

I assent.

(L.S.)

GUIDO DE MARCO
President

28th June, 2002

ACT No. IX of 2002

An Act to provide for the creation of Producer Organisations in the Agricultural and Fisheries sectors.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

PART I
Preliminary

Short title and
commencement.

1. (1) The short title of this Act is the Producer Organisations Act, 2002.

(2) This Act shall come into force on such date as the Minister responsible for Agriculture may by notice in the Gazette appoint, and different dates may be so appointed for different purposes and for different provisions of this Act.

Interpretation.

2. In this Act, unless the context otherwise requires -

"action plan" means an approved plan by a producer organisation to meet the criteria for recognition in accordance with regulations made under article 19;

"Director" means the Director of Agriculture or the Director of Fisheries, as the case may require, and includes, to the extent of the authority given, any officer authorised by the Director, in writing, to act in that behalf for any of the purposes of this Act;

"interbranch association" means an association made up of representatives of economic activities linked to the production, the trading in and the processing of the product, and may include representatives of any one or more of such economic activities;

"marketed production" means the products of members of the producer organisation marketed through the organisation;

"market withdrawal" means the withdrawal from the market of products covered by an operational programme; and "withdrawal from the market" shall be construed accordingly;

"measure" means a group of related actions which together meet one or more of the objectives under the operational programme;

"member" means a person who, together with other persons, forms, creates or joins a producer organisation;

"Minister" means the Minister responsible for agriculture and fisheries;

"operational fund" means the producer organisation account, based on producer contributions and Government funding, which is used solely to finance operational programmes, action plans and market withdrawals;

"operational programme" means an approved plan by a producer organisation to improve performance of the organisation over time particularly in terms of marketing, product quality and environmental conditions;

"producer" means any person who is involved in the trade of tilling land or tending live stock, or engaged in the fishing industry;

"producer organisation" means an organisation, recognised by the Director, being a voluntary legally constituted body of producers of particular products or of persons engaged in the agricultural and, or fishing industries, acting together to produce, harvest, store, package and, or market their products;

"producer organisation non-member" means producers who produce products covered by regulations made under article 19, but who are not members of any producer organisation;

"product" means the type of agricultural produce and, or fishery products, covered by regulations made under article 19; and "production" shall be construed accordingly.

PART II

Constitution of Producer Organisations

Establishment
of producer
organisations.

3. (1) Producer organisations which are recognized by the Director in accordance with the provisions of regulations made under article 19 shall have a distinct legal personality from that of their members.

(2) Producers, whose products fall under any of the categories as may, from time to time, be prescribed by the Minister in regulations made under article 19, may form a producer organisation.

Functions and
aims of
producer
organisations.

4. The functions and aims of a producer organisation shall be:

(a) to take such measures as will ensure that its members' production will be as market-orientated as possible;

(b) to promote the placing on the market of the products produced by its members; and

(c) to promote production techniques which are environmentally sound and along rational lines.

Recognition of
producer
organisations.

5. A producer organisation shall only be recognised for the purposes of this Act if, after it applies for recognition to the Director in accordance with the provisions of this Act, it satisfies the requirements laid down in regulations made under article 19.

Membership of
producer
organisations.

6. (1) Members of producer organisations shall abide by the rules of the organisation of which they are members, and shall -

(a) apply the rules adopted by the producer organisation relating to production reporting, the production itself, marketing and protection of the environment;

(b) belong to only one of the producer organisations in respect of each product, but may belong to various organisations as long as the relative organisations do not market similar products;

(c) subject to the provisions of subarticle (2), market the entire production of their produce through the producer organisation; and

(d) pay such financial contributions provided for in the

rules of the producer organisation for the establishment and replenishment of the operational fund provided for in article 9.

(2) Where the producer organisation so authorizes, and in compliance with the terms and conditions it lays down, the members may -

- (a) sell part of their production directly to consumers;
- (b) market, through any other producer organisation or any other marketing channel, designated by their producer organisation, quantities of products which are marginal in relation to the volumes marketed by their organisation;
- (c) market, through another producer organisation or any other marketing channel, designated by their producer organisation, products which, because of their characteristics, are not normally covered by the commercial activities of the organisation concerned; and
- (d) in accordance with the procedure laid down by the Director by way of derogation, be authorised only for limited periods and on a gradually reducing scale, and with respect to particular products, to conclude direct contracts with processing undertakings.

