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COMMISSION STAFF WORKING DOCUMENT

**Guidance document on the implementation of Chapter II “Professional Organisations”
of Regulation (EU) No 1379/2013 establishing a common organisation of the markets in
fishery and aquaculture products**

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Introduction

This staff working document describes the conditions laid down in Chapter II of Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No 1184/2006 and (EC) No 1224/2009 and repealing Council Regulation (EC) No 104/2000¹ (the ‘CMO’ Regulation) with regard to the recognition of professional organisations and extension of the rules adopted within them to non-members.

The rules laid down in Chapter II of the CMO Regulation, and described in this document, relate to producer organisations, associations of producer organisations and inter-branch organisations. The nature and objectives of these professional organisations are laid down in the CMO Regulation. The definitions provided in the CMO Regulation also apply here. In particular:

- an operator is a natural or legal person as defined in Article 4(1)(30) of the Common Fisheries Policy (‘CFP’) Regulation;²
- a producer is a producer of the product concerned, as defined in Article 5(c) of the CMO Regulation;
- a producer organisation (‘PO’) is an organisation of producers, as defined in Articles 6 to 8 and 14 of the CMO Regulation;
- an association of producer organisations (‘APO’) is an association of POs, as defined in Articles 9 and 10 of the CMO Regulation;
- an inter-branch organisation (‘IBO’) is an organisation of operators in the fishery and aquaculture sector³ as defined in Articles 11 to 13 and 16 of the CMO Regulation.

In accordance with Article 9(2) of the CMO Regulation, the conditions that apply to POs also apply to APOs, unless otherwise stated.

Aim of the document

Under the CFP and its market pillar, the CMO, POs, APOs and IBOs play a central role in ensuring sustainable fishery and aquaculture activities and in improving the sector’s competitiveness.

Chapter II of the CMO Regulation sets out specific rules on the establishment and functioning of these professional organisations, including their objectives and available tools. It lays down the conditions for recognition of POs, APOs and IBOs (Section II) and for the extension of the rules adopted by them to non-members (Section III).

This document addresses a number of issues that arose in the assessment of compliance with the criteria laid down in the CMO Regulation. The aim of this document is to facilitate application of the rules on the recognition of professional organisations and the extension of their rules to non-members,

¹ OJ L 354, 28.12.2013, pp. 1-21.

² Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, 28.12.2013, p. 22–61.

³ See definition under Article 5(d) of the CMO Regulation.

while at the same time maintaining effective competition in the markets for fisheries and aquaculture products.⁴

More specifically, this document explains the purpose of and the conditions for recognition of these professional organisations and extension of their rules to non-members. It also describes the procedure that the actors involved should follow to comply with the CMO Regulation as well as their respective roles. Particular attention is paid to explaining how competition rules (Chapter V of the CMO Regulation) should be applied both when granting recognition to a professional organisation and when extending a rule adopted by one such organisation to non-members. This document aims to ensure a common and uniform understanding of the rules and procedures relating to recognising professional organisations and extending their rules to non-members by all parties concerned.

The guidance in this document is for information purposes only and is without prejudice to the case-law of the Court of Justice of the European Union on the interpretation of Articles 39, 42, 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) and of Chapter V of the CMO Regulation.

Structure

The document describes separately the conditions laid down in the CMO Regulation for the recognition of professional organisations and for extending rules adopted by them to non-members. It is divided into two parts: one dealing with the criteria that apply to POs and APOs and one dealing with the criteria for IBOs. If IBOs are subject to the same conditions as POs and APOs, a cross-reference is provided.

⁴ See judgment of the General Court of 13 December 2006, Joined Case T-217/03 and T-245/03, *FNCVB v Commission*.

PART I – GUIDANCE ON THE IMPLEMENTATION OF CHAPTER II, SECTION II RECOGNITION OF PROFESSIONAL ORGANISATIONS

Chapter II, Section II of the CMO Regulation establishes the conditions for the recognition by Member States of POs, APOs and IBOs. Article 2 of Commission Implementing Regulation (EU) No 1419/2013⁵ provides specific details on the recognition process, such as time limits, procedures to be followed and the information to be provided in the application for recognition.

This part explains the purpose of the recognition and the role of the actors involved. It also describes how the application for recognition should be assessed against the conditions set out in Articles 14, 16 and 17 of the CMO Regulation.

1. Purpose of the recognition of professional organisations

Recognition as a PO, APO or IBO enables a group of producers or operators to commit to pursuing the goals of the CFP and of the CMO. Recognition sets specific objectives for these professional organisations and requires them to contribute to the day-to-day implementation of the CFP and of the CMO.

The establishment of specific criteria for the recognition of POs, APOs and IBOs is designed to ensure that these organisations are competitive and viable, and so capable of meeting their objectives.

To support the role of these professional organisations, Article 68(1)(a) of the European Maritime and Fisheries Fund (EMFF)⁶ provides that public funding may be made available for the purpose of setting up such organisations. Once a PO (or APO) is recognised, the relevant Member State shall, in accordance with Article 66(1) of the EMFF Regulation, financially support the preparation and implementation of its production and marketing plan. This is the main instrument through which a PO implements measures that contribute to the CFP and CMO goals.

2. Role of the actors involved

The procedure for recognition of POs, APOs and IBOs takes place at national level.

The recognition process is initiated by the members of the organisation: producers (in the case of a PO), producer organisations (in the case of an APO) or operators (in the case of an IBO). The PO, APO or IBO seeking recognition submits a formal application to the competent national authority, using the format set out in Annex I to Commission Implementing Regulation (EU) No 1419/2013. The PO, APO or IBO must demonstrate that it complies with the conditions laid down in Articles 14, 16 and 17 of the CMO Regulation.

⁵ Commission Implementing Regulation (EU) No 1419/2013 of 17 December 2013 concerning the recognition of producer organisations and inter-branch organisations, the extension of the rules of producer organisations and inter-branch organisations and the publication of trigger prices as provided for by Regulation (EU) No 1379/2013 of the European Parliament and of the Council on the common organisation of the markets in fishery and aquaculture products, OJ L 353, 28.12.2013, p. 43-47.

⁶ Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund, OJ L 149, 20.5.2014, p. 1–66.

The Member State receiving the request for recognition is responsible for assessing whether the application meets the conditions in Articles 14, 16 and 17 of the CMO Regulation. For transnational POs, APOs and IBOs, the checks must be carried out by the Member State from which recognition is being sought in cooperation with the other Member States concerned.

Although common conditions for the recognition of these organisations have been laid down at EU level, the recognition procedure takes place at national level. The Commission must, however, be informed by Member States of any recognition that is granted or withdrawn. It must make this information publicly available. Article 20 of the CMO Regulation gives the Commission the authority to carry out checks to verify compliance with the conditions for recognition. If these checks provide evidence that the conditions for recognition are not complied with, the Commission shall, where appropriate, request the Member State to proceed to a withdrawal of recognition.

3. Conditions for the recognition of professional organisations

Articles 14, 16 and 17 of the CMO Regulation establish the conditions that a professional organisation must meet in order to be recognised as PO, APO or IBO. These conditions are described below, under separate sections for POs/APOs and IBOs. In accordance with Article 9(2) of the CMO Regulation, the same conditions that apply to POs also apply to APOs (unless otherwise stated).

3.1. Conditions for the recognition of producer organisations

3.1.1. Initiative (Article 14(1) of the CMO Regulation)

The PO must be set up at the initiative of producers. This means that membership of the group must be voluntary, and members must remain free to leave the PO.

Verification of this condition:

The application for recognition should include information on how the PO was set up and how the decision to apply for recognition was made (point (d) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

3.1.2. Compliance with the rules on internal functioning (Article 14(1)(a) of the CMO Regulation)

The PO applying for recognition must comply with the following principles of internal functioning set out in Article 17 of the CMO Regulation and with the rules adopted for their application:

- Compliance by members with the rules adopted within the organisation (in terms of fisheries exploitation, production and marketing) (Article 17(a) of the CMO Regulation);
- Non-discrimination among members (e.g. on grounds of nationality, place of establishment) (Article 17(b) of the CMO Regulation);
- Levying of a financial contribution from its members to finance the organisation (Article 17(c) of the CMO Regulation);
- Democratic functioning that enables members to scrutinise the organisation and its decisions (Article 17(d) of the CMO Regulation);
- Imposition of effective, dissuasive and proportionate penalties for infringement of obligations laid down in the internal rules (Article 17(e) of the CMO Regulation);

- Definition of rules on the admission of new members and the withdrawal of membership (Article 17(f) of the CMO Regulation);
- Definition of accounting and budgetary rules on the management of the organisation (Article 17(g) of the CMO Regulation).

