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"I/A" ITEM NOTE

From:	General Secretariat of the Council
To:	Special Committee on Agriculture / Council
No. prev. doc.:	15242/1/15 REV 1
No. Cion doc.:	6054/14
Subject:	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 – Adoption

1. On 30 January 2014 the Commission submitted the above proposal, based on Article 43(3) TFEU, to the Council in conjunction with the 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 establishments¹. The two proposals have been considered as a package in the Council and have been discussed together.

¹ See "I/A" item note doc. 7154/16.

2. Following several rounds of discussion by the Working Party on Horizontal Agricultural Questions and the Special Committee on Agriculture, the latter, at its meeting on 16 December 2015, approved the Presidency revised text subject to legal linguistic finalisation. The Dutch and Hungarian delegations indicated their intention to vote against while the United Kingdom delegation expressed its intention to abstain.

3. In light of the above, the Special Committee on Agriculture is invited to confirm its agreement and suggest that the Council:
 - approve the draft Council Regulation as set out in document 15436/15 at one of its coming meetings; and
 - have the statements set out in the Annex hereto entered in the minutes of that meeting.

Statements for the minutes

Statement by the German delegation, supported by the Austrian, Bulgarian, Czech, Estonian, Polish and Slovene delegations², regarding the overall negotiations on the

- **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 educational establishments (first reading)**
- **Proposal for a Regulation of the Council amending Regulation (EU) No. 1370/2013 determining measures on fixing certain aids and refunds to the common organisation of the market in agricultural products**

The abovementioned delegations' agreement with the overall compromise that has been reached does not prejudice the ongoing proceedings in Case C-113/14.

Pursuant to the Treaty on the Functioning of the European Union, the Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities (Article 43 (3) TFEU). It is therefore exclusively the responsibility of the Council to lay down such rules.

According to the European Court of Justice's most recent findings (C-124/13, C-125/13), Article 43 (3) TFEU may include measures that are not limited to the fixing and allocation of fishing opportunities provided that they do not entail a policy choice that is reserved to the EU legislature. The abovementioned delegations therefore welcome the fact that the overall compromise now - as called for by the abovementioned delegations - bases the indicative distribution of aid among the Member States on Article 43 (3) TFEU.

² The Dutch delegation supports the elements of this statement that relate to the issue of the legal basis.

However, the abovementioned delegations consider Article 43 (3) TFEU to be in principle the more appropriate legal basis for rules on the transfer of funds from one sector to the other as well. The abovementioned delegations do, however, note that there are different opinions on the matter.

The abovementioned delegations hereby state that a differentiation is to be made between the legal bases (Articles 43 (2) and 43 (3) TFEU) for draft legislation relating to the Common Agricultural Policy - and consequently for the individual measures of the above proposals.

The abovementioned delegations therefore call upon the Council and the European Parliament to ensure that the selection of Article 43 (2) or Article 43 (3) as legal basis is subjected to a thorough and differentiated examination for all future draft legislation.

Declaration of Hungary on the proposals merging the School Fruit and Vegetable Scheme and the School Milk Scheme

In Hungary both the School Fruit and Vegetable Scheme and the School Milk Scheme are very popular and thanks to the legislation actually in force both programmes have substantially developed over the past years.

Throughout the negotiations on the merging of the two schemes Hungary has supported the use of a historical criterion when setting the indicative allocations for both schemes, for the sake of ensuring the fulfilment of the European objectives of the schemes and the effective use of financial resources.

The amendment of Council Regulation (EU) No 1370/2013 divides financial resources between Member States fundamentally based on the number of 6 to 10 year children and taking into account differences in regional development. Only in the milk scheme appears the historical use component as a third criterion.

Therefore Hungary hereby reiterates the importance of the application of the historical use of resources as a criterion when setting the indicative allocations and in particular when setting the final allocations for Member States in both schemes.

Statement by Lithuania regarding:

- **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 educational establishments.**
- **Proposal for a Regulation of the Council amending Regulation (EU) No. 1370/2013 determining measures on fixing certain aids and refunds to the common organisation of the market in agricultural products.**

Lithuania holds its consistent position and considers that budgetary provisions, and in this particular case – approval of the budget of aid scheme, transfers between product groups and criteria of the distribution of aid between Member States – should be adopted by the Council in accordance with the Article 43 (3) of the Treaty on the Functioning of the European Union (TFEU).

In addition, Lithuania is of the opinion that merging of those two schemes does not bring any added value from the perspectives of their effectiveness, simplification and reduction of administrative burden, as these schemes are different in their nature, initial aims, products and channels of distribution. Also we note that both schemes could successfully be continued under the existing regulations.

However, Lithuania has agreed with the overall compromise that has been reached on 16th of December 2015 in order to ensure the continuity of current schemes and smooth implementation of principal objectives of these schemes.

Nevertheless, Lithuania stresses that it should not become a precedent and common practice to use Article 43 (2) TFEU when adopting measures on fixing prices, levies, aid and quantitative limitations in the future.