7. (1) It shall be the duty of the Director to -

Duties of
Director.

- (a) decide whether to grant recognition to a producer organisation within three months of the lodging of an application together with all supporting documents that may be required;
- (b) regularly carry out checks to ascertain that producer organisations comply with the requirements for recognition, and are functioning in accordance with the approved operational programme, carry out a proper audit of operational funds, and, in the event of non-compliance, to impose the prescribed penalties and, or, to withdraw recognition;
- (c) notify the Minister, within two months of every decision to grant, refuse or withdraw recognition.

(2) Without prejudice to any other action competent to the Director under this or any other law, failure by an organisation to function in accordance with an approved operational programme or to submit its books for inspection and verification and to allow an audit thereof provided for in this article, shall render the officers of the

organisation liable to such administrative penalties and fines as may be prescribed.

PART III

Operation of Producer Organisations

Operation of
producer
organisations.

8. (1) Producer organisations shall be governed by such regulations as may be prescribed under article 19 and shall be run in accordance with the operational programme referred to in subarticle (2).

(2) Producer organisations shall submit, for approval by the Director, operational programmes whenever required to do so by the Director, and no changes to such operational programmes shall become effective without the prior approval, in writing, of the Director.

(3) The Director shall signify his consent or otherwise to a change in an operational programme within three months of the submission, by the producer organisation concerned, of the request for such change.

Operational
fund.

9. (1) Producer organisations setting up an operational fund may apply to the Director, in accordance with the provisions of this Act, for financial assistance.

(2) The operational fund referred to in subarticle (1) may be applied, by producer organisations, for the financing of market withdrawals only where the operational programme has been approved by the Director in accordance with article 8(2).

(3) The Minister may make regulations establishing the conditions under which products covered by an operational programme may be withdrawn from the market, and the manner in which products so withdrawn may be disposed of.

Promotion and
competitiveness
of products.

10. The Director shall take such measures as he may deem appropriate to promote and improve the competitiveness of products listed in regulations made under this Act and intended to be placed on the market by producer organisations.

PART IV

Interbranch Associations

Recognition of
interbranch
associations.

11. (1) Interbranch associations which are recognised by the Director in accordance with the provisions of regulations made under article 19 shall have a distinct legal personality from that of their members.

(2) The Director shall, in accordance with regulations made under article 19 -

(a) decide whether to grant recognition to an interbranch association, within three months of the lodging of an application together with all relevant supporting documents, as specified in the said regulations;

(b) carry out checks at regular intervals to ensure that interbranch associations meet the terms and conditions for recognition;

(c) withdraw recognition if -

(i) the terms and conditions for recognition specified in regulations referred to in this article are no longer met; or

(ii) the interbranch association contravenes or fails to comply with any other regulation prescribed under this Act;

(d) notify the Minister, within two months, of any decision to grant, refuse or withdraw recognition.

(3) Without prejudice to any other action competent to the Director under this or any other law, failure by an interbranch association to function in accordance with the provisions of this Act or of any regulations made thereunder, shall render the officers of the interbranch association liable to such administrative penalties and fines as may be prescribed.

PART V General

12. (1) The Director shall, every year, forward to the Minister an annual report on the activities of producer organisations and interbranch associations. Annual report.

(2) The Director shall, once a year, publish in the Gazette a list of registered producer organisations and interbranch associations; the Director shall also publish in the Gazette any withdrawals of recognition of producer organisations and interbranch associations, as well as lists of products, if any, withdrawn from the market at any particular time or times during the three month period immediately preceding such publication.

13. (1) Producer organisations may allow producers, who Extension of
benefits.

are not members of producer organisations, if the latter so request, to withdraw products from the market under such conditions as may be prescribed:

Provided that the withdrawal compensation, if any, which may be payable to such producers, in the form of financial assistance payable by the Director, shall be reduced by a maximum of ten *per centum* of the compensation payable to members of the producer organisation, and provided also that the amount paid shall take account of the overall withdrawal costs borne by such producers:

Provided further that compensation shall not be granted where the amount of products withdrawn from the market is higher than the percentage, as the Director may from time to time establish, of the total amount of the product which would have otherwise been marketed by the producer.

