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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Draft Regulation of the European Parliament and of the Council amending Regulations (EU) No 1305/2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), (EU) No 1306/2013 on the financing, management and monitoring of the common agricultural policy, (EU) No 1307/ 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy, (EU) No 1308/ 2013 establishing a common organisation of the markets in agricultural products and (EU) No 652/2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (first reading) - Preparation for the adoption of the legislative act = Statements

Commission statements

Ad Article 1 - Rural development

- **Extension of the duration of rural development programmes**

Expenditure relating to the 2014-2020 rural development programmes approved in accordance with Article 10(2) of Regulation (EU) No 1305/2013 will continue to be eligible for EAFRD contribution if paid to the beneficiaries by latest 31 December 2023. The Commission will address the continuation of support for rural development after 2020 in the context of its proposal for the next MFF.

- **Risk management**

The Commission confirms its intention to review the functioning and efficiency of the risk management tools which are currently included in Regulation (EU) No 1305/2013 in the context of its proposal on the modernisation and simplification of the Common Agricultural Policy.

- **Penalties for Leader**

The Commission confirms its intention to review the effectiveness and proportionality of the penalties for LEADER included in Commission Implementing Regulation (EU) 809/2014.

Ad Article 2 - Horizontal Regulation

- **Crisis reserve**

The Commission confirms that the operation of the reserve for crises in the agricultural sector and the reimbursement of appropriations related to financial discipline as provided for in Articles 25 and 26(5) of Regulation (EU) No 1306/2013 will be reviewed in the context of the preparations for the next MFF with a view to allowing an efficient and timely intervention in times of market crisis.

- **Single audit**

The Commission supports the single audit approach, as confirmed by its proposal for Article 123 of the new Financial Regulation. The Commission also confirms that the current legal framework for the management and control of agricultural expenditure, established by Regulation (EU) No 1306/2013, already allows for such an approach and that this has been taken up in its audit strategy for the 2014-2020 period. In particular, where the opinion of the Certification Body delivered in accordance with Article 9(1) of Regulation (EU) No 1306/2013 is considered reliable, the Commission takes this opinion into account when assessing the need for audits of the paying agency concerned.

Ad Article 3 - Direct payments

- **Protein Plan**

The Commission confirms its intention to review the supply and demand situation for plant proteins in the EU and to consider the possibility of developing a "European plant protein strategy" with a view to further encouraging the production of plant proteins in the EU in an economically and environmentally sound way.

Ad Article 4 - CMO

- **Voluntary production reduction**

The Commission confirms that Regulation (EU) 1308/2013 establishing a common organisation of the markets in agricultural products already contains, in Articles 219 and 221, the necessary legal base allowing it, subject to the availability of budgetary resources, to address market disturbances and other specific problems, including at regional level, with the possibility of granting direct financial assistance to farmers. Moreover, the Commission's proposal to add a sector-specific income stabilisation tool to Regulation (EU) No 1305/2013 on support for rural development will allow Member States to include in their rural development programmes the possibility of compensating farmers in a specific sector in the event of a significant drop in their income.

The Commission further confirms that Article 219 allows it to introduce, in case of market disturbance or threats thereof, schemes under which Union aid is granted to producers who undertake to reduce their production on a voluntary basis, including the necessary details for the operation of such a scheme (Example: Commission Delegated Regulation (EU) No 2016/1612, OJ L 242 of 9/9/2016, p. 4).

- **Recognition of transnational IBOs**

The Commission recalls that rules on producer cooperation of recognising transnational producer organisations, transnational associations of producer organisations or transnational interbranch, including the necessary administrative cooperation between the Member States concerned, are currently laid down in Commission Delegated Regulation (EU) 2016/232. The operation and adequacy of these rules will be reviewed in the context of the ongoing process on the modernisation and simplification of the CAP.

- **Unfair trading practices**

The Commission confirms that it has launched an initiative on the food supply chain which is now proceeding through the various stages required by the Better Regulation guidelines. It will decide on a possible legislative proposal once this procedure has been completed, if possible in the first half of 2018.

