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WK 5929/2021 INIT

**LIMITE**

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### WORKING PAPER

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#### **NOTE**

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From:	General Secretariat of the Council
To:	Special Committee on Agriculture (SCA)
N° Cion doc.:	9556/18 + REV 1 (en, de, fr) + COR 1
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures <sup>o</sup> for agriculture in favour of the smaller Aegean islands - Presidency note

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With a view to the meeting of the Special Committee on Agriculture on 10 May 2021, delegations will find in the Annex a Presidency note.

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## CMO Regulation - Document for SCA May 10th

In this SCA, the Presidency brings to the Member States, a consultation on certain elements related to Blocks 1 and 3 based on the outcome of the 6th CMO trilogue on 29 April 2021:

### **1. Block 1 – “Market management: intervention, exceptional/crisis measures, market transparency, imports (R 1308/2013)”**

With regard to Block 1, in recent weeks there has been great progress in addressing the European Parliament's proposals. It was possible to move forward in the negotiations, since the European Parliament has also been showing openness to address the Council's concerns, in aspects that had initially been considered difficult to accept by the Council. The following articles (and amendments) were addressed in Trilogue n° 6 on April 29: 11 (Am. 52); 12 (Am. 53); 13 (Am. 54); 14 (Am. 55); 15(1) (Am. 56); 15(2) (Am. 57); 15(2a) (Am. 266); 16 (Am. 232); 17(1)b (Am. 59); 17(1)ia (Am. 60); 182(1) (Am. 133-136); 184 (Am. 137); 188a (Am. 138); 219 (Am. 148); 219a (Am. 149); 219b (Am. 150) e 220 (Am. 247).

#### **1.1. Package “Public Intervention”**

In the last 2 trilogues (April 21 and 29), the European Parliament has been showing some flexibility, having presented a package proposal:

- Article 11 (Products eligible for public intervention) – European Parliament now only wants to keep the introduction of a single product (sugar) instead of the 4 initially proposed;
- Article 12 (Public intervention periods) - with regard to the opening period, a commitment was reached to bring the public intervention period forward, to start one month earlier. Thus, the new proposal will be only for products that currently have a fixed period in the year (cereals, paddy rice, butter and SMP), and as an alternative to opening all year round and for all products, as the European Parliament initially proposed.
- The European Parliament withdrew the amendments relating to articles 13 (
- Opening and closing of public intervention); 14 (Buying-in at a fixed price or tendering); 15(1) (definition of public intervention price) and 15(2) (arrangements for fixing the level of the public intervention price). It should be noted that some of these changes were in conflict with the Council's own competences, as set out in the TFEU, with regard to the fixing of the public intervention price.
- However, the European Parliament intends to maintain the proposal for Article 15(2a), in which it is intended to establish criteria for the determination of the public intervention price by the Council, for which it presented a revised wording in response to the initial concerns presented by the Council.

As a whole, this package proposed by the European Parliament tries to find a compromise. The Presidency recognizes the European Parliament's attempt to establish a compromise and, has therefore, committed to bring this proposal to the attention of the Member States.

In the case of public intervention (Article 11), the European Parliament kept only its proposal to consider sugar as an eligible product to add to those existing in the status quo.

The Presidency considers that in the case of the sugar, the 3 institutions have recognized the sensitivity of this sector, which is experiencing difficulties because of the post-quota period. To this end, a high-level group has already been created, which has issued recommendations, and, as a result, a study is underway.

The conclusions of the study are foreseen for the Autumn of this year, already at the end of the Slovenian Presidency.

The Presidency also considered that would be more advisable and more effective to wait for the results of this study, in order to be able to assume the conclusions at the political level, with regard to a possible future "Sugar Package", as had already been done with the "Milk Package".

However, the European Parliament considers that it is important to include sugar as a product covered by public intervention under the CAP reform, as a possible anticipation of the study.

For this purpose, EP drops all other product proposals, keeping only sugar.