Verification of this condition:

The application for recognition should include information on the internal functioning of the organisation, including an explanation of how the organisation will ensure that members abide by any principles that are not laid down in the constitutive act (points (a), (b) and (d) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

3.1.3. Representativeness (Article 14(1)(b) of CMO Regulation)

The PO applying for recognition must be sufficiently economically active in the territory of the Member State concerned or a part thereof (e.g. number of members, volume of marketable production).

Neither the CMO Regulation nor its implementing acts lay down minimum levels of representativeness. The evaluation of this aspect, including the decision to draw up specific criteria, is therefore left to the competent national authority on the basis of the situation in the Member State and taking into account the specificities of the sector (e.g. small-scale fisheries, see Article 6(2) of the CMO Regulation).

Verification of this condition:

The application for recognition should include information on the representativeness of the PO. The information should include details on the PO's activities, area of activity and products. The format and type of information submitted may need to be tailored to specific requirements (if any) drawn up by the Member State concerned (point (e) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

3.1.4. Legal personality, establishment and headquarters (Article 14(1)(c) of the CMO Regulation)

The PO applying for recognition must have legal personality under the law of the Member State concerned, be established there and have its official headquarters in its territory. This requirement enables the PO to enjoy rights and be subject to duties that are specific to it, and not to be bound by those of its members.

Verification of this condition:

The application for recognition should include proof of acquisition of legal personality (the PO's constitution, accompanied by documents establishing administrative authorisation or registration or certification by a competent authority or any other such document acceptable to or by the Member State), and information on the PO's establishment and headquarters. The application should also provide the names of the persons authorised to act on its behalf (points (a), (c) and (d) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

3.1.5. Capacity to pursue objectives (Article 14(1)(d) of the CMO Regulation)

The PO applying for recognition must be capable of pursuing the objectives of Article 7 of the CMO Regulation (POs) or Article 10 of the CMO Regulation (APOs). This condition is linked to the key role that professional organisations recognised under the CMO play in delivering the CFP and CMO objectives. If a PO is not capable of pursuing these objectives, it should not be granted recognition.

Verification of this condition:

The application for recognition should include an explanation of how the PO will pursue the objectives set out in the CMO Regulation, in particular by providing evidence that the PO has the ability and technical capacity to pursue its objectives and by describing the measures it intends to use and how (point (d) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

3.1.6. Compliance with competition rules (Article 14(1)(e) of the CMO Regulation)

The PO applying for recognition must comply with the competition rules referred to in Chapter V of the CMO Regulation. Article 40 of the CMO Regulation establishes the general principle whereby EU competition rules apply to agreements, decisions and practices relating to the production and marketing of fishery and aquaculture products.

Compliance

When assessing a PO's application for recognition, attention should be paid to its agreements, decisions and established practices. These should be assessed against Articles 101(1) and 102 TFEU, which list, by way of example, situations considered incompatible with the internal market:

Article 101(1) TFEU	Article 102 TFEU
<p>Agreements between undertakings, decisions by associations of undertakings and concerted practices that, in particular:</p> <p>(a) directly or indirectly fix purchase or selling prices or any other trading conditions;</p> <p>(b) limit or control production, markets, technical development, or investment;</p> <p>(c) share markets or sources of supply;</p> <p>(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;</p> <p>(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.</p>	<p>Any abuse by one or more undertakings of a dominant position that consists, in particular, in:</p> <p>(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;</p> <p>(b) limiting production, markets or technical development to the prejudice of consumers;</p> <p>(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;</p> <p>(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.</p>

If the agreements, decisions and practices of the PO do not infringe Articles 101(1) and 102 TFEU, they are deemed compatible with the internal market as they do not prevent, restrict or distort competition. Agreements, decisions and practices are also not covered by Article 101(1) TFEU and Article 102 TFEU if they do not affect trade between Member States. Accordingly, they do not infringe EU competition rules.

Exceptions to the application of competition rules

Some agreements on setting up a PO, or the internal rules governing its conduct, might involve restricting competition. The Member State must examine this at the recognition stage. This applies, for example, if a PO's internal rules on fisheries exploitation (Article 17(a) of the CMO Regulation) aim to control production. Under Article 101(1) TFEU, this practice is normally prohibited. However, as these rules are necessary to achieving the objectives of the CFP and CMO (and thus those of Article 39 TFEU), such practice could benefit, under certain conditions, from an exception to the application of competition rules. This exception is only applicable to the practices covered by Article 101(1) TFEU. No exception is possible to the prohibition of an abuse of dominant position under Article 102 TFEU.

The Treaties and secondary legislation provide for two exceptions to the application of Article 101(1) TFEU:

1. **Article 41 of the CMO Regulation:** If a PO's agreements, decisions or practices fall within any of the situations set out in Article 101(1) TFEU, their legality could be ensured by an exception to the application of competition rules based on Article 41 of the CMO Regulation.

Article 41 lays down specific conditions under which a PO's agreements, decisions and practices can benefit from such exception to the application of competition rules. The agreements, decisions and practices in question must:

- (a) be necessary to attain the objectives set out in Article 39 TFEU;
- (b) not imply any obligation to charge identical prices;
- (c) not lead to the partitioning of markets in any form within the Union;
- (d) not exclude competition; and
- (e) not eliminate competition in respect of a substantial proportion of the products in question.

Practices that e.g. fix prices, exclude competition or partition markets are not acceptable under any circumstances.

The conditions in Article 41 of the CMO Regulation are cumulative. This means that they must all be met. Verification of compliance with each condition is explained below (points 3.1.6.1 to 3.1.6.5).

2. **Article 101(3) TFEU:** A general exception to the application of competition rules is also provided for under Article 101(3) TFEU.⁷ However, unlike Article 41 of the CMO Regulation, this exception is of a general nature and does not take account of the specificities of the CFP.

⁷ For more detailed information on the exception under Article 101(3) TFEU, see the Communication from the Commission – Notice - Guidelines on the application of Article 81(3) of the Treaty (2004/C 101/08), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0427%2807%29&from=EN>.

3.1.6.1. The agreements, decisions and practices are necessary to attain the objectives set out in Article 39 TFEU (Article 41(1)(a) of the CMO Regulation)

According to settled case law, any exception to the application of general competition rules under Article 41 of the CMO Regulation should be interpreted strictly⁸ and be limited to cases where the agreements, decisions or practices are conducive to the attainment of all the objectives of Article 39 TFEU.⁹ In the event of conflicts between the different objectives of Article 39 TFEU, or if those objectives cannot all be fully achieved at the same time, it should at least be possible to reconcile these objectives and ensure that the pursuit of one is not to the detriment of another.¹⁰

The European Courts have also confirmed that one of the options for the agreements, decisions and practices to be excluded from the application of competition rules is that they are **necessary** for the attainment of the objectives of Article 39 TFEU.¹¹ This principle is also reflected in Article 41(1)(a) of the CMO Regulation. Thus, all five objectives of Article 39 TFEU must be considered and analysed separately. The agreement, decision, practice in question must be assessed against each objective.

The assessment must lead to the conclusion that POs' agreements, decisions and practices are necessary in order to:

Article 39(1)(a) Increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour.

In light of the CFP, the agreements, decisions and practices must be necessary to ensure environmental sustainability and economic and social viability of the fisheries and aquaculture activities (Article 2(1) of the CFP Regulation¹²).

Article 39(1)(b) Ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture.

In respect of the CFP, the agreements, decisions and practices must be necessary to “ensure a fair standard of living for the fisheries (or aquaculture) community, in particular by increasing the individual earnings of persons engaged in fisheries (or aquaculture)”.

Article 39(1)(c) To stabilise markets.

