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THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: 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
COMMON GUIDELINES
Consultation deadline for Croatia: 24.2.2012

REGULATION (EU) No .../2012
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

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 paragraph of Article 42 and Article 43(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 218, 23.7.2011, p. 110.

² OJ C 192, 1.7.2011, p. 36.

³ Position of the European Parliament of 15 February 2012 (not yet published in the Official Journal) and decision of the Council of ...

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)¹, have been aimed at market orientation, that is, 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. It was therefore decided to increase quotas gradually, by adopting 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 315/2007² (the "Health Check" reform of 2008-2009), in order to ensure a smooth phasing out of the milk quota system by 2015.

¹ OJ L 299, 16.11.2007, p. 1.

² OJ L 230, 2.9.2009, p. 6.

- (2) In the period from 2007 to 2009, exceptional developments took place in the milk and milk products sector markets, which ultimately resulted in a price collapse in 2008/09. Initially, extreme weather conditions in Oceania brought about a significant decline in supplies, leading to a rapid and significant increase in prices. Although world supplies started to recover and prices started to return to more normal levels, the subsequent financial and economic crisis negatively affected Union dairy producers, aggravating price volatility. Higher commodity prices resulted in a significant increase in feed and other input costs including energy. Subsequently, a drop in worldwide, as well as Union, demand, including demand for milk and milk products, during a period when Union production remained stable, led Union prices to fall 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, for downstream sectors, a widening in the gross margin for most milk and milk sector products and countries, and preventing demand for them from adjusting to low commodity prices, slowing down price recovery and exacerbating the impact of low prices on milk producers, the viability of many of whom was put at serious risk.

- (3) In response to this difficult market situation for milk, a High Level Expert Group on Milk ("HLG") was set up in October 2009 with the purpose of discussing mid- and long-term arrangements for the milk and milk products sector which, in the context of the end of dairy quotas in 2015, would contribute to stabilising the market and milk producers' incomes and to enhancing transparency in the sector.
- (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. Furthermore, the HLG received contributions from invited academic experts, third country representatives, national competition authorities and from 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. The report contained an analysis of the current state of the dairy sector and a number of recommendations which focused on contractual relations, the bargaining power of producers, interprofessional/interbranch organisations, transparency (including the further elaboration of the European Price Monitoring Tool), market measures and futures, marketing standards and origin labelling, and innovation and research. As a first step, this Regulation addresses the first four of these issues.

- (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. However, in many cases the concentration of supply is low, which results in an imbalance in bargaining power in the supply chain between farmers and dairies. This imbalance can lead to unfair commercial practices; in particular, farmers may not know at the moment of delivery what price they will receive for their milk because frequently the price is fixed much later by dairies on the basis of the added value obtained, which is often beyond the farmer's control.
- (6) There is thus a problem of price transmission along the chain, in particular as regards farm-gate prices, the level of which generally does not evolve in line with rising production costs. Conversely, during 2009, the supply of milk did not adjust promptly to lower demand. Indeed, in some large producer Member States, farmers reacted to lower prices by producing more than in the previous year. Value-added in the dairy chain has become increasingly concentrated in the downstream sectors, especially dairies and retailers, with a final consumer price that is not reflected in the price paid to milk producers. All actors in the dairy chain, including the distribution sector, should be encouraged to collaborate to address this imbalance.

- (7) For dairies, the volume of milk which is delivered to them during the season is not always well planned. Even in the case of dairy cooperatives (which are owned by farmers, possess processing facilities and process 58 % of the Union's raw milk), there is a potential failure to adapt supply to demand: farmers are obliged to deliver all their milk to their cooperative and the cooperative is obliged to accept all that milk.
- (8) The use of formalised written contracts, concluded in advance of delivery containing basic elements is not widespread. However, such contracts may help to reinforce the responsibility of operators in the dairy chain and increase awareness of the need to better take into account the signals of the market, to improve price transmission and to adapt supply to demand, as well as to help to avoid certain unfair commercial practices.

