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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 - Presidency background paper

The annex to this document contains a Presidency background paper for the SCA meeting on 17 May 2021.

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CMO Regulation - Document for SCA May 17th

In this SCA, the Presidency wishes to consult the Member States on certain elements related to Blocks 1 and 3 based on the outcome of the technical meetings and the 7th CMO trilogue on 12 May 2021:

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

At the AGRIFISH Council of March 23rd, the Presidency presented Block 3 to the Member States, and ministers showed some openness to compromise, where this would strengthen the position of producers in the value chain and increase their bargaining power, without compromising the market orientation of the CAP and competition rules.

The discussion carried out so far in this block has made it possible to obtain several points of possible understanding already, and now the Presidency intends to present other points, which resulted from the discussions held at the technical meetings and the 12 May trilogue, aiming to reach some more possible agreements.

On 23 March, the Council expressed its readiness to discuss those Block 3 matters which contribute to strengthening the role of Producer and Interbranch Organisations in improving the position of producers in the value chain.

The result of this is already clear in many amendments, on which it was possible to reach agreements. Some previously presented in the SCA.

1.1. Article 157 - “Interbranch organisations”

This particular Article 157 is a lengthy article with much significance in the CMO and it has some sensitivity because of the implications it may have on the powers conferred on Interbranch Organisations in their sphere of action.

The European Parliament has tabled a large number of amendments to this article, some of which were considered sensitive by both the Presidency and the European Commission.

In the framework of the negotiations that took place at technical level and also at the trilogue of 12 May, the European Parliament agreed to drop some of the most sensitive amendments related to this article and redrafts were also possible on others, allowing agreements in principle.

In paragraph 1 of this article, the reference to the territorial level of recognition of interbranch organisations, proposed by the European Commission, has been incorporated and responds to the concerns raised by the European Parliament on Article 163a.

On this article, the European Parliament has agreed to withdraw four of its proposals, concerning points (i), (v), (xvb) and (xvia) of paragraph 1(c).

The 12 May trilogue resulted in an agreement in principle on the European Parliament's proposals for paragraph 1(c)(vii) and (xiv), as they are in line with the new approach to sustainability, namely climate action, animal welfare and the valorisation of by-products. Also the revised proposal for paragraph 1(c)(xvi) on the management of funds to reinforce action in case of health problems and environmental risks was considered positive.

Additionally, the European Parliament insists on deleting the current specificity conferred on interbranch organisations in the milk sector in Article 157(3), granted since the "Milk Package", preferring identical rules to all other sectors.

The Commission was in favour of this alignment and considered that currently there is no justification to keep this specific provisions. Therefore it welcomed the deletion, as it aligns the current provisions and effectively integrates the sector into the cross-cutting rules.

The European Parliament's proposal for the deletion of paragraph 3 was initially discussed under the German Presidency and somehow a consensual initial approach was developed. However, any text was brought to the attention of Member States.

We therefore put this element to the consideration of the Member States, i.e. whether we can move in that direction by repealing Article 157(3) and placing the recognition of interbranch organisations in the milk sector under the scope of Article 157(1).

In conclusion, the Presidency considers a good principle for an agreement on Article 157 to accept the drafting of first subparagraph of paragraph 1, subparagraphs (vii), (xiv) and (xvi) of paragraph 1(c) and the deletion of paragraph 3.

(EP AM. 239)

Draft agreement based in the EP's initial proposal (text in bold and highlighted in grey):

"(22i) Article 157 is replaced by the following:

Article 157

Interbranch organisations

*1. Member States may, on request, recognise interbranch organisations **at national and regional levels and at the level of the economic areas referred to in Article 164(2)**, in a specific sector listed in Article 1(2) which:*

[...]

(c) pursue a specific aim taking account of the interests of their members and of consumers, which may include, in particular, one of the following objectives:

[...]

