation on national level.

Rules on representativeness

No regulation on national level.

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 60 of the Agriculture Act stipulates that whilst Regulation (EU) No 1308/2013 sets out specific competition rules for the production and trade of agri-food products, the Minister of Agriculture must issue a special ordinance for the implementation of such rules in the national legal system. The ordinance in question has not yet been adopted.

Section 3: History and list of IBOs pursuant to Articles 157-IBOs, 158-Recognition of IBOs, 159 (b) and 162-Recognition of IBOs in the olive oil, table olives and tobacco sectors and 163-Recognition of IBOs in the milk and milk products sector of the CMO Regulation

Not applicable

Section 4: Use of the available legal framework for IBOs and other forms of cooperation between producers and other stages of the food supply chain established in the context of CMO Regulation

So far no IBOs have been recognised in Croatia and no applications for recognition have been submitted to the Ministry of Agriculture. There are no visible signs that this trend might change in the near future.

It is the understanding of the Ministry of Agriculture that there are several reasons for the lack of IBOs in Croatia.

The first reason arises from the fact that even the recognition of producer organisations is a novelty in the Croatian legal system and market. There are currently only 4 recognised producer organisations (2 in the sector of milk and milk products and 2 in the sector of fruits and vegetables). The first recognition dates back to the beginning of 2014. This is especially the result of long lasting reluctance of small producers to join into different forms of associations, which partially resulted from the negative connotations associated with cooperatives during the communist era, but which was also the indirect result of the former legal framework and the system of aids/incentives in agriculture. Considering the low number of recognised producer organisations and the pace at which such organisations obtain recognition, it is not very likely that any IBO, as a more complex form of organisation at the level of the agri-food chain, is recognised in the near future.

Another factor that is preventing IBOs' recognition in the country is the lack of information and the difficulties to access to such information for interested organisations. Considering that, on the average, agricultural producers in Croatia are poorly educated, a more active stance in providing information and raising awareness about IBOs and their benefits should be taken.

In addition to that, the procedure for IBOs' recognition requires a considerable amount of paperwork and is rather complicated as opposed to the former national agricultural incentives scheme, which was perceived as very burdensome. Hence, one could claim that the procedural requirements currently applicable represent a barrier to the establishment of IBOs.

The last point is that a considerable part of production and trade in agricultural products in Croatia is conducted in a manner not completely compliant with applicable statutory and tax requirements (grey market). Hence, the rigid transparency requirements of producer organisations or IBOs are not quite an incentive for ensuring cooperation and integration within the relevant food sectors.

Overall, national competent authorities tend to view IBOs as generally useful entities; however, the Croatian agricultural market does not appear ripe for their introduction. Indeed, stakeholders do not show the necessary degree of interest that may lead to the setting up of IBOs with the uptake of producers' associations that is still at an early stage.

There have not been any public discussions on IBOs on the national level. IBOs are not mentioned in any media or even professional papers. The current focus is on producer organisations.

As regards other forms of cooperation between actors of the same food chain foreseen by Regulation (EU) No 1308/2013, in 2015 there have been considerable attempts on the side of recognised producer organisations in the milk sector to negotiate agreements on behalf of their members with processors and collectors. However, these efforts have not produced any success, i.e. no agreements were concluded.

According to the Ministry of Agriculture the problem lies with the processors and the collectors who do not recognise producer organisations as equal parties in negotiations. On the one hand, processors and collectors did not acknowledge those organisations as the legitimate representatives of their members. On the other hand, they did not agree with the rescindment of existing contracts with the members of the producer organisations, thereby preventing the negotiation of new agreements with such organisations. Moreover, the Ministry of Agriculture is of the view that the existing contracts would not be completely consistent with the current CMO legislation and that they should soon be amended. It is the understanding of the Ministry that the concerned producer organisations are currently finalising a framework agreement with their members, which should form the basis of future individual contracts between their members and processors or collectors.