- (9) In the absence of Union legislation concerning such contracts, Member States may, within their own contract law systems, decide to make the use of such contracts compulsory provided that in doing so Union law is respected and in particular that the proper functioning of the internal market and the common market organisation is respected. In view of the diversity of the situations that exist across the Union in relation to contract law, in the interests of subsidiarity, such a decision should remain with Member States. Equal conditions should apply to all deliveries of raw milk on a given territory. Therefore, if a Member State decides that every delivery of raw milk in its territory to a processor by a farmer must be covered by a written contract between the parties, this obligation should also apply to deliveries of raw milk coming from other Member States, but it is not necessary for it to apply to deliveries to other Member States. In accordance with the principle of subsidiarity it should be left to Member States to decide whether to require a first purchaser to make a written offer to a farmer for such a contract.

- (10) In order to ensure appropriate minimum standards for such contracts and to ensure that the internal market and the common market organisation function well, some basic conditions for the use of such contracts should be laid down at Union level. All such basic conditions should, however, be freely negotiated. Nevertheless, in order to strengthen the stability of the dairy market and the outlet for milk producers in certain Member States where the use of extremely short contracts is quite widespread, Member States should be allowed to set a minimum contract duration to be included in such contracts and/or offers. Such minimum duration should however be imposed only on contracts between first purchasers and milk producers or in the offers made by first purchasers to milk producers. Moreover, it should not impair the proper functioning of the internal market and milk producers should be free to opt out or refuse such a minimum duration. Among the basic conditions, it is important that the price payable for the delivery can be set in the contract, at the choice of the contracting parties, as a static price or a price varying depending on defined factors, such as the volume and the quality or composition of the raw milk delivered, without excluding the possibility of a combination of a static price for a certain volume and a formula price for an additional volume of raw milk delivered in a single contract.

- (11) Dairy cooperatives which have in their statutes or in the rules and decisions based thereon provisions with effects similar to those of the basic conditions for contracts laid down in this Regulation should, in the interests of simplicity, be exempted from a requirement that there be a written contract.
- (12) In order to strengthen the effectiveness of the contract-based system set out above, where intermediate parties collect milk from farmers to deliver to processors, Member States should be given the possibility of applying that system also to those intermediaries.
- (13) Article 42 of the Treaty on the Functioning of the European Union (TFEU) provides that Union rules on competition are to 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 establishment of the common organisation of agricultural markets.

- (14) In order to ensure the viable development of production and thus to ensure a fair standard of living for dairy farmers, their bargaining power vis-à-vis dairy processors should be strengthened, thereby resulting 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 Article 42 and Article 43(2) TFEU to allow producer organisations constituted solely of dairy farmers or their associations to jointly negotiate contract terms, including price, for some or all of its members' production, with a dairy. However, only producer organisations which seek and obtain recognition under Article 122 of Regulation (EC) No 1234/2007 should be eligible for to benefit from that provision. In addition, that provision should not apply to recognised producers' organisations, including cooperatives, that process all the raw milk of their members, since no delivery of raw milk to other processors is at stake. Furthermore, provision should be made for the possibility of de facto recognition under this Regulation for existing producer organisations recognised under national law.

- (15) So as not to undermine the effective functioning of cooperatives and for the sake of clarity, it should be specified that, when a farmer's membership of a cooperative entails an obligation, in respect of all or a part of that farmer's milk production, to deliver raw milk, the conditions of which are set out in the cooperative's statutes or in the rules and decisions based thereon, those conditions should not be subject to a negotiation through a producer organisation.
- (16) In addition, in order to maintain effective competition on the dairy market, this possibility should be subject to appropriate limits expressed in terms of a percentage of the Union's production and of the production of any Member State covered by such negotiations. The limit expressed in terms of a percentage of the national production should first apply to the volume of raw milk produced in the producing Member State or in each of the producing Member States. The same percentage limit should also apply to the volume of raw milk delivered to any particular Member State of destination.

