

Initiatives impacting the EU Food Supply Chain



**Producer
organisations**

**Interbranch
organisations**

Contracts

Value sharing

***Presentation Primary Food Processors
28 June 2018***

DG AGRI, Unit G 1 – Governance of Agri-Food markets

Dr. Annette Kliemann

The views expressed in this presentation are personal and do not commit the European Commission



European
Commission

Competition law aspects



Competition law

Article 101 TFEU

*Agreements between undertakings which restrict competition **are prohibited** – in particular cartels between actual or potential competitors to fix price, agree volumes or partition markets or allocate customers.*

Article 102 TFEU

Abuse** of a dominant position is **prohibited (not the dominance as such)

Article 101 TFEU

Agreements between undertakings which lead to a restriction of competition may also cover:

- Joint production agreements
- Joint sales agreements
- Exchange of sensitive information (e.g. on prices and markets or customer information)

- ***Prohibited, unless***

- a **derogation** to the competition rules of the CMO applies
- justification under **Article 101 (3) TFEU**
- the agreements fall under **Competition Block Exemption** Regulations, e.g. Specialisation Block Exemption, *allowing for sales when parties produce together and subject to 20% market threshold.*



Agricultural Derogations

- Article 42 gives **special status** to the agricultural sector: Competition rules apply only to the extent determined by the legislator
- Article 206 CMO: Competition rules apply to the agricultural sector, *unless the CMO states something different*= see derogations in the CMO
- Agriculture is not a competition free zone.
- But special status confirmed by the ECJ that **agricultural objectives take precedence** over competition law objectives

Agricultural Derogations in the CMO

- May apply to producer organisations (POs)/ associations of producer organisations (APOs) and interbranch organisations (IBOs) or only to one of these two groups
- May apply only to recognised POs/ APOs or to farmers associations, even if not recognised
- May apply to ***all*** agricultural sectors, or only to some sectors
- Details see next slides



Recognised POs and recognised IBOs

Different entities with different functions

- POs represent **horizontal cooperations** between farmers, which work together and –under conditions – may plan production and sell products
- Interbranch organisations are **vertical organisations which govern** the chain. IBOs are not allowed to engage in production, processing and trade themselves. But note 162 CMO for olive oil, table olives and tobacco.
- See for more info on interbranch organisations, including Study on IBO 10/16

https://ec.europa.eu/agriculture/producer-interbranch-organisations/interbranch-organisations_en



General CMO Derogations for POS and APOS from Article 101 TFEU

<p>Article 152 CMO Recognised Pos and Recognised APOs, which integrate activities for their members</p>	<p>All agri sectors</p>	<p>Under certain conditions, Ps/APOS may plan production, do contractual negotiations, place on the market and optimise costs (next slides)</p>
<p>Article 209 Farmers, farmers associations, recognised POs/APOs</p>	<p>All agri sectors</p>	<p>Agreements related to the sale and production of agricultural products and joint use of facilities After Omnibus: COM can be asked for an opinion</p>
<p>Article 222 CMO Farmers, farmers associations, recognised POs/APOs</p>	<p>All agri sectors</p>	<p>Crisis management (after Omnibus without 'last resort character')</p>



CMO Derogations for POs/APOs from 101 TFEU

Article	Sector	Measure
Article 125 and Annex I CMO Recognised undertakings and seller associations	Sugar	Agreements within the trade
Article 149 CMO Recognised PO	Milk	Contractual negotiations = Bargaining
Article 150 CMO Recognised PO	PDO