Article 39(1)(d) To assure the availability of supplies.

⁸ See judgment of the Court Of Justice of 12 December 1995, Case C-399/93, *Oude Luttikhuis*, ECLI:EU:C:1995:434, p. 23 et seq.

⁹ See judgment of the Court of Justice of 15 May 1975, Case 71/74, *Frubo v Commission*, ECLI:EU:C:1975:61, p. 22 to 27.

¹⁰ See judgment of the General Court of 14 May 1997, Joined Cases T-70/92 and T-71/92, ECLI:EU:T:1997:69, p. 153.

¹¹ See judgment of the General Court of 13 December 2006, Joined Case T-217/03 and T-245/03, *FNCVB v Commission*, ECLI:EU:T:2006:391, p. 199. The concept of necessity was first introduced in EEC Council Regulation No 26 applying certain rules of competition to production of and trade in agricultural products, OJ 30, 20.04.1962, p. 993.

¹² Regulation (EU) No 1380/2013, OJ L 354, 28.12.2013, p. 22–61(see footnote 4 for full reference).

Taking into account the specificities of the CFP, the agreements, decisions and practices must be necessary to ensure the sustainable exploitation of resources so as to ensure the availability of food supplies in the long term (Article 2(1) of the CFP Regulation).

Article 39(1)(e) To ensure that supplies reach consumers at reasonable prices.

Verification of this condition:

The application for recognition should provide information on the agreements, decisions and practices of the PO seeking recognition. The application for recognition should explain why these agreements, decisions and practices are necessary to achieve the objectives of Article 39 TFEU. The explanation should show that, in the absence of such rules, it would be impossible to attain these objectives. The analysis should address each objective of Article 39 TFEU individually (points (b) and (d) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

3.1.6.2. The agreements, decisions and practices do not imply any obligation to charge identical prices (Article 41(1)(b) of the CMO Regulation)

The prohibition to fix prices or to agree to charge identical prices is one of the competition rules laid down in Article 101(1) TFEU that applies without exception. Under no circumstance can a PO adopt a rule that would result in its members charging identical prices.

Verification of this condition:

The information on the PO's agreements, decisions and practices should show that none of them leads to price fixing (points (b) and (d) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

3.1.6.3. The agreements, decisions and practices do not lead to the partitioning of markets in any form within the Union (Article 41(1)(c) of the CMO Regulation)

Market partitioning refers to practices that have as their direct or indirect object the restriction of the territory into which one may sell, or the group/type of customers to whom one may sell. Producers must remain free to decide where and to whom they sell.

Verification of this condition:

The information on the agreements, decisions and practices of the PO should show that freedom of producers to sell is not limited, both in terms of geographic market and of group/type of potential buyers (points (b) and (d) of Annex I to Commission Implementing Regulation (EU) No 1419/2013). For guidance on the definition of the relevant market, see box under point 3.1.6.5.

3.1.6.4. The agreements, decisions and practices do not exclude competition (PO) (Article 41(1)(d) of the CMO Regulation)

This condition aims to ensure that the agreements, decisions and practices of the PO do not go beyond what is required to achieve the CFP and CMO objectives and do not have a negative effect on competition and thus on the functioning of the internal market. This condition safeguards competition among producers and competitive processes.

3.1.6.5. The agreements, decisions and practices do not eliminate competition in respect of a substantial proportion of the products in question (Article 41(1)e) of the CMO Regulation)

This condition is complementary to the previous one, but focuses on the specific product(s) that the PO produces.

These two conditions should be assessed with regard to actual or potential competition.¹³ The analysis must therefore verify whether actual and potential barriers/limitations to the product or geographic market exist. The verification of compliance with these conditions must be carried out on a case-by-case basis, taking into account the specific aspects of the relevant product and the geographic market.

Verification of conditions 3.1.6.4 and 3.1.6.5:

The application for recognition should provide information on the agreements, decisions and practices of the PO seeking recognition and details on its activities. The information should allow the assessment of compliance with conditions 3.1.6.4 and 3.1.6.5. The relevant market needs to be established on the basis of two aspects: (i) the relevant **product market** and (ii) the relevant **geographic market**.

(i) With regard to the relevant product market, the information should show the substitutability with other products. The identification of these products should be made on the basis of e.g. similar characteristics, price, use or perception by consumers.

(ii) As regards the relevant geographic market, the assessment should identify the area in which the conditions of competition are homogenous. To this end, the following aspects must be assessed:

- Can supplies and purchases be directed to other areas without limitation or without incurring substantial costs?

- Is the demand limited to local products or does it cover products produced in a given Member State or even imported products? Data on imports of the product(s) from outside the EU and from other EU countries and information on sales within the Member State concerned are useful indicators.

On the basis of these aspects, the assessment should show that the agreements, decisions and practices do not exclude competition and do not affect a substantial proportion of a given market. To check compliance with condition 3.1.6.5, only the geographic market should be taken into account as only the specific products produced by the PO in question are considered (and not all substitutable products as in 3.1.6.4) (points (b), (d) and (e) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

Guidance on the assessment of these aspects is provided in the Commission notice on the definition of relevant market for the purposes of Community competition law (97/C 372 /03) and in the Communication from the Commission on the Guidelines on the application of Article 81(3) of the Treaty (2004/C 101/08).¹⁴

¹³ The notion of potential competition refers to undertakings that are not already competing in the relevant market. For guidance on how to assess potential competition, see the Commission notice on the definition of relevant market for the purposes of Community competition law (97/C 372 /03).

¹⁴ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1209\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1209(01)&from=EN)
[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0427\(07\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0427(07)&from=EN)

3.1.7. Abuse of dominant position (Article 14(1)f) of the CMO Regulation)

The PO applying for recognition may not abuse a dominant position in a given market.

To be in a dominant position is not in itself illegal. A dominant company is entitled to compete on the merits as any other company. However, a dominant company has a special responsibility to ensure that its conduct does not distort competition, avoiding behaviours such as e.g. setting prices at a loss-making level (predation) or charging excessive prices.¹⁵ The verification of compliance with these conditions must be carried out on a case-by-case basis, taking into account the specificities of the market concerned.

Verification of this condition:

The application for recognition should provide information on the agreements, decisions and practices of the PO seeking recognition and details on its activities. The information should make it possible to identify or exclude the presence of a dominant position in a defined relevant product and geographic market (see previous condition for guidance) and to assess whether the PO is abusing a dominant position.

When assessing whether the PO has a dominant position, aspects such as market shares or representativeness are useful indicators. Experience suggests that the higher the market share, and the longer the period of time over which it is held, the more likely there is a preliminary indication of dominance. In general, the Commission considers that low market shares are generally a good proxy for the absence of substantial market power. The Commission's experience suggests that if a company has a market share of less than 40 %, it is unlikely to be dominant. This presumption should however be checked against the specific structure of the market, as there may be specific cases below that threshold where competitors are not in a position to constrain effectively the conduct of a dominant undertaking. The Court of Justice of the EU has furthermore indicated that, except in exceptional circumstances, dominance can be presumed if an undertaking has a market share persistently above 50 %.¹⁶

Other aspects that can be looked at are the ease with which other companies can enter the market, existence of countervailing buyer power, overall size and strength of the group and resources and the extent to which it is present at several levels of the supply chain (vertical integration).

The information provided in the application should lead to the conclusion that the PO, if dominant, is not abusing its position and is not behaving in a way that leads to anti-competitive practices (points (b), (d) and (e) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

Guidance on the assessment of this aspect is provided in particular in the Communication from the Commission — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (2009/C 45/02).¹⁷

¹⁵ See the judgment of the Court of Justice of 9 November 1983, Case 322/81, *Michelin v Commission*, ECLI:EU:C:1983:313. It is routinely repeated in the judgments of the EU Courts that Article 102 imposes obligations on dominant firms that non-dominant firms do not bear.

¹⁶ See Judgment of the Court (Fifth Chamber) of 3 July 1991, Case C-62/86, *AKZO Chemie BV v Commission of the European Communities*. ECLI:EU:C:1991:286, p. 60.