- (17) In view of the importance of protected designations of origin (PDO) and protected geographical indications (PGI), notably for vulnerable rural regions, and in order to ensure the value-added and to maintain the quality of, in particular, cheeses benefiting from PDO or PGI, and in the context of the expiring milk quota system, Member States should be allowed to apply rules to regulate the supply of such cheese produced in the defined geographical area. The rules should cover the entire production of the cheese concerned and should be requested by an interbranch organisation, a producer organisation or a group as defined in Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs¹. Such a request should be supported by a large majority of milk producers representing a large majority of the volume of milk used for that cheese and, in the case of interbranch organisations and groups, by a large majority of cheese producers representing a large majority of the production of that cheese. Moreover, these rules should be subject to strict conditions, in particular in order to avoid damage to the trade in products in other markets and to protect minority rights. Member States should immediately publish and notify to the Commission the adopted rules, ensure regular checks and repeal the rules in case of non-compliance.

¹ OJ L 93, 31.3.2006, p. 12.

- (18) Rules have been introduced at Union 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 also be applied in the milk and milk products sector, along with the provisions clarifying the position of such organisations under competition law, provided that the activities of those organisations do not distort competition or the internal market or adversely affect the good functioning of the common organisation of agricultural markets. Member States should encourage all relevant actors to participate in interbranch organisations.
- (19) In order to follow developments in the market, the Commission needs timely information on volumes of raw milk delivered. Therefore, provision should be made to ensure that the first purchaser communicates such information to the Member States on a regular basis and that the Member State notifies the Commission thereof.
- (20) The Commission also needs notifications from Member States with respect to contractual negotiations, recognition of producer organisations and their associations and interbranch organisations, as well as contractual relations in the milk and milk products sector, for the purpose of monitoring and analysing the application of this Regulation, notably with a view to preparing the reports which it should present to the European Parliament and Council on the development of the dairy market.

- (21) 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 period to allow them to have full effect. However, given their far-reaching nature, they should be temporary and be subject to review for the purpose of seeing how they have operated and whether they should continue to apply. This should be dealt with in two Commission reports on the development of the dairy market, covering, in particular, potential incentives to encourage farmers to enter into joint production agreements, to be submitted by 30 June 2014 and by 31 December 2018 respectively.
- (22) The economy of certain disadvantaged regions in the Union depends heavily on milk production. Because of the specific characteristics of these regions, general policies need be adapted to better meet their needs. The common agricultural policy already contains specific measures for those disadvantaged regions. Additional policy measures laid down in this Regulation may contribute to strengthening the position of milk producers in such regions. These effects should however be evaluated in the abovementioned reports on the basis of which, the Commission should, where necessary, submit proposals to the European Parliament and to the Council.

- (23) In order to ensure that the objectives and responsibilities of producer organisations and associations of producer organisations in the milk and milk products sector are clearly defined, the power to adopt delegated acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the conditions for the recognition of transnational producer organisations and transnational associations of producer organisations, the rules on the establishment and the conditions of administrative assistance in the case of transnational cooperation and the calculation of the volume of raw milk covered by negotiations by a producer organisation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (24) In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission. The implementing powers relating to the implementation of conditions for the recognition of producer organisations and their associations and interbranch organisations, the notifications by those organisations of the volume of raw milk covered by negotiations, the notifications to be made by the Member States to the Commission concerning those organisations and the rules for the regulation of supply of cheese benefiting from a PDO or a PGI, detailed rules concerning agreements, decisions and concerted practices in the milk and milk products sector, the content, format and timing of compulsory declarations in that sector, certain aspects of contracts for the delivery of raw milk by farmers and the notification, to the Commission, of options taken by the Member State in this respect should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers¹.

¹ OJ L 55, 28.2.2011, p. 13.

- (25) In the light of the Commission's powers in the field of Union competition policy and given the special nature of those acts, the Commission should decide without applying Regulation (EU) No 182/2011 whether certain agreements and concerted practices in the milk and milk products sector are incompatible with Union competition rules, whether the negotiations by a producer organisation relating to more than one Member State may take place and whether certain rules laid down by the Member States to regulate the supply of such cheese with a PDO or a PGI should be repealed.
- (26) 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 hereby amended as follows:

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

"(iiia)and milk products;".
- (2) In Article 123, the following paragraph is added:

"4. Member States may also 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: 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 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;

- (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 value-added products 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."

