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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Regulation (EC) No 1234/2007 as regards contractual relations in the  
milk and milk products sector**

## **EXPLANATORY MEMORANDUM**

After the Health Check decisions in November 2008, the milk sector went through a deep crisis due to a shift in demand away from dairy products following exceptionally high prices in 2007. To overcome the crisis, safety net tools proved their efficiency in crisis situations. The crisis also showed some shortcomings in the market orientation of the milk sector. The Commissioner for Agriculture and Rural Development therefore decided to create a High Level Experts' Group on Milk (HLG) to work on a regulatory framework to be put in place for the medium and long term, which can contribute to stabilising the market and producers' income and enhance transparency, while respecting the outcome of the Health Check. The HLG met at ten meetings from October 2009 till June 2010 and produced a report on 15 June 2010 accompanied by 7 recommendations.

The HLG has made a thorough evaluation of all the questions and aspects that the proposal seeks to address. The HLG was composed by representatives of all EU Member States, was chaired by the Director-General for Agriculture and Rural Development of the Commission with the attendance of an observer from the European Parliament's secretariat. It obtained oral and written input from major European stakeholder groups in the dairy supply chain: COPA-COGECA, European Milk Board, European Coordination Via Campesina (each representing farmers), European Dairy Association (dairy processors), EUCOLAIT (dairy traders), EUROCOMMERCE (retailers) and BEUC (consumers). Further, the HLG received contributions from invited academic experts, third country representatives (from the USA, New Zealand, Australia and Switzerland), National Competition Authorities and the Commission's services (DG COMP and DG AGRI). A dairy stakeholder conference was also held on 26 March 2010 allowing a wider range of actors in the supply chain to express their views.

The report and recommendations issued by the HLG were examined by the Council and Presidency conclusions were adopted at the meeting of 27 September 2010. Those conclusions urge the Commission to submit by the end of the year its response to the first three recommendations of the HLG (contractual relations, bargaining power of producers and inter-branch organisations) and to rapidly respond to the HLG recommendation on transparency.

One of the key aspects of HLG's work focussed on areas which relate to the structure of the market and the actors in it: contractual relations, bargaining power, producer organisations and inter-branch organisations. The current market structure significantly worsened aspects of the 2009 milk crisis, reflecting the fact that the reform process started significantly later for the dairy sector than for other sectors – essentially only in 2003. The existence for a long period of fixed quotas and high institutional prices, with, in effect, guaranteed outlets for dairy commodities created rigidities in the market. Structural adaptation was often inhibited, actors in the production chain were not stimulated to respond to market signals, including price movements, and there were reduced incentives for innovation or productivity gains. The dairy reform should mirror those in other sectors which have aimed at much more market orientation with "freedom to farm". This should lead to efficiency gains and allow for the EU sector to take advantage of market opportunities, inside and outside the EU.

A number of measures would seem to be necessary in the medium-term, leading up to and after the expiry of the quota regime. The market structure is very different between and within Member States, but often concentration of supply is much lower than concentration at

processing level. This results in an imbalance in bargaining power between these levels. There are also rigidities in the market, with farmers having little choice of dairy (or even of transporters for raw milk). These factors can lead to a serious lack of adaptation of supply to demand and unfair commercial practices. In particular farmers often do not know what price they will receive for their milk when delivering (which is often fixed much later by dairies on a basis wholly out of the farmer's control). On the other hand, for dairies, the volume to be delivered is not always well-planned. The distribution of the added value in the chain is not balanced, especially with regard to farmers, and there is a significant problem of price transmission along the chain.

A key problem seems to be between the farmers and the processors and solutions to remedy the situation would focus at this level. The proposal provides for optional written contracts to be drawn up in advance for deliveries of raw milk by a farmer to a dairy which would include the key aspects of price, the timing and volume of deliveries, and the duration of the contract. In order to take into account the specific nature of cooperatives and not to interfere unnecessarily in current structures, cooperatives would not be required to have contracts on condition that their statutes provide for rules with the same objective.

To rebalance bargaining power, it is further proposed to allow farmers to negotiate such contract terms, including the price, collectively via producer organisations. Whilst current competition law provides for this to some extent, the possibilities are limited in the absence of shared processing facilities and there is a lack of legal certainty. The proposal provides for a legal basis in agricultural law to this end. In order not to destabilise the situation in reverse, a size limit is proposed. It does not affect dairy cooperatives, to the extent that they consist of vertical integration of farmers together with processing facilities.

