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From: General Secretariat of the Council
To: Special Committee on Agriculture/Council

Subject: Draft Regulation of the European Parliament and of the Council amending Regulations (EU) No 1308/2013 and (EU) No 1306/2013 as regards the aid scheme for the supply of fruit and vegetables, bananas and milk in educational establishments **(first reading)**
- Adoption of the legislative act (LA + S)
= Statements

Statement by the Commission

With regard to the first subparagraph of Article 23(3) of the compromise text modifying the CMO, insofar as it relates to the school scheme, the Commission confirms that Member States, when prioritising the distribution of products, are not obliged to respect a minimum share or percentage for the products referred to in that same subparagraph.

Statement by Hungary

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

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.

Statement by Germany, Austria, Bulgaria, Czech Republic, Estonia, Poland and Slovenia¹

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.

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.

¹ The Dutch delegation supports the elements of this statement that relate to the issue of the legal basis.