(3) In Chapter II of Title II of Part II, the following Section is inserted:

"Section IIA

Rules concerning producer organisations and interbranch organisations in the milk and milk products sector

Article 126a

Recognition of producer organisations and their associations in the milk and milk products sector

1. Member States shall recognise as producer organisations in the milk and milk products sector all legal entities or clearly defined parts of legal entities applying for such recognition, provided that:
 - (a) they meet the requirements laid down in points (b) and (c) of the first paragraph of Article 122;

- (b) they have a minimum number of members and/or cover a minimum volume of marketable production, to be laid down by the Member State concerned, in the area where they operate;
 - (c) there is sufficient evidence that they can carry out their activities properly, both over time and in terms of effectiveness and concentration of supply;
 - (d) they have a statute that is consistent with points (a), (b) and (c) of this paragraph.
2. In response to an application, Member States may recognise an association of recognised producer organisations in the milk and milk products sector if the Member State concerned considers that this 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 paragraph 1.
3. Member States may decide that producer organisations which have been recognised before ...^{*} on the basis of national law and which fulfil the conditions laid down in paragraph 1 of this Article are to be considered to be recognised as producer organisations pursuant to point (iiia) of point (a) of the first paragraph of Article 122.

Producer organisations which have been recognised before ...^{*} on the basis of national law and which do not fulfil the conditions laid down in paragraph 1 of this Article may continue to exercise their activities under national law until ...^{**}.

^{*} OJ: please insert date of entry into force of this Regulation.

^{**} OJ: please insert the date six months after the date of entry into force of this Regulation.

4. Member States shall:

- (a) decide whether to grant a recognition to a producer 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 ascertain that recognised producer organisations and associations of producer organisations are complying with the provisions of this Chapter;
- (c) in the event of non-compliance or irregularities in the implementation of the measures provided for in this Chapter, impose on those organisations and associations the applicable penalties they have laid down and decide whether, if necessary, recognition should be withdrawn;
- (d) inform the Commission once a year, and no later than 31 March, of every decision to grant, refuse or withdraw recognition which they have taken during the previous calendar year.

Article 126b

Recognition of interbranch organisations in the milk and milk products sector

1. Member States may recognise interbranch organisations in the milk and milk products sector provided that such organisations:
 - (a) meet the requirements laid down in Article 123(4);
 - (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 Article 123(4)(a);
 - (d) do not themselves engage in the production of processing of or the trade in products in the milk and milk products sector.
2. Member States may decide that interbranch organisations which have been recognised before ...^{*} on the basis of national law and which fulfil the conditions laid down in paragraph 1 are to be considered to be recognised as interbranch organisations under Article 123(4).

^{*} OJ: please insert date of entry into force of this Regulation.

3. Where Member States make use of the option to recognise an interbranch organisation in accordance with paragraph 1 and/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 decide whether, if necessary, recognition should be withdrawn;
 - (d) withdraw recognition if:
 - (i) the requirements and conditions for recognition laid down in this Article are no longer met;

- (ii) the interbranch organisation engages in any of the agreements, decisions and concerted practices referred to in Article 177a(4), 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 Article 177a(2);
- (e) inform the Commission once a year and no later than 31 March of every decision to grant, refuse or withdraw recognition taken during the previous calendar year.

Article 126c

Contractual negotiations in the milk and milk products sector

1. A producer organisation in the milk and milk products sector which is recognised under Article 122, may negotiate on behalf of its farmer members, in respect of part or all of their joint production, 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).

2. The negotiations 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, for a particular producer organisation:
 - (i) the volume of raw milk covered by such negotiations does not exceed 3,5 % of total Union production, and
 - (ii) the volume of raw milk covered by such negotiations which is produced in any particular Member State does not exceed 33 % of the total national production of that Member State, and
 - (iii) the volume of raw milk covered by such negotiations which is delivered in any particular Member State does not exceed 33 % of the total national production of that Member State;