In addition to this new product, all the arrangements related to the conditions to be implemented for sugar, will remain for a later definition under the exclusive competence of the Council under article 43(3) TFEU.

The European Parliament recognizes that the current rules for the operation of the public intervention regime should not be changed. The one-month anticipation of the public intervention period appears to be a response to the current reality of the sectors in terms of seasonality of production.

On the other hand, the Presidency considers that Article 15(2a) still interferes with the Council's prerogative in setting public intervention prices granted under Article 43(3) TFEU. The EP insisted on maintaining this article as part of this commitment.

**(EP AM. 52)**

**The EP proposed a new wording for Article 11:**

*“(3b) Article 11 is replaced by the following:*

*Article 11*

*Products eligible for public intervention*

*Public intervention shall apply in respect of the following products in accordance with the conditions laid down in this Section and any additional requirements and conditions that may be determined by the Commission, by means of delegated acts pursuant to Article 19 and implementing acts pursuant to Article 20:*

*(a) common wheat, durum wheat, barley and maize;*

*(b) paddy rice;*

(c) fresh or chilled meat of the beef and veal sector falling within CN codes 0201 10 00 and 0201 20 20 to 0201 20 50 ;

(d) butter produced directly and exclusively from pasteurised cream obtained directly and exclusively from cow's milk in an approved undertaking in the Union of a minimum butterfat content, by weight, of 82 % and of a maximum water content, by weight, of 16 %;

(e) skimmed milk powder of top quality made from cow's milk in an approved undertaking in the Union by the spray process, with a minimum protein content of 34,0 % by weight of the fat free dry matter;

**(ea) white sugar;**

**(EP AM. 53)**

**Compromise proposal after the April 29<sup>th</sup> Trilogue, regarding Article 12:**

“(3c) Article 12 is replaced by the following:

*Article 12*

*Public intervention periods*

*Public intervention shall be available for:*

(a) common wheat, durum wheat, barley and maize, from 1 ~~October~~ ~~November~~ to 31 May;

(b) paddy rice, from 1 ~~March~~ ~~April~~ to 31 July;

(c) beef and veal, throughout the year;

(d) butter and skimmed milk powder, from 1 ~~February~~ ~~March~~ to 30 September;

**(e) white sugar, throughout the year.**

**(EP AM. 54)**

**The EP withdrew its proposal, maintaining the status quo of Article 13, with the exception of including white sugar under Article 13(1b) as a consequence of Article 11 amendment:**

“(3d) Article 13 is replaced by the following:

*Article 13*

*Opening and closing of public intervention*

1. During the periods referred to in Article 12, public intervention:

(a) shall be open for common wheat, butter and skimmed milk powder;

(b) may be opened by the Commission, by means of implementing acts, for durum wheat, barley, maize, ~~and~~ paddy rice (including specific varieties or types of paddy rice) **and white sugar** if the market situation so requires. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2);

(c) may be opened for the beef and veal sector by the Commission, by means of implementing acts adopted without applying the procedure referred to in Article 229(2) or (3), if, over a representative period determined pursuant to point (c) of the first paragraph of

Article 20 the average market price in a Member State or in a region of a Member State, recorded on the basis of the Union scale for the classification of carcasses of bovine animals referred to in point A of Annex IV, is below 85 % of the reference threshold laid down in point (d) of Article 7(1).

[...]

**(EP AM. 55)**

**The EP withdrew its proposal, maintaining the status quo of Article 14:**

*~~“(3e) Article 14 is replaced by the following:~~*

*Article 14*

*Buying-in at a fixed price or tendering*

*~~“Where public intervention is open pursuant to Article 13(1), arrangements for fixing buying-in prices for the products referred to in Article 11 shall be taken by the Council in accordance with Article 43(3) TFEU.”~~*

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Article 15

Public intervention price

**(EP AM. 56)**

**The EP withdrew its proposal, maintaining the status quo of Article 15(1):**

*~~“(3f) In Article 15, paragraph 1 is replaced by the following:~~*

*~~1. Public intervention price means the maximum price at which products eligible for public intervention may be bought in where this is done by tendering.”~~*

