



PhD Thesis – « Fisheries enterprises: types and outlook. The role of Producer Organisations (P.O.s) between resource management and markets. »

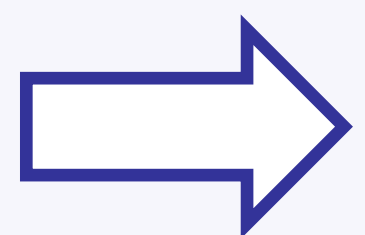
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➔ What is a (Fish) Producer Organisation?

- POs essentially are private collective structures set up by producers, on a voluntary basis, to the purpose of strengthening their position in the market.
- The EU legislation now explicitly accords to POs a major role in pursuing the objectives both of Common Fishery Policy (CFP) and Common Market Organisation (CMO) for fishery and aquaculture products (Regulations EU n. 1380/2013 and 1379/2013).

- EU legislation essentially is more focused on identifying POs purposes and measures deployable by them. At an earlier stage by considering them primarily as ‘marketing tool’ (market stability and improvement of sales conditions). Then, gradually over time, by entrusting them with more effective functions, both on the resource preservation and management side.
- On the other side, the latest CMO regulation provides a (new) set of competition rules addressing fishing and aquaculture enterprises, with relevant exemptions granted to POs.

FINDING



The EU ‘statute’ of POs must be coupled with the relevant domestic legislation of Member States, to outline their actual functioning and to detect possible policy (in)coherences. The comparison is conducted between Italy and France.

The Cooperative firm as the ‘eligible’ legal form.

- **Matching** the POs’ principles of internal functioning set by EU legislation and the **International Cooperative Principles**, an essential **overlap** is to found.
- **Cross examination** between the **list of the recognised POs** provided by the European Commission with data provided the **national public business registers** of Italy and France, shows that the overwhelming majority of POs are **incorporated under their national law as cooperative companies**.

Principles of internal functioning (Art. 17 Reg. EU n° 1379/2013)

- (a) Members’ compliance with the rules (exploitation – production – marketing)
- (b) **Avoidance of any discrimination** among the members
- (c) **Financial contributions**
- (d) **Democratic functioning**
- (e) Penalties for infringement
- (f). Admission and withdrawal
- (g) Accounting and budgetary rules

Cooperative Principles (ICA Statement of Cooperative Identity – 1995)

- ((1)**Open and voluntary membership** (non-discrimination)
- (2) **Democratic member control** (one member – one vote)
- (3) **Members’ economic participation**
- (4) Autonomy and independence
- (5) Education, training, and information
- (6) Cooperation among cooperatives
- (7) Concern for community

ITALY

About **42 bodies** recognised under EU law

2 Associations of Producer Organisation (APO).

About **39 POs** → **More than 80%** are cooperatives

FRANCE

About **15 bodies** recognised under EU law

2 Associations of Producer Organisation (APO).

About **13 POs** → **Around 80%** are cooperatives

Competition law implications

- The latest **CMO regulation** (Reg. EU n. 1379/2013, namely art. 40 and 41) provides that the Eu general **Competition Rules** «shall apply to agreements, decisions and practices» «which relate to **production or marketing of fishery and aquaculture products**». However, the **ban on restrictive practices shall not apply** to those set by (fish and aquaculture) **POs**’ which met some specific requirements, among wich a major one is their being needed ad for the **attainment of the objectives** of the **common policies** of the sector (art. 39 TFEU).
- A relevant issue is to determine **to what extent the action of a POs is protected** by the exemption from the ban of restrictive praticctices, having regard to all the **economic and social implications** that the assumption might have in a sector in which **producers are traditionally considered ‘price takers’**.
- In addition to that, the current antitrust experience has shown **that in some cases the structure of a PO and its role in the (sub) Quota management**, might have **relevant consequences in the fair competition balance** in a specific national market (French National Competition Authority, Avis, n° 15-A-19 (16 December 2015) concerning the impact on competition of the fisheries quota allocation system in France).

EU General Competition Rules

- CAP/CFP **Objectives**
 - **General exemption** primary sector
- Art. 39 and 42(1) TFEU
- General competition rules**
- Art.101 – 106 TFEU (Prohibition of restricted practices and abuse of dominant position)
- Art. 101 – 106 TFEU shall apply** to fisheries and aquaculture sectors.
- Art. 40 – 41 Reg. EU 1379/2013
- Exceptions** for selected agreements, decisions and practices of **POs**.

Competition Issues Regarding French POs and quota management

EU TAC allocation between Member States

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National Quotas

Quota allocation in France

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Managed by the administrative authority and allocated between recognised POs’ and fishermen non PO-members (ad a whole)

Criteria for sub-quotas allocation in France

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Hystorical landings (2001 – 2003)

Market orientation

Socioeconomic balance

Risk of discrimination

PLUS

Unofficial market of rights

- Between **POs**
- Within the **same PO**, between its **members** [undue benefits]
- Between **fishermen** who are **members** of a PO and those who are **not (hors OP)** [barriers to entry the market]

Measures suggested by the french Competition Authority

Switch to an ITQ system

CONCENTRATION

→ Merger between all the existing POs at each sea front level