- (d) provided that the farmers concerned are not members of any other producer organisation which also negotiates such contracts on their behalf; however, Member States may derogate from this condition in duly justified cases where farmers hold two distinct production units located in different geographic areas;
 - (e) provided that the raw milk is not covered by an obligation to deliver arising from the farmer's membership of a cooperative in accordance with the conditions set out in the cooperative's statutes or the rules and decisions provided for in or derived from these statutes; and
 - (f) provided that the producer organisation notifies the competent authorities of the Member State or Member States in which it operates of the volume of raw milk covered by such negotiations.
3. Notwithstanding the conditions set out in points (ii) and (iii) of point (c) of paragraph 2, a producer organisation may negotiate pursuant to paragraph 1, provided that, with regard to that producer organisation, the volume of raw milk covered by the negotiations which is produced in or delivered in a Member State having a total annual raw milk production of less than 500 000 tonnes does not exceed 45 % of the total national production of that Member State.

4. For the purposes of this Article, references to producer organisations shall also include associations of such producer organisations.
5. For the purposes of applying point (c) of paragraph 2 and paragraph 3, the Commission shall publish, by such means as it considers appropriate, the amounts of raw milk production in the Union and the Member States using the most up-to-date information available.
6. By way of derogation from point (c) of paragraph 2 and paragraph 3, even where the thresholds set out therein are not exceeded, the competition authority referred to in the second subparagraph of this paragraph may decide in an individual case that a particular negotiation by the producer organisation should either be reopened or should not take place at all if it considers that this is necessary in order to prevent competition being excluded or in order to avoid seriously damaging SME processors of raw milk in its territory.

For negotiations covering more than one Member State, the decision referred to in the first subparagraph shall be taken by the Commission without applying the procedure referred to in Article 195(2) or Article 196b(2). In other cases, that decision shall be taken by the national competition authority of the Member State to which the negotiations relate.

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

7. For the purposes of this Article:
 - (a) a "national competition authority" means the authority referred to in Article 5 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 of the Treaty*;
 - (b) an "SME" means 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**.
8. The Member States in which negotiations take place in accordance with this Article shall notify the Commission of the application of point (f) of paragraph 2 and paragraph 6.

Article 126d

Regulation of supply for cheese with a protected designation of origin or protected geographical indication

1. Upon the request of a producer organisation recognised under point (a) of the first paragraph of Article 122, an interbranch organisation recognised under Article 123(4) or a group of operators referred to in Article 5(1) of Regulation (EC) No 510/2006, Member States may lay down, for a limited period of time, binding rules for the regulation of the supply of cheese benefiting from a protected designation of origin or from a protected geographical indication under Article 2(1)(a) and (b) of Regulation (EC) No 510/2006.
2. The rules referred to in paragraph 1 shall comply with the conditions set out in paragraph 4 and shall be subject to the existence of a prior agreement between the parties in the geographical area referred to in Article 4(2)(c) of Regulation (EC) No 510/2006. Such an agreement shall be concluded 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 the cheese referred to in paragraph 1 and, if appropriate, at least two-thirds of the producers of that cheese representing at least two-thirds of the production of that cheese in the geographical area referred to in Article 4(2)(c) of Regulation (EC) No 510/2006.

3. 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 4(2)(c) of Regulation (EC) No 510/2006 related to that cheese.
4. The rules referred to in paragraph 1:
 - (a) shall only cover the regulation of supply of the product concerned and shall have the aim of adapting the supply of that cheese to demand;
 - (b) shall have effect only on the product concerned;
 - (c) may be made binding for no more than three years and be renewed after this period, following a new request, as referred to in paragraph 1;
 - (d) shall not damage the trade of products other than those concerned by the rules referred to in paragraph 1;

- (e) shall not relate to any transaction after the first marketing of the cheese 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 Article 126c.
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 4 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 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 4, 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 195(2) or Article 196b(2).