**(EP AM. 57)**

**The EP withdrew its proposal, maintaining the status quo of Article 15(2):**

*~~“(3g) In Article 15, paragraph 2 is replaced by the following:~~*

*~~2. The arrangements for fixing the level of the public intervention price, including the amounts of increases and reductions, shall be taken by the Council in accordance with Article 43(3) TFEU.”~~*

**(EP AM. 266)**

**The EP maintains its proposal:**

***“(3h) In Article 15, the following paragraph is added:***

***2a. Without prejudice to the respective competences under the Treaty and in order to fulfill the objectives of the article 39 of the TFUE, the Council shall take in account the best***

*scientific, technical and economic advice when fixing the level of the public intervention price."*

## 1.2. Package "Aid for Private Storage"

The European Parliament proposed to include table olives and rice in the list of products benefiting from support for private storage.

In a spirit of compromise, it was possible to reach an understanding with the European Parliament, and a proposal was considered for table olives, since the olive oil sector already benefits from support for private storage and both products are part of the same sector. The Commission confirmed the positive effect of this instrument, applied in the past to table olives, as exceptional measures.

On the other hand, in the case of rice, it does not seem to be justified to open up the option of Private Storage since this product has the possibility of accessing Public Intervention and also benefits from coupled support, in all EU producers' Member States. However, this does not preclude private storage as an exceptional measure for this product, if needed.

### (EP AM. 59)

**The EP's amendment proposal was considered in a spirit of a compromise:**

*"(3j) In the first paragraph of Article 17, point (b) is replaced by the following:*

(b) olive oil **and table olives;**"

### (EP AM. 60)

**The EP withdrew its own proposal:**

*"(3k) In the first paragraph of Article 17, the following point is added:*

**(ia) rice."**

## 1.3. Package "Trade - Additional import duties" (Special safeguard clauses)

This package brings together 4 amendments proposed by the European Parliament, with regard to "Additional import duties", under Article 182:

- EP AM 133 - Safeguard: import volumes in FTAs
- EP AM 134 - Safeguard: noncompliance EU standards
- EP AM 135 - Safeguard: trigger volume, price update
- EP AM 136 - Safeguard: market exposure definition

Following a confirmed commitment by the three institutions at the super-trilogue on 26 March 2021 to ensure respect of WTO and international agreements, it was proposed to reformulate the text of Article 182(1) in order to meet the concerns in terms of the safeguard clauses and the additional import duties referred to in amendments 133 to 136 of the European Parliament.

This should be done without prejudicing WTO rules and the EU's international trade commitments.

For this purpose, the Commission has proposed that the current method of calculating trigger volumes should be included in the wording of Article 182, to allow for a better clarification of this rule, in accordance with Article 5 of the WTO Agreement on Agriculture.

In the SCA of April 19<sup>th</sup>, the Presidency presented a new wording for the Article 182(1), as an alternative to the European Parliament's amendments 133 to 136. In that wording it was clarified that "The trigger volume shall be calculated in accordance with Article 5 of the WTO Agreement on Agriculture", as had been agreed by the Member States.

However, in the April 29<sup>th</sup> trilogue, the European Parliament presented an alternative wording of the approach to this article, where instead of referring to article 5 of the WTO Agreement on Agriculture, the EP suggested to complement the status quo wording, with additional wording.

This is the proposal that the Presidency is presenting today. Nevertheless, the Commission during the Interinstitutional Technical Meeting of May 4<sup>th</sup>, raised some concerns regarding the respect of the WTO rules, that we expect to be clarified during the SCA.

Thus, the Presidency asks the Member States if the Council should keep the proposal presented in the SCA of April 19<sup>th</sup> or could consider the new wording from the EP, after some legal fine-tuning to make sure that it is indeed WTO compatible.

