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WORKING PAPER

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CONTRIBUTION

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Subject:	Regulation on common market organisation (CMO) of agricultural products - The Netherlands' comments

Further to the meeting of the Working Party on Agricultural Products on 25 October 2019, delegations will find attached the comments from the Netherlands delegation.

Clear Recognition Criteria for Producer Organisations

NL text proposal for Article 160 of Regulation (EU) nr. 1308/2013

The Netherlands endorses the important role of producer organisations in the fruit and vegetables sector in strengthening the position of producers by concentrating supply and placing its members' produce on the market. The same considerations underpinning the start of the fruit and vegetable scheme in 1996 still apply today¹.

While these considerations are still valid today, since 1996 market structures and realities (practices) have changed considerably in some Member States:

1. In 1996 the auction clock was the predominant sales method used by producer organisations; today producer organisations use a variety of methods to market their members' production ranging from day or weekly sales to longer term contracts. While producer organisations conduct the negotiations on the delivery conditions, agreements on conditions such as sorting and packing often require fine-tuning between producer members who provide these services and the producer organisation's customers, notably retailers.
2. Dutch producers have increasingly developed into professional entrepreneurs. While some producers may continue to focus on the cultivation of fruit and vegetables itself, more and more producers also want to get a better grip on what determines their profit and engage in activities such as looking at trends in the market, initiating innovation. For these producer members contact with retailers that are the producer organisation's (potential) customers is a means to explore market potentials.
3. As sustainable production is turning into an important marketing factor, retailers increasingly want to know the producers from whom they ultimately source their products and discuss with them the possibilities for customization. Retailers also respond to increasing consumer demand for information on the origin of the food products they buy by requiring primary producers to become a more visible presence both in- and outside of the supermarkets, for example by organising farm visits and linking producers' websites to instore displays.

These changes have resulted in a clear need for interaction between producers, including producer members of a producer organisation, and customers. Yet such interaction sits uneasily with the recognition criteria: contacts between producer members and customers could raise the question (for example by EU auditors) who actually decides on the sales, the producer organisation or the producer member, and thus call into question the producer organisation's compliance with the recognition criteria laid down in Regulation 1308/2013.

This grey zone causes **uncertainty** for producer organisations, producer members of producer organisations and Member States alike and undermines the scheme.

Drafting suggestion

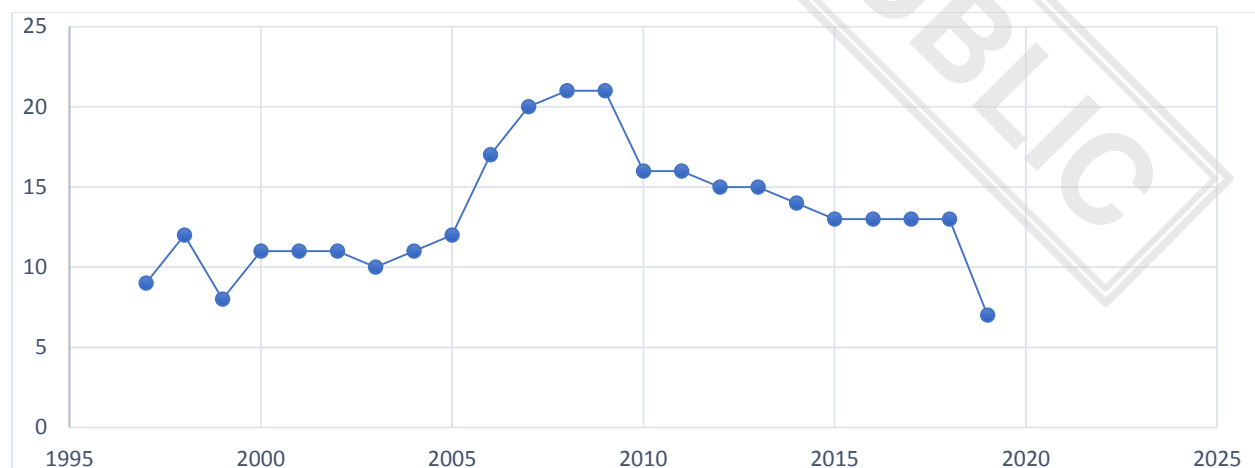
To provide the necessary **clarity** and cater to current market structures, the Netherlands propose to add a new sentence (bold and underlined) in the first subparagraph in Article 160 of Regulation 1308/2013, which would then read as follows:

