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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1308/2013 and Regulation (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in the educational establishments

Proposal for a COUNCIL REGULATION amending Regulation (EU) No 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products

- Presidency Progress Report

I. INTRODUCTION

1. On 30 January 2014 the Commission submitted the above proposals. The first aims at amending Regulation (EU) No 1308/2013 and Regulation (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in the educational establishments (the "CMO proposal", doc. 5958/14). The second amends Regulation (EU) No 1370/2013 (the "Fixing Regulation", doc. 6054/14).

2. The objective of the proposals is to review the existing school schemes (School Fruit Scheme ("SFS") and the School Milk Scheme ("SMS")) with a view to:
 - unify and consolidate the current separate legal and financial frameworks and increase the visibility of the EU activities in this area;
 - refocus the current set-up towards long-term policy objectives (improving eating habits and promote the consumption of fresh milk and fruit and vegetables), with a view to strengthening the educational dimensions of both schemes. The proposal also aims to contribute to fighting obesity and reconnecting young citizens with food and its source, thus enhancing perceptions of agriculture and its products, the CAP and the EU;
 - increase the efficiency of the spending dedicated to the promotion of the consumption of agricultural products in schools.
3. The **European Parliament** is expected to start its work on the CMO proposal in early autumn, after the electoral recess.
4. The **Economic and Social Committee** and the **Committee of the Regions** were consulted on the CMO proposal on 19 February 2014 and on 7 March 2014 respectively¹.
5. Five **national parliaments** have delivered so far opinions on the application of the principles of subsidiarity and proportionality².
6. The Commission presented the proposals to the Council ("Agriculture and Fisheries") at its session on 17 February 2014.

¹ The Committee of the Regions was consulted on a optional basis by decision of Coreper on 7 March 2014 (see doc. 6784/14).

² See doc. 9676/14 (Spanish Parliament), doc. 9002/14 (Croatian Parliament), doc. 9001/14 (Lithuanian Parliament), doc. 8386/14 (Italian Parliament), doc. 8350/14 and doc. 10625/14 (Portuguese Parliament).

7. The Working Party on Horizontal Agricultural Questions completed its first technical examination of the proposals on 4 April 2014³. Throughout the discussions, delegations raised a number of issues and questions to which the Commission representative replied explaining the Commission position, providing detailed answers and taking note of the comments made. At its meeting on 16 May 2014, the Working Party carried out a second technical examination and also took note of Presidency drafting suggestions (document 9604/14). On 2 June 2014 the Special Committee on Agriculture held an orientation debate on the three key issues identified by the Working Party, namely the legal basis, the scope and the allocation criteria.
8. In parallel with its examination, the Working Party considered the impact assessment accompanying the proposals⁴. From the discussion it emerged that the impact assessment provided solid evidence for each policy option. However, whilst some delegations considered that the choice of option 3 (merging the two schemes) was well-grounded, few preferred option 2 (the adjustment option: to keep the current separate setting but to strengthen the school milk scheme educational dimension and increase the synergies between the two schemes).

II. STATE OF PLAY

9. In the light of these discussions the following main issues have been identified.

³ Meetings on 7 March and 4 April 2014.

⁴ Docs. 6059/14, 6059/14 + ADD 1 and 2. See also the executive summary of the Impact Assessment (doc. 6062/14).

On the legal basis of the proposals

10. Delegations unanimously supported the Council Legal Service's view that Article 43(3) TFEU - and not Article 43(2) TFEU - is the correct legal basis for the fixing of the level of aid. This position is consistent with the earlier opinion delivered by the Council Legal Service on the legal basis of the proposal for the Single CMO Regulation⁵ and with the Council consistent position, including in the CAP reform. In the same vein, most delegations had reserves about the deletion of the fixing of aid provisions from the Council Regulation (EU) No 1370/2013 (Articles 5 and 6) proposed by the Commission. The Commission maintained its position that Article 43(3), as an exception to the codecision procedure, had to be interpreted narrowly.

On the balance between the basic act and the delegated powers (Article 24)

11. Many delegations voiced concerns on the overall balance between the basic act and delegated acts. They considered that some of the issues for which the Commission had proposed to be empowered to adopt delegated acts (for example, how the criteria for the allocation of funds would be applied or the conditions for the transfers of allocations between the two components of the scheme) were essential provisions to be regulated in the basic act. Delegations also pointed out that the issue of the legal basis has an impact on the general architecture of delegated and implementing acts of the proposal.

On the objective and the scope (Article 23)

12. In general, delegations shared the objective of merging the school schemes⁶, thus increasing their efficiency and effectiveness and consolidating the legal and financial framework. They also confirmed the original objectives of the schemes, i.e. the promotion of the consumption of fruit, vegetables and milk, underlying the nutritional benefits for children.