**(EP AM. 115)**

**The EP presented a new wording for the Article 182(1), and dropped the amendments 133-136, to be aligned with the WTO rules:**

*"Article 182  
Additional import duties*

*1. The Commission may adopt implementing acts determining the products of the cereals, rice, sugar, fruit and vegetables, processed fruit and vegetables, beef and veal, milk and milk products, pigmeat, sheepmeat and goatmeat, eggs, poultry and bananas sectors, as well as of grape juice and grape must, to which, when imported subject to the rate of duty laid down in the Common Customs Tariff, an additional import duty shall apply in order to prevent or counteract adverse effects on the Union market which may result from those imports, if:*

*(a) the imports are made at a price below the level notified by the Union to the WTO (the trigger price); or*

*(b) the volume of imports in any year exceeds a certain level (the trigger volume).*

*The trigger volume shall be based on market access opportunities defined as imports expressed as a percentage of the corresponding domestic consumption during the three previous years **or, where domestic consumption is not taken into account, on the absolute level of imports.***

*Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).*

*[...]*

## **2. Block 3 – “Producers/Interbranch Organisations, contracts, competition rules, state aids”**

At the AGRIFISH Council of March 23<sup>rd</sup>, the Presidency presented Block 3 to the Member States, and an opening spirit was expressed to reach some possible commitments, in order to strengthen the position of producers in the value chain and increasing their bargaining power, without compromising the market orientation of the CAP and competition rules. The discussion carried out so far in this block has already made it possible to obtain several points of possible understanding, and now the Presidency intends to present other points, which resulted from the discussions held at the technical meetings and the April 29<sup>th</sup> Trilogue, aiming reach some more possible agreements.

### **2.1. Package “Producers and interbranch organisations”**

Thus, regarding the Block 3, the European Parliament suggested including 5 articles in a compromise package proposal:

- Article 154 (“Recognition of producer organizations”) (EP AM. 115);
- Article 156 (“Associations of producer organizations”) (EP AM. 116);
- Article 158 (“Recognition of interbranch organizations”) (EP AM. 240);
- Article 158a (“Associations of interbranch organizations”) (EP AM. 118);
- Article 158b (“Transnational producer organizations and their transnational associations and transnational interbranch organizations”) (EP AM. 119).

The European Parliament intends to maintain its amendments to Articles 154 and 158, and as a compromise withdraws the proposals for Articles 156, 158a and 158b, which have been the object of concerns on the part of the Council and the Commission.

To this end, the European Parliament presented a revised text for article 154, in which clarifies the concept of “small scale production” for the purpose of defining the value of the marketed production, within the scope of the recognition of producer organizations.



In the case of article 158, the Commission made a new drafting proposal to clarify the approach to the concept of balance of representativeness at the various stages of the supply chain in the interbranch organizations.

The Presidency considers that this package may represent a good compromise opportunity, as it solves some of the most sensitive issues, raised by the Presidency and the Commission, and, at the same time, allows to meet the objectives on organisation of small farmers, presented by European Parliament.

On the other hand, it also allows for a more evident approach regarding the balance of representation within interbranch organizations.

**(EP AM. 115)**

**The EP redrafted its own initial proposal (highlighted in grey):**

*“(22g) Article 154 is replaced by the following:*

*Article 154*

*Recognition of producer organisations*

*1. In order to be recognised by a Member State, the producer organisation applying for such recognition shall be a legal entity or clearly defined part of a legal entity which:*

*(a) fulfils the requirements laid down in points (a), (b) and (c) of Article 152(1);*

*(b) has a minimum number of members and/or covers a minimum volume or value of marketable production, to be laid down by the Member State concerned, in the area where it operates. **Such provisions shall not prevent the recognition of producer organisations which are dedicated to marginal production small-scale production;***

*(c) provides sufficient evidence that it can carry out its activities properly, both over time and in terms of effectiveness, provision of human, material and technical support to its members, and as appropriate concentration of supply;*