(v) without prejudice to Articles ~~s 148 and~~ 168, drawing up standard forms of contract, compatible with Union rules, for the sale of agricultural products to

purchasers and/or the supply of processed products to distributors and retailers, taking into account the need to achieve fair competitive conditions and to avoid market distortions. **Those standard forms of contract may involve farmers with one or more operators in the supply chain and may include objective indicators of production and market costs that are easily accessible and comprehensible reflecting changes in market conditions, the quantities delivered and the quality or composition of the agricultural products delivered.**

[...]

(vii) providing the information and carrying out the research necessary to innovate, rationalise, improve and adjust production and, where applicable, the processing and marketing, towards products more suited to market requirements and consumer tastes and expectations, in particular with regard to product quality, including the specific characteristics of products with a protected designation of origin or a protected geographical indication, and protection of the environment, **climate action, animal health and animal welfare;**

[...]

(xiv) contributing to the management **and valorisation** of by-products and the reduction and management of waste;

[...]

~~(xvb) establishing standard clauses for fair compensation of the costs incurred by farmers for meeting extra-legal requirements with regard to environment, climate, animal health and animal welfare, including methods to calculate these costs;~~

(xvi) **promoting and** implementing measures to prevent, **control and manage** animal health, plant-protection and environmental risks, **including by setting up and managing of funds or by contributing to such funds with a view to paying financial compensation to farmers for the costs and economic losses arising from the promotion and implementation of such measures;**

~~(xvii) contributing to the transparency of trade relations between the various stages in the chain, in particular through the design, implementation and compliance control of technical standards by members of the sector.~~

[...]

~~3. By way of derogation from paragraph 1, as regards the milk and milk products sector, Member States may recognise interbranch organisations which:~~

~~(a) have formally requested recognition and are made up of representatives of economic activities linked to the production of raw milk and linked to at least one of the following stages of the supply chain: the processing of or trade in, including distribution of, products of the milk and milk products sector;~~

~~(b) are formed on the initiative of all or some of the representatives referred to in point (a);~~

~~(c) carry out, in one or more regions of the Union, taking into account the interests of the members of those interbranch organisations and of consumers, one or more of the following activities:~~

~~(i) improving the knowledge and the transparency of production and the market, including by publication of statistical data on the prices, volumes and durations~~

- of contracts for the delivery of raw milk which have been previously concluded, and by providing analyses of potential future market developments at regional, national and international level;
- (ii) helping to coordinate better the way the products of the milk and milk products sector are placed on the market, in particular by means of research and market studies;
 - (iii) promoting consumption of, and providing information on, milk and milk products in both internal and external markets;
 - (iv) exploring potential export markets;
 - (v) drawing up standard forms of contract compatible with Union rules for the sale of raw milk to purchasers or the supply of processed products to distributors and retailers, taking into account the need to achieve fair competitive conditions and to avoid market distortions;
 - (vi) providing the information and carrying out the research necessary to adjust production in favour of products more suited to market requirements and consumer tastes and expectations, in particular with regard to product quality and protection of the environment;
 - (vii) maintaining and developing the production potential of the dairy sector, inter alia, by promoting innovation and supporting programmes for applied research and development in order to exploit the full potential of milk and milk products, especially in order to create products with added value which are more attractive to the consumer;
 - (viii) seeking ways of restricting the use of animal health products, improving the management of other inputs and enhancing food safety and animal health;
 - (ix) developing methods and instruments for improving product quality at all stages of production and marketing;
 - (x) exploiting the potential of organic farming and protecting and promoting such farming as well as the production of products with designations of origin, quality labels and geographical indications; and
 - (xi) promoting integrated production or other environmentally sound production methods;
 - (xii) establishing standard value sharing clauses within the meaning of Article 172a, including market bonuses and losses, determining how any evolution of relevant market prices of the products concerned or other commodity markets is to be allocated between them; and
 - (xiii) implementing measures to prevent and manage animal health, plant protection and environmental risks.

1.2. Article 165 - “Financial contributions of non-members”

The European Parliament's proposal aims to improve the transparency of the action of interbranch organisations when they can benefit from contributions from non-members.

The Commission made an alternative proposal, clarifying the possibility for members or non-members to request information on the yearly budget related to the activities subject to extension.

The Presidency agrees as it considers it a good reinforcement of transparency and information by interbranch organisations.

