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SUMMARY RECORD
SPECIAL COMMITTEE ON AGRICULTURE
14 January 2019

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1. Adoption of the agenda

The agenda was adopted.

Non-discussion items (I)

2. Summary record of the 1587th meeting of the SCA 15693/18

The SCA approved the summary record.

Discussion items (II)

3. Presentation of the Presidency Work Programme

The SCA took note of the presentation of its Work Programme¹ by the RO Presidency.

4. Regulation amending Regulations (EU) No 1305/2013 and (EU) No 1307/2013 as regards certain rules on direct payments and support for rural development in respect of the years 2019 and 2020 15719/18

Confirmation of the final compromise text with a view to agreement

The SCA noted that all delegations supported the amendments to the direct payments and rural development regulations in relation to calendar years 2019 and 2020 as proposed by the Commission (document 15344/18) (subject, in the case of DK, to a parliamentary scrutiny reservation). It also took note of delegations' comments and the Commission's undertaking to provide written explanations.

The Presidency would therefore send a letter to the European Parliament confirming that an agreement at first reading could be reached on the Commission proposal as it stood, provided that the Parliament agreed to adopt its position in the form of the Commission proposal. The text would be submitted to legal-linguistic finalisation with a view to its approval by the SCA and adoption by the Council in the coming weeks.

¹ See WK 450/2019

5. Post 2020 CAP reform package



14195/18

a) Regulation on CAP Strategic Plans

Presentation by the Commission on the green architecture

b) Regulation on common market organisation (CMO) of agricultural products

Exchange of views

The SCA took note of the Commission's presentation² on the "green architecture" in the post-2020 Common Agricultural Policy.

The Presidency also took note of the comments made by delegations on the questions asked on specific aspects related to wine provisions in the CMO Regulation. The Presidency will revert to this subject, including wine varieties, at the upcoming SCA meeting on 21 January where it will propose questions for the ministerial debate.

6. Directive on unfair trading practices in the food supply chain



5061/19

Presidency debriefing on the outcome of the trilogue

Confirmation of the final compromise text with a view to agreement

The SCA took note of the information provided by the Austrian delegation on the compromise text agreed ad referendum during the sixth trilogue on 19 December 2018 as well as of the comments made by delegations, the Council Legal Service and the Commission.

The SCA took note of the existence of unanimity support (with UK announcing its parliamentary scrutiny reservation) to the final compromise text set out in document 5061/19. The SCA agreed to suggest to the Council to make a joint statement by the European Parliament, the Council and the Commission as set out in Annex II of document 5061/19 and took note of the statement by the European Parliament as set out in Annex III of document 5061/19.

² See WK 452/2019

The CZ, DK, DE and NL delegations requested to insert statements into the SCA summary record³.

On that basis, the SCA authorised the Presidency to send a letter to the Chair of the European Parliament's AGRI Committee confirming that, if the European Parliament adopts at first reading the amendments as negotiated, subject to revision by the lawyer-linguists of both institutions, the Council would adopt the act in that form.

7. Organisation of future work

The Presidency informed the SCA on the next SCA meeting on 21 January 2019.



First reading



Item based on a Commission proposal

³ See the Annex to this summary record. The NL statement is supported by SE. The DE statement is supported by LU.

6. Directive on unfair trading practices in the food supply chain 5061/19

Presidency briefing on the outcome of the trilogue

Confirmation of the final compromise text with a view to agreement

(a) Statement of the Netherlands, supported by Sweden, regarding the Directive on unfair trading practices in business-to-business relationships in the food supply chain

We support the current outcome of the trilogue. Thanks to efforts from all sides an agreement was reached at the end of 2018. This is an important step towards protecting small suppliers in the agricultural and food chain against unfair trading practices.

During the trilogue negotiations the scope of this directive has been widely discussed. Two new categories above the current SME-definition have been created for lower mid-range firms, ranging from EUR 50-150 million turnover per year, and upper mid-range firms, ranging from EUR 150-350 million turnover per year. We consider the new categories for the scope in this directive to have been specifically designed with the agricultural and food chain in mind. The European Union has traditionally had specific legislation in place for agricultural and food products, as is shown by the existence of the common agricultural policy.