(2) Producer organisations shall keep the Director informed of any measures taken in accordance with the provisions of subarticle (1).

Payment of
compensation.

14. (1) The Director shall authorise the payment, out of the operational fund, of the withdrawal compensation, which shall be fixed in accordance with such regulations as may be prescribed under article 19, to producer organisations or interbranch associations which have withdrawn products from the market in accordance with the provisions of this Act or any regulations made thereunder.

(2) The Director may, in such circumstances as he may deem appropriate, authorise the payment of the withdrawal compensation even where the amount of products withdrawn from the market exceeds the limit, which may have been set by the Director at the beginning of the year, to prevent imbalances in withdrawals of products from the market for the payment of withdrawal compensation.

(3) Where producer organisations and interbranch associations are unable to direct withdrawn products to one of the destinations referred to in article 15, the withdrawal compensation shall be granted only if the products are disposed of in accordance with such instructions as the Director may give.

Disposal of
products.

15. Products which are withdrawn from the market in accordance with the provisions of this Act or of regulations made thereunder shall be disposed of in any of the following methods, as shall be determined by the Director:

- (a) free distribution to charitable organisations;

- (b) free distribution to penal institutions, hospitals and old people's homes;
- (c) use for non-food purposes; or
- (d) use in animal feeds, either in their fresh state or after processing by the feeding stuffs industry.

16. Without prejudice to any other action which the Director may take under any of the provisions of this Act, the Director may carry out spot checks to ensure the proper application and implementation of the provisions of this Act, or of any regulations made thereunder, by the members of the producer organisations and of the interbranch associations.

17. (1) The Director shall designate such number of his officers as inspectors for each sector, as he may deem fit, who shall be persons with suitable qualifications, technical knowledge and experience to take part in such inspections, as may be required in order to ensure that producer organisations and interbranch associations are acting in conformity with the provisions of this Act, or any regulations made thereunder.

(2) The inspectors shall, in the course of such inspections, follow such instructions as may be given by the Director under this Act, as regards the manner, duration and method of the inspections carried out, and shall be bound by the rules of professional secrecy.

18. (1) There shall be a Board, which shall have such number of divisions as the Minister may by order in the Gazette prescribe, to be known as the Producer Organisations Appeals Board, hereinafter referred to as "the Board", consisting of the Auditor General or his representative, who shall preside, two persons nominated by National Audit Office, and two other persons who are conversant with matters relating to producer organisations and interbranch associations, each of whom shall be appointed by the President acting on the advice of the Minister. Saving the provisions of subarticle (2), the Minister may make regulations to regulate the distribution by types of appeals amongst the divisions of the Board, provided that such distribution shall not be specific to a geographical area and that no two divisions of the Board shall deal with the same type of appeals.

(2) A member of the Board shall be disqualified from hearing an appeal in such circumstances as would disqualify a judge in terms of Sub-Title II of Title II of Book Third of the Code of Organization and Civil Procedure; and in any such case the member shall be substituted by another person either appointed for the purpose by the

President acting on the advice of the Minister; or the appeal, when there is more than one division of the Board in office, may be referred by order of the Board from one division of the Board to another.

(3) The members of the Board shall hold office for a period of three years, and shall be eligible for re-appointment.

(4) A member of the Board may be removed from office by the President acting on the advice of the Minister, on grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming a member of the Board.

(5) The Board shall have jurisdiction to hear and determine all appeals made by a person aggrieved by any decision of the Director, relating to the grant, refusal or withdrawal of recognition of a producer organisation or of an interbranch association, or the refusal by the Director of the payment of compensation withdrawal.

(6) The decisions of the Board shall be final except with respect to points of law decided by the Board from which an appeal shall lie to the Court of Appeal (Inferior Jurisdiction).

(7) The Board may require any department or agency of the Government to provide the Board with such information or advice as the Board may deem necessary for the proper execution of its functions.