(EP AM. 123)

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

"(22q) Article 165 is replaced by the following:

Article 165

Financial contributions of non-members

*Where rules of a recognised producer organisation, a recognised association of producer organisations or a recognised interbranch organisation are extended under Article 164 and the activities covered by those rules are in the general economic interest of economic operators whose activities relate to the products concerned, the Member State which has granted recognition may, after consulting the relevant stakeholders, decide that individual economic operators or groups which are not members of the organisation but which benefit from those activities shall pay the organisation all or part of the financial contributions paid by its members to the extent that such contributions are intended to cover costs directly incurred as a result of pursuing **one or more of** the activities in question. **Any organisation which receives contributions from non-members under this Article shall, upon request of a member or a non-member that contributes financially to the activities of the organisation, make those parts of its yearly budget available which relate to the pursuit of activities listed in Article 164(4).***

1.3. Article 166a - "Regulation of supply of agricultural products with a PDO/PGI other than cheese and ham"

One of the main achievements of the super trilogue on 26 March concerned the agreement on Article 166a, as proposed by the European Parliament, on the extension of the regulation of supply management to all PDO/PGI products other than cheese and ham.

After this agreement, and in response to the request by the European Parliament and the Presidency, the Commission submitted a new drafting proposal to include cheese (Article 150) and ham (Article 172) in this article.

This proposal, in a very well structured and complete way, reflects the extension of this instrument to all PDO/PGI products, and at the same time integrates the PDO/PGI products that already benefit from this instrument: cheese and ham.

Before the 29 April trilogue, the Presidency believed that the proposal had already been stabilised at technical level and ready to be presented to the Member States at the last SCA of 10 May, as one of the most positive outcome of the CMO negotiations so far.

However, in the 29 April trilogue, the European Parliament, wishing to create a link with Article 172b ("*Value sharing for products with a Protected Designation of Origin and Protected Geographical Indication*"), requested the Presidency to wait for a revised proposal.

The European Parliament's revised version seeks to establish a joint discussion of these two articles, not allowing to close the discussion on Article 166a without a parallel discussion of Article 172b.

In the view of the Presidency, this new drafting proposal submitted by the European Parliament for Article 166a does not add value to the European Commission's proposal, which keeps the status quo of the actual products as a basis for the incorporation of new ones, as agreed at the super trilogue of 26 March.

On the other hand, the Commission has some concerns regarding Article 172b, and considers that even if Article 166a is maintained, this does not necessarily imply an acceptance of Article 172b.

The Presidency intends to propose again the separate consideration of these articles to ensure a good agreement on Article 166a, without prejudice to an independent discussion on Article 172b, which still has to take place.

Since the European Parliament insisted on its text, and in order to unblock a deadlock, it was agreed that both the proposals of the European Commission and the European Parliament would be submitted to the Member States for consideration.

We would underline that the European Commission's proposal reflects the status quo of the current products covered and the intention to extend this possibility to all PDO/PGI products, in line with our agreement at the super trilogue on 26 March.

As a last note for this Article 166a: the need of a reference to Article 157(3) in paragraph 1 will result from the outcome of the discussion on Article 157.

In conclusion, considering that Article 172b is a sensitive topic that needs still further work, the Presidency does not see merit in making a link between these two articles.

Thus, the Presidency considers the Commission's proposal on Article 166a as such a good element of agreement.

(EP AM. 124)

Based in the EP's initial proposal, the Commission presented a compromise wording proposal. As agreed, the both proposals are presented below with the differences highlighted in grey:

"(22r) The following Article is inserted:

(Commission's proposal)

'Article 166a

Regulation of supply of agricultural products with a protected designation of origin or protected geographical indication