In accordance with EU recommendation 2003/361 we emphasize that small and medium-sized enterprises are still those that employ fewer than 250 persons and have either less than EUR 50 million annual turnover or an annual balance sheet total not exceeding EUR 43 million. We want to underline our understanding that the categories specifically designed for this UTP-directive do not result in an augmentation of the thresholds in the SME-recommendation in general.

**(b) Statement by the Czech Republic on the compromise text of the Proposal for a Directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain
Special Committee on Agriculture, 14 January 2019**

The Czech Republic supports the wording of the compromise text of the proposal for a Directive according to document No. 5061/19 of 8 January 2019. **However, the scope of the Directive based on the so-called dynamic model, as referred to in Article 1 (2) of the proposal for a Directive, continues to be a weakness of the proposal.**

In the view of the Czech Republic, the proposed scope of the Directive is not a meaningful solution for a better functioning of the single market of the European Union. The presented proposal does not address, inter alia, neither the question of the multiplication of economic activities, its territoriality, nor the interconnection or partnership of economic operators.

From the perspective of enforceability of such proposal, neither the principles of simplification and administrative burden reduction can be guaranteed.

Unfair trading practices (UTPs) that have a "domino effect" within the food supply chain remain unfair regardless of the size of the concerned operator. They have a negative impact on employment, lead to a competitiveness loss and to a decrease in investment and innovation.

The Czech Republic considers that there is nothing to prevent the proposal for a Directive from being extended to all buyers. The Directive could also protect all suppliers without changing the legal basis (Article 43 (2) TFEU). The Court of Justice has stated that the Treaty on the Functioning of the European Union does not define the type of entity that can be regulated under the CAP provisions of the Treaty. In fact, the automatic exclusion of non-SME entities would violate the prohibition of discrimination under Article 40 (2) of the TFEU, which prohibits the different treatment of producers in a similar situation.

The case law of the Court of Justice of the European Union also states that agricultural measures specifically designed to ensure the standard of living of the farming community, such as the proposal for a Directive, can also regulate non-SME enterprises (Judgment of 23 March 2006, C-535/03 Unifarm and North Sea Fishermen's Organization, Judgment of 13 November 1990, C-331/88 Fedesa and Others). Scope extension to large suppliers would therefore ensure that the protection of all agricultural producers remains a priority.

We therefore support future elimination of unfair trading practices within the food chain and among all operators. Unfair business practice is unfair irrespective of the size of the affected supplier or buyer. In the interest of a sustainable and well-functioning food supply chain, the scope of the Directive must cover all economic operators, both large and small. After that the EU will have a fair supply chain for both suppliers and buyers.

(c) Statement for the minutes by Germany, supported by Luxembourg, on the occasion of the 1588th Meeting of the Special Committee on Agriculture on 14 January 2019 on unfair trade practices in the food supply chain (UTP)

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on unfair trading practices in business-to-business relationships in the food supply chain. Outcomes of the trilogues. Doc 5061/19.

Germany points out that Article 5 paragraph 1 sentence 2 does not create competence for enforcement authorities to intervene on the territory of a different member state.

(d) Danish declaration on the directive on unfair trading practices in business-to-business relationship in the food supply chain

Denmark supports the compromise reached on the directive on unfair trading practices in the food supply chain with the following considerations in mind.

Firstly, Denmark recognizes the importance of strengthening the position of farmers in the food supply chain. In Denmark, the high level of organization of farmers in cooperatives is key to ensure this. Therefore, Denmark has during the negotiations strived to ensure that the directive is compatible with the cooperative model. It is the Danish understanding that the final compromise protects the cooperative as a model since it addresses the specificities of cooperatives in relation to payment deadlines and written contracts.

Secondly, in relation to the scope of the directive, Denmark has continuously supported the Commission proposal to protect small and medium-sized enterprises since this closely corresponds to the legal basis of the directive in the Treaty and the objective to ensure a fair standard of living for the agricultural community.

Thirdly, it is essential that fighting unfair trading practices does not compromise the well-functioning of the internal market nor a continued market orientation of the agricultural policy. Therefore, Denmark stresses the importance of ensuring that national rules going beyond the directive should respect the rules of the internal market.