*In the fruit and vegetables sector producer organisations shall pursue at least one of the objectives set out in points (c)(i), (ii) and (iii) of Article 152(1). Without prejudice to Article 152(1), point c(ii), **producer members may be involved in establishing the terms of delivery under authorization and supervision of the producer organisation.***

The Netherlands attaches great importance to solving this problem.

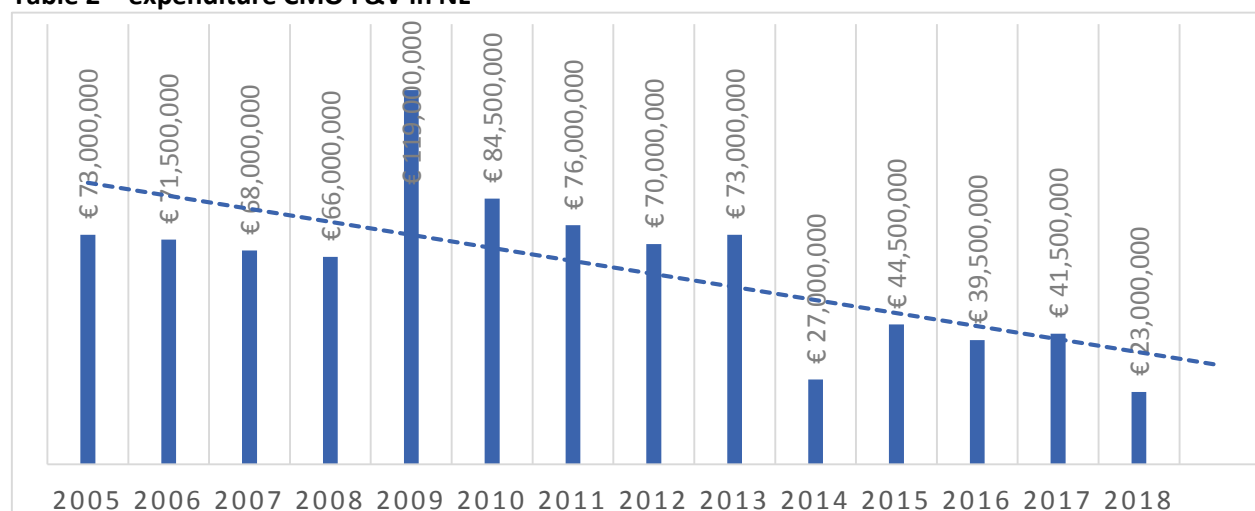
The current ambiguity and fear of financial repercussions as a result of EU audits have led to a rapid decline in the number of recognised producer organisations (Table 1) and a steep decrease in the use of CMO funds in the fruit and vegetables sector in The Netherlands (Table 2).

Table 1 – number of recognised PO's F&V in NL



Decreases in the number of PO's have until recently been due to mergers or withdrawals of recognition. Since 2015 the number has been stable at 13 PO's. However, as of 1 January 2019 5 PO's have handed in their recognition, citing the discrepancy between the CMO scheme and the market reality as a main factor for their decision.

Table 2 – expenditure CMO F&V in NL



While the steep decrease in expenditure in 2014 was caused by the aftermath of the withdrawal of a large PO, the continued decrease in expenditure as of 2015 is caused in part by the PO's perception of the CMO as a financial risk.