1. Without prejudice to Articles 167 and 167a, Member States may, upon the request of a producer organisation or association of producer organisation recognised under Article 152(1) or 161(1) of this Regulation, an interbranch organisation recognised under Article 157(1) ~~or 157(3)~~ of this Regulation, a group of operators referred to in Article 3(2) of Regulation (EU) No 1151/2012 or a group of producers referred to in Article 95(1) of this Regulation, **lay down**, for a limited period of time, binding rules for the regulation of the supply of agricultural products referred to in Article 1(2) benefiting from a protected designation of origin or from a protected geographical indication under Article 5(1) and (2) of Regulation (EU) No 1151/2012 or under Article 93(1), points (a) and (b) of this Regulation.
2. The rules referred to in paragraph 1 shall be subject to the existence of a prior agreement that shall be concluded between at least two-thirds of the producers or their representatives of the product defined in paragraph 1, accounting for at least two thirds of the production of that product in the geographical area referred to in Article 7(1), point (c) of Regulation (EU) No 1151/2012 or Article 93(1), points (a)(iii) and (b)(iii) of this Regulation for wine.

Where the production of the product referred to in paragraph 1 involves a processing process and the product specification referred to in Article 7(1) of Regulation (EU) No 1151/2012 or in Article 94(2) of this Regulation restricts the sourcing of the raw material to a specific geographical area, Member States shall require, for purposes of the rules to be laid down according to paragraph 1:

- (a) that the producers of that raw material used for the processing process in the specific geographical area shall, be consulted prior to the conclusion of the agreement referred to in subparagraph 1 of this paragraph; or
 - (b) that at least two-thirds of the producers or their representatives of the raw material accounting for at least two thirds of the production of the raw material used for the processing process in the specific geographical area, are also parties to the agreement referred to in subparagraph 1 of this paragraph.
3. By way of derogation from paragraph 2, for the production of cheese benefitting from a protected designation of origin or a protected geographic indication, the rules referred to in paragraph 1 shall be subject to the existence of a prior agreement between at least two-thirds of the milk producers or their representatives representing at least two thirds of the raw milk used for the production of cheese and where relevant, at least two-thirds of the producers of that cheese or their representatives representing at least two thirds of the production of that cheese in the geographical area referred to in Article 7(1), point (c) of Regulation (EU) No 1151/2012.

4. For the purpose of paragraph 1, concerning cheese benefiting from a protected geographical indication, the geographical area of origin of the raw milk, as set in the product specification for the cheese, shall be the same as the geographical area referred to in Article 7(1), point (c) of Regulation (EU) No 1151/2012 relating to that cheese.
4. The rules referred to in paragraph 1:
- (a) shall only cover the regulation of supply of the product concerned and, where applicable, the raw material and shall have the aim of adapting the supply of that product to demand;
 - (b) shall have effect only on the product and, where applicable, the raw material, concerned;
 - (c) may be made binding for no more than three years and may be renewed after this period, following a new request, as referred to in paragraph 1;
 - (d) shall not damage the trade in products other than those concerned by those rules;
 - (e) shall not relate to any transaction after the first marketing of the product concerned;
 - (f) shall not allow for price fixing, including where prices are set for guidance or recommendation;
 - (g) shall not render unavailable an excessive proportion of the product concerned that would otherwise be available;
 - (h) shall not create discrimination, constitute a barrier for new entrants in the market, or lead to small producers being adversely affected;
 - (i) shall contribute to maintaining the quality and/or the development of the product concerned.
 - (j) shall be without prejudice to Articles 149 and 152(1a).
5. The rules referred to in paragraph 1 shall be published in an official publication of the Member State concerned.
6. Member States shall carry out checks in order to ensure that the conditions laid down in paragraph 5 are complied with, and, where it has been found by the competent national authorities that such conditions have not been complied with, shall repeal the rules referred to in paragraph 1.
7. Member States shall notify the Commission forthwith of the rules referred to in paragraph 1 which they have adopted. The Commission shall inform other Member States of any notification of such rules.
8. The Commission may at any time adopt implementing acts requiring that a Member State repeal the rules laid down by that Member State pursuant to paragraph 1 if the Commission finds that those rules do not comply with the conditions laid down in paragraph 5, prevent or distort competition in a substantial part of the internal market or jeopardise free trade or the attainment of the objectives of Article 39 TFEU. Those implementing acts shall be adopted without applying the procedure referred to in Article 229(2) or (3) of this Regulation.

