

## **Guidance on recognition criteria for UK Fisheries Producers Organisations**

Regulation (EU) No 1379/2013 on the common organisation of  
the markets in fishery and aquaculture products



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## Introduction

This guidance has been produced by the UK Fisheries Administrations (**FAs**). It aims to help UK Fisheries Producer Organisations (**POs**) in understanding and complying with the conditions for recognition set out in Article 14 and Article 17 of the Regulation (EU) No 1379/2013 on the common organisation of the markets in fishery and aquaculture products (**CMO Regulation**) and in the Commission Implementing Regulation (EU) No 1419/2013 of 17 December 2013. All FAs will use this guidance to support their compliance checks. This guidance has been drafted following discussions with the Commission, which is responsible for monitoring compliance with the CMO Regulation at an EU level.

POs are officially recognised bodies set up at the initiative of fishery (or aquaculture) producers. They play an essential role in reducing the fragmentation of the fisheries sector, collectively managing the activities of their members, promoting sustainable fishing, and matching supplies with market demands.

A common organisation of the markets in fishery and aquaculture products was established to contribute to the achievement of the objectives the Common Fisheries Policy (CFP) and in particular to promote the sustainable exploitation of living marine biological resources and the competitiveness of the Union fishery and aquaculture industry. POs are key to delivering the objectives set out in Article 7 of the CMO Regulation. Measures which POs can deploy to meet those objectives are set out in Article 8 of the CMO Regulation.

In accordance with Article 18 of the CMO Regulation, UK FAs will carry out checks at least every two years to verify that POs comply with the conditions for recognition laid down in Article 14 and Article 17 of the CMO Regulation. Where a PO does not comply with the conditions for recognition, or where a PO refuses to provide information required to verify compliance with the conditions for recognition, compliance action will follow which may result in the withdrawal of PO recognition.

The information in this document is intended as guidance only and is not exhaustive. It does not supersede, negate or amend the CMO Regulation nor its implementing regulations. Other information relevant to PO compliance can be found in the 'Related documents' section in the Annex of this guidance.

### Key descriptions

- A fisheries **producer organisation (PO)** must be a group set up on the initiative of fishery or aquaculture producers: CMO Regulation, Article 14(1).
- A **producer** is: *‘any natural or legal person using means of production to obtain fishery or aquaculture products with a view to placing them on the market’*: CMO Regulation, Article 5(c). This means that each member of a PO must be a natural person (i.e. an individual human being) or a legal person (e.g. a company or a limited liability partnership (LLP)), which uses means of production (e.g. a fishing vessel) to obtain fishery/aquaculture products with a view to placing them on the market. Fishing vessels per se cannot be members of a PO, since a fishing vessel is not a natural or legal person.

## **A - PO membership: Condition of plurality of members**

Member States may recognise as producer organisations all groups set up at the initiative of fishery or aquaculture producers which apply for such recognition (Article 14(1) of the CMO Regulation).

### **1) Formal and genuine plurality requirements**

Formal plurality: Article 14(1) of the CMO Regulation indicates that POs must be composed of a plurality of producers (two or more). Genuine plurality: The plurality requirement will not be satisfied if all of the members of a PO are controlled by one natural or legal person. This is the case if a single natural or legal person can control the decision-making in a PO on its own. The following examples illustrate situations in which a single natural or legal person would have control over all the members of a PO:

- The members of the PO are Companies A, B and C (i.e. legal persons). Company D holds the majority of the shares or has the majority of voting rights in each of Company A, Company B and Company C. In this situation, all the members of the PO are controlled by one legal person, i.e. Company D.
- The members of the PO are Companies E and F. Company F is owned by Companies G and H. A single natural person holds the majority of the shares or has the majority of voting rights in each of Company E, Company G and Company H. In this situation, the members of the PO are all controlled by one natural person.

### **2) Key requirements**

A PO should have a minimum of two members (each of which must be a producer) and no member should control all of the other members.

- The different natural or legal persons that are members of a PO should be identified from the PO's register of members and officers/directors and an extract of the register should be submitted to the relevant FA on request.
- The natural or legal persons who have significant control (PSCs) of the PO's members should be identified. Where a PSC is a legal person, that person's PSCs should in turn be identified, and so on, until it can be confirmed that no single natural or legal person controls all the members of the PO. A person with significant control ("PSC") of a legal person will usually be someone with:

- more than 25% of shares in the legal person
- more than 25% of voting rights in the legal person
- the right to appoint or remove the majority of the board of directors

Further information on PSC can be found in the following guidance:  
<https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>.