*(d) has statutes that are consistent with points (a), (b) and (c) of this paragraph.*

*[...]*

**(EP AM. 116)**

**The EP withdrew its own proposal:**

*“(22h) ~~Article 156 is replaced by the following:~~*

*Article 156*

*Associations of producer organisations*

*1. ~~Member States may, on request, recognise associations of producer organisations in a specific sector listed in Article 1(2) which are formed at the initiative of **recognised producer organisations and/or associations of producer organisations.** Subject to the rules adopted pursuant to Article 173, associations of producer organisations may carry out any of the activities or functions of producer organisations.~~*

~~2. — By way of derogation from paragraph 1, Member States may, on request, recognise an association of recognised producer organisations in the milk and milk products sector if the Member State concerned considers that the association is capable of carrying out effectively any of the activities of a recognised producer organisation, and that it fulfils the conditions laid down in Article 161(1)."~~

**(EP AM. 240)**

Based in the EP's initial proposal (erased text highlighted in grey), the Commission presented a compromise wording proposal (text in bold and highlighted in grey):

~~"(22j) — Article 158 is replaced by the following:~~

*Article 158*

*Recognition of interbranch organisations*

1. Member States may recognise interbranch organisations applying for such recognition, provided that they:

- (a) fulfil the requirements laid down in Article 157;
- (b) carry out their activities in one or more regions in the territory concerned;
- (c) account for a significant share of the economic activities referred to in point (a) of Article 157(1);

~~**(ca) — ensure a balanced representation of the stages of the supply chain referred to in point (a) of Article 157(1);**~~

**(ca) strive for a balanced representation of the organisations of those stages of the supply chain, as referred to in point (a) of Article 157(1), that constitute the interbranch organisation;**

(d) with the exception of the cases laid down in Article 162, do not, themselves, engage in production, processing or trade.

[...]

**(EP AM. 118)**

The EP withdrew its own proposal:

~~"(22k) In Section 1 of Chapter III, the following article is inserted:~~

*Article 158a*

*Associations of interbranch organisations*

~~Member States may, on request, recognise associations of interbranch organisations in a specific sector listed in Article 1(2) which are formed at the initiative of recognised interbranch organisations.~~

~~Subject to the rules adopted pursuant to Article 173, associations of producer organisations may carry out any of the activities or functions of interbranch organisations."~~

(EP AM. 119)

The EP withdrew its own proposal:

*“(221) In Section 1 of Chapter III, the following article is inserted:*

*Article 158b*

*Transnational producer organisations and their transnational associations and translational interbranch organisations*

*1. For the purposes of this Regulation, references to producer organisations, associations of producer organisations and interbranch organisations shall also include transnational producer organisations, transnational associations of producer organisations and transnational interbranch organisations recognised under this Article.*

*2. The following definitions shall apply for the purposes of this Regulation:*

*(a) ‘transnational producer organisation’ means any producer organisation whose member producers’ holdings are located in more than one Member State;*

*(b) ‘transnational association of producer organisations’ means any association of producer organisations whose member organisations are located in more than one Member State;*

*(c) ‘transnational interbranch organisation’ means any interbranch organisation whose members carry out a production, processing or marketing activity of the products covered by the organisation’s activities in more than one Member State.*

*3. The Commission shall decide on the recognition of transnational producer organisations, transnational associations of producer organisations and transnational interbranch organisation.*

*The general rules on recognition referred to in Articles 154, 156 and 158 and the specific rules on recognition in the milk and milk products sector referred to in Articles 161 and 163 shall apply mutatis mutandis.*

*4. The Member State in which a transnational producer organisation or a transnational association of producer organisations has a significant number of members or member organisations or has marketable production of a significant volume or value, or the Member State in which the headquarters of a transnational interbranch organisation is located, as well as the other Member States in which the members of that organisation or association are located, shall submit to the Commission the information necessary to enable it to verify compliance with the conditions for recognition and shall grant it all necessary administrative assistance.*

*5. The Commission and the Member State referred to in paragraph 4 shall make available all relevant information upon request of another Member State in which members of such organisation or association are located.”*

**2.2. Article 163.3 - “Recognition of interbranch organisations in the milk and milk products sector”  
(Interbranch organisation withdrawal recognition in milk/milk products)**

With regard to article 163.3, the European Parliament proposed to remove the accessory penalty for withdrawal of recognition of interbranch organizations in the milk sector, in case of participating in practices provided for in article 210(4).