¹⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XC0224%2801%29&from=EN>

3.1.8. Information on membership, governance and sources of funding (Article 14(1)(g) of the CMO Regulation)

The PO requesting recognition must provide information on membership, governance and sources of funding. This information is necessary to allow the competent national authority to assess the representativeness of the PO, as well as its compliance with the rules on internal functioning.

Verification of this condition:

The application for recognition should include information on the membership, governance and sources of funding of the PO (points (a), (b) and (d) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

3.2. Conditions for the recognition of inter-branch organisations

3.2.1. Compliance with rules on internal functioning (Article 16(1)(a) of the CMO Regulation)

See point 3.1.2.

3.2.2. Representativeness (Article 16(1)b of the CMO Regulation)

The IBO applying for recognition must represent a significant share of production activity and of either processing or marketing activities or of both, concerning fishery and aquaculture products (processed or not).

See point 3.1.3 for further details.

3.2.3. Involvement in production, processing or marketing (Article 16(1)(c) of the CMO Regulation)

The IBO applying for recognition may not itself be involved in production, processing or marketing of fishery and aquaculture products (processed or not). This condition implies that the IBO must carry out other activities than those of its members, and these should not relate to production, processing or marketing.

Verification of this condition:

The application for recognition should include information on the activities of the IBO and its constitution. The constitution should list the activities in which the group intends to engage (point (a) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

3.2.4. Legal personality, establishment and headquarters (Article 16(1)(d) of the CMO Regulation)

See point 3.1.4.

3.2.5. Capacity to pursue objectives (Article 16(1)(e) of the CMO Regulation)

The IBO applying for recognition must be capable of pursuing the objectives set out in Article 12 of the CMO Regulation.

See point 3.1.5 for further details.

3.2.6. Consumer interests (Article 16(1)(f) of the CMO Regulation)

The IBO applying for recognition must take into account the interests of consumers.

This condition should be read in the context of Article 169 TFEU, under which the Union shall contribute to protecting the economic interests of consumers and to promoting their right to information. This is because consumer confidence is regarded as key to the development of the EU

internal market. As the objectives of IBOs are related to improving coordination and conditions for making fishery and aquaculture products available on the EU market, its actions should take into account the interests of the EU consumer.

Verification of this condition:

The application for recognition should include an explanation of how the interests of consumers will be taken into account in the activities of the IBO (points (a), (b) and (d) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

3.2.7. Sound operation of the CMO (Article 16(1)(g) of the CMO Regulation)

The recognition of an IBO may not hinder the functioning of the CMO. Thus, an IBO may only be recognised if its activities are in line with the goals of the CMO.

Verification of this condition:

The application for recognition should show how the IBO contributes to achieving the CMO goals. The application should show that the activities carried out by the IBO are not in contrast with the CMO Regulation (points (a) and (d) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

3.2.8. Compliance with competition rules (Article 16(1)(h) of the CMO Regulation)

For a general explanation of the application of competition rules, please see point 3.1.6.

IBOs' agreements, decisions and practices may benefit from an exception to the application of competition rules if they:

- (a) are necessary to attain the objectives set out in Article 39 TFEU;
- (b) do not entail any obligation to apply a fixed price;
- (c) do not lead to the partitioning of markets in any form within the Union;
- (d) do not apply dissimilar conditions to equivalent transactions with other trading partners, thereby placing them at a competitive disadvantage;
- (e) do not eliminate competition in respect of a substantial proportion of the products in question; and
- (f) do not restrict competition in ways which are not essential for the achievement of the objectives of the CFP.

These conditions are cumulative. This means that they must all be met. The rules on checking compliance with each condition are explained below (points 3.2.8.1 to 3.2.8.6).

3.2.8.1. The agreements, decisions and practices are necessary to attain the objectives set out in Article 39 TFEU (Article 41(2)(a) of the CMO Regulation)

See point 3.1.6.1.

3.2.8.2. The agreements, decisions and practices do not entail any obligation to apply a fixed price (Article 41(2)(b) of the CMO Regulation)

See point 3.1.6.2.

3.2.8.3. The agreements, decisions and practices do not lead to the partitioning of markets in any form within the Union (Article 41(2)(c) of the CMO Regulation)

See point 3.1.6.3.

3.2.8.4. The agreements, decisions and practices do not apply dissimilar conditions to equivalent transactions with other trading partners, thereby placing them at competitive disadvantage (Article 41(2)(d) of the CMO Regulation)

The setting up of an IBO must not lead to anti-competitive discrimination.

This condition must be read in light of the vertical relationship established between IBO members, and sets out the principle that the IBO's agreements, decisions and practices must not apply dissimilar conditions that put any trading partner at a competitive disadvantage, thus affecting the good functioning of the internal market. For example, differences in prices charged to trading partners must be justifiable on the basis of objective facts (e.g. differences in shipping costs) or they might be considered in contrast with EU competition rules.

Verification of this condition:

The information on the rules of the group should show that they exclusively concern the aspects covered and do not discriminate between trading partners, placing them at a competitive disadvantage (points (b) and (d) of Annex I to Commission Implementing Regulation (EU) No 1419/2013).

Guidance on the assessment of this aspect is provided in the Commission Notice – Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (2004/C 101/07).¹⁸

3.2.8.5. The agreements, decisions and practices do not eliminate competition in respect of a substantial proportion of the products in question (Article 41(2)(e) of the CMO Regulation)

See point 3.1.6.5.

3.2.8.6. The agreements, decisions and practices do not restrict competition in ways which are not essential for the achievement of the objectives of the CFP (Article 41(2)(f) of the CMO Regulation)

See by analogy point 3.1.6.4. for guidance on how to verify compliance with this condition. Verification is carried out following the same procedure as for POs, but the burden of proof for IBOs is greater in that an IBO must demonstrate that any restriction to competition resulting from its agreements, decisions and practices is essential to the achievement of the objectives of the CFP.

¹⁸ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0427 %2806%29&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0427%2806%29&from=EN), see in particular paragraph 82.

Verification of conditions 3.2.8.5 and 3.2.8.6:

See the description provided under points 3.1.6.4 and 3.1.6.5. The conditions applicable to POs also apply to IBOs, albeit in reverse order.

4. Procedure**Format of the application**

Annex I to Commission Implementing Regulation (EU) No 1419/2013 establishes the format that the PO/IBO seeking recognition must follow in its application to the Member State concerned.

Deadline for reply by Member State

The Member State concerned, after checking compliance with all the conditions listed in Articles 14, 16 and 17 of the CMO Regulation, must inform the applicant PO/IBO of its decision and, where relevant, give reasons for it. This shall be done within three months of receiving the application (Article 2 of Commission Implementing Regulation (EU) No 1419/2013).

Checks

POs/IBOs must comply with the conditions set out in Articles 14, 16 and 17 of the CMO Regulation at all times. Member States have the obligation to carry out checks at regular intervals to guarantee compliance also after recognition has been granted. In the case of POs, these checks should also verify fulfilment of the obligations laid down in Article 28 of the CMO Regulation (Production and Marketing Plans). In the event of non-compliance, recognition may be withdrawn. In this case, the Member State shall inform the PO/IBO concerned and allow it two months to submit its observations (Article 18 of the CMO Regulation and Article 3 of Commission Implementing Regulation (EU) No 1419/2013).

Neither the CMO Regulation nor its implementing acts lay down a time frame for these checks. It is up to the Member State concerned to decide at which frequency these checks should be made, as long as they are carried out at regular intervals, thus ensuring effective monitoring of ongoing compliance with the relevant conditions.

The Commission may also carry out checks to ensure that the procedure for recognition of POs/IBOs has been correctly followed. In the event of non-compliance, the Commission shall, where appropriate, request withdrawal of recognition by the Member State concerned (Article 20 of the CMO Regulation).