A further issue arising from the HLG is the role of inter-branch organisations. Unlike producer organisations which only include farmers, those cover part or all of the supply chain: farmers, processors, distributors and retailers. They can potentially play useful roles in research, improvement of quality, promotion and spreading of best practice in production and processing methods. They exist in a few Member States today and carry out these roles whilst respecting EU law. Furthermore, in sectors such as fruit and vegetables, specific EU rules provide for such actions, subject to limits, and often Commission scrutiny. It is proposed to apply the rules on the objectives of IPOs in the fruit and vegetables sector to the dairy sector, with appropriate adaptations, so that hardcore restraints of competition (including price fixing and market partitioning) remain excluded and the agreements concerned are submitted to Commission approval.

They would contribute to improving 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 concluded, and by providing analyses of potential future market developments at regional or national level.

Again with the purpose of improving knowledge of production and following of developments in the market, it is necessary for the Commission to obtain regular information on volumes of raw milk delivered.

In order to further enhance transparency, joint meetings of the experts of the Management Committee for the Common Organisation of Agricultural Markets together with the Advisory Group on Milk will be organised to assess the market situation and prospects, the objective

being to increase awareness as well as reinforce the responsibility of operators in the dairy chain to better take into account market signals and adapt supply to demand.

The present proposal addresses all 4 elements: contractual relations, bargaining power of producers, inter-branch organisations and transparency to the extent that they need an amendment to present provisions.

These solutions are quite significant steps, and whilst justified by the current market situation and structure, they would be temporary and subject to review. The validity of the proposal should be limited to the timeframe needed for milk producers to adapt to the context without production quota and to improve their organisation in view of a more market oriented environment. The intermediate review should in particular see how the proposed provisions have operated, whether they should continue to apply for the rest of the period and examine ways to encourage farmers to enter into joint production agreements.

The proposal is based on the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 42 and Article 43(2) thereof.

Action at EU level is justified since in order to realise the objectives of the common agricultural policy, measures have to be taken in that context in order to ensure equal implementation throughout the Union, whilst maintaining effective competition on the dairy market and ensuring the proper functioning of the internal market. This is particularly the case where the application of EU competition law – an exclusive competence of the Union - to the common agricultural policy is concerned. However, in view of the differentiated situations in the Union as regards contract law, the choice as to whether to make certain elements of the proposal (contracts) compulsory is left to Member States.

EU competition law is an exclusive competence of the Union and individual Member States cannot therefore modify its application to the common agricultural policy, which may only be done under Article 42 TFEU. As regards contractual relations, the proposal leaves a wide margin of appreciation to Member States. However certain minimum standards need to be laid down in order to allow for the proper functioning of the internal market and the common market organisation due to their inherent cross-border nature.

The EU can achieve the objectives better, since the envisaged objectives on competition law cannot be achieved by individual Member States and the necessary minimum standards as regards competition law are needed to ensure the proper functioning of the internal market and the common market organisation.

The proposal respects the proportionality principle. The approach to contractual relations is voluntary at EU level. It is left to the discretion of the Member States whether or not to opt for a compulsory scheme. Only 4 aspects of contracts are regulated at EU level, once a Member State has opted for compulsory application on its territory in order to ensure the proper functioning of the internal market and the common market organisation.

As regards the provisions on strengthening the negotiating power of dairy farmers, a limit of 3.5% of EU milk production is proposed which would allow negotiations between producer organisations of approximately the same size as major dairy processors. A limit of a certain share of national production is also proposed in order to ensure competition in the supply of raw milk at national level. The possibility for the relevant competition authorities to intervene

in necessary and justified individual cases would prevent prejudice to small and medium processors of raw milk in its territory.

Rules on inter-branch organisations are largely inspired by those existing for the fruits and vegetables sector and are merely aimed at ensuring legal certainty for the actions of those organisations.

The addition of an explicit legal basis for Member States to collect information on raw milk deliveries on a monthly basis concerns data in the hands of operators and should not impose a significant burden either on dairy processors or Member States.