For the majority of UK companies, PSCs can be identified from the Companies House website.

- It is the responsibility of the PO to gather information to confirm that its members are not all under the control of a single natural or legal person. FAs will verify the information provided by POs and, where the relevant FA is unable to obtain the necessary information from publicly available sources, the FA will request further

information from the PO. Additional information may have to be obtained for member legal persons that are ultimately controlled by foreign legal persons, as information on these legal persons will not be available on Companies House.

## **B - Economic activity**

Article 14 (1)(b) of the CMO Regulation requires that POs are sufficiently economically active in the territory of the Member State concerned or a part thereof, in particular as regards the number of members or the volume of marketable production. Each FA has set its own criteria to assess whether their POs are sufficiently economically active in accordance with Article 14(1)(b).

### **3) Key requirements**

- POs should understand the criteria for determining sufficient economic activity used by their relevant FA.
- POs should keep a record of their members' economic activity (e.g. landings, area of activity and products) to allow POs to check compliance with the economic activity criteria.

## **C - Legal personality in the Member State concerned**

Article 14 (1)(c) of the CMO Regulation requires that a PO has legal personality under the national law of the Member State concerned, is established there and has its official headquarters there.

### **4) Key requirements**

- POs should submit on request (i) the registered name of the PO; (ii) the registration number; and (iii) the address of its headquarters in the UK to their relevant FA.
- POs should provide on request the names of the persons authorised to act on its behalf (point (c) of Annex I to the Commission Implementing Regulation (EU) No 1419/2013 of 17 December 2013).

## **D - Capability to pursue the objectives of Art 7 of the CMO Regulation**

Article 14 (1)(d) of the CMO Regulation requires that POs must be capable of pursuing the objectives laid down in Article 7 of the CMO Regulation.

### **5) Key requirements**

- POs are required to complete a production and marketing plan (**PMP**) in accordance with Article 28 of the CMO Regulation. The PMP should set out the measures the POs are going to pursue to meet the objectives in Article 7 of the CMO Regulation. Further information on the structure format and content of PMPs is available in the Commission's Recommendation of 3 March 2014 on the establishment and implementation of PMPs (2014/117/EU) ([here](#))
- POs should submit an annual report to the relevant FA documenting progress in achieving its objectives.

## **E - Compliance with competition rules**

Article 14 (1)(e) of the CMO Regulation requires POs to comply with the competition rules referred to in Chapter V of the CMO Regulation.

### **6) Key requirements**

- POs should sign a declaration to confirm that they comply with the competition rules referred to in Chapter V of the CMO Regulation and to not abuse a dominant position (see next section F below).
- POs should inform the relevant FA if they consider that they require an exception from the application of competition rules in order to meet the objectives in the CMO or CFP. The FA will then assess whether this is justified.
- POs should disclose information to the relevant FA about inter-PO coordination. This could be in the form of agreements or concerted practices between POs.

FAs will refer to the guidance contained on pages 8-12 of the Commission's Staff Working Document ([here](#)) when assessing compliance with competition rules.

Where an FA concludes that there are *prima facie* grounds to suspect a breach of competition law, they will refer the matter to the Competition and Market Authority (CMA). The FA/CMA will take such action as is appropriate in the circumstances.

## **F - Abuse of a dominant position on the market**

Article 14 (1)(f) of the CMO Regulation requires that POs do not abuse a dominant position on the market. FAs will refer to the guidance contained on page 13 of the Commission's Staff Working Document ([here](#)) when determining whether a PO abuses a dominant position on the market.

## **G - Details of membership, governance and sources of funding**

Article 14 (1)(g) of the CMO Regulation requires POs to provide relevant details of their membership, governance and sources of funding.

### **7) Key requirements**

POs should provide the relevant FA with:

- (i) up to date membership lists (extract of the PO's register of members) which, where applicable, should also include details of the natural or legal persons who ultimately control the members (see section (A) above);
- (ii) a copy of the most recently adopted version of the Constitution (including the Rules/Articles of Association of the POs) (points (a) and (b) of Annex I to the Commission Implementing Regulation (EU) No 1419/2013); and
- (iii) a copy of the most recent accounts detailing the sources of funding of the PO.