Annex I.I – Summary of information to be included in the application for recognition as producer organisation on the basis of the format set out in Annex I to Commission Implementing Regulation (EU) No 1419/2013

- (a) The constitution of the producer organisation.**
- (b) The rules of internal functioning in accordance with the principles laid down in Article 17 of Regulation (EU) No 1379/2013.**
- (c) The names of persons with authority to act for and on behalf of the producer organisation.**
- (d) Evidence that the producer organisation complies with the conditions laid down in Article 14(1) of Regulation (EU) No 1379/2013:**
 - Evidence of voluntary nature of the membership and proof (minutes or similar) of democratic decision to apply for recognition.
 - Information on internal function complementing the information provided under points (a) and (b), as appropriate.
 - Proof of acquisition of legal personality.
 - Evidence that the group can pursue PO objectives.
 - Evidence of compliance with competition rules and, in the case of exceptions to the application of these rules, proof of notably:
 - necessity of the rule to attain the objectives of Article 39 TFEU;
 - verification that the rule does not imply any obligation to charge identical prices;
 - verification that the rule does not lead to the partitioning of markets in any form within the Union;
 - analysis showing that the rule does not exclude competition;
 - analysis showing that the rule does not eliminate competition in respect of a substantial proportion of the product in question.
 - Information on agreements, decisions and practices of the group complementing the information provided under points (a) and (b), if any.
 - Information on membership, governance and sources of funding.
- (e) Detail of the activities carried out by the producer organisation including the area of activity and the fishery and aquaculture products for which recognition is sought.**
 - Information on representativeness – to be tailored to specific requirements established by the Member State, if any.
 - Information on activities (area, products).

Annex I.II – Summary of information to be included in the application for recognition as inter-branch organisation on the basis of the format set out in Annex I to Commission Implementing Regulation (EU) No 1419/2013

- (a) The constitution of the inter-branch organisation.**
Including information on the activities in which the group may engage.
- (b) The rules of internal functioning in accordance with the principles laid down in Article 17 of Regulation (EU) No 1379/2013.**
- (c) The names of persons with authority to act for and on behalf of the inter-branch organisation.**
- (d) Evidence that the inter-branch organisation complies with the conditions laid down in Article 16(1) of Regulation (EU) No 1379/2013.**
- Information on internal functioning to supplement the information provided under points (a) and (b), as appropriate.
 - Proof of acquisition of legal personality.
 - Evidence that the group can pursue IBO objectives.
 - Evidence that the group takes into account the interests of consumers in its activities (in addition to information provided under points (a) and (b), if needed).
 - Evidence that the activities carried out by the group do not conflict with the CMO (in addition to information provided under point (a), if needed).
 - Compliance with competition rules and, in the case of exceptions to the application of these rules, proof of notably:
 - necessity of the rule to attain the objectives of Article 39 TFEU;
 - verification that the rule does not imply any obligation to charge identical prices;
 - verification that the rule does not lead to the partitioning of markets in any form within the Union;
 - analysis that the rule does not exclude competition;
 - analysis that the rule does not eliminate competition in respect of a substantial proportion of the product in question.
- (e) Details of the activities carried out by the inter-branch organisation, including the area of activity and the fishery and aquaculture products for which recognition is sought.**
- Information on representativeness – to be tailored to specific requirements established by the Member State, if any.
 - Information on activities (area, products).

PART II – GUIDANCE ON THE IMPLEMENTATION OF CHAPTER II, SECTION III EXTENSION OF RULES

Chapter II, Section III of the CMO Regulation establishes the conditions, limitations on and procedure for the extension by Member States of rules agreed by a PO/IBO to non-members. The format and the procedure to be followed for notification to the Commission of an intended extension of rules are specified in Article 5 of Commission Implementing Regulation (EU) No 1419/2013.

This part explains the purpose of Section III and the role of the actors involved, and describes how a request to extend rules to non-members should be assessed on the basis of the conditions set out in Articles 22, 23 and 25 of the CMO Regulation.

1. Purpose of the extension of rules to non-members

Extending rules agreed by a PO/IBO to non-members is one of the instruments that allow delivering the goals of the CFP and CMO goals in a way that is best adapted to the needs on the ground. When deciding to extend the rules of a PO/IBO to non-members, Member States confirm the validity of such rules for the achievement of the CFP objectives and acknowledge the contribution that the rules provide to this end.

For POs, the extension of rules to non-members is one of the instruments to ensure sustainable activities by stabilising production. Such extensions aim to reduce the fluctuations of the offer of fishery and aquaculture products, for example in terms of quantity and size, and to provide the basis for more stable production throughout the year.

In the case of IBOs, the extension of rules to non-members is intended to improve the conditions for the marketing of fishery and aquaculture products throughout the supply chain.

2. Role of the actors involved

Three actors are involved in the procedure leading to an extension of rules: the requesting PO/IBO, the Member State where the PO/IBO is established and representative, and the European Commission.

The PO/IBO is the actor at the heart of the extension of rules. It agrees rules within its structure, making them binding on all its members. If it considers that an agreed rule is necessary to the achievement of the CFP and CMO goals, it may request that this rule be extended to all producers/operators active in the area where it is representative. It is the task of the PO/IBO to prove that the conditions listed in Articles 22, 23 and 25 of the CMO Regulation are met.

The Member State receiving a request for an extension of rules from a PO/IBO is responsible for assessing whether the requested extension of rules complies with the conditions set out in Articles 22, 23 and 25 of the CMO Regulation. Once all checks have been carried out and the request has been positively assessed, the Member State must notify the Commission of its intention to extend the proposed rule.

Upon receipt of the notification by the Member State, the Commission must take a decision authorising or refusing to authorise the proposed extension of rules. To this end, the Commission verifies the content of the Member State's notification and checks that the relevant investigations and

analysis have been carried out to guarantee compliance with the conditions laid down in Articles 22, 23 and 25 of the CMO Regulation. Upon authorising an extension of rules, the Commission may carry out checks to verify that it complies with the conditions for authorisation. If the extended rule is found to be non-compliant with the requirements laid down in the CMO Regulation, the Commission may withdraw the authorisation.

3. Conditions for the extension of rules and its authorisation

Articles 22, 23 and 25 of the CMO Regulation establish the conditions that a rule must meet in order to be extended to non-members. These conditions are described below, in two separate sections, one for POs/APOs and one for IBOs. In accordance with Article 9(2) of the CMO Regulation, the conditions applicable to POs also apply to APOs, unless otherwise stated.

3.1. Conditions for the extension of rules adopted within producer organisations

3.1.1. Origin of the request (Article 22(1) of the CMO Regulation)

The proposal to extend a rule must come from a PO. Thus, if a Member State wishes to make a rule agreed within a PO binding on non-members and without an explicit request from it, this must be done through other instruments than the extension of rules.

Verification of this condition:

The request for extension of the rule by the PO concerned should be included in the notification of the rule to be extended (point (d) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

3.1.2. Established organisation (Article 22(1)(a) of the CMO Regulation)

The PO requesting the extension of rules must have been established for at least one year. Therefore, in their first year of activity, POs may not request the extension of a rule agreed among their members. This condition is intended to ensure that a PO has been established long enough to gather sufficient evidence to support a request to extend a rule, before making it applicable to non-members.

Verification of this condition:

The name and postal address of the PO concerned and the date of recognition should be included in the notification of the rule to be extended (points (a) and (d) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

3.1.3. Representativeness (Articles 22(2) for fisheries POs and 22(3) for aquaculture POs of the CMO Regulation)

In the year preceding the request for extension, the PO must represent at least:

- **for fishery POs:** 55 % of marketed production of the product subject to the rule in the proposed area of application of the rule;
- **for aquaculture POs:** 40 % of marketed production of the product subject to the rule in the proposed area of application of the rule;

Only the criteria listed in Articles 22(2) and 22(3) can be used to calculate representativeness.

Verification of this condition:

All information required to demonstrate the representativeness of a PO should be included in the notification of the rule to be extended (point (b) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

3.1.4. Measures (Article 22(1)(b) of the CMO Regulation)

The rule proposed for extension must concern one of the following measures, listed in Article 8 of the CMO Regulation:

All POs

- Adjust production to market requirements (Article 8(1)(a) of the CMO Regulation).
- Channel supply and marketing of their members (Article 8(1)(b) of the CMO Regulation).
- Promote the products of their members in a non-discriminatory manner (Article 8(1)(c) of the CMO Regulation).

Fisheries POs

- Collectively plan and manage fishing activities (Article 8(2)(a) of the CMO Regulation).
- Avoid and minimise unwanted catches (Article 8(2)(b) of the CMO Regulation).