In order to further improve supply concentration, producer organisations would also be encouraged, as recommended in the Commission Communication on a better functioning food supply chain in Europe. The current provision to support the setting up and administrative operation of producer groups, which is already available for all sectors in the new Member States under Rural Development Policy, should be extended to also cover the EU-15. However, the possibility to support producer groups in the fruit and vegetable sector should not be allowed as possibilities to support their activities are available under Article 103b-103g of the single CMO. The modification of the relevant provisions is part of the exercise to adapt the basis agricultural regulations to the Lisbon Treaty.

As far as the rest of the recommendations of the HLG are concerned, the issue of "place of farming" discussed by the HLG would be treated as part of the so-called "quality package". Under this new framework, a legal basis for compulsory labelling of place of farming will be introduced for all sectors. This will allow the Commission, following appropriate impact assessments and on a case by case basis, to adopt delegated acts concerning possible mandatory labelling on place of farming at the appropriate geographical level in order to satisfy the consumers' demands for transparency and information. One of the first sectors to be examined will be the dairy sector. The results of the discussions in the Council and Parliament on the Commission proposal for a regulation on the provision of food information to consumers [COM(2008) 40] will be taken in to account.

Possible changes to market instruments, research and innovation would be addressed under the initiative CAP post 2013, in order to broaden the discussion to the wider context of all agricultural products and have a coherent approach.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Council Regulation (EC) No 1234/2007 as regards contractual relations in the milk and milk products sector**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 42 and Article 43(2) thereof,

Having regard to the proposal from the European Commission<sup>1</sup>,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

Whereas:

- (1) Successive reforms of the common market organisation covering milk and milk products, now contained in Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)<sup>4</sup>, have been aimed at market-orientation (i.e. letting price signals guide the decisions of farmers in terms of what and how much to produce) so as to strengthen the competitive situation of the dairy sector and its sustainability in the context of globalised trade. By Council Regulation (EC) No 72/2009 of 19 January 2009 on modifications to the Common Agricultural Policy by amending Regulations (EC) No 247/2006, (EC) No 320/2006, (EC) No 1405/2006, (EC) No 1234/2007, (EC) No 3/2008 and (EC) No 479/2008 and repealing Regulations (EEC) No 1883/78, (EEC) No 1254/89, (EEC) No 2247/89, (EEC) No 2055/93, (EC) No 1868/94, (EC) No 2596/97, (EC) No 1182/2005 and (EC) No 315/2007<sup>5</sup>, ("Health Check" reform of 2008-2009) it was therefore decided that it was necessary to increase quotas gradually in order to ensure a smooth transition to the end of the milk quota system in 2015.
- (2) In 2007-2009, exceptional developments took place in milk and milk products sector markets. Initially, extreme weather conditions in Oceania brought about a significant

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ L 299, 16.11.2007, p. 1.

<sup>5</sup> OJ L 230, 2.9.2009, p. 6.

decline in supplies, leading to a rapid and significant increase in prices. Yet while world supplies had started their recovery, and prices had started to return to more normal levels, the subsequent financial and economic crisis negatively affected EU dairy producers, aggravating price volatility. Initially feed and other input costs including energy increased significantly as a result of higher commodity prices. Subsequently, a drop in worldwide, as well as EU, demand, including for milk and milk products, whilst EU production was stable led to a collapse in EU prices, down to the lower safety net level. This sharp decline in dairy commodity prices failed to fully translate into lower dairy prices at consumer levels, generating a widening in the gross margin of the downstream sectors for most milk and milk sector products and countries, and preventing demand for them to adjust to low commodity prices, slowing down price recovery and exacerbating the impact of low prices on milk producers.