¹ These considerations are: 1) in the face of greater concentration of demand, the concentration of supply through producer organisations is an economic necessity in order to strengthen the position of producers in the market, and 2) producer organisations in the fruit and vegetables sector cannot contribute to this objective unless its producer members are obliged to market their entire production through the producer organisation.

Some comments and suggestions from the Netherlands on the Amending Regulation

Following the Working Party on Agricultural Products of 25 October last please find in this document some comments and drafting suggestions regarding the Amending Regulation.

Article 90a, 0a

The Netherlands would like to thank the Presidency for the drafting suggestions concerning checks and penalties related to marketing rules in the wine sector.

From the explanation given at the meeting by the Presidency and the Council Legal Service we understood that the proposed new recital purports to clarify that in case of minor errors market operators should be given the opportunity to correct these errors by means of re-labelling of the products concerned (by additional stickering for example). Indeed, this way of dealing with minor errors is less burdensome on market operators and a more proportionate measure than compulsory withdrawal of the products concerned. Nevertheless, re-labelling could be a costly operation.

We are of the opinion that in the case of truly *minor* errors market operators should neither be obliged to withdraw nor to re-label the products concerned that already on the shelves. The error should be corrected before more products are placed on the market.

Hence the need to better define "the non-compliance of a minor nature". Below you will find our attempt at this definition. We took our inspiration from other regulations containing similar clauses on minor errors, but we are aware that this proposal may need further fine-tuning.

As indicated at the meeting we would include the definition preferably in Article 90a itself.

Article 90a

Checks and penalties related to marketing rules

0a. Member States shall take measures to ensure that the products referred to in Article 119(1) which are not labelled in conformity with this Regulation are not placed on the market. or, if they have already been placed on the market, are withdrawn from it ***except in case of minor clerical errors that do not alter the essential information concerning the particulars of Article 119 and Article 120.***

Article 119 and 122

We would like to thank the Presidency, the Commission and the Council Legal Service for having further clarified the relationship between Regulation 1308/2013 and Regulation 1169/2011.

The Netherlands is of the opinion that it is not necessary to provide in the CMO-Regulation for further specific provisions concerning energy value.

With regard to *off-labeling*, it is important to ensure that the digital provision of information concerns exclusively objective information on ingredients and is not used for sales or marketing purposes. Further discussion is needed e.g. on which ingredients may be presented off-label. Given the proposal to include ingredients in the list of compulsory particulars, further thought needs to be given to the availability of the information to consumers everywhere. In our opinion these discussions may be held in the framework of a delegated act.

Article 160

Finally, we would also like to thank the Presidency for giving us the opportunity to present our case for amending Article 160. We took note of your response indicating that we will come back to this issue some other time and are looking forward to further discuss the issue then.

We would like to stress once again that it is not our intention to undermine the important role of producer organisations in the fruit and vegetables sector in strengthening the position of producers by concentrating supply and placing its members' produce on the market.

We do not intend to loosen the recognition criteria in order for producer members to sell their own products, thereby competing against each other within the producer organisation. We only wish to clarify that a) the scheme does not prohibit contacts between producer members and the market, b) under which conditions those contacts can take place and c) what the subject matter of those contacts may be.

We appreciate the response given by the Commission at the meeting and would like to underline that we are open to other suggestions for amending Article 160. For the moment we would like to reiterate the suggestion included in our position paper.

Article 160

Producer organisations in the fruit and vegetables sector

In the fruit and vegetables sector producer organisations shall pursue at least one of the objectives set out in points (c)(i), (ii) and (iii) of Article 152(1). ***Without prejudice to Article 152(1), point c(ii), producer members may be involved in establishing the terms of delivery under authorization and supervision of the producer organisation.***

The statutes of a producer organisation in the fruit and vegetables sector shall require its producer members to market their entire production concerned through the producer organisation.

Producer organisations and associations of producer organisations in the fruit and vegetables sector shall be deemed to be acting in the name and on behalf of their members in economic matters within their terms of reference.