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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	5958/14, 6054/14
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1308/2013 and Regulation (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in the educational establishments Proposal for a COUNCIL REGULATION amending Regulation (EU) No 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products – State of Play

1. On 16 December 2015, with two votes against and one abstention the Special Committee on Agriculture (SCA):

   - approved the outcome of the negotiations with the European Parliament on the proposal for a Regulation amending Regulation (EU) No 1308/2013 and Regulation (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in the educational establishments (doc. 15239/15 + COR 1).

   - finalized and approved the text of the Council Regulation amending Regulation (EU) No 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products (doc. 15242/1/15 REV 1).

2. At the moment of the approval of this "package" on the reform of the school schemes, the German and the Hungarian delegations put forward two statements, set out in the Annex. A number of delegations signalled their intention to associate themselves to the German statement or to support it [1]. The Commission also made a statement, set out in the Annex, on the interpretation of the first subparagraph of Article 23(2) of the Regulation amending the CMO Regulation, concerning the prioritisation in the distribution of products. All these statements will be attached to the minutes of the Council meeting adopting the texts of the Regulations.

3. On the same day of the endorsement by the SCA of the outcome of the negotiations, the compromise text was sent by the SCA Chair to the Chair of the Committee on Agriculture and Rural Development (COMAGRI) of the European Parliament, Mr Siekierski, with a letter indicating that, should the EP adopt its position at first reading in the form set out in the text attached (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of that Treaty, approve the EP's position and the act would be adopted in the wording which corresponds to the EP's position.

4. On 11 January 2016, the COMAGRI approved the result of the trilogue negotiations by 29 votes in favour, 6 against and one abstention and adopted the draft legislative resolution by 30 votes in favour, 6 against and one abstention.

5. The legal-linguistic phase is currently underway and should be finalized by the beginning of March. This should allow the EP to adopt its first reading position at the March plenary session. After receiving the EP first reading the SCA will take note of the EP's vote and approve the legal act as a "Point I" and the Council will formally adopt the legal act ("PE-CONS") as a "Point A". The Council will also adopt, at the same time, the Council Regulation amending Regulation (EU) No 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products. The signature of the legal acts and the publication in the Official Journal will then follow. The new Regulations will be applied for the first time in the 2017/2018 school year.

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[1] If, in addition to delegations mentioned in the minutes of the SCA meeting of 16 December 2016 (doc. 15421/15), other delegations wish to support the statements or to put forward new ones they are invited to inform the Council secretariat thereof and transmit the relevant documents.

ANNEX

Statements for the minutes

Statement by the German delegation regarding the overall negotiations on the

- **Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1308/2013 and Regulation (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments (first reading)**
- **Proposal for a Regulation of the Council amending Regulation (EU) No. 1370/2013 determining measures on fixing certain aids and refunds to the common organisation of the market in agricultural products**

Germany's agreement with the overall compromise that has been reached does not prejudice the ongoing proceedings in Case C-113/14.

Pursuant to the Treaty on the Functioning of the European Union, the Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities (Article 43 (3) TFEU). It is therefore exclusively the responsibility of the Council to lay down such rules.

According to the European Court of Justice's most recent findings (C-124/13, C-125/13), Article 43 (3) TFEU may include measures that are not limited to the fixing and allocation of fishing opportunities provided that they do not entail a policy choice that is reserved to the EU legislature.

Germany therefore welcomes the fact that the overall compromise now - as called for by Germany - bases the indicative distribution of aid among the Member States on Article 43 (3) TFEU.

However, Germany considers Article 43 (3) TFEU to be in principle the more appropriate legal basis for rules on the transfer of funds from one sector to the other as well. Germany does, however, note that there are different opinions on the matter.

Germany hereby states that a differentiation is to be made between the legal bases (Articles 43 (2) and 43 (3) TFEU) for draft legislation relating to the Common Agricultural Policy - and consequently for the individual measures of the above proposals.

Germany therefore calls upon the Council and the European Parliament to ensure that the selection of Article 43 (2) or Article 43 (3) as legal basis is subjected to a thorough and differentiated examination for all future draft legislation.

Declaration of Hungary on the proposals merging the School Fruit and Vegetable Scheme and the School Milk Scheme

In Hungary both the School Fruit and Vegetable Scheme and the School Milk Scheme are very popular and thanks to the legislation actually in force both programmes have substantially developed over the past years.

Throughout the negotiations on the merging of the two schemes Hungary has supported the use of a historical criterion when setting the indicative allocations for both schemes, for the sake of ensuring the fulfilment of the European objectives of the schemes and the effective use of financial resources.

The amendment of Council Regulation (EU) No 1370/2013 divides financial resources between Member States fundamentally based on the number of 6 to 10 year children and taking into account differences in regional development. Only in the milk scheme appears the historical use component as a third criterion.

Therefore Hungary hereby reiterates the importance of the application of the historical use of resources as a criterion when setting the indicative allocations and in particular when setting the final allocations for Member States in both schemes.

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Statement by the Commission

With regard to the first subparagraph of Article 23(2) of the compromise text modifying the CMO, insofar as it relates to the school scheme (doc. 15239/2015), the Commission confirms that Member States, when prioritising the distribution of products, are not obliged to respect a minimum share or percentage for the products referred to in that same subparagraph