Aquaculture POs

- Promote sustainable aquaculture (Article 8(3)(a) of the CMO Regulation).
- Collect information on the marketed products (Article 8(3)(b) of the CMO Regulation).
- Collect environmental information (Article 8(3)(c) of the CMO Regulation).
- Plan the management of aquaculture activities of members (Article 8(3)(d) of the CMO Regulation).
- Support programmes for professionals to promote sustainable aquaculture products (Article 8(3)(e) of the CMO Regulation).

These measures have to be examined in the context of the POs' and APOs' objectives. Those objectives should lead to the achievement of the objectives set out in Article 7 of the CMO Regulation (POs) or in Article 10 of the CMO Regulation (APOs) and contribute to achieving the CMO and CFP goals.

Verification of this condition:

The rule, as well as the measure concerned that can be implemented by a PO, should be included in the notification of the rule to be extended. The link between the measure and the objectives pursued by POs should also be explained (points (c) and (d) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

3.1.5. Compliance with competition rules (Article 25(2)(b) of the CMO Regulation)

The rule proposed for extension must comply with the competition rules established in Chapter V of the CMO Regulation. Article 40 of the CMO Regulation sets out the general principle that EU competition rules apply to agreements, decisions and practices relating to the production and

marketing of fishery and aquaculture products. For more information on compliance with these rules and exceptions to their application, see point 3.1.6 of part I on the recognition of professional organisations.

If the rules to be extended contain practices normally prohibited by Article 101(1) TFEU, their extension may only be authorised if all the conditions for the exception to the application of competition rules set out in Article 41 of the CMO Regulation are fulfilled.

Fulfilment of the conditions laid down in Article 41 should be verified in the context of the rule **as extended to non-members**. Furthermore, the rule agreed within a PO should itself comply with competition rules, even before it is extended to non-members.

In order to benefit from an exception to the application of competition rules under Article 41, the rule to be extended must:

- (a) be necessary to attain the objectives set out in Article 39 TFEU;
- (b) not imply any obligation to charge identical prices;
- (c) not lead to the partitioning of markets in any form within the Union;
- (d) not exclude competition; and
- (e) not eliminate competition in respect of a substantial proportion of the products in question.

Practices that, for example, fix prices, exclude competition, or lead to partitioning of markets are not acceptable under any circumstances.

These conditions are cumulative. This means that they must all be met. Verification of compliance with each condition is explained below (points 3.1.5.1 to 3.1.5.5).

3.1.5.1. The extension of rules is necessary to attain the objectives set out in Article 39 TFEU (Article 41(1)(a) of the CMO Regulation)

According to settled case law, any exception to the application of general competition rules under Article 41 of the CMO Regulation should be interpreted strictly¹⁹ and be limited to cases where the agreement, decision or practice is conducive to attainment of all the objectives of Article 39 TFEU.²⁰ In the event of conflicts between the different objectives of Article 39 TFEU, or where those objectives cannot all be fully achieved at the same time, it should at least be possible to reconcile these objectives and ensure that the pursuit of one is not to the detriment of another.²¹

The European Courts have also confirmed that one of the options for the agreements, decisions and practices to be excluded from the application of competition rules is that they are **necessary** for the attainment of the objectives of Article 39 TFEU.²² This principle is also reflected in Article 41(1)(a) of

¹⁹ See judgment of the Court Of Justice of 12 December 1995, Case C-399/93, *Oude Luttikhuis*, ECLI:EU:C:1995:434, p. 23 et seq.

²⁰ See judgment of the Court of Justice of 15 May 1975, Case 71/74, *Frubo v Commission*, ECLI:EU:C:1975:61, p. 22 to 27.

²¹ See judgment of the General Court of 14 May 1997, Joined Cases T-70/92 and T-71/92, ECLI:EU:T:1997:69, p. 153.

²² See judgment of the General Court of 13 December 2006, Joined Case T-217/03 and T-245/03, *FNCVB v Commission*, ECLI:EU:T:2006:391, p. 199. The concept of necessity was first introduced in EEC Council

the CMO Regulation. Thus, all five objectives of Article 39 TFEU must be considered and analysed separately. The agreement, decision or practice in question must be assessed against each objective.

The assessment must lead to the conclusion that the PO's rule is necessary in order to:

Art 39(1)(a) Increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour.

In light of the CFP, the explanation should focus on why the extension of rules is necessary to ensure environmental sustainability and economic and social viability of the fisheries and aquaculture activities (Article 2(1) of the CFP²³).

Art 39(1)(b) Ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture.

In respect of the CFP, the notification should therefore explain why the extension of rules is necessary to 'ensure a fair standard of living for the fisheries (or aquaculture) community, in particular by increasing the individual earnings of persons engaged in fisheries (or aquaculture)'.

Art 39(1)(c) To stabilise markets.

Art 39(1)(d) To assure the availability of supplies.

Taking into account the specificities of the CFP, the notification should indicate why the extension of rules is necessary to ensure sustainable exploitation of resources so as to ensure availability of food supplies in the long-term (Article 2(1) of the CFP).

Art 39(1)(e) To ensure that supplies reach consumers at reasonable prices.

Verification of this condition:

An explanation of why the extension of a rule is necessary to achieve the objectives of Article 39 TFEU should be included in the notification. The analysis should show that, in the absence of such extension, it would be impossible to attain the objectives of Article 39 TFEU. The analysis should cover each objective individually. For the objectives under Article 39(1)(a), (b) and (d), the explanation should focus on the aspects highlighted above. In the case of Article 39(1)(c), the notification should explain the necessity of the extension of rules by showing e.g. the risk, in its absence, of fluctuations in the markets. Regarding Article 39(1)(e), the notification should include an explanation of how the extension of rules will contribute to the stability of prices for the end consumer (point (d) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

Regulation No 26 applying certain rules of competition to production of and trade in agricultural products, OJ 30, 20.04.1962, p.993.

²³ Regulation (EU) No 1380/2013, OJ L 354, 28.12.2013, p. 22–61(see footnote 4 for full reference).

3.1.5.2. The extension of rules does not imply any obligation to charge identical prices (Article 41(1)(b) of CMO Regulation)

Under no circumstances can a rule adopted by a PO be extended if it results in a situation where identical prices are charged.

Verification of this condition:

The notification should confirm that the rule to be extended concerns only the aspects covered in the notification (e.g. limitations of volume/size of landings for PO rules) and does not entail any obligation to charge identical prices (price fixing) (point (d) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

3.1.5.3. The extension of rules does not lead to the partitioning of markets in any form within the Union (Article 41(1)(c) of CMO Regulation)

Market partitioning concerns practices that have as their direct or indirect object the restriction of the territory into which one may sell, or the group/type of customers to whom one may sell. Producers must remain free to decide where and to whom they sell.

Verification of this condition:

The notification should confirm that the rule to be extended does not involve any form of market partitioning. In particular, the notification should show that the rule will not limit the freedom of producers to sell, both in terms of geographic market and of group/type of potential buyers. The analysis should also show that buyers will maintain freedom to choose where and from whom they buy once the extension of rules is in place (point (d) of Annex III to Commission Implementing Regulation (EU) No 1419/2013). For guidance on the definition of the relevant market, see box under point 3.1.5.5.

3.1.5.4. The extension of rules does not exclude competition (Article 41(1)(d) of CMO Regulation)

This condition is intended to ensure that the extension of rules does not go beyond what is required to achieve the CFP and CMO objectives, and does not have a negative effect on competition and thus on the functioning of the internal market. This condition safeguards competition between producers and competitive processes.

3.1.5.5. The extension of rules does not eliminate competition in respect of a substantial proportion of the products in question (Article 41(1)(e) of CMO Regulation)

This condition is complementary to the previous one, but focuses on the specific product that is covered by the proposed extension of rules. It establishes that the extension of rules must not eliminate competition with regard to the product in question.

These two conditions are to be assessed together with regard to actual or potential competition.²⁴ The analysis must therefore verify whether barriers/limitations to the product or geographic market exist that could affect actual or potential competitors. The verification of compliance with these conditions must be carried out on a case-by-case basis, taking into account the specific aspects of the relevant product and geographic market concerned.