(22y) Articles 150 and 172 are deleted.

=====

(Parliament's proposal)

'Article 166a

Regulation of supply of agricultural products with a protected designation of origin or protected geographical indication

*1. Without prejudice to Articles 167 and 167a, Member States may, upon the request of a producer organisation or association of producer organisation recognised under Article 152(1) or 161(1) of this Regulation, an interbranch organisation recognised under Article 157(1) ~~or 157(3)~~ **[pending final draft of 157.3]** of this Regulation, a group of operators referred to in Article 3(2) of Regulation (EU) No 1151/2012 or a group of producers referred to in Article 95(1) of this Regulation, **approve**, for a limited period of time, binding rules for the regulation of the supply of agricultural products referred to in Article 1(2) benefiting from a protected designation of origin or from a protected geographical indication under Article 5(1) and (2) of Regulation (EU) No 1151/2012 or under Article 93(1), points (a) and (b) of this Regulation.*

[...]

4. The rules referred to in paragraph 1:

[...]

*(f) shall not allow for price fixing, **in accordance of Article 210 of this Regulation;***

[...]

1.4. Article 208 - "Dominant position"

The status quo of Article 208 excludes the power exercised by a company vis-à-vis suppliers, for the purposes of assessing its dominant position, being limited to the power exercised before competitors, customers and consumers.

The European Parliament presented an amendment where its intention is to clarify that an undertaking could hold a dominant position as a buyer as well as a seller. The key point relates specifically to **"of its suppliers"**. There is great concern about the due diligence and treatment of suppliers by large companies.

This article was already discussed at the trilogue on 24 March, and a more technical discussion took place thereafter. The Commission presented a non-paper saying that there was no need to amend the current wording in the CMO Regulation. The European Parliament said that integrating **"suppliers"** is only clarifying what is already done by the authorities who scrutinise mergers of interbranch organisations.

After an internal consultation with DG Competition, the Commission now considers that it could endorse the European Parliament's concern, with a new slightly different wording, where it clarifies the concept of suppliers vis-à-vis customers. This is not a change, as it would already be implied, but a clarification.

The Presidency considers that, in a spirit of compromise, this proposal can be presented to Members States, with a positive recommendation.

(EP AM. 142)

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

"(26d) Article 208 is replaced by the following:

Article 208

Dominant position

*"For the purposes of this Chapter, "dominant position" means a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained in the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, **of its suppliers or** customers, and ultimately of consumers."*

1.5. 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 hand, because the effective scrutiny is carried out by the Competent 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 29 April trilogue.

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

The Commission has agreed on a deadline of four months to issue such opinion, as proposed by the Parliament.

The Presidency considers that, in a spirit of compromise, the latest proposal by the European Parliament can be presented to Members States, as it allows for rules to be harmonized under Articles 209 and 210, keeping the same level of control that is performed by National Competent Authorities.

(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 the first sub-paragraph of this Article, shall not be prohibited, no prior Commission decision to that effect being required.

2. (new) **Recognised interbranch organisations 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 inter-branch organisation 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.

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).

1.6. Annex X – Point XI – paragraph 1 – Conciliation/mediation in sugar agreements

The European Parliament proposed this amendment as a request from the sector to allow other means of conflict resolution to be added, besides arbitration which is expensive.

On the reference to mediation mechanisms, the Presidency and the Commission don't see the need for them to be mentioned in the legal text, as such mechanisms can be used, even if they are not explicitly referred at this point of the Annex X.

However, for better evidence of the possibility to use such mechanisms, the Commission can agree with the addition proposed by the European Parliament.

The Presidency, in a spirit of compromise, also considers that such reference can be included, as it provides for evidence of better mechanisms to address possible conflicts.

(EP AM. 174)

The European Parliament's proposal (highlighted in grey):

“(33a) In point XI of Annex X, paragraph 1 is replaced by the following:

*1. Agreements within the trade as described in point 6 of Section A of Part II of Annex II shall contain **conciliation and/or mediation mechanisms and** arbitration clauses.”*

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

With regard to Block 1, good progress has been made in the recent weeks, in addressing the European Parliament's proposals, as presented to the CSA. It was possible to move forward in the negotiations, since the European Parliament has also demonstrated openness to address the Council's concerns, particularly in aspects that had initially been considered difficult to accept by the Council.

