



Brussels
MARE.A.4/LJ

Dear representatives of the Markets and Trade Expert Group,

I would like to inform you that the report on the Pilot Project “an EU platform for fishery and aquaculture producer organisations” [has been released](#).

This report, presented at our last expert group of 23rd October 2020, explored the possibility for professional organisations to be recognised as transnational organisations under the CMO regulation (R(EU)No 1379/2013). The project assessed potential ways forward to strengthen the transnationalisation of professional organisations.

We would like to take the opportunity of the publication of this report to provide you with guidance on the recognition of transnational organisations under the CMO, as well as on the establishment and support of their production and marketing plans (PMPs).

1 RECOGNITION OF TRANSNATIONAL ORGANISATIONS

In 2013, the reform of the CMO regulation introduced the possibility to recognise professional organisations (i.e. producer organisations (POs), associations of producer organisations (APOs) and inter-branch organisations (IBOs) with a transnational area of activity. When notifying the Commission on their decision to grant recognition, Member States are required to specify the “Area of activity” of any organisation seeking recognition, in accordance with the format laid down in Annex II of the Implementing Regulation (EC) No 1419/2013. Member States can either classify an organisation as T (transnational) or N (national).

The Member State responsible for the recognition of the transnational organisation is the one where the organisation has a legal personality under the law of that Member State, is established and has its official headquarters (art. 14 of the CMO regulation). The Member State where the transnational producer organisation (or association thereof) is recognised is also responsible for the approval of its production and marketing plan (PMP) (art. 28 of the CMO regulation).

The CMO does not provide a definition of the transnational area of activity. For instance, the transnational character could be established on the basis of:

- (i) the countries in which the members are registered (i.e. member’s legal entity);
- (ii) the countries in which the members/producers are nationals;
- (iii) the countries of the flag of the vessels of the members (for fishery POs);

- (iv) the countries where the production units of the members of the PO are based (for aquaculture POs).

The Pilot Project has identified the following cases of multinational membership within existing CMO-recognised organisations:

- Fishery POs including members with vessels under other Member States flags as well as their own Member State;
- Fishery POs including member vessel-owners from other Member States and all vessel flags under the PO's Member State;
- Fishery POs including member vessel-owners from other Member States with vessels under other Member States flags.

Each Member State may decide to provide a definition of transnational organisations in their national legal framework, as long as the latter does not contradict the provisions of the CMO Regulation or EU legislation in general. For APOs, article 9 of the CMO clearly states that a transnational APO is one where the POs that are members of the APO have been recognised in two or more Member States. Thus, the transnational status should be assigned by looking at the countries of recognition of the members.

Besides, Member States may adopt specific provisions in their national law to implement articles 14 and 16 of the CMO Regulation (e.g. criteria of sufficient economic activity) for the specific case of transnational organisations. By default, the same provisions apply to both national and transnational organisations.

2 COOPERATION WITH OTHER MEMBER STATES CONCERNED

Article 18(2) of the CMO Regulation states that the competent authorities of the Member State hosting the transnational organisation is responsible for the set-up of the administrative cooperation needed to “carry out checks on the activities of the organisation or association concerned in collaboration with the other Member States concerned” (i.e. the national competent authorities of the foreign members of the transnational association).

The CMO Regulation does not provide any rule on the framework and the implementation of this cooperation. It is up to the Member State to decide how to proceed. The Member State shall formally inform the competent authorities of the other concerned Member States and might ask them information on the foreign members during the process of checks. Conversely, if a Member State is invited by other national competent authorities for the checks of members of a transnational organisation on its territory, this Member State should cooperate and provide the requested information.

There is no legal obligation to set-up these administrative arrangements at the stage of the recognition, although it would be advisable, in particular if the intention is to have concerned Member States financing the transnational organisation through EMF(A)F support.

As far as PMPs are concerned, the principles and obligations to which T-(A)POs must subscribe are exactly those applicable to national POs. Accordingly, it is the responsibility of the competent authorities of the host Member State to approve the PMPs and related annual activity reports (art.28(5) of the CMO regulation) as well as to carry-out the checks it considers necessary to verify that POs recognised on its territory comply with PMPs' related obligations (art.28(7) of the CMO regulation). To that end, concerned Member

State must integrate these checks in the administrative cooperation framework established in accordance with the requirements of art.18.2 of the CMO regulation.

In order to carry-out these checks, you may find useful to refer to the EC guidance document on the implementation of Chapter II “Professional Organisations” of Regulation (EU) No 1379/2013 (SWD(2016) 113 final).