Verification of conditions 3.1.5.4 and 3.1.5.5:

The notification should assess conditions 3.1.5.4 and 3.1.5.5. To do so, the notification needs to establish the relevant market on the basis of two aspects: (i) the relevant **product market** and (ii) the relevant **geographic market**.

(i) With regard to the relevant product market, the notification should show the substitutability with other products. The identification of these products should be made on the basis of e.g. similar characteristics, price, use or perception by consumers.

(ii) As regards the relevant geographic market, the notification should identify the area in which the conditions of competition are homogenous. To this end, the notification will have to analyse the following aspects:

- Can supplies and purchases be directed to other areas without limitation or without incurring substantial costs?

- Is the demand limited to local products or does it cover products produced in a given Member State or even imported products? Data on imports of the product(s) from outside the EU and from other EU countries, and information on sales within the Member State concerned are useful indicators.

On the basis of these aspects, the analysis should show that the extension of rules does not exclude competition and does not affect a substantial proportion of a given market. To verify compliance with condition 3.1.5.5, only the geographic market should be taken into account as only the specific product concerned by the extension is considered (and not all substitutable products as in 3.1.5.4) (point (d) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

Guidance on the assessment of these aspects is provided in the Commission notice on the definition of relevant market for the purposes of Community competition law (97/C 372 /03) and in the Communication from the Commission on the Guidelines on the application of Article 81(3) of the Treaty (2004/C 101/08).²⁵

3.1.6. Free trade (Article 25(2)(c) of CMO Regulation)

The extension of a rule adopted within a PO must not create a barrier to trade. This condition must be examined in light of the possible cross-border effects of an extension of rules. The concept of trade is not limited to traditional exchanges of goods and services across borders, but covers all cross-border economic activity, including establishment.

²⁴ The notion of potential competition refers to undertakings that are not already competing within the relevant market. For guidance on how to assess potential competition, see the Commission notice on the definition of relevant market for the purposes of Community competition law (97/C 372 /03).

²⁵ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1209\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31997Y1209(01)&from=EN)
[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0427\(07\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0427(07)&from=EN)

Furthermore, according to settled case law, the concept of ‘trade’ also encompasses cases where agreements or practices affect the competitive structure of the market. An extension of rules must not therefore eliminate or threaten to eliminate a competitor operating within or outside the Union, as this would affect the economic activities that are carried out in the internal market or in the context of trade with third countries.

Verification of this condition:

A justification that the rule does not have any impact on the free flow of goods, services or other cross-border activities should be included in the notification of the rule to be extended. In particular, the analysis should show that the extension of rules does not limit cross-border trade of the product concerned by the rule. The analysis should look not only at the EU internal market (see guidance document referred to below), but verify possible negative effects on trade with third countries (point (d) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

Guidance on the assessment of this aspect is provided in particular in the Commission Notice – Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty (2004/C 101/07).²⁶

3.1.7. Achievement of objectives of Article 39 TFEU (Article 25(2)(d) of CMO Regulation)

The extension of a rule adopted by a PO may not endanger the achievement of the objectives of Article 39 TFEU. This Article sets out the overall goals of the CFP. A rule may therefore only be extended if it is in line with the goals of the CMO and of the CFP.

Verification of this condition:

An explanation of how the rule contributes to achieving the CMO/CFP goals should be included in the notification of the rule to be extended. The explanation should show that the rule is not in contrast with the CFP and thus does not endanger the achievement of the objectives of Article 39 TFEU (point (d) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

3.1.8. Limited duration (Article 22(4) of CMO Regulation)

The extension of rule must be time-limited. A rule adopted by a PO should be extended to non-members for at least 60 days and for no more than 12 months.

Verification of this condition:

The period of application should be included in the notification of the rule to be extended. The notification should also include the date of entry into force of the rule (points (f) and (g) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

²⁶ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004XC0427%2806%29&from=EN>.

3.2. Conditions for the extension of rules adopted within inter-branch organisations

3.2.1. Origin of the request (Article 23(1) of the CMO Regulation)

See point 3.1.1.

3.2.2. Representativeness (Article 23(1) of the CMO Regulation)

In the year preceding the request for extension, the IBO must represent at least:

- 65 % of production and 65 % of processing, or
- 65 % of processing and 65 % of marketing, or
- 65 % of production and 65 % of marketing

of the product subject to the rule in the proposed area of application of the rule.

Only the criteria listed in Articles 22.2 and 22.3 may be used to calculate representativeness.

Verification of this condition:

All information required to demonstrate the representativeness of an IBO should be included in the notification of the rule to be extended (point (b) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

3.2.3. Measures (Article 23(1)(b) of the CMO Regulation)

The rule proposed for extension must concern one of the following measures, listed in Article 13 of the CMO Regulation:

- drawing up standard contracts compatible with EU law (Article 13(a) of the CMO Regulation);
- non-discriminatory promotion of EU fishery and aquaculture products (Article 13(b) of the CMO Regulation);
- laying down stricter rules on the production and marketing of fishery and aquaculture products than EU/national ones (Article 13(c) of the CMO Regulation)
- improving quality, knowledge and transparency of production and market and training activities (Article 13(d) of the CMO Regulation)
- carrying out research and market studies and developing techniques to optimise market operation (Article 13(e) of the CMO Regulation)
- providing information and research to deliver sustainable supplies corresponding to market expectations (Article 13(f) of the CMO Regulation)
- promoting sustainable, nutritious and under-consumed fish (Article 13(g) of the CMO Regulation)

These measures have to be examined in the context of the objectives of IBOs. The measures must therefore lead to the attainment of the objectives set out in Article 12 of the CMO Regulation and contribute to the achievement of the overall goals of the CFP and of the CMO.

Verification of this condition:

The rule, as well as the measure concerned that can be implemented by the IBO, should be included in the notification of the rule to be extended. The link between the measure and the objectives pursued by IBOs should also be explained (points (c) and (d) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

3.2.4. Potential damage to other operators (Article 23(1)(b) of the CMO Regulation)

The rule that the IBO proposes to extend to non-members must not cause any damage to other operators in the Member State concerned or the Union.

The rule proposed for extension by an IBO must be assessed against fair market practices and in the broader context of the EU internal market. The rule must therefore be in line with the principles of good commercial conduct, good faith and fair dealing. IBOs may request that a rule be made binding on non-members only if such rule does not adversely affect the functioning of the market and does not cause damage to other operators.

Verification of this condition:

Analysis showing that the rule does not adversely affect operators in the supply chain should be included in the notification of the rule to be extended. The analysis should cover not only the national supply chain, but also the potential negative effects on operators in other Member States. The analysis should therefore also cover intra-EU trade flows (point (d) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

3.2.5. Compliance with competition rules (Article 25(2)(b) of the CMO Regulation)

See point 3.1.5 for a general explanation of the application of EU competition rules. A proposal by an IBO to extend a rule to non-members may be exempted from the application of competition rules if it:

- (a) is necessary to attain the objectives set out in Article 39 TFEU;
- (b) does not entail any obligation to apply a fixed price;
- (c) does not lead to the partitioning of markets in any form within the Union;
- (d) does not apply dissimilar conditions to equivalent transactions with other trading partners, thereby placing them at a competitive disadvantage;
- (e) does not eliminate competition in respect of a substantial proportion of the products in question; and
- (f) does not restrict competition in ways which are not essential for the achievement of the objectives of the CFP.

These conditions are cumulative. This means that they must all be met. Verification of compliance with each condition is explained below (points 3.2.5.1 to 3.2.5.6).

3.2.5.1. The extension of rules is necessary to attain the objectives set out in Article 39 TFEU (Article 41(2)(a) of the CMO Regulation)

See point 3.1.5.1.

3.2.5.2. The extension of rules does not entail any obligation to apply a fixed price (Article 41(2)(b) of the CMO Regulation)

See point 3.1.5.2.

3.2.5.3. The extension of rules does not lead to the partitioning of markets in any form within the Union (Article 41(2)(c) of the CMO Regulation)

See point 3.1.5.3.

3.2.5.4. The extension of rules does not apply dissimilar conditions to equivalent transactions with other trading partners, thereby placing them at competitive disadvantage (Article 41(2)(d) of the CMO Regulation)

An extension of rules must not lead to anti-competitive discrimination.