## **H - Member compliance with production and marketing rules**

The internal functioning of POs is required to be based on the principle of compliance by its members with the rules adopted by the PO in terms of fisheries exploitation,

production and marketing (Article 14(1)(a) as read with Article 17(a) of the CMO Regulation).

#### **8) Key requirements**

- Where POs have rules regarding fisheries exploitation, production and marketing, POs should keep records for inspection of cases of non-compliance and the action that was taken to address these cases.
- Further guidance regarding the imposition of penalties to ensure compliance with the rules can be found at section L.

#### **I - Non-discrimination among members**

Article 17(b) of the CMO Regulation requires that there should be no discrimination between members, particularly on the grounds of nationality or place of establishment (Article 14(1)(a) as read with Article 17(b) of the CMO Regulation).

#### **J - Levying a financial contribution in order to finance the organisation**

The levying of a financial contribution from its members in order to finance the organisation (Article 14(1)(a) as read with Article 17(c) of the CMO Regulation).

#### **9) Key requirements**

- POs' Rules/Articles of Association should set out that a financial contribution is required from their members in order to finance the PO.
- POs do not need to be funded entirely through the membership levy, but the levy should be a genuine and material contribution to the organisation.
- POs' Rules/Articles of Association should detail the process undertaken for setting the levy.
- POs should provide evidence to the relevant FA that they are levying a contribution from their members by submitting their accounts.

#### **K - Democratic Functioning**

POs must be based on the principle of democratic functioning that allows members to scrutinise the organisation and its decisions (Article 14(1)(a) as read with Article 17(d) of the CMO Regulation).

#### **10) Key requirements**

- There must be genuine plurality of membership: this is addressed in section A 1 above.
- PO Rules/Articles of Association must allow for members to be involved in the decision making process of the PO and members should be able to scrutinise decisions taken by the PO.
- POs should provide meeting minutes of Board meetings, annual general and other general meetings to FAs with details of votes recorded to allow FAs to determine who took part in meetings and establish that decisions were made through a democratic process. FAs will use minutes to check that POs operate in accordance with the democratic structures in their Rules/Articles of

Association, and that members are in practice able to scrutinise the PO and its decisions. A particular close examination is required in cases where there are indications that a small number of members may have substantial influence over the operation of the PO.

- POs should keep records of invitations to general meetings and the circulation of meeting minutes to allow FAs to verify that members are given the opportunity to scrutinise the PO and its decisions.
- There should be clarity about any role that non-producers play in the PO. Note that, while non-producers may be associates of a PO and may, for example, provide services to a PO, they cannot be members of the PO and can therefore not have voting rights as members.

#### **11)The following should be set out in the PO's Rules/Articles of Association**

- POs should have at least one general meeting annually to discuss issues of significance to the PO which all members are invited to attend.
- The decision-making processes at general meetings and Board level (e.g. one member one vote or decisions by consensus).
- Details of how members of the Board are selected and removed. It is expected that at least the majority of Board members will be elected by the members of the PO, and members of the PO should have the power to remove any Board member.
- The Board should be composed in a way that no single person can control decision-making of the Board / effectively take board decisions on their own.
- The definition of a suitable quorum for general meetings and Board meetings.
- The Board should set out how it will deal with issues where there is a conflict of interest (for example when the Board is considering whether to penalise a member of the PO, and a member of the Board has an ownership interest in the member in question).
- Members should have the opportunity to request that the Board of a PO reconsiders a decision and a specific procedure should be followed, which should be set out in the POs' Rules/Articles of Association.

#### **12)The role of non-producers in POs**

- Non-producers can be of benefit to POs, but non-producers cannot be members and must not have undue influence over the PO and its decision making.

#### **13) Concentration of production/fixed quota allocation (FQA) units**

- Where there are instances of members owning significantly higher shares of the means of production (e.g. FQA units), the PO should put safeguards in place to ensure that the voices of other members, holding smaller units of production/FQA shares, are heard and that they are still able to scrutinise the PO and its decisions.