On the particular case of market exceptional measures, a Commission's proposal for Article 219 is currently being discussed at trilogue and technical level, and will be presented to Member-States afterwards.

In addition, faster progress was made on Article 220 to allow a compromise proposal as follows.

2.1. Article 220 - “Measures concerning animal diseases and plant pests and loss of consumer confidence due to public, animal or plant health risks”

The European Parliament presented a proposal to extend the measures concerning animal diseases to the plant products in case of diseases or pests.

The European Parliament's proposal was very far-reaching, raising some budgetary concerns on both the Commission and the Presidency side.

The Presidency recognised the merit of the proposal, as it would allow the possibility for some vegetable products to have an increased range of possibilities in case of market disturbances due to sanitary problems. However, Presidency considered EP's initial proposal to be too open compared to the status quo, preferring a more specific approach, keeping the positive list of current sectors covered and extending it only to few plant sectors, which can more directly justify this possibility.

The Commission has contributed for this objective and presented a more limited and balanced proposal, maintaining the status quo for animal products, and opening only the possibility to

fruit and vegetables, addressing only the problems resulting from pests, although keeping some concerns on a possible budgetary impact of this new approach.

In this context, the Presidency considers that the European Commission's proposal to include only the fruit and vegetable sector in the positive list is balanced and prudent, and may lead to an increased level of protection for Fruit and Vegetables sector, to meet higher risks resulting from the increased plant protection requirements for the sector. This is a sector that doesn't have intervention measures.

Regarding the questions about the potential budgetary impact, the European Commission's proposal allows for some safeguards in this respect, and these measures are kept on a basis requested by the Member States.

This European Commission's proposal reflects the agreement reached at the latest trilogue on 12 May on the best approach to the initial European Parliament's proposal on Article 220.

The Presidency considers that the European Commission's wording is a good compromise proposal to be presented to the Member States, with a positive recommendation.

(EP AM. 247)

The Commission redrafted the European Parliament's proposal (text cross checked with the status quo - erased and also in bold, highlighted in grey):

"(26m) Article 220 is replaced by the following:

Article 220

*Measures concerning animal diseases **and plant pests** and loss of consumer confidence due to public, animal or plant health risks*

1. The Commission may adopt implementing acts taking exceptional support measures for the affected market in order to take account of:

*(a) restrictions on intra-Union and third-country trade which may result from the application of measures for combating the spread of diseases in animals **or the spread of plant pests**; and*

(b) serious market disturbances directly attributed to a loss in consumer confidence due to public, animal or plant health and disease risks.

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

2. The measures provided for in paragraph 1 shall apply to any of the following sectors:

(-a) fruit and vegetables;

- (a) beef and veal;
- (b) milk and milk products;
- (c) pigmeat;
- (d) sheepmeat and goatmeat;
- (e) eggs;
- (f) poultrymeat;

The measures provided for in point (b) of the first subparagraph of paragraph 1 related to a loss in consumer confidence due to public or plant health risks shall also apply to all other agricultural products except those listed in Section 2 of Part XXIV of Annex I.

*The Commission shall be empowered to adopt delegated acts in accordance with the urgency procedure referred to in Article 228, extending the list of products **referred to** in the first two subparagraphs of this paragraph.*

3. The measures provided for in paragraph 1 shall be taken at the request of the Member State concerned.

*4. The measures provided for in point (a) of the first subparagraph of paragraph 1 may be taken only if the Member State concerned has taken health ~~and veterinary~~, **veterinary and phytosanitary** measures quickly to stamp out the disease **and to monitor, control and eradicate or contain the pest**, and only to the extent and for the duration strictly necessary to support the market concerned.*

5. The Union shall provide part-financing equivalent to 50 % of the expenditure borne by Member States for the measures provided for in paragraph 1.