Conversely, the producer organisations in hand assert that the problem lies with the Ministry of Agriculture or, more precisely, with the existing regulatory framework regulating the **milk sector**. Indeed, Regulation (EU) No 1308/2013 would have been poorly implemented into the Croatian legal system, thereby giving rise to legal gaps in its

application. The producer organisations have especially pointed out the following legal issues:

- (a) The Milk Ordinance contains only one, very vague, provision on contractual negotiations, which generally stipulates that conditions of delivery of milk to processors or collectors have to be regulated by contracts for the delivery of raw milk (Article 20), while not providing for any instruction or information as regards to the content thereof or the procedure for its conclusion;
- (b) The national regulatory framework does not foresee any explicit provision empowering producer organisations to act as authorised representatives of their members while negotiating with processors or collectors; and
- (c) The regulatory framework regulating milk as a product in general (e.g. its composition, quality etc.) is insufficient to the extent it does not lay down sufficient parameters for the negotiations, such as quality/price ratio.

In addition to that, producer organisations claim that the Ministry of Agriculture would have not deployed enough effort in promoting collective negotiations and that, instead, it took a passive stance when faced with the unwillingness of processors and collectors to enter into negotiations with producer organisations.

Other than that, it should be noted that in Croatia there are currently no recognised producer organisations in the sector of **olive oil and table olives** and of **live cattle**. As regards **arable crops** until now no producer organisation has negotiated on behalf of their members. With regard to sugar, there are no forms of cooperation in place between actors of this sector. Similarly, there is no regulation at national level concerning the supply of **cheese and ham** protected under EU quality schemes or the operations of the common market of wines.

[Section 5: National practice concerning Article 210 CMO Regulation and decisions of competition authorities/national courts on the compatibility of IBOs activities/practices with national competition law](#)

Not applicable

[Section 6: Literature](#)

- National Legislation

(N.B. No consolidated version of the national legislative acts governing IBOs exists in the Croatian Official Gazette)

Agriculture Act (*Zakon o poljoprivredi*, Official gazette no. 30/2015) http://narodne-novine.nn.hr/clanci/sluzbeni/2015_03_30_612.html

Ordinance on recognition and aid for beginning of work of producer organisations (*Pravilnik o priznavanju i potporama za početak rada proizvođačkih organizacija*, Official Gazette nos. 81/2015, 97/2015, 100/2015, 101/2015, 124/2015), http://narodne-novine.nn.hr/clanci/sluzbeni/2015_07_81_1557.html

Ordinance on producer organisations in fruit and vegetable sector (*Pravilnik o proizvođačkim organizacijama u sektoru voća i povrća*, Official Gazette nos. 4/2010, 120/2010, 82/2013, 30/2015, 81/2015), http://narodne-novine.nn.hr/clanci/sluzbeni/2010_01_4_108.html

Ordinance on approval of producer organisations in the olive oil and table oil sector (*Pravilnik o priznavanju proizvođačkih organizacija u sektoru maslinovog ulja i stolnih maslina*, Official Gazette nos. 3/2011, 82/2013, 30/2015, 81/2015), http://narodne-novine.nn.hr/clanci/sluzbeni/2011_01_3_50.html

Ordinance on approval of producer and interbranch organisations and on the regulation of contractual relations in the sector of milk and milk products (*Pravilnik o priznavanju proizvođačkih i međusektorskih organizacija te o uređenju ugovornih odnosa u sektoru mlijeka i liječnih proizvoda*, Official Gazette nos. 67/2013, 82/2013, 30/2015, 81/2015), http://narodne-novine.nn.hr/clanci/sluzbeni/2013_06_67_1321.html

Regulation on incentives to producer organisations in the fruit and vegetable sector (*Uredba o potporama proizvodnih organizacija u sektoru voća i povrća*, Official Gazette nos. 70/2010, 22/2011, 82/2013, 30/2015), http://narodne-novine.nn.hr/clanci/sluzbeni/2010_06_70_2120.html

- National competent authorities

Ministry of Agriculture official website: <http://www.mps.hr/>