- (3) In October 2009, in light of this difficult market situation for milk, a High Level Expert Group on Milk ("HLG") was set up with the purpose of discussing mid-term and long-term arrangements for the milk and milk products sector, given the expiry of dairy quotas in 2015. While respecting the outcome of the Health Check, the HLG was to work on a regulatory framework to be put in place, to contribute to stabilising the market and producers' income and enhance its transparency.
- (4) The HLG obtained oral and written input from major European stakeholder groups in the dairy supply chain representing farmers, dairy processors, dairy traders, retailers and consumers. Further, the HLG received contributions from invited academic experts, third country representatives, National Competition Authorities and the Commission's services. A dairy stakeholder conference was also held on 26 March 2010 allowing a wider range of actors in the supply chain to express their views. The HLG delivered its report on 15 June 2010, which contained an analysis of the current situation of the dairy sector and number of recommendations.
- (5) The HLG noted that the dairy producing and processing sectors are highly differentiated between Member States. There is also a highly variable situation between operators and types of operators within individual Member States. But concentration of supply is low in many cases with a resulting imbalance in bargaining power in the supply chain between farmers and dairies. This imbalance can lead to unfair commercial practices; in particular, farmers do not know what price they will receive for their milk when delivering because the price is often fixed much later by dairies on a basis of the obtained added value, which, for non-cooperatives, is often outside of the farmer's control.
- (6) There is a problem of price transmission along the chain, in particular as regards farm-gate prices. Conversely, during 2009 the supply of milk did not react to lower demand. Indeed, in some large producer Member States, in reaction to lower prices, farmers produced more than in the previous year. Value-added in the chain has become increasingly concentrated in the downstream sectors, notably with dairies.
- (7) For dairies, the volume which will be delivered during the season is not always well planned. Even for dairy co-operatives (owned by farmers which possess processing facilities, by which 58% of EU raw milk is processed) there is a potential lack of adaptation of supply to demand: farmers are obliged to deliver all their milk to their co-operative and the co-operative is obliged to accept all the milk.

- (8) The use of formalised, written contracts even containing basic elements made in advance of delivery is not widespread. However, they could increase awareness and reinforce the responsibility of the operators in the dairy chain to better take into account the signals of the market, improve price transmission and adapt supply to demand, as well as help avoid certain unfair commercial practices.
- (9) In the absence of EU legislation on such contracts, Member States may, within their own contract law systems, make the use of such contracts compulsory provided that in doing so EU law is respected and in particular that the proper functioning of the internal market and the common market organisation is respected. Given the diversity of situations across the EU in this context, in the interests of subsidiarity, such a decision should remain with Member States. However, to ensure appropriate minimum standards for such contracts and good functioning of the internal market and the common market organisation, some basic conditions for the use of such contracts should be laid down at EU level. Since some dairy co-operatives may have rules with similar effect in their statutes, in the interests of simplicity they should then be exempted from a requirement for contracts. In order to ensure that any such system is effective where intermediate parties collect milk from farmers to deliver to processors, it should apply equally in such a case.
- (10) Article 42 of Treaty on the Functioning of the European Union (TFEU) provides that EU rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the European Parliament and the Council within the framework of Article 43(2) TFEU, which itself provides for the adoption of a common market organisation for agricultural products.
- (11) In order to ensure the rational development of production and so to ensure a fair standard of living for dairy farmers, their bargaining power vis-à-vis processors should be strengthened which should result in a fairer distribution of value-added along the supply chain. Therefore, in order to realise these objectives of the common agricultural policy, a provision should be adopted pursuant to Articles 42 and 43(2) TFEU to allow producer organisations constituted by dairy farmers or their associations to negotiate contract terms, including price, jointly for some or all of its members' production with a dairy. In order to maintain effective competition on the dairy market, this possibility should be subject to appropriate quantitative limits. Such producer organisations should therefore also be eligible for recognition under Article 122 of Regulation (EC) No 1234/2007. The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of the conditions for approval of associations of producer organisations.
- (12) Rules have been introduced at EU level for interbranch organisations in some sectors. These organisations can play useful roles in allowing dialogue between actors in the supply chain, and in promoting best practice and market transparency. Such rules should equally be applied in the milk and milk products sector, along with the provisions clarifying the position of such organisations under competition law whilst ensuring that they do not distort competition or the internal market or affect the good functioning of the common market organisation.
- (13) In order to follow developments in the market, the Commission needs timely information on volumes of raw milk delivered. Article 192 of Regulation (EC) No 1234/2007 provides a basis for the exchange of information between the Member



States and the Commission. However, provision should be made to ensure that processors deliver such information to the Member States on a regular basis. The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of the scope, content, format and timing of such declarations.