(8) Appeals to the Court of Appeal (Inferior Jurisdiction) from decisions of the Board as provided in subarticle (6) shall be made within ten days from the day of the decision; and such appeals shall be regulated by rules of court made under article 29 of the Code of Organisation and Civil Procedure.

Cap. 12.

Regulations.

19. (1) The Minister may make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of subarticle (1), the regulations may make provision for:

(a) the criteria to be used for the recognition of producer organisations and interbranch associations, including the minimum number of members and the minimum volume of marketable production required for recognition;

(b) the categories of products which qualify for the formation and the recognition of producer organisations and interbranch associations; and the categories of related trades which qualify for the formation and the recognition of

interbranch associations;

(c) the conditions under which a producer organisation or an interbranch association shall be deemed to be representative of a sector or of a specific area;

(d) the rules governing the running and operation of producer organisations and interbranch associations;

(e) the information which producer organisations are expected to collect and forward upon demand and the provision for administrative penalties and fines, not exceeding one thousand liri, in cases of unjustified delays or systematic negligence in the proper performance of these tasks;

(f) the contents of operational programmes, and the rules which govern the allocation of financial aid to operational funds;

(g) the proportion of the operational fund which may be used to finance market withdrawals;

(h) the procedure for the establishment, administration and inspections of producer organisations;

(i) the measures which may be taken by the Director to improve the competitiveness of products and their promotion;

(j) the determination of the withdrawal compensation payable for a particular product; and

(k) the administrative penalties and fines, not exceeding one thousand liri, which may be imposed on producer organisations and, or interbranch associations which do not fulfil their undertakings or act in contravention of the provisions of this Act.

20. The Agricultural and Fishing Industries (Financial Assistance) Act shall be amended by the addition, immediately after

Amendment of
Cap. 146.

article 5 thereof, of the following two new articles:

"Other assistance.

6. The Minister responsible for Agriculture and the Minister responsible for Fisheries may, with the concurrence of the Minister responsible for Finance, establish schemes and guarantee funds for the purpose of providing financial and other forms of guidance or assistance of any nature to the agricultural industry and to the fishing industry.

Power to make regulations.

7. The Minister responsible for Agriculture and the Minister responsible for Fisheries may, with the concurrence of the Minister responsible for Finance, make regulations for the purpose of implementing the provisions of this Act and, without prejudice to the generality of the foregoing, to provide:

(a) for the establishment of any paying agency with the function of administering any scheme or other measure relating to any financial or other guidance or assistance to be provided under this Act;

(b) for the establishment and management of any schemes and guarantee funds for the purpose of providing financial and other forms of guidance or assistance of any nature to the agricultural industry and to the fishing industry under this Act;

(c) for the standards to be observed by persons applying for any financial or other guidance or assistance under this Act;

(d) for the measures to be taken to ensure compliance with international and other standards relating to products or equipment used in the agricultural industry or in the fishing industry by persons applying for any financial or other guidance or assistance under this Act;

(e) for any matters that may be required for the purpose of complying with any international obligation of Malta relating to the agricultural industry or to the fishing industry and involving schemes of financial assistance, guarantees or guidance to any said industry;

(f) for any matter related to the resolution of disputes arising in connection with the operation of this Act including the establishment of an appellate body and the regulation of appeals from decisions taken under this Act;

(g) for enabling the Director of Agriculture or the Director of Fisheries, as the case may be, to impose administrative penalties or sanctions upon any person acting in contravention of any of the provisions of this Act or of any regulations made thereunder:

Provided that any administrative penalty provided for by regulations made under this article shall not exceed the sum of one thousand liri (Lm1,000) for each offence and one hundred liri (Lm100) for each day during which failure to observe the provisions of this Act or of any regulations made thereunder persists;

(h) for providing that any person who contravenes any provision of any regulations made under this Act shall be guilty of a criminal offence:

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Provided that any criminal offences provided for in regulations made under this article shall not, without prejudice to any higher punishment to which the offender may be liable under any other law, provide that upon conviction the offender shall be liable to a fine (*multa*) of more than three thousand liri (Lm3,000) or, in the case of a continuing offence, to a further fine (*multa*) of three hundred liri (Lm300) for each day during which the offence continues."

Passed by the House of Representatives at Sitting No. 758 of the 19th June, 2002.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives