NEW STRATEGIES FOR CO-OPERATIVES: UNDERSTANDING AND MANAGING CO-OPERATIVE CREATION, TRANSITION AND TRANSFORMATION

International Co-operative Alliance Committee on Co-operative Research

ICA Research International Conference
Almería, Spain 24-27 May 2016

The role of producers´ organisations in rebalancing the food chain: yesterday, today and tomorrow?

Tomas Garcia Azcarate[1] and Jaime de Pablo[2]

Abstract

The first questions address in the paper are historical: why the European Union has developed the legal concept of "producers´ organisations" instead of taking advantage of the existing cooperative legal framework and how they have developed in particular in the precursor case of the fruit and vegetables. This background is needed in order to understand properly the second part, on the current situation, and the third on the possible evolutions in the coming years.

Secondly, the paper presents and discuses some of the important changes in the European regulation, introduced by the new CAP 2014-2020, concerning the possibilities of joint selling, joint negotiating and farmers cooperation. Special attention is devoted to the legal changes introduced in the primary regulation and to the recent Guidelines approved by the Commission at the end of December 2015.

It concludes that the current situation is deeply unsatisfactory. It is the result of deep and long discussions inside the Commission first. Later, the negotiation field moves to the informal trilogies between the Commission, the Council and the Member States and the European Parliament.

It continues with some considerations on the future debate which, in our opinion without any doubt, will take place sooner or later and concludes with some proposals to clarify and to improve the current rules. Both consumers and producers are suffering from excessive market volatility. The paper presents a possible win-win strategy which contribute to rebalance the food chain and to safeguard consumers´ interests. They are also compatible with the current European financial rules and disciplines.

Current primary regulation will have to be change. The main obstacle are nor technical nor legal. As often, changes have first to start in the mind of the main economic and political actors.

Topic Areas: Topic #4 Agriculture and Co-operatives

Stages of Co-operative Development: Stage 5 Crucial decision-making moments or crisis and transformation

Levels of Analysis are: Macro: contextual level

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[1] Institute of Economics, Geography and Demography of the Spanish National Research Council (IEGD-CCHS-CSIC) and CEIGRAM, Madrid

[2] Universidad de Almería

1. Introduction

This paper addresses the role of producer's ´organisations in the Common Agricultural Policy (CAP) in general and in the rebalancing of the food chain in particular.

In part 2, we will address an historical issue: why the European Union has developed the legal concept of "producers´ organisations" instead of taking advantage of the existing cooperative legal framework and how they have developed in particular in the precursor case of the fruit and vegetables. This background is needed in order to understand properly the second part, on the current situation, and the third on the possible evolutions in the coming years.

In part 3 and 4, we will presents and discuses some of the important changes in the European regulation, introduced by the new CAP 2014-2020, concerning the possibilities of joint selling, joint negotiating and farmer's cooperation. Special attention is devoted to the legal changes introduced in the primary regulation and to the recent Guidelines approved by the Commission at the end of December 2015.

In part 5, we will present some conclusions and thinking on how the regulation could (should?) move in the future.

2. Yesterday

As soon as December 1968, the Commission submitted to the Council a "Memorandum on the reform of agriculture in the European Economic Community: Agriculture 1980", otherwise known as the Mansholt Plan after the Commissioner who had inspired it[i]. On this basis, the Council, after many "marathon sessions", adopted several directives and measures, including one on producer groups and associations thereof.

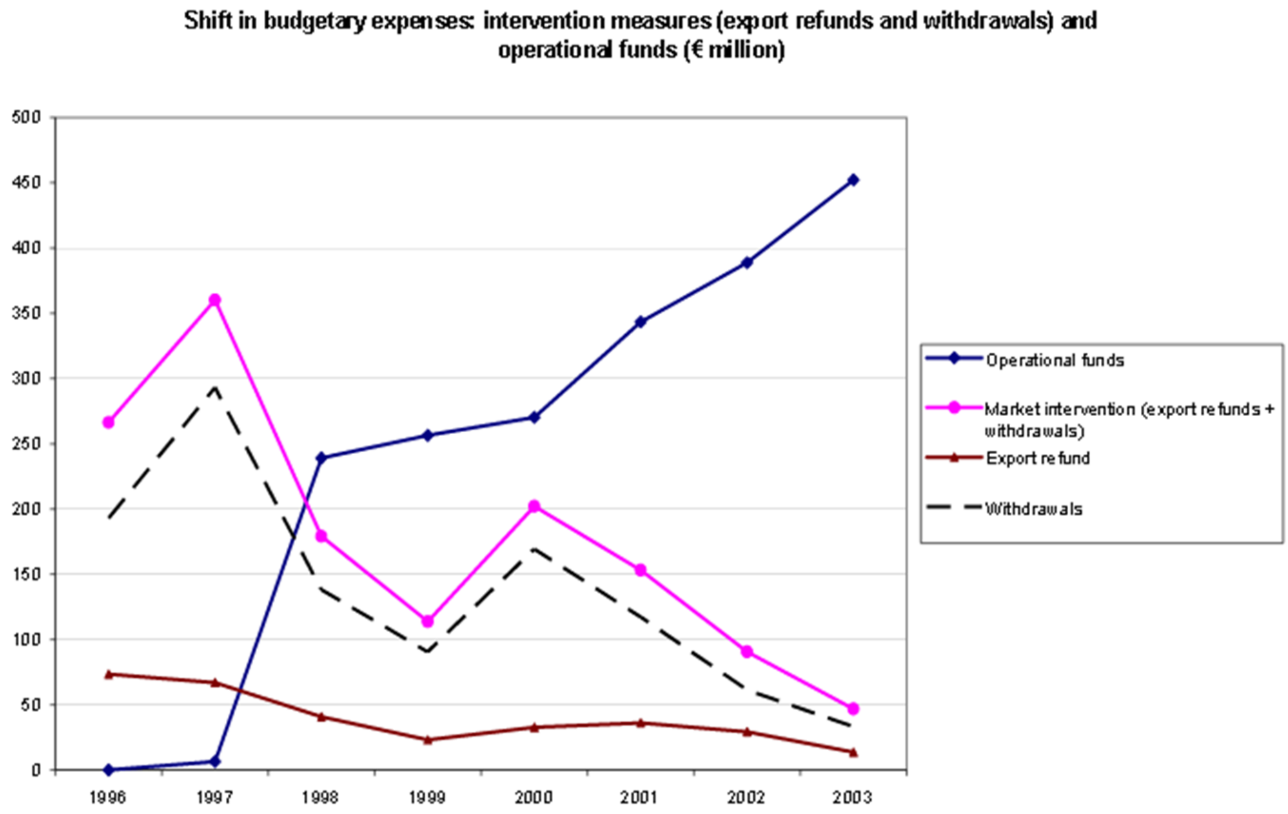
Later on, in particular in the fruit and vegetable sector, producers' organisations were given a special role in market management. Regulation 1035/72[ii] on the common organization of the market in fruit and vegetables defined "producers' organization" as »any organization of fruit and vegetable producers which is established on the producers' own initiative«. Their main role in practice was to intervene on the market through withdraws of products. The more you were unable to sell your products on the market, the more EU support you were receiving.

Since the beginning, it was decided to not limit the range of possible »producers 'organisations« to cooperatives. The different regulations and traditions amongst the 6 founder Member States advise the European legislator to be flexible enough in order to catch as many different farmers 'structures as possible. In all case, the control of the organisation has to be in the farmers 'hand.

Obviously cooperatives have been the most numerous group but other figures, such as »syndicates« in France; »Sociedades Agrarias de Transformación« in Spain and different types of »companies« have always existed.

The producers 'organisation role change radically with the 1996 reform. Through the »operational fund system«, calculated on the basis of the value of the marketed production, the European Union is able to cofinance their market and company investments, under certain limits.

The consequences of this change have been significant.



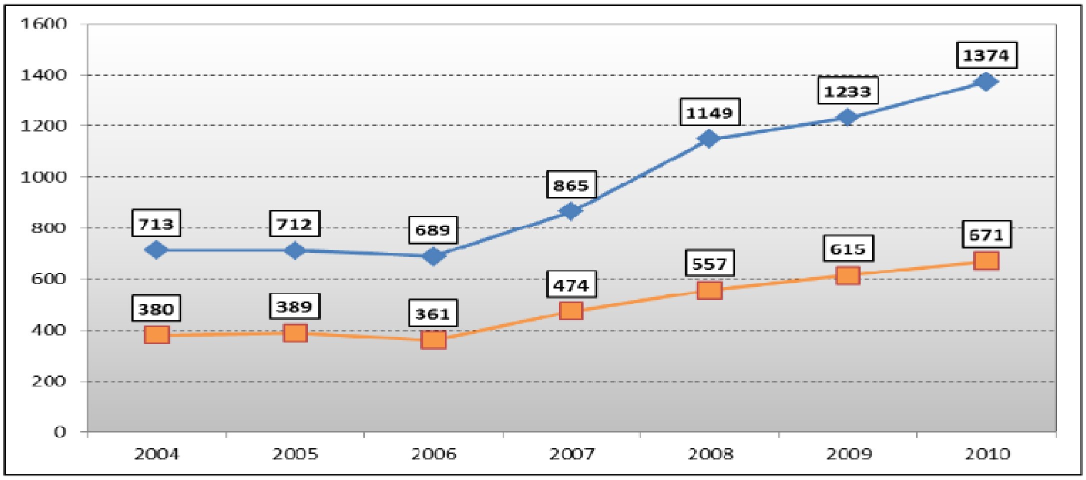
Source: European Commission (2004)

From 1996 to 2003, the budget expenditure on market withdraws and export refunds decreased dramatically and the budget devoted to finance the operational funds sky-rocketed Since then (Chart 2), the EU financial assistance has been growing slowly but constantly.

When the European Commission has been willing to encourage producer cooperation amongst farmers in order to the functioning of the food chain, the figure of the producers 'organisations developed in the fruit and vegetable sector has been seen as a useful tool. The reinforced legal framework for Producer Organisations is backed by financial incentives under the second pillar and legal changes in the Regulation 1308/2013 establishing the common organisation of agricultural markets, the single CMO (European Commission, 2013).

Chart 2: Total expenditure under operational programmes and EU financial assistance (2004-2010)

Legend: Total expenditure (€m) EU financial assistance (€m)



Source: European Commission (2014)

3. Today: Collective bargaining

Articles 169 to 171 of Reg. 1308/2013 are a perfect example of how complicated it is to draft legislation, probably in the early morning after many hours of meeting and long negotiations[iii].

These articles placed on the table unclear concepts, such as those organisations must carry out “significant activities” in terms of volumes and ‘production costs’. There are tons of academic and economic publications on "production costs" and their definition. Even worse, if you increase your productivity and decrease your production costs - which means you are more competitive - you risk no longer being "significant".

The nightmare continues. Organisations cannot exceed a certain percentage (20 % for olive oil) of the “relevant market”, a notion that is not defined precisely. Logically, national competition authorities have a natural tendency to consider their own national market as being the most important, even if only one Member State (Spain) is by far the world’s largest producer, placing on the market in other Member States and in exports to third countries more than twice what is sold on its domestic market.

The issues are so tricky that the European Commission has had to propose guidelines to make possible what is necessary. The reading of the proposed guidelines, which will certainly be amended following a public consultation, contributions and comments received, is particularly illustrative[iv].

Without changing the political balance reached in the negotiations, it would seem sensible to take the earliest possible opportunity to translate the current rules into plain and operational language

4. Today: Crisis management

The new provisions of Article 222 of Reg. 1308/2013 establishing the common organisation of agricultural markets allow what can be called “private management of crises” in case of ‘serious disturbance of the market’.

In this case, the text is clear since it specifies:

- Who may intervene? Producers’ organisations, associations of producer organisations and interbranch organisations.
- What may be done?: i) market withdrawal or free distribution of their products; transformation and processing; ii) storage by private operators; iii) joint promotion measures; v) agreements on quality requirements; vi) joint purchasing of inputs necessary to combat the spread of pests and diseases in animals and plants in the Union or of inputs necessary to address the effects of natural disasters in the Union; vii) temporary planning of production taking into account the specific nature of the production cycle.

But the text introduces a series of requirements and formalities which make unviable a rapid and efficient use of this mechanism. In a context of tight budgetary constraints, the beauty of any private management would not only be that it does not generate public expenditure but also that it could be flexible enough to prevent the crisis.

The first requirement set out in the regulation is that the Commission “shall specify in implementing acts the substantive and geographic scope of this derogation and the period for which the derogation applies”. Therefore, before it can be activated, an implementing act has to be adopted by the European Commission.

The second requirement is that private management will apply “only if the Commission has already adopted one of the (crisis management) measures…, if products have been bought in under public intervention or if aid for private storage…has been granted”. In other words, the private management of crisis can only intervene once public management has been activated.

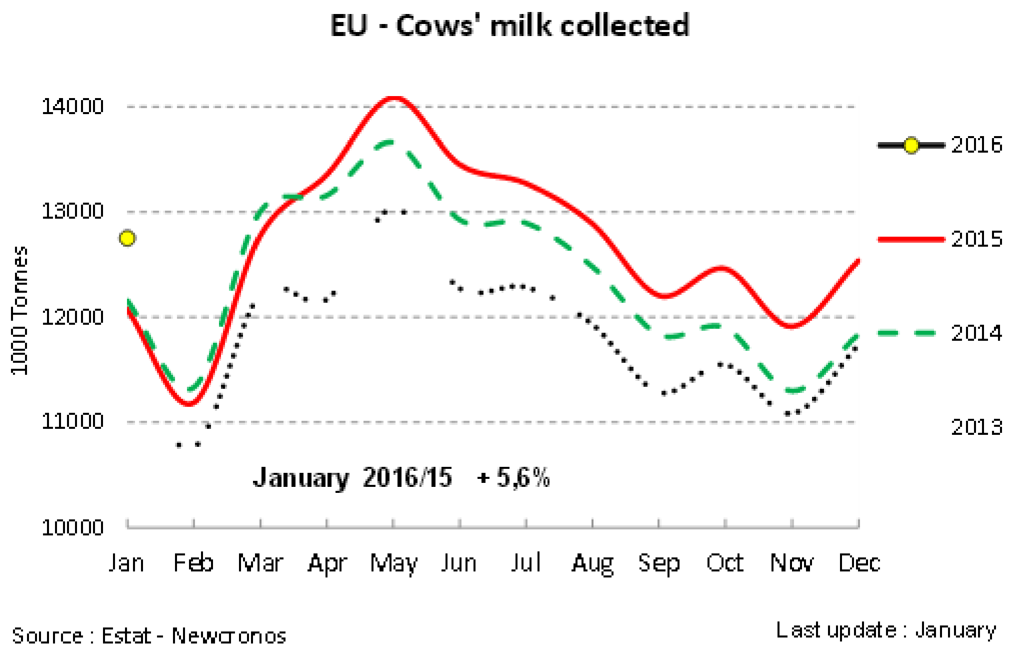
From an agricultural policy point of view, this is difficult to understand. As already mentioned, private crisis management makes sense as a preventive measure, as a "measure to calm markets", as Paolo de Castro rightly proposed (2010). But the obstacles that have been put in place to any "preventive" market intervention are huge: European Commission internal procedures; budgetary constraints, if we are speaking about the "normal” agricultural budget; reservations from Member States with the largest volume of direct aids if we are speaking about the crisis reserve.

There is, obviously, a reason for such a prudent and restrictive approach. It follows the logic for private intervention, which represents an important exception to normal commercial conditions, restricted solely to cases in which it would be genuinely necessary. The problem it seeks to address is real, but the solution that has been found (certainly in the early hours of the morning after long nights of negotiations and short dreams) is inadequate and bureaucratic.

The march 2016 package measures as a perfect example

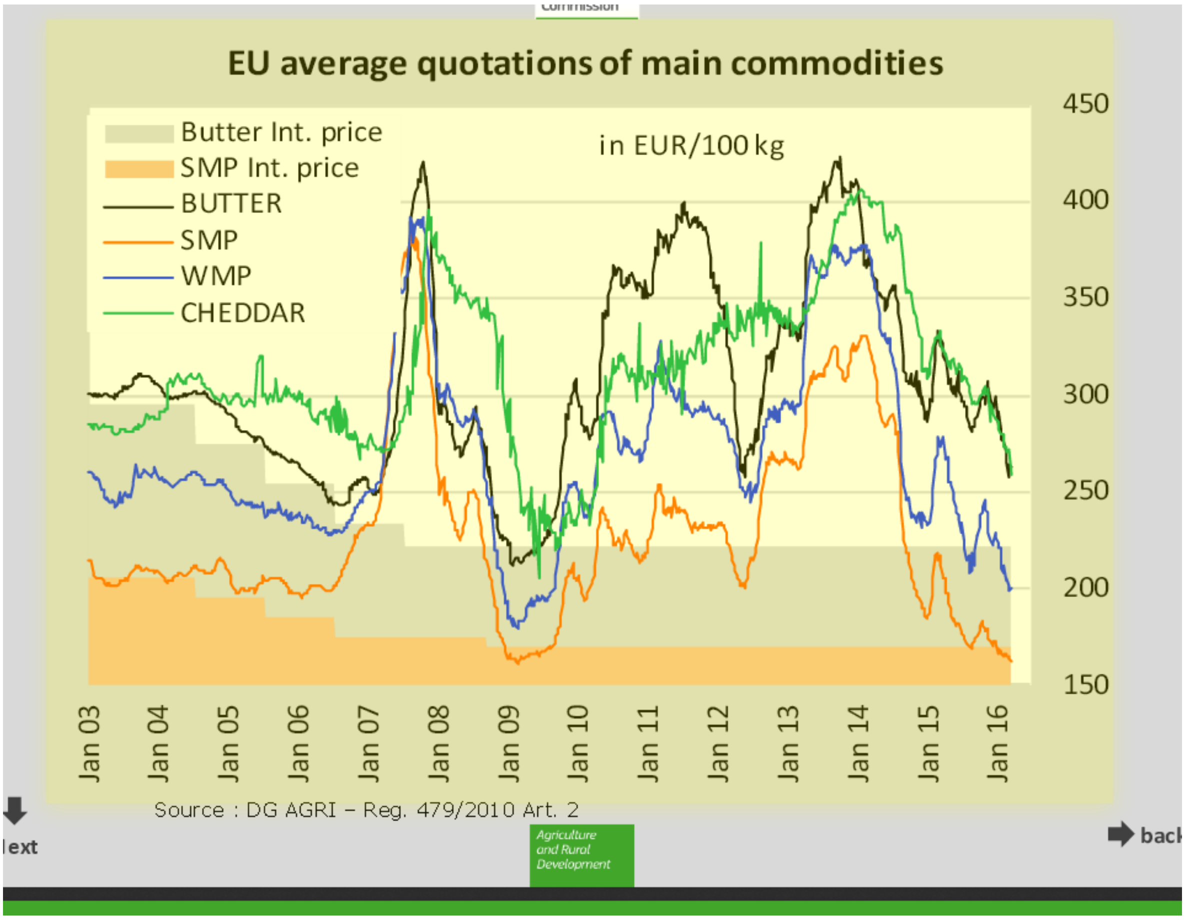
On 14 March 2016, the Commission announced the application of voluntary supply management (article 222 of the single CMO). In its press release[v], it explained that »*the Commission will activate, for a limited period of time, the possibility to enable producer organisations, interbranch organisations and cooperatives in the dairy sector to establish voluntary agreements on their production and supply. This is the so-called Article 222 from the Common Market Organisation (CMO), which is specific to the agricultural sector and can be applied in case of severe imbalance in the market. The Commission has concluded that the strict conditions for the application of this article to the dairy sector are fulfilled in the current circumstances. This is an exceptional measure, which must also safeguard the EU internal market and was included by the legislators in the 2013 CAP reform but never used before.*«

The European Milk market Observatory Dashboard[vi] presented the evolution of the EU milk collected from January 2013 to January 2016.



In concrete terms, this means that EU milk collection increased by 5.6% in January 2016 (compared to January 2015), highest monthly increase compared to any month in 2015. This represents close to 700 000 t more milk in one month. Biggest delivery increases has been reported in % Luxembourg, Irland, Belgium, Cyprius and the Nederland and in tonnes in the Nederland and Germany.

The EU and word markets are currently imbalanced as shown by the price evolution of the main commodities and the price declines have been observed since many months.



Private market management is confronted to a double challenge: fistly to envolve enough participants in oder to be effective and, secondly, the free riders who try to take advantage of the disciplines acepted and pratiqued by the others (Olson and Cook, 2008).

The deeper the crisis is, the later the private arrangement is implemented, the more severe the the agreed disciplines have to be in order to be effective; the more deseperate the producers will be, the more difficult it will be to implement and control any kind of disciplines and the more dificult it therefore will be to keep under control free riders. This is why private market management make only sense as a preventive action.

The European Unión has published on 12 April 2016 its Commission Delegated Regulation authorising agreements and decisions of cooperatives and other forms of producer organisations in the milk and milk products sector on the planning of production[vii]. Not only I would be significantly and gladly surprise if it has any market effect but I observe that the posible financial support will come from national (and not the European) budget. Does this means that the European Commission believes that the current milk crisis is a national one and not an European one?

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5. Tomorrow

We can then conclude that the current situation is deeply unsatisfactory. It is the result of deep and long discussions inside the Commission first. Later, the negotiation field moves to the informal trilogies between the Commission, the Council and the Member States and the European Parliament.

As we have already deeply underlined, current rules are not foreseen for crisis prevention but only to reinforce crisis management actions already adopted by the Commission. Obviously, a safeguard is needed in order to ensure, for instance, that one of the CAP objectives, to ensure reasonable prices to consumers, is also taken into account as it has been done in the past in similar cases in California.

In the US Marketing orders, created under the Agricultural Marketing Act of 1937, "…are initiated by industry to help provide stable markets for dairy products, fruits, vegetables and specialty crops. Each order and agreement is tailored to the individual industry's needs. Marketing Orders are a binding regulation for the entire industry in the specified geographical area, once it is approved by the producers and the Secretary of Agriculture. Marketing Agreements are only binding for those handlers that sign the agreement". Marketing orders can be suspended by the Federal Government temporarily or permanently if they damage the consumers' interests or are found to be unnecessary[viii] .It thus appears that supply control of marking orders is permitted, but under the strong threat of suspension by the Federal Government.

An illustrative example of an alternative scheme could be the following:

A group of cereal producers, cooperatives and traders could agree that, if market prices move below a certain target (for instance 130% of the wheat intervention price), to jointly start a private storage up to (10) million tons. When prices would recover to (160%) of the same intervention price, they would have to start putting the harvest in the market. The announcement of the agreement would, per se, reduce the excessive speculation and volatility on the market. If implemented, it would smooth the consequences of the (often very rapid) changes in market prices, stabilizing the income of the cereal and the meat producers on one hand and the consumers on other.

We have seen in January 2016 that the Europe's largest dairy cooperative, Friesland Campina, has provided until mid-February an incentive for members not to increase milk production. As Agra-Europe informed "farmers received a compensation of €2.00 per 100 kilograms for deliveries less or equal to the volume they supplied during the week December 13-17 - the equivalent of a 5% income bonus – said the co-op. The move follows a 3.9% increase in milk deliveries throughout the EU in the 10 months to the end of October, compared to the same period a year earlier." Why not allowing a similar and enlarged coordinated initiative between the major European milk buyers? At the opposite of what some critics said, a scheme like this would increase the farmers' market orientation allowing them to adjust, within some clearly defined limits, their production.

The action should be explicitly allowed by the single CMO and monitored by the competent authorities, in order to avoid any abuse of 'dominant position'. It would be automatic, flexible, market oriented, on time to "calm down the markets" and without any cost for the EU or national budgets. This would be another tool provided to the producers and their organisations which would make them more responsible and responsive to the market price changes, if they wish to take advantage of it.

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[ii] http://www.l2d.lv/leul.php?i=18331

[iii] http://eur-lex.europa.eu/legal-content/ES/TXT/HTML/?uri=CELEX:32013R1308&from=ES

[iv] http://ec.europa.eu/competition/consultations/2015_cmo_regulation/index_en.html

[v] http://europa.eu/rapid/press-release_IP-16-806_en.htm

[vi] http://ec.europa.eu/agriculture/milk-market-observatory/pdf/dashboard-dairy_en.pdf consulted on 31/03/2016, 12:28

[vii] http://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=OJ:L:2016:096:FULL

[viii] See the Suspension of Marketing Order Provisions: Irish Potatoes Grown in Southeastern States http://www.regulations.gov/#!documentDetail;D=AMS-FV-11-0027-0003 Special thanks to Alberto Garrido, my colleague from the CEIGRAM for this piece of relevant information