This condition must be examined in light of the vertical relationship between IBO members. It sets out the principle that an extension of rules must not lead to application of dissimilar conditions, which would put trading partners at a competitive disadvantage, thus adversely affecting the proper functioning of the internal market. For example, differences in prices charged to trading partners must be justifiable on the basis of objective facts (e.g. differences in shipping costs), otherwise they would be considered to infringe EU competition rules.

Verification of this condition:

The notification should confirm that the rule to be extended to non-members relates exclusively to the aspects covered and does not discriminate among trading partners, placing them at a competitive disadvantage. In particular, the notification should show that extending the rule agreed by an IBO will not have an adverse effect on the competitiveness of other trading partners (point (d) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

3.2.5.5. The extension of rules does not eliminate competition in respect of a substantial proportion of the products in question (Article 41(2)(e) of the CMO Regulation)

See point 3.1.5.5.

3.2.5.6. The extension of rules does not restrict competition in ways which are not essential for the achievement of the objectives of the CFP (Article 41(2)(f) of the CMO Regulation)

See by analogy point 3.1.5.4. for guidance on how to verify compliance with this condition. Verification is carried out following the same procedure as for POs, but the burden of proof for IBOs is greater. An IBO must demonstrate that any restriction to competition resulting from its agreements, decisions and practices is essential to the achievement of the objectives of the CFP.

Verification of conditions 3.2.5.5 and 3.2.5.6:

See the description provided under points 3.1.5.5 and 3.1.5.4. The conditions applicable to POs also apply to IBOs, albeit in reverse order.

3.2.6. Free trade (Article 25(2)(c) of CMO Regulation)

See point 3.1.6.

3.2.7. Achievement of objectives of Article 39 TFEU (Article 25(2)(d) of the CMO Regulation)

See point 3.1.7.

3.2.8. Limited duration (Article 23(2) of the CMO Regulation)

The extension of rule must be time-limited. A rule proposed by an IBO cannot be extended to non-members for more than 3 years.

Verification of this condition:

The period of application should be included in the notification of the rule to be extended. The notification should also include the date of entry into force of the rule (points (f) and (g) of Annex III to Commission Implementing Regulation (EU) No 1419/2013).

4. Procedure

Deadline for notification to the Commission

Member States must notify the Commission of their intention to make a rule adopted within a PO/IBO binding on non-members at least two months before its intended entry into force (Article 5 of Commission Implementing Regulation (EU) No 1419/2013).

In order to allow the Commission to verify that all the conditions in the CMO Regulation have been complied with, the notification must include all the information and evidence necessary for such an assessment. Otherwise, the Commission will not be able to assess the request of the Member State and will have to return the submission to the Member State concerned with a request for additional information necessary for its assessment.

Format of the notification

Annex III of Commission Implementing Regulation (EU) No 1419/2013 sets out the format that Member States must follow when notifying the Commission of an intended extension of rules .

Adoption of decision by the Commission

Upon receipt of a notification by a Member State (see above point on the deadline for notification), the Commission must take a decision authorising or refusing to authorise the extension of rules. The Commission must inform the Member State of its decision within one month of the notification. If the Commission does not adopt a decision within this time period, the extension of rules is deemed to be authorised.

Amendment

Once an extension of rules has been authorised by the Commission, Member States may amend the extended rule. Any such amendment must be notified to the Commission in accordance with the procedure established under Article 5 of Commission Implementing Regulation (EU) No 1419/2013.

This notification must enable the Commission to verify that the extension of rules as amended complies with the conditions laid down in the CMO Regulation (see above point on the deadline for notification).

Renewal

If a Member State wishes to renew an extension of rules in force, it must notify the Commission of its intention at least one month before the extension expires. The Commission will have one month after receiving this notification to authorise the renewal of the extension of rules or object to it. If the Commission does not adopt a decision within this time period, the renewal is deemed to be authorised.

The Member State wishing to renew an existing extension of rules must follow the notification procedure set out in Article 5 of Commission Implementing Regulation (EU) No 1419/2013. The notification must enable the Commission to verify that the extension of rules to be renewed complies with the conditions set out in the CMO Regulation (see above point on the deadline for notification).

Withdrawal

The Commission may carry out checks to verify compliance of an authorised extension of rules with the conditions for authorisation. If an extension of rules is found not to meet the requirements established in Articles 22, 23 and 25 of the CMO Regulation, the Commission may withdraw the authorisation and inform the Member State of such a withdrawal (Article 26 of the CMO Regulation).

Annex II.I – Summary of information to be included in the notification of an extension of rules adopted within a producer organisation on the basis of the format set out in Annex III to Commission Implementing Regulation (EU) No 1419/2013

- (a) **Name and postal address of the producer organisation concerned.**
- (b) **All the information required to demonstrate that the producer organisation is representative in accordance with Articles 22(2) or 22(3) of Regulation (EU) No 1379/2013.**
- (c) **Rule(s) to be extended.**
- (d) **Justification of the extension of rules, supported by appropriate data and other relevant information.**
- Request for extension of the rule by the PO.
 - Date of recognition of the PO.
 - Reference to the concerned measure that can be implemented by the PO and explanation of the link between the measure and the objectives of POs.
 - Compliance with competition rules and, in the case of exceptions to the application of these rules, proof of notably:
 - necessity of the extension of rules to attain the objectives of Article 39 TFEU;
 - verification that the extension of rules does not imply any obligation to charge identical prices;
 - verification that the extension of rules does not lead to the partitioning of markets in any form within the Union;
 - analysis showing that the extension of rules does not exclude competition;
 - analysis showing that the extension of rules does not eliminate competition in respect of a substantial proportion of the product in question.
 - Justification that the rule does not have any adverse impact on free trade.
 - Justification that the rule does not endanger the achievement of the objectives of Article 39 TFEU.
- (e) **Area or areas in which it is intended to make the rules binding.**
Area(s) in which the PO is representative.
- (f) **Period of application of the extension of rules.**
Duration of the extension of rules (between 60 days and 12 months).
- (g) **Date of entry into force.**
Date starting from which the rule will also apply to non-PO members (may be indicated as number of days after publication (or equivalent) of the Member State's decision).

Annex II.II – Summary of information to be included in the notification of an extension of rules adopted within an inter-branch organisation on the basis of the format set out in Annex III to Commission Implementing Regulation (EU) No 1419/2013

- (a) Name and postal address of the inter-branch organisation concerned.**
- (b) All the information required to demonstrate that the inter-branch organisation is representative in accordance with Article 23(1)(a) of Regulation (EU) No 1379/2013.**
- (c) Rule(s) to be extended.**
- (d) Justification of the extension of rules, supported by appropriate data and other relevant information.**
- Request for extension of the rule by the IBO.
 - Reference to the concerned measure that can be implemented by the IBO and explanation of the link between the measure and the objectives of IBOs.
 - Analysis showing that the rule does not adversely affect operators in the supply chain at national or EU level.
 - Compliance with competition rules and, in the case of exceptions to the application of these rules, proof of notably:
 - necessity of the extension of rules to attain the objectives of Article 39 TFEU;
 - verification that the extension of rules does not entail any obligation to apply a fixed price;
 - verification that the extension of rules does not lead to the partitioning of markets in any form within the Union;
 - analysis showing that the rule does not apply dissimilar conditions to equivalent transactions with other trading partners, thereby placing them at competitive disadvantage.
 - analysis showing that the extension of rules does not restrict competition in ways which are not essential for the achievement of the objectives of the CFP;
 - analysis showing that the extension of rules does not eliminate competition in respect of a substantial proportion of the product in question.
 - Justification that the rule does not have any adverse impact on free trade.
 - Justification that the rule does not endanger the achievement of the objectives of Article 39 TFEU.
- (e) Area or areas in which it is intended to make the rules binding.**
Area(s) in which the IBO is representative.
- (f) Period of application of the extension of rules.**
Duration of the extension of rules (maximum 3 years).
- (g) Date of entry into force.**
Date starting from which the rule will also apply to non-IBO members (may be indicated as number of days after publication (or equivalent) of the Member State's decision).