The following are examples of safeguards that may be used:

- a) Percentage limit on large member's voting rights (e.g. where one owner controls the majority of member companies, voting rights may be restricted).

- b) Providing members with no or small amounts of production/FQA units an automatic right to sit on the Board to ensure board plurality and representation of minority members.
- c) Procedure in PO Rules/Articles of Association for members to have Board decisions reconsidered.
- d) Quorum set so that large owners/members cannot effectively take decisions on their own.
- e) Circulation of agenda and minutes of Board meetings to all members of the PO.
- f) Right for non-Board members to attend Board meetings (but without the right to vote).

### **L - The imposition of effective, dissuasive and proportionate penalties**

The internal functioning of POs should be based on the principle of imposition of effective, dissuasive and proportionate penalties for infringement of obligations laid down in the internal rules of the PO concerned, particularly in the case of non-payment of financial contributions, or fishing in excess of quota limit (Article 14(1)(a) as read with Article 17(e) of the CMO Regulation).

#### **14) Key requirements**

- POs' Rules/Articles of Association should set out (i) the infringements that will attract penalties, (ii) the range of penalties to be applied, (iii) the criteria for their application; and (iv) the procedure to be followed.
- The provisions on penalties in the Rules/Articles of Association could also include such points as categories of offences, penalties/sanctions applicable to each level of offence and the ability to terminate (or expel) membership.
- POs have discretion to decide who will determine cases of member non-compliance, but each PO's Rules/Articles of Association should set out who will make the determination. This may, for example, be a panel of peers made up of members of the PO, the Board of directors or the chief executive officer. Other options may be suitable – e.g. it may be appropriate to have a wholly external tribunal in very serious cases. In all cases the PO Rules/Articles of Association should provide clear and transparent criteria for the determination and ensure that the determination is a fair and independent.
- POs should keep records (internal notes, emails, etc.) of (i) the steps taken to identify and investigate potential breaches of their Rules/Articles of Association; and (ii) the penalties imposed and (iii) the decisions to impose or not impose penalties, including the reasons for such decisions. This is necessary to allow FAs to check that the provisions on penalties in the POs' Rules/Articles of Association are followed in practice.

## **M - Admission and withdrawal of PO membership**

The internal functioning of POs shall be based on the principles of the definition of rules on the admission of new members and the withdrawal of membership (Article 14(1)(a) as read with Article 17(f) of the CMO Regulation).

### **15) Key requirements**

- POs should have transparent Rules/Articles of Association governing the admission of new members and the withdrawal of membership.
- The Rules/Articles of Association should be drafted in a sufficiently detailed way that allows the FAs to check their application by the POs.
- Rules/Articles of Association should not allow the Board to consider applications for membership without following set criteria (such as, for example, that the natural or legal person should be a producer and have access to FQA units for a particular fishery/fisheries relevant for that PO).
- An applicant, whose application to be admitted as a member of a PO is rejected, should be given the reasons for rejection in writing.
- POs should keep a detailed record (application forms, correspondence with prospective applicants, etc.) of admission and rejection of new members as well as withdrawal of membership, including the reasons for decisions to accept/reject membership applications or withdraw membership. This is to allow FAs to verify that the POs' Rules/Articles of Association are being followed in practice.
- POs' Rules/Articles of Association should specify whether there is an opportunity for a rejected applicant to appeal the decision. If so, a description of these procedures should also be contained in the Rules/Articles of Association.

## **N - Accounting and budgetary rules**

The internal functioning of POs requires the definition of accounting and budgetary rules on the management of the organisation (Article 14(1)(a) as read with Article 17(g) of the CMO Regulation).

### **16) Key requirements**

- POs should have clear accounting rules. The following guidance should be used where appropriate: <https://www.gov.uk/running-a-limited-company/company-and-accounting-records>, <https://www.fca.org.uk/firms/annual-returns-accounts-mutual-societies>
- POs should have clear budgetary rules.

## Related documents

- [Regulation \(EU\) No 1379/2013 on the common organisation of the markets in fishery and aquaculture products](#)
- [Commission Implementing Regulation \(EU\) No 1418/2013](#) of 17 December 2013 concerning production and marketing plans pursuant to 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.
- [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
- [Commission Recommendation of 3 March 2014](#) on the establishment and implementation of the Production and Marketing Plans pursuant to 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
- [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.](#)