



**COUNCIL OF
THE EUROPEAN UNION**

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AGRIORG 130
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DELECT 42**

NOTE

from: General Secretariat
to: Special Committee on Agriculture

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Subject: Commission delegated Regulation (EU) No .../... of 28.6.2012 supplementing Council Regulation (EC) 1234/2007 as regards transnational cooperation and contractual negotiations of producer organisations in the milk and milk products sector
- Comments from the German delegation

In view of the meeting of the Special Committee on Agriculture on 3 September 2012, delegations will find attached comments from the DE delegation on the above mentioned Commission's delegated Regulation.

Commission delegated Regulation supplementing Council Regulation (EC) No 1234/2007 as regards transnational cooperation and contractual negotiations of producer organisations in the milk and milk products sector

12020/12 AGRI 453 AGRIORG 110 AGRILEG 100 DELACT 30

On 16 July 2012 the Council decided to extend the period for raising objections to the above delegated Regulation by two months, pursuant to the second sentence of Article 196a(5) of Regulation (EC) No 1234/2007 (12353/12). At the Special Committee on Agriculture meeting on 9 July 2012, the Presidency announced that it would be returning to the issue early in September 2012. This being the case, Germany wishes to state its position on the delegated Regulation, as follows:

We have no objection to the content of the delegated Regulation and we support the Presidency in its desire to reach a Council opinion on the delegated Regulation in good time.

However, we should like to have clarification, in principle, as to whether parts of Article 2 of the delegated Regulation are sufficiently covered by the powers delegated to the Commission. Article 2(1)(a) lays down which Member State is responsible for recognising transnational producer organisations. Article 2(1)(c) provides that the Member State of recognition should provide other Member States with relevant information on the producer organisation, on request.

We take the view that Article 2(1)(a) and (c) of the delegated Regulation constitute implementing law and should therefore be contained in the Commission legislation implementing the milk package (Regulation (EU) No 511/2012). We have already put this view during the consultations on the two Regulations at the Commission.

Since this is a question of principle which might arise in the context of other legislation, and since the Council Legal Service has already looked into the distinction between Articles 290 and 291 of the TFEU several times (in particular in its opinion of 11 April 2011 (8970/11)), we suggest that the Council Legal Service should also give an opinion on the question raised here.

Our concerns arise from the following considerations in particular:

If we consider the powers delegated to the Commission in Article 126e of Regulation (EC) No 1234/2007, paragraph 1(a) provides for delegated Regulations to lay down "conditions for recognising transnational producer organisations and transnational associations of producer organisations". However, paragraphs (1)(a) and (c) of Article 2 of the delegated Regulation do not lay down any recognition criteria applicable to producer organisations. They are targeted more at Member State administrations.

Since Article 126e(1)(c) of Regulation (EC) No 1234/2007 simply lays down methods for calculating the volume of raw milk, it follows that Article 2(1)(a) and (c) of the delegated Regulation can only be based on Article 126e(1)(b) of Regulation (EC) No 1234/2007, which refers to "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." "Establishment of administrative assistance" means that Member States are required to establish administrative assistance. This is laid down in Article 2(1)(b) in conjunction with Article 2(2) and (3) of the delegated Regulation. "Conditions of administrative assistance" means the conditions to be met in order for administrative assistance to be given. This is also regulated – indirectly – in Article 2(1)(b) in conjunction with Article 2(2) and (3) of the delegated Regulation. The most important condition is that the producer organisation must be transnational.

By contrast, paragraphs (1)(a) and (c) of Article 2 of the delegated Regulation deal with questions of administrative procedure, on the one hand assigning responsibility between Member States and on the other requiring relevant information to be forwarded on request.

These administrative questions come within the Commission implementing powers of Article 126e(2)(d) of Regulation (EC) No 1234/2007: "the procedures relating to administrative assistance in the case of transnational cooperation". The reference to "procedures" should be seen in relation to the distinction between delegated and implementing legal acts which is laid down in Articles 290 and 291 TFEU. While delegated legal acts pursuant to Article 290 TFEU are intended to "supplement or amend" the content of legislation, Article 291 TFEU covers the administrative implementation of EU law. The Commission can adopt implementing legal acts to lay down "uniform conditions" for implementation. This includes laying down when a Member State is responsible for implementing EU law, to prevent several Member States, or none, thinking themselves responsible. It also includes the detailed arrangements for administrative cooperation between Member States. These are issues which relate to implementation, not to the content of EU law on producer organisations.

The fact that transnational producer organisations can be recognised does not constitute an amendment to Regulation (EC) No 1234/2007, since that Regulation does not contain any provision restricting membership of such organisations to one state. However, since this question is not regulated in detail in Regulation (EC) No 1234/2007 as regards the milk and milk products sector, the Commission does have legitimate delegated powers to lay down supplementary rules. This does not mean, however, that these powers cover all rules on transnational producer organisations, even though it may seem more practical for all these questions to be dealt with together in one delegated legal act.

Unlike Article 290 TFEU, Article 291(2) TFEU does not provide that it is only legislation which may be implemented by implementing legal acts. It follows that any questions of uniform administrative implementation relating to transnational producer organisations which arise from a delegated legal act can only be dealt under by Commission implementing powers under Article 291(2) TFEU. However, the implementing Regulation already adopted by the Commission (Regulation (EU) No 511/2012) does not as yet contain any rules on the procedure for recognition and monitoring of transnational producer organisations.