Article 126e

Commission powers in relation to producer organisations and interbranch organisations in the milk and milk products sector

1. In order to ensure that the objectives and responsibilities of producer organisations and associations of producer organisations in the milk and milk products sector are clearly defined, so as to contribute to the effectiveness of the actions of such organisations without imposing an undue burden, the Commission shall be empowered to adopt delegated acts in accordance with Article 196a which lay down:
 - (a) the conditions for recognising transnational producer organisations and transnational associations of producer organisations;
 - (b) rules relating to the establishment and the conditions of administrative assistance to be given by the relevant competent authorities in the case of transnational cooperation;
 - (c) additional rules regarding the calculation of the volume of raw milk covered by the negotiations referred to in Article 126c(2)(c) and (3).
2. The Commission may adopt implementing acts laying down detailed rules necessary for:
 - (a) the implementation of the conditions for recognition of producer organisations and their associations and interbranch organisations set out in Articles 126a and 126b;

- (b) the notification referred to in Article 126c(2)(f);
- (c) the notifications to be made by the Member States to the Commission in accordance with Article 126a(4)(d), Article 126b(3)(e), Article 126c(8) and Article 126d(7);
- (d) the procedures relating to administrative assistance in the case of transnational cooperation.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 196b(2).

* OJ L 1, 4.1.2003, p. 1. Editorial note: The title of Regulation (EC) N° 1/2003 has been adjusted to take account of the renumbering of the articles of the Treaty establishing the European Community, in accordance with Article 5 of the Treaty of Lisbon; the original reference was to Articles 81 and 82 of the Treaty.

** OJ L 124, 20.5.2003, p. 36."

(4) 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".

(5) The following Article is inserted:

"Article 177a

Agreements, decisions 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 for the purpose of carrying out the activities referred to in Article 123(4)(c) of this Regulation.
2. Paragraph 1 shall only apply if:
 - (a) the agreements, decisions and concerted practices have been notified to the Commission; and
 - (b) within three months of receipt of all the details required, the Commission, without applying the procedure referred to in Article 195(2) or Article 196b(2), 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 period referred to in point (b) of paragraph 2 elapses.

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 in any form within the Union;
 - (b) may affect the sound operation of the market organisation;
 - (c) may create distortions of competition and are not essential to achieving the objectives of the common agricultural policy pursued by the interbranch organisation activity;
 - (d) entail the fixing of prices;
 - (e) may create discrimination or eliminate competition in respect of a substantial proportion of the products in question.
5. If, after the period referred to in point (b) of paragraph 2 has expired, the Commission finds that the conditions for applying paragraph 1 have not been met, it shall, without applying the procedure referred to in Article 195(2) or Article 196b(2), 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 has abused the exemption provided for in paragraph 1 of this Article.

6. In the case of multiannual agreements, the notification for the first year shall be valid for the subsequent years of the agreement. However, the Commission may, on its own initiative or at the request of another Member State, issue a finding of incompatibility at any time.
7. The Commission may adopt implementing acts laying down 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 196b(2)."

(6) Article 184 is amended as follows:

(a) point 6 is replaced by the following:

"6) before 31 December 2010 and 31 December 2012 to the European Parliament and Council regarding the evolution of the market situation and the consequent conditions for smoothly phasing out the milk quota system, accompanied, if necessary, by appropriate proposals;"

(b) the following point is added:

"9) by 30 June 2014 and by 31 December 2018 to the European Parliament and the Council regarding the development of the market situation in the milk and milk products sector and in particular on the operation of point (iiia) of point (a) of the first paragraph of Article 122, of Article 123(4) and of Articles 126c, 126d, 177a, 185e and 185f, assessing, in particular, the effects on milk producers and milk production in disadvantaged regions in connection with the general objective of maintaining production in such regions, and covering potential incentives to encourage farmers to enter into joint production agreements together with any appropriate proposals."

(7) The following Articles are inserted:

"Article 185e

Compulsory declarations in the milk and milk products sector

From 1 April 2015, the first purchasers of raw milk shall declare to the competent national authority the quantity of raw milk that has been delivered to them each month.

For the purpose of this Article and of Article 185f, a "first purchaser" means an undertaking or group which buys milk from producers in order to:

(a) subject it to collecting, packing, storing, chilling or processing, including under a contract;

- (b) sell it to one or more undertakings treating or processing milk or other milk products.

Member States shall notify the Commission of the quantity of raw milk referred to in the first subparagraph.

The Commission may adopt implementing acts laying down rules on the content, format and timing of such declarations and measures relating to the notifications to be made by the Member States in accordance with this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 196b(2).