This proposal removes a situation of exception applied to the milk sector that is considered unfair and discriminatory.

The Commission was pleased with the European Parliament's proposal, as it removes a discriminatory provision.

The Presidency considers that this proposal does not question the specificities of the rules of recognition applied to interbranch organizations in the milk sector, under Article 157(3). It also doesn't undermine the incompatibility of the practices of Article 210(4), in the light of Union rules, which have their own sanctioning framework, under the competition rules.

On the other hand, the Presidency considers that removing this penalty of Article 163(3), allows for the interbranch organizations in the milk sector a more equitable, non-discriminatory and fair level playing field, regarding the interbranch organizations of other sectors in the same circumstances.

It should be highlighted that removing this particular penalty, doesn't compromise a possible withdrawal of recognition by the authorities of the Member States, if they considered it justified, under the terms of the referred practices of article 210(4).

**(EP AM. 121)**

**The EP amended the status quo:**

*“(22n) Article 163 is replaced by the following:*

*Article 163*

*Recognition of interbranch organisations in the milk and milk products sector*

*[...]*

*3. Where Member States make use of the option to recognise an interbranch organisation in accordance with paragraph 1 or 2, they shall:*

*(a) decide whether to grant recognition to the interbranch organisation within four months of the lodging of an application, accompanied by all the relevant supporting evidence; this application shall be lodged with the Member State where the organisation has its headquarters;*

*(b) carry out, at intervals to be determined by them, checks to verify that recognised interbranch organisations are complying with the conditions governing their recognition;*

*(c) in the event of non-compliance or irregularities in the implementation of the measures provided for in this Regulation, impose on those organisations the applicable penalties they have laid down and, if necessary, decide whether recognition should be withdrawn;*

*(d) withdraw recognition if **the requirements and conditions for recognition laid down in this Article are no longer fulfilled;***

*~~(i) the requirements and conditions for recognition laid down in this Article are no longer fulfilled;~~*

*~~(ii) the interbranch organisation takes part in any of the agreements, decisions and concerted practices referred to in Article 210(1); such withdrawal of recognition shall be without prejudice to any other penalties to be imposed pursuant to national law;~~*

*~~(iii) the interbranch organisation fails to comply with the notification obligation referred to in point (a) of the first subparagraph of Article 210(2);~~*

[...]

### 2.3. Article 172a - "Value sharing for IBOs"

With regard to Article 172a, the European Parliament presented a proposal in which it expressed its concern to consider the possibility of establishing agreements, which apply to different stages of the supply chain and not just to the first purchaser.

The Commission has presented a proposal for a text, which safeguards this possibility in an integrated and comprehensive way.

The Presidency considers that the European Parliament's concerns are related to current contracting procedures, which can be established vertically along the food supply chain. And the Presidency also considers that the Commission's drafting proposal addresses this concern, without introducing too much complexity and entailing administrative burdens in its application.

#### (EP AM. 244)

Based in the EP's initial proposal, the Commission presented a compromise wording proposal (text cross checked with the status quo: erased and also in bold, highlighted in grey):

*“(22w) the following article is inserted:*

#### *Article 172a*

##### *Value sharing for interbranch organisations*

*Without prejudice to any specific value-sharing clauses in the sugar sector, farmers, including associations of farmers, ~~and their first purchaser~~ may agree **with downstream operators** on value sharing clauses, including market bonuses and losses, determining how any evolution of relevant market prices for the products concerned or other commodity markets is to be allocated between them.”*

#### 2.4. Article 210 - “Agreements and concerted practices of recognised interbranch organisations”

As regards Article 210, the European Parliament has made a proposal for an amendment to bring the procedures in line with Article 209. This proposal removes the obligation for the formal approval notification mechanism by the Commission.

The Commission agrees with the approach, since, on the one hand, it harmonises with Article 209, and on the other, because the effective scrutiny is carried out by the competition authorities of the Member States.

The European Parliament presented a revised text to address the concerns raised by both the Presidency and the Council, in the April 29<sup>th</sup> Trilogue.

In that revised text, the Commission's obligation to approve is no longer necessary and is replaced by the voluntary possibility of interbranch organisations request an opinion from the Commission on the compatibility of these agreements, decision and concerted practices with this article. The Commission agrees with this text.

The Presidency considers that, in a spirit of compromise, this proposal can be presented to Member States.

##### (EP AM. 143)

**The EP redraft its own initial proposal to amended the status quo (text cross checked with the status quo - erased and also in bold, highlighted in grey):**

*“(26e) Article 210 is replaced by the following:*

##### *Article 210*

##### *Agreements and concerted practices of recognised interbranch organisations*

*1. Article 101(1) TFEU shall not apply to agreements, decisions and concerted practices of interbranch organisations recognised under Article 157 of this Regulation with the object of carrying out the activities **which are necessary in order to meet the objectives** listed in point(c) of Article 157(1) and, for the milk and milk products sector, in point (c) of Article 157(3) of this Regulation, and, for the olive oil and table olives and tobacco sectors, in Article 162 of this Regulation.*

***Agreements, decisions and concerted practices, which fulfil the conditions referred to in this Article, shall not be prohibited, no prior decision to that effect being required.***

***2. (new) However, interbranch organisations recognised under Article 157 of this Regulation may request an opinion from the Commission on the compatibility of these agreements, decision and concerted practices with this article. The Commission shall deal with requests for opinions promptly and shall send the applicant its opinion within two months of receipt of a complete request.***

*The Commission may, at its own initiative or at the request of a Member State, change the content of an opinion, in particular if the applicant has provided inaccurate information or misused the opinion.*

*If the Commission finds that the conditions for applying this paragraph are no longer met, the Commission shall take a decision declaring that Article 101(1) TFEU applies for the future to the agreement, decision or concerted practice in question. That Commission decision shall not apply earlier than the date of its notification to the inter-branch organisation concerned.*

*2. Paragraph 1 shall apply provided that:*

*(a) the agreements, decisions and concerted practices referred to therein have been notified to the Commission; and*

*(b) within two months of receipt of all the details required the Commission has not found that those agreements, decisions or concerted practices are incompatible with Union rules.*

*Where the Commission finds that the agreements, decisions or concerted practices referred to in paragraph 1 are incompatible with Union rules, it shall set out its finding without applying the procedure referred to in Article 229(2) or (3).*

*3. The agreements, decisions and concerted practices referred to in paragraph 1 may not be put into effect before the lapse of the two-month period referred to in point (b) of the first subparagraph of paragraph 2.*

*4. 3. (previous 4) Agreements, decisions and concerted practices shall in any case be declared incompatible with Union rules if they:*

*(a) may lead to the partitioning of markets within the Union in any form;*

*(b) may affect the sound operation of the market organisation;*

*(c) may create distortions of competition which are not essential to achieving the objectives of the CAP pursued by the interbranch organisation activity;*

*(d) entail the fixing of prices or the fixing of quotas;*

*(e) may create discrimination or eliminate competition in respect of a substantial proportion of the products in question.*

*5. If, following the expiry of the two-month period referred to in point (b) of the first subparagraph of paragraph 2, the Commission finds that the conditions for applying paragraph 1 have not been met, it shall, without applying the procedure referred to in Article 229(2) or (3), take a decision declaring that Article 101(1) TFEU applies to the agreement, decision or concerted practice in question.*