3 FINANCIAL SUPPORT TO TRANSNATIONAL (ASSOCIATION OF) PRODUCER ORGANISATIONS

This section focuses on the financing of production and marketing plans established by T-(A)POs. The principles can however be applied to all operations funded under the EMF(A)F to the benefit of these organisations (such as the creation and restructuring¹ of POs), as well as to inter-branch organisations.

3.1 General principles

The **EMFF** supports the preparation and implementation of the PMPs. Support to this measure is mandatory: the EMFF "shall support..." (art.66 of the EMFF). There is no minimum amount set for the financial support. The total support (EMFF + MS) may not exceed 12% of the average annual value of products put on the market by (members of) POs over a reference period. Support of PMPs under the EMFF is possible until 2022 on conditions that all related actions are implemented and paid by 31 December 2023.

The **EMFAF**² does not provide for the financing obligation nor any upper limits in the support. However, all obligations applicable to POs ensuing from the CMO regulation remain in force. It is therefore important that Member States ensure continuity in the support to their POs. Support to PMPs under the EMFAF is possible from January 2021. This means that managing authorities may choose between EMFF and EMFAF to support their POs' PMPs for the 2021 and 2022 fishing years.

To support its POs' PMPs, a Member State must specifically plan it in the Operational Programme it submits under the EMFF or the EMFAF. This is enough to make possible related expenditures eligible for EU aid. The corresponding operations will be subsequently selected according to the national selection criteria established by the Member State.

3.2 Specific case of T-(A)POs

The support to a T-(A)POs' PMPs follows the same logic as for national organisations: mandatory under the EMFF and possible under the EMFAF. The difficulty results from the fact that this logic implies that a Member State would finance the PMP of a T-(A)PO which members are nationals of one or several other Member States. This is allowed but could legitimately be difficult to accept (the EMFF and EMFAF being closed envelopes, funds allocated to foreign beneficiaries would come in deduction to funds allocated to national ones).

Therefore, it may be legitimate to expect other concerned Member States to pay their fair share of the support in case national producers or POs are members of a PO or of an APO

¹ The support to the restructuring of POs is only possible under the EMFAF.

² At the date of this letter

recognised in another Member State. However, methods and conditions to do so are not explicitly laid down in the legal bases.

The first requirement is that Member State earmark amounts in their national EMF(A)F programmes destined to the support of POs' PMPs.

From there, Member States are entitled to support operations that take place outside the programme area, provided they comply with the conditions set by art.70 of the CPR (R(EU) No 1303/2013). Concretely, this would be the path forward for a Member State which intends to support the PMP of a T-(A)PO located in a third Member State, and which consists of national producers or national POs. In this case, the operation (the PMP) could be considered to be "for the benefit of the programme area" as stipulated by art.70.2(a) of the CPR (all other conditions of that article would normally be fulfilled).

Nevertheless, no formal mechanism establishes the conditions for an even distribution of the financial support over the concerned Member States. To overcome this weakness, DG MARE would recommend establishing an information sharing framework within the administrative cooperation framework established in compliance with art.18.2 of the CMO regulation. By doing so, concerned Member States could be consulted by the competent authorities of the home Member State of the T-(A)PO on the content of the draft PMP as well as on the extent to which they will financially support the preparation and implementation of the PMP. Member States are invited to commonly decide in that framework on the most appropriate distribution key. Possible sharing criteria can be based for example on the relative weight of national producers or POs in the T-(A)POs, the share in the total value of production of members, share in the amount of vessels, etc. The concerned (A)POs may be consulted in this process.

As far as the new programming period is concerned, this framework should be included in the section on "the interregional and transnational actions with beneficiaries located in at least one other Member State" in the EMFAF programme template.

4 CONCLUSION

I would like to recall that we are at your disposal to provide advice on any provision of the CMO regulation, of the financial instruments that support its implementation or any concrete issue related to this topic. We are committed to continue direct dialogue with national competent authorities and stakeholders who are interested to set-up a transnational organisation.

We are also considering the provision of additional guidance for producers and Member States administrations on how concretely to handle application, recognition and checks of these transnational organisations. For that purpose, we would like to call on your support and communicate in our functional mailbox MARE-A4@ec.europa.eu the main challenges that both the sector and Member States face when handling a procedure for recognition of transnational organisations and the subsequent obligations such as the submission / validation and support of PMPs.

Please consider this letter as guidance and not as an interpretation of the legal framework. Only the ECJ holds the prerogative to interpret the EU law.

Yours faithfully,

Frangiscos NIKOLIAN
Head of Unit