- (14) The measures set out in this Regulation, are justified in the current economic circumstances of the dairy market and the structure of the supply chain. They should therefore be applied for a sufficiently long duration (both before and after the abolition of milk quotas) to allow them to have full effect. However, given their far-reaching nature, they should nevertheless be temporary in nature, and be subject to review to see how they have operated and whether they should continue to apply. This should be dealt with in Commission reports on the development of the milk market, and covering in particular potential incentives to encourage farmers to enter into joint production agreements, to be submitted by 30 June 2014 and 31 December 2018.
- (15) The Commission should have the power to adopt delegated acts in accordance with Article 290 TFEU in order to supplement or amend certain non-essential elements of measures set out in this Regulation. The elements for which that power may be exercised should be defined, as well as the conditions to which that delegation is to be subject.
- (16) In order to guarantee a uniform application of measures set out in this Regulation in all Member States, the Commission should be empowered to adopt implementing acts in accordance with Article 291 TFEU. Save where explicitly provided otherwise, the Commission should adopt those implementing acts in accordance with the provisions of Regulation (EU) No [xxxx/yyyy] of the European Parliament and the Council on....
- (17) Regulation (EC) No 1234/2007 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

*Article 1*  
**Amendments to Regulation (EC) No 1234/2007**

Regulation (EC) No 1234/2007 is amended as follows:

- (1) A new Article 4a is inserted:

*"Article 4a*

*Adoption of delegated and implementing acts*

Where powers are conferred upon the Commission, it shall act in accordance with the procedure referred to in Article 196a in the case of delegated acts, and in accordance with the procedure referred to in Article 196b in the case of implementing acts, save where explicitly provided otherwise in this Regulation."

- (2) In point (a) of the first paragraph of Article 122, the following point is inserted after point (iii):

"(iiia) milk and milk products;"

(3) In Article 123, the following paragraph is added :

"4. Member States may also recognise inter-branch organisations which:

- (a) are made up of representatives of economic activities linked to the production of, trade in, or processing 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 one or more of the following activities in one or more regions of the Union, taking into account the interests of consumers:
  - (i) improving 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 or national 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) drawing up standard forms of contract compatible with Union rules;
  - (iv) providing the information and carrying out the research necessary to adjust production towards products more suited to market requirements and consumer tastes and expectations, in particular with regard to product quality and protection of the environment;
  - (v) seeking ways of restricting the use of animal-health products and other inputs;
  - (vi) developing methods and instruments for improving product quality at all stages of production and marketing;
  - (vii) exploiting the potential of organic farming and protecting and promoting such farming as well as designations of origin, quality labels and geographical indications; and
  - (viii) promoting integrated production or other environmentally sound production methods."

- (4) In Chapter II of Title II of Part II, the following Section IIa is inserted :

**"SECTION IIa**  
**PRODUCER ORGANISATIONS IN THE MILK AND MILK PRODUCTS SECTOR**

*Article 126a*

**Contractual negotiations in the milk and milk products sector**

1. Contracts for the delivery of raw milk by a farmer to a processor of raw milk, or to a collector within the meaning of the second subparagraph of Article 185f(1), may be negotiated by a producer organisation in the milk and milk products sector which is recognised under Article 122, on behalf of its farmer members for part or all of their joint production.
2. The negotiation by the producer organisation may take place:
  - (a) whether or not there is a transfer of ownership of the raw milk by the farmers to the producer organisation,
  - (b) whether or not the price negotiated is the same as regards the joint production of some or all of the farmer members,
  - (c) provided that the total volume of raw milk covered by such negotiations by a particular producer organisation does not exceed:
    - (i) 3.5% of total Union production, and
    - (ii) 33% of the total national production of any particular Member State covered by such negotiations by that producer organisation, and
    - (iii) 33% of the total combined national production of all the Member States covered by such negotiations by that producer organisation,
  - (d) provided the farmers concerned are not members of any other producer organisation which also negotiates such contracts on their behalf, and
  - (e) provided that the producer organisation notifies the competent authorities of the Member State or Member States in which it operates.
3. For the purposes of this Article, references to producer organisations shall also cover associations of such producer organisations. In order to ensure that these associations may be appropriately monitored, the Commission may, by means of delegated acts, adopt rules on the conditions for recognition of such associations.
4. For the purposes of applying point (c) of paragraph 2, the Commission shall publish, by the methods it considers appropriate, the amounts of raw milk production in the Union and the Member States using the most up-to-date information available.