*That Commission decision shall not apply earlier than the date of its notification to the interbranch organisation concerned, unless that interbranch organisation has given incorrect information or abused the exemption provided for in paragraph 1.*

*6. In the case of multiannual agreements, the notification for the first year shall be valid for the subsequent years of the agreement. However, in that event, the Commission may, on its*

~~own initiative or at the request of another Member State, issue a finding of incompatibility at any time.~~

**7. 4. (previous 7)** *The Commission may adopt implementing acts laying down the measures necessary for the uniform application of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 229(2).*

## **2.5. Article 210a - “Vertical initiatives for sustainability”**

This item concerns vertical initiatives for sustainability, and it is based on a proposal from the European Parliament for a new article aiming at strengthening the position of producers in the supply chain and increasing their bargaining power. It seeks to establish a derogation from Article 101(1) of the Treaty for IBO initiatives in favour of higher environmental, animal health and animal welfare standards thus making the supply chain more sustainable.

On the Presidency's side, we are not contrary to strengthening the position of producers and increasing their bargaining power. The Presidency considers that this amendment may have positive effects towards this objective.

This proposal was presented in the March 15th SCA (Doc. WK 3404/2021) and it was also a discussion issue in the AGRIFISH Council of March 23rd and in the March 24th Trilogue. Following the latter, the Commission made a new drafting proposal which was presented at the April 29 Trilogue, and the compromise text was agreed in principle (ad referendum for the Council).

The Presidency considers that it's a good basis for commitment, for the implementation of this possibility, and that also allows anticipating the application of these practices within the scope of the objectives of the “Farm To Fork” strategy and the Green Deal.

### **(EP AM. 144)**

#### **The COM redrafted the EP’s initial proposal:**

*“(26f) The following article is inserted:*

#### *Article 210a*

##### *Vertical initiatives for sustainability*

- 1. Article 101(1) TFEU shall not apply to agreements, decisions and concerted practices of producers of agricultural products that relate to the production of and trade in agricultural products and that aim to apply a sustainability standard higher than mandated by Union or national law, provided that these agreements, decisions and concerted practices only impose restrictions of competition that are indispensable to the attainment of this standard.*
- 2. Agreements, decisions and concerted practices of producers of agricultural products within the meaning of paragraph 1 are concluded or taken either by several producers or by one or more producers with one or more operators at different levels of the production and distribution chain for agricultural and food products.*



3. *A sustainability standard within the meaning of paragraph 1 is a standard which aims to contribute to one or more of the following objectives:*
- *Environmental objectives, including climate change mitigation and adaptation; the sustainable use and protection of landscapes, water and soil; transition to a circular economy, including the reduction of food waste; pollution prevention and control; the protection and restoration of biodiversity and ecosystems;*
  - *Production of agricultural products in ways that reduce the use of pesticides and manage risks therefrom, or reduce the danger of antimicrobial resistance in agricultural production; and*
  - *Animal health and animal welfare.*
4. *Agreements, decisions and concerted practices that fulfil the conditions referred to in this Article shall not be prohibited, no prior decision to that effect being required.*
5. *The national competition authority referred to in Article 5 of Regulation (EC) No 1/2003 may decide in individual cases that, for the future, one or more of the agreements, decisions and concerted practices referred to in paragraph 1 are to be modified, discontinued or not take place at all if it considers that this is necessary in order to prevent competition from being excluded or if it considers that the objectives set out in Article 39 TFEU are jeopardised.*

*For agreements, decisions and concerted practices covering more than one Member State, the decision referred to in the first subparagraph of this paragraph shall be taken by the Commission without applying the procedure referred to in Article 229(2) or (3).*

*When acting under the first subparagraph of this paragraph, the national competition authority shall inform the Commission in writing after initiating the first formal measure of the investigation and shall notify the Commission of the decisions without delay after their adoption.*

*The decisions referred to in this paragraph shall not apply earlier than the date of their notification to the undertakings concerned.*