⁵ Doc. 13638/1/11.

⁶ See above on the impact assessment.

13. On the scope, while a few delegations could support a narrow list of eligible products for regular distribution as suggested by the Commission, many others considered the proposed scope unsatisfactory and preferred the scope of the existing schemes. Many of the delegations wishing an extension of the scope, called for dairy products other than drinking milk - notably cheese and yoghurt - to be considered (a number of delegations emphasised the importance of including lactose-free milk, covered by CN code 0404 90). Several delegations also called for processed fruit and vegetables (notably fresh juices). A few also asked for honey, table olives and olive oil to be included. Most delegations considered that these limited requests remained compatible with the objective of the scheme, underlying the need for clear health parameters and for the provisions set out in Annex V of Regulation (EU) N° 1308/2013 - deleted in the Commission's proposal - to be reinserted in the text. They considered that, if needed, this Annex could be adapted to cover also dairy products. For a few delegations, this list of products excluded from the scheme could replace the involvement of national health authorities or make it optional for Member States, thus reducing the administrative burden for national administrations.
14. A number of delegations made it clear that an enlarged scope could not justify an increased budget.
15. On the introduction of mandatory supporting educational measures, as a way to promote the consumption of agricultural products and healthy eating habits of children, most delegations welcomed the proposal.

On the financing provisions (Article 23a)

16. On the financial provisions most delegations could support the amount of the total envelopes for fruit and vegetable, including bananas, and for milk. However a few delegations considered the proposed EU aid for milk (80 million euros for school year) to be inadequate.

17. The notion of portion of fruit, vegetables and milk to be defined by the Commission in a delegated act, together with the level of Union aid to be paid toward the price of it, was a matter of concern for many delegations. The deletion of this notion in the drafting suggestions put forward by the Presidency was considered as a step in the right direction.

18. The criteria for the allocation of Union aid were discussed extensively. Several delegations contested the choice of the criterion of "the historical use of funds under previous schemes for the supply of milk and milk products to children" as one of the two criteria to determine the milk envelope. They considered that it could be detrimental to those Member States that so far had not fully benefited from the school milk scheme or had no historical record having joined the EU only recently. Some delegations contesting this criterion suggested using the same criteria as that used for fruit and vegetables, i.e. the number of children and the degree of development of the regions within a Member State. They stressed that this would further simplify of the scheme. However a number of other delegations considered the criterion of the historical use of funds particularly important to ensure that there would be no disruption in the functioning of the school milk scheme in their Member State. The Presidency noted the Commission intention to further consider the specific situation of Member States such as those that joined the EU very recently and that therefore have no historical record of the use of milk funds.

19. A number of delegations recalled that the relative weight of the criteria was an essential element that should be defined in the basic act rather than in delegated acts, as proposed by the Commission.

20. In response to the call from most delegations to disclose estimates on future national envelopes under the proposed scheme, in order to dispel concerns about the practical consequences resulting from the implementation of the new allocation criteria, the Commission confirmed working on the figures with a view to revert to this issue after the summer break.

21. On the possibility to transfer up to 15% of the indicative allocations from one component of the scheme to the other, delegations expressed a variety of views. While some were happy with the percentage suggested by the Commission, many others called for more flexibility, putting forward different suggestions. A number of delegations recalled that the conditions of the transfer need to be defined in the basic act.
22. On the provision preventing Member States from using Union aid to replace national funds for existing national schemes (Article 23a(5) as modified by the Presidency drafting suggestions), a few delegations maintained their reserve since this wording would not cover the situation in Member States where milk was freely distributed during meals (while an exception allowing this practice is foreseen in the current CMO Regulation).
23. A few delegations insisted on the need to take into account the specificities of small Member States and fix minimum envelopes of aid (as it is now the case of the school fruit scheme). The Commission showed some understanding for their request. Those delegations also considered that these minimum envelopes should be fixed in the basic act and not through delegated acts.

On the administrative burden

24. Several delegations remained to be convinced that the merged scheme would not increase the administrative burden both for national administrations and schools, notably in relation to the mandatory supporting educational measures, the involvement of national health authorities, national strategies, monitoring and reporting, price monitoring or the necessity to prove the added value of EU aid. The Presidency draft suggestions (doc. 9604/14) were considered a step forward in the right direction. Delegations notably called for national strategies to remain simple and for requirements to remain proportionate. The Presidency noted the suggestions made by delegations on how to simplify the determination of the level of Union aid.

III. CONCLUSIONS

- 25 The Presidency has noted the intention of the incoming Italian Presidency's to reflect on the progress made so far on this dossier.
26. In light of the above, the Council is invited to take note of the state of play on this dossier.
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