5. By way of derogation from paragraph 2(c)(ii) and (iii), even where the threshold of 33% is not exceeded, the competition authority referred to in the second subparagraph may decide in an individual case that the negotiation by the producer organisation may not take place if it considers that this is necessary in order to prevent competition being excluded or in order to avoid serious prejudice to SME processors of raw milk in its territory.

The decision referred to in the first subparagraph shall be taken by the Commission by means of implementing acts without the assistance of the Committee referred to in Article 195(1) for negotiations covering the production of more than one Member State. In other cases it shall be taken by the national competition authority of the Member State the production of which is covered by the negotiations.

The decisions referred to in the first and second subparagraphs shall not apply earlier than the date of their notification to the undertakings concerned.

6. For the purposes of this Article:
  - (a) a "national competition authority" shall be the authority referred to in Article 5 of Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty<sup>6</sup>;
  - (b) a "SME" shall mean a micro, small or medium-sized enterprise within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises<sup>7</sup>."

(5) In Article 175 the words "subject to Articles 176 to 177 of this Regulation" are replaced by the words "subject to Articles 176 to 177a of this Regulation".

(6) The following Article 177a is inserted:

*"Article 177a*

**Agreements and concerted practices in the milk and milk products sector**

1. Article 101(1) TFEU shall not apply to the agreements, decisions and concerted practices of recognised interbranch organisations with the object of carrying out the activities referred to in Article 123(4)(c) of this Regulation.

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<sup>6</sup> OJ L 1, 4.1.2003, p. 1.

<sup>7</sup> OJ L 124, 20.5.2003, p. 36.

2. Paragraph 1 shall apply only provided that:
  - (a) the agreements, decisions and concerted practices have been notified to the Commission;
  - (b) within three months of receipt of all the details required, the Commission, by means of implementing acts without the assistance of the Committee referred to in Article 195(1), has not found that the agreements, decisions or concerted practices are incompatible with Union rules.
3. The agreements, decisions and concerted practices may not be put into effect before the lapse of the period referred to in paragraph 2(b).
4. The following agreements, decisions and concerted practices shall in any case be declared incompatible with Union rules:
  - (a) agreements, decisions and concerted practices which may lead to the partitioning of markets in any form within the Union;
  - (b) agreements, decisions and concerted practices which may affect the sound operation of the market organisation;
  - (c) agreements, decisions and concerted practices which may create distortions of competition which are not essential to achieving the objectives of the common agricultural policy pursued by the interbranch organisation activity;
  - (d) agreements, decisions and concerted practices which entail the fixing of prices;
  - (e) agreements, decisions and concerted practices which may create discrimination or eliminate competition in respect of a substantial proportion of the products in question.
5. If, following expiry of the period referred to in paragraph 2(b), the Commission finds that the conditions for applying paragraph 1 have not been met, it shall, by means of implementing acts without the assistance of the Committee referred to in Article 195(1), 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) Article 179 is replaced by the following:

*"Article 179*

**Implementing powers in respect of agreements and concerted practices**

The Commission may, by means of implementing acts, adopt all necessary measures related to Articles 176a to 178."

- (8) In Article 184, the following point is added:

"(10) to the European Parliament and the Council by 30 June 2014 and by 31 December 2018 on the development of the market situation in the milk and milk products sector and in particular on the operation of point (iiia) of the first paragraph of Article 122 and of Articles 123(4), 126a, 177a, 185e and 185f, covering in particular potential incentives to encourage farmers to enter into joint production agreements together with any appropriate proposals."

- (9) The following Articles 185e and 185f are inserted:

*"Article 185e*

**Compulsory declarations in the milk and milk products sector**

1. Processors of raw milk shall declare to the competent national authority the quantity of raw milk that has been delivered to them each month.
2. In order to ensure the usefulness and timeliness of such declarations for market management purposes, the Commission may, by means of delegated acts, adopt rules on the scope, content, format and timing of such declarations.

*Article 185f*

**Contractual relations in the milk and milk products sector**

1. If a Member State decides that every delivery of raw milk by a farmer to a processor of raw milk must be covered by a written contract between the parties, such contract shall fulfil the conditions laid down in paragraph 2.

