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'A' ITEM NOTE

From:	General Secretariat of the Council
To:	Council

Subject:	Draft Regulation of the European Parliament and of the Council amending Regulations (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No 1307/ 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/ 2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (first reading) - Adoption of the legislative act = Statement
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Statement by the European Parliament

- The new rules on producer organisations and competition law (CMO)

The European Parliament recalls that, according to Article 42 of the Treaty on the Functioning of the European Union (TFEU), rules on competition apply to the production of and trade in agricultural products only to the extent determined by the Parliament and the Council, account being taken of the objectives of the Common Agricultural Policy (CAP) as laid down in Article 39 of the same Treaty.

As set out in the treaty, and in accordance with the case law of the Court of Justice of the European Union¹, the objectives of the CAP prevail over those of European competition policy. However, agricultural markets are not exempt from the application of competition law. The adaptation of competition rules to agricultural specificities is the prerogative of the co-legislators, the European Parliament and the Council.

Within this context, the European Parliament by means of this Regulation proposes a clarification of the relationship between CAP rules, in particular the role and the missions of producer organisations and associations of producer organisations, and the application of European competition law. Such a clarification is necessary because of the existing uncertainties regarding the implementation of these rules, and is essential to reach the Union's objective to strengthen farmers' position within the food supply chain. The European Parliament's proposals are based on the recommendations in the Agri-Market Task Force (AMTF) report of 14 November 2016. These recommendations were based on a series of hearings and contributions received from all actors in the food supply chain: producers, processors and retailers.

¹ Judgment *Maizena*, 139/79, EU:C:1980:250, paragraph 23; Judgment *Germany v Council*, C-280/93, EU:C:1994:367, paragraph 61.

The European Parliament aims to simplify and clarify the conditions under which producer organisations or associations of producer organisations in all the sectors listed in Article 1(2) of Regulation 1308/2013 may carry out, on behalf of their members, activities of production planning, placing on the market, negotiation of contracts for the supply of agricultural products and optimisation of production costs. These tasks essentially require the existence of certain practices, including internal consultations and the exchange of commercial information within those entities. It is therefore proposed that these practices fall outside of the scope of the prohibition of anticompetitive agreements, laid down by Article 101(1) of the TFEU, and that producer organisations or associations of producer organisations, carrying out at least one economic activity, benefit from a derogation from the application of this article. However, this derogation is not absolute: competition authorities retain the possibility to intervene if they consider that such activities are likely to exclude competition or jeopardize the objectives of the CAP.

The role and the missions of producer organisations or associations of producer organisations and their relationship with competition law is thus clarified. Without prejudice to the institutional prerogatives of the European Commission, the European Parliament considers that the new rules do not require further clarification in the form of guidelines of the European Commission.