- **Producer co-operation**

The Commission takes note of the agreement between Parliament and Council on the amendments to Articles 152, 209, 222 and 232. The Commission notes that the amendments agreed by Parliament and Council are substantial in nature and included without an impact assessment as required by point 15 of the Inter-Institutional Agreement on Better Law-Making. This leads to an unwelcome degree of legal and procedural uncertainty of which the impact and implications are not known.

As the changes to the Commission's original proposal taken together result in a significant change to the legal framework, the Commission notes with concern that some of the new provisions in favour of producers' organisations might have the effect of endangering the viability and wellbeing of small farmers and the interest of the consumers. The Commission confirms its commitment to maintain effective competition in the agricultural sector, and give full effect to the objectives of the CAP laid down in Article 39 of the Treaty on the Functioning of the European Union. In this context, the Commission notes that the amendments agreed by the co-legislators foresee only a very limited role for both the Commission and the national competition authorities to act to preserve effective competition. The Commission's overall agreement on the "Omnibus" proposal, including the amendments agreed by Parliament and Council, is without prejudice to any future proposals the Commission may make in these areas in the context of the reform of the common agricultural policy for the post-2020 period and other initiatives which are specifically meant to address some of the issues touched upon by the text now agreed by the European Parliament and the Council.

The Commission regrets that the issue of the very limited role for both the Commission and the National Competition authorities to act to preserve effective competition has not been addressed in a satisfactory manner by the co-legislators, and expresses concern with the possible implications of this limitation for farmers and consumers. The Commission notes that the legal text must be interpreted in a manner consistent with the Treaty, notably as regards the possibility for the Commission and national competition authorities to intervene if a producer organisation, which covers a large share of the market, seeks to restrict the freedom of action of its members. The Commission regrets that this possibility is not clearly safeguarded in the legal text.

- **The new rules on producer organisations and competition law (CMO)**

The European Parliament recalls that, according to Article 42 of the Treaty on the Functioning of the European Union (TFEU), rules on competition apply to the production of and trade in agricultural products only to the extent determined by the Parliament and the Council, account being taken of the objectives of the Common Agricultural Policy (CAP) as laid down in Article 39 of the same Treaty.

As set out in the treaty, and in accordance with the case law of the Court of Justice of the European Union¹, the objectives of the CAP prevail over those of European competition policy. However, agricultural markets are not exempt from the application of competition law. The adaptation of competition rules to agricultural specificities is the prerogative of the co-legislators, the European Parliament and the Council.

Within this context, the European Parliament by means of this Regulation proposes a clarification of the relationship between CAP rules, in particular the role and the missions of producer organisations and associations of producer organisations, and the application of European competition law. Such a clarification is necessary because of the existing uncertainties regarding the implementation of these rules, and is essential to reach the Union's objective to strengthen farmers' position within the food supply chain. The European Parliament's proposals are based on the recommendations in the Agri-Market Task Force (AMTF) report of 14 November 2016. These recommendations were based on a series of hearings and contributions received from all actors in the food supply chain: producers, processors and retailers.

¹ Judgment *Maizena*, 139/79, EU:C:1980:250, paragraph 23; Judgment *Germany v Council*, C-280/93, EU:C:1994:367, paragraph 61.

The European Parliament aims to simplify and clarify the conditions under which producer organisations or associations of producer organisations in all the sectors listed in Article 1(2) of Regulation 1308/2013 may carry out, on behalf of their members, activities of production planning, placing on the market, negotiation of contracts for the supply of agricultural products and optimisation of production costs. These tasks essentially require the existence of certain practices, including internal consultations and the exchange of commercial information within those entities. It is therefore proposed that these practices fall outside of the scope of the prohibition of anticompetitive agreements, laid down by Article 101(1) of the TFEU, and that producer organisations or associations of producer organisations, carrying out at least one economic activity, benefit from a derogation from the application of this article. However, this derogation is not absolute: competition authorities retain the possibility to intervene if they consider that such activities are likely to exclude competition or jeopardize the objectives of the CAP.

The role and the missions of producer organisations or associations of producer organisations and their relationship with competition law is thus clarified. Without prejudice to the institutional prerogatives of the European Commission, the European Parliament considers that the new rules do not require further clarification in the form of guidelines of the European Commission.