However, with regard to the beef and veal, milk and milk products, pigmeat and sheepmeat and goatmeat sectors, the Union shall provide part-financing equivalent to 60 % of such expenditure when combating foot-and-mouth disease.

6. Member States shall ensure that, where producers contribute to the expenditure borne by Member States, this does not result in a distortion of competition between producers in different Member States.”

2.2. Package “Trade” – Article 188a “Import of agricultures and agri-food products from third countries” (Political Joint Statement)

Concerns on International Trade issues were addressed at the super trilogue of 26 March.

The Presidency confirmed at that occasion that it shares the Parliament objectives of competitiveness for European producers vis-à-vis their competitors in the international market, which must be addressed under the framework of international institutions and rules.

The Presidency highlighted that the European Union is a net exporter and also depends on its external trade partner's compliance with these rules and agreements. The European Union must prevent grounds for retaliation as a result of unilateral political signals which could result in susceptibility for those trading partners.

In this sense, and as agreed in the super trilogue, the Presidency considers that the best way to address the concerns expressed by the text of Article 188a would be through the Joint Political Statement of the 3 institutions, providing the European Commission with objective and clear guidelines for future action on trade policy.

This declaration should be worked on at political level, and the Presidency has already presented in that sense a draft proposal.

The European Parliament submitted from its side another proposal for a Joint Statement on the eve of the 12 May trilogue, that will be further evaluated and crossed with the first Presidency proposal.

Despite the principle of a Statement agreed on the super trilogue, the European Parliament insists on its intention to maintain Article 188a, and in that sense presented a revised version on 10 May.

This approach of the European Parliament establishes, on the part of the European Union, changes to the rules for importing agri-food products, which are maintained in this latest draft text, and may be interpreted as protectionist measures that go against the rules of the World Trade Organisation and *Codex Alimentarius*.

The Presidency and the European Commission therefore feel that keeping this article is not the best way forward, especially as the CMO does not seem to be the most appropriate legal instrument for this matter.

In doing so, European Parliament intends to anticipate what would be the conclusions of future political action to be defined in the framework of the Statement. It diverges from the approach presented by the Presidency for future policy orientations.

Thus, and as it seems that there is still no alignment on this matter, it was agreed in the trilogue that two possible lines of action regarding this article should be kept and worked out for future presentation in the super trilogue. Two working alternative scenarios are therefore foreseen:

Working alternative 1 - Joint Statement (by Council; European Parliament; European Commission) whose text will address also issues raised by the Parliament in Article 188a, regarding MRL for pesticides in imported products. The Article 188a would be withdrawn by the European Parliament.

Working alternative 2 - Joint Statement (by Council; European Parliament; European Commission) not addressing the MRL issue of Article 188a. The European Parliament would maintain its proposal for an Article 188a.

[Regardless the final solution that will be agreed by both co-legislators and the Commission, there will be a second Joint Statement by the Council and the European Parliament, requesting the European Commission to produce a report as part of a review of future trade policy with third countries.]

In order to set the best way to tackle this 'Trade' topic in the ongoing negotiations, the Presidency presents to the Member States for consideration the two above mentioned working alternatives.

(EP AM. 138)

The European Parliament redrafted its initial proposal:

"(26af) in Chapter III, the following article is added:

Article 188a

Import of agricultures and agri-food products from third countries

Food and feed of plant and animal origin may only be imported from third countries if they comply with obligations related to the maximum residue levels (MRL) of pesticides in force for food and feed produced in the Union. As soon as possible and by 1 January 2025 at the latest, import tolerances and codex values (CXLs), as defined in Article 6, para 4 of Regulation 396/2005, shall neither be granted nor renewed with respect to active substances non-authorised in the EU due to meeting the cut-off criteria[1] or for reasons related to consumer protection as well as environmental and other similar concerns of a global nature.*

**Substances classified as: mutagenic, carcinogenic, toxic for reproduction or having endocrine disrupting properties as set out in points 3.6.2. to 3.6.5 [3.7??] and 3.8.2 of Annex II to Regulation (EC) No 1107/2009.*