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WK 5929/2021 REV 2 ADD 1

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WORKING PAPER

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NOTE

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°for agriculture in favour of the smaller Aegean islands - latest compromise text for Article 210a

With a view to the meeting of the Special Committee on Agriculture on 10 May 2021, delegations will find in the Annex the latest compromise text for Article 210a.

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EN

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, processing, trade, including distribution, tiers of the 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 Commission shall issue guidelines concerning the conditions of applicability of this Article for operators by [...date, two years from the entry into force of this regulation].
6. From [... date, two years from the entry into force of this regulation] the producers referred to in paragraph 1 may request an opinion from the Commission concerning the compatibility of the agreements, decisions and concerted practices referred to in paragraph 1 with this Article. The Commission shall send the applicant its opinion within 4 months of receipt of a complete request.

If the Commission finds that the conditions for an opinion to the effect that Article 101(1) does not apply are no longer met, it shall declare that Article 101(1) TFEU applies for the future to the agreement, decision or concerted practice in question and inform the producers accordingly.

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.

7. 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.