In the case described in the first subparagraph, the Member State concerned shall also decide that if the delivery of raw milk is made through one or more collectors, each stage of the delivery must be covered by such a contract between the parties. To this end, a "collector" means an undertaking which transports raw milk from a farmer or another collector to a processor of raw milk or another collector, where the ownership of the raw milk is transferred in each case.

2. The contract shall:
  - (a) be concluded in advance of the delivery,
  - (b) be made in writing, and

- (c) include, in particular, the following elements:
- (i) the price payable for the delivery, which shall:
    - be static and be set out in the contract, and/or
    - vary only on factors which are set out in the contract, in particular the development of the market situation based on market indicators, the volume delivered and the quality or composition of the raw milk delivered,
  - (ii) the volume which may and/or shall be delivered and the timing of deliveries, and
  - (iii) the duration of the contract, which may include an indefinite duration with termination clauses.
3. By way of derogation from paragraph 1, a contract shall not be required where raw milk is delivered by a farmer to a processor of raw milk where the processor is a co-operative of which the farmer is a member if its statutes contain provisions having similar effects as those set out in points (a), (b) and (c) of paragraph 2.
4. All elements of contracts for the delivery of raw milk concluded by farmers, collectors or processors of raw milk, including those elements referred to in paragraph 2(c), shall be freely negotiated between the parties.
5. In order to guarantee a uniform application of this Article, the Commission may, by means of implementing acts, adopt all necessary measures."

(10) In Chapter I of Part VII, the following Articles 196*a* and 196*b* are added:

*"Article 196a*

*Delegated acts*

1. The powers to adopt the delegated acts referred to in this Regulation shall be conferred on the Commission for an indeterminate period of time.  
  
As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
2. The delegation of power referred to in paragraph 1 may be revoked at any time by the European Parliament or by the Council.

The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.

The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

3. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by one month.

If, on the expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the *Official Journal of the European Union* and shall enter into force at the date stated therein.

The delegated act shall be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

#### *Article 196b* *Implementing acts*

Where implementing acts are adopted pursuant to this Regulation, the Commission shall be assisted by the Committee referred to in Article 195 of this Regulation and the procedure provided for in Article [5] of Regulation (EU) No [xxxx/yyyy] shall apply."

- (11) In Article 204, the following paragraph is added :

- "6. As regards the milk and milk products sector, point (iiia) of the first paragraph of Article 122 and Articles 123(4), 126a, 177a, 185e and 185f shall apply until 30 June 2020."

#### *Article 2* **Entry into force**

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States. It shall apply from [...].



Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

<b>FINANCIAL STATEMENT</b>		Indic/10/744996(SM/t m) 6.142.2010.1 DATE: 07/10/2010		
1.	BUDGET HEADING: 05 02 12 943.1	APPROPRIATIONS: Mio €(Budget 2010)		
2.	TITLE: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) N° 1234/2007 (single CMO Regulation) as regards contractual relations in the milk and milk products sector.			
3.	LEGAL BASIS: Art. 42 and 43 of the Treaty on the functioning of the European Union (TFUE)			
4.	AIMS: To rapidly respond to the recommendations of the High Level Group examined by the Council and adopted by the Presidency conclusions on 27 September 2010. This proposal concerns essentially contractual relations, bargaining power of contactors, inter-branch organisations and transparency.			
5.	FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR million)	CURRENT FINANCIAL YEAR 2010 (EUR million)	FOLLOWING FINANCIAL YEAR 2011 (EUR million)
5.0	EXPENDITURE - CHARGED TO THE EU BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER	-	-	-
5.1	REVENUE - OWN RESOURCES OF THE EU (LEVIES/CUSTOMS DUTIES) - NATIONAL	-	-	-
		2012	2013	2014
5.0.1	ESTIMATED EXPENDITURE	-	-	-
5.1.1	ESTIMATED REVENUE	-	-	-
5.2	METHOD OF CALCULATION:			
6.0	CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?			YES NO
6.1	CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?			YES NO
6.2	WILL A SUPPLEMENTARY BUDGET BE NECESSARY?			YES NO
6.3	WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?			YES NO
OBSERVATIONS: The proposed measures which can contribute to stabilize the market and producers' income for the medium and long term have no direct impact on the EU Budget. The changes to Regulation (EC) No 1698/2005 to allow for supporting Producer Organisations in EU-15 were already included in COM(2010) 537				