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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Regulation amending the common market organisation (CMO) Regulation as regards the strengthening of the position of farmers in the food supply chain - Guidance for further work

With a view to the meeting of the Special Committee on Agriculture on 28 April 2025, delegations will find attached the Presidency discussion paper – questions to Member States on elements of the proposal for a Regulation amending CMO Regulation.

**Presidency discussion paper – questions to Member States on elements of the proposal for a
Regulation amending CMO Regulation**

1. Question on mediation mechanisms

An obligatory mediation mechanism is proposed by the Commission to encourage parties to reach an amicable settlement in cases of disputes over the conclusion or review of a written contract. During the discussion some Member States referred mainly to administrative burden and suggested to maintain the status quo by leaving the decision whether to provide the parties with mediation mechanisms with Member States.

Therefore, the Presidency would like to ask which option you prefer for **Article 148(3)** and **Article 168(3)**:

Option 1 (“mandatory” mediation)

3. Member States ~~shall establish~~ **may provide** ~~aensure~~ **that** mediation ~~mechanism to cover~~ **mechanisms are available in cases in which there is no mutual agreement has been reached with a view to negotiating a mutually acceptable to conclude a contract referred to in paragraphs 1 and 2 or to revision of such a contract.**

Option 2 (“voluntary” mediation)

3. Member States ~~shall establish~~ **may provide** ~~that~~ mediation ~~mechanism to cover~~ **mechanisms are available in cases in which there is no mutual agreement has been reached with a view to negotiating a mutually acceptable to conclude a contract referred to in paragraphs 1 and 2 or to revision of such a contract.**

2. Question on Article 152(1a) CMO

The Commission proposal on Article 152(1a) aims to extend the current exception to competition rules to all producer organisations (POs), whether recognised or not recognised according to the CMO Regulation, including cooperatives, as long as they meet the conditions for recognition, both the general ones, as well as the specific ones for fruit and vegetables (Article 160 CMO) and milk and dairy products (Article 161 CMO), and the conditions laid down at national level pursuant to Article 154 CMO (e.g., minimum number of members).

During the meeting of Working Party for Agricultural Products on 28 March, the Commission extensively explained its proposal (based on a working document as set out in WK 3897/25).

Taking into account the different approaches of Member States to the Commission proposal for Article 152(1a), the Presidency would like to present Member States with the following three options. Member States are invited to express their opinion on the preferred option and indicate if any other option(s) would also be acceptable.

Option 1

Retain Article 152(1a) and recital 11 as amended in the Presidency drafting suggestions in doc. 7072/25.

Option 2

Restrict the extension of the exception to competition rules **to cooperatives only** as it is the most common example of farmers'/producers' organisation which is well established in many Member States.

Moreover, according to the judgment of the European Court of Justice in the Oude Luttikhuis Case¹, and as recalled by the Commission in its working paper, certain competition restrictions for agricultural cooperatives are already permissible, if those are necessary for the cooperative's functioning and are proportionate. However, to ensure that the exemption would be well framed, those cooperatives should also fulfil recognition criteria.

¹ Case C-399/93 Oude Luttikhuis and Others v Verenigde Coöperatieve Melkindustrie Coberco BA [1995] ECR I-4515, ECLI:EU:C:1995:434.

Wording suggestion:

1a. By way of derogation from Article 101(1) TFEU, a producer organisation recognised under paragraph 1 of this Article, or **a producer organisation, including** a cooperative, that has not been recognised as a producer organisation by a Member State, but meets the requirements set out in paragraph 1 of this Article and of Article 154, *or, if applicable, of Article 160 or Article 161*, may plan production, optimise the production costs, place on the market and negotiate contracts for the supply of agricultural products, on behalf of its members for all or part of their total production. ~~*A Member State may require that a producer organisation that is not recognised in accordance with Article 154 shall declare to the competent national authority that it fulfils the requirements laid down in paragraph 1 of this Article and of Article 154, or, if applicable, of Article 160 or Article 161, for the purpose of benefitting from the derogation contained in this paragraph.*~~²;

Option 3

Delete the Commission proposal for Article 152(1a).