Article 185f

Contractual relations in the milk and milk products sector

1. If a Member State decides that every delivery of raw milk in its territory by a farmer to a processor of raw milk must be covered by a written contract between the parties and/or decides that first purchasers must make a written offer for a contract for the delivery of raw milk by the farmers, such a contract and/or such an offer for a contract shall fulfil the conditions laid down in paragraph 2.

Where the Member State decides that deliveries of raw milk by a farmer to a processor of raw milk must be covered by a written contract between the parties, it shall also decide which stage or stages of the delivery shall be covered by such a contract if the delivery of raw milk is made through one or more collectors. For the purposes of this Article, 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 and/or the offer for a contract shall:

- (a) be made 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
 - be calculated by combining various factors set out in the contract, which may include market indicators reflecting changes in market conditions, the volume delivered and the quality or composition of the raw milk delivered,

- (ii) the volume of raw milk which may and/or must be delivered and the timing of such deliveries,
 - (iii) the duration of the contract, which may include either a definite or an indefinite duration with termination clauses,
 - (iv) details regarding payment periods and procedures,
 - (v) arrangements for collecting or delivering raw milk, and
 - (vi) rules applicable in the event of force majeure.
3. By way of derogation from paragraph 1, a contract and/or an offer for a contract shall not be required where raw milk is delivered by a farmer to a cooperative of which the farmer is a member if the statutes of that cooperative or the rules and decisions provided for in or derived from these statutes contain provisions having similar effects to the provisions 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 the elements referred to in paragraph 2(c), shall be freely negotiated between the parties.

Notwithstanding the first subparagraph,

- (i) where a Member State decides to make written contracts for the delivery of raw milk compulsory in accordance with paragraph 1 of this Article, it may establish a minimum duration, applicable only to written contracts between a farmer and the first purchaser of raw milk. Such a minimum duration shall be at least six months and shall not impair the proper functioning of the internal market; and/or
- (ii) where a Member State decides that the first purchaser of raw milk must make a written offer for a contract to the farmer in accordance with paragraph 1, it may provide that the offer must include a minimum duration for the contract, set by national law for this purpose. Such a minimum duration shall be at least six months and shall not impair the proper functioning of the internal market.

The second subparagraph shall be without prejudice to the farmer's right to refuse such a minimum duration provided that he does so in writing. In this case, the parties shall be free to negotiate all elements of the contract, including those elements referred to in paragraph 2(c).

5. The Member States which make use of the options referred to in this Article shall notify the Commission of how they are applied.
6. The Commission may adopt implementing acts laying down measures necessary for the uniform application of points (a) and (b) of paragraph 2 and paragraph 3 of this Article and measures relating to notifications to be made by the Member States in accordance with this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 196b(2)."

(8) In Chapter I of Part VII, the following Articles are added:

"Article 196a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 126e(1) shall be conferred on the Commission for a period of five years from ...^{*}. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

^{*} OJ Please insert the date of entry into force of this Regulation.

3. The delegation of power referred to in Article 126e(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 126e(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 196b

Committee procedure

1. The Commission shall be assisted by a committee which shall be referred to as the Committee for the Common Organisation of Agricultural Markets. That committee is a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers^{*}.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

^{*} OJ L 55, 28.2.2011, p. 13."

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

"7. As regards the milk and milk products sector, point (iiia) of point (a) of the first paragraph of Article 122, Article 123(4) and Articles 126a, 126b, 126e, and 177a shall apply from^{*} ... until 30 June 2020 and Articles 126c, 126d, 185e and 185f shall apply from ...^{**} until 30 June 2020."

^{*} OJ: please insert date (entry into force of this Regulation).

^{**} OJ: please insert date (6 months following the entry into force of this Regulation).

Article 2
Entry into force

1. This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall apply from ...^{*}.

However, Articles 126c, 126d, 185e and 185f of Regulation (EC) No 1234/2007, as inserted by this Regulation, shall apply from ...^{**}.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at,

For the European Parliament
The President

For the Council
The President

^{*} OJ: please insert date of entry into force of this Regulation.

^{**} OJ: please insert date of 6 months after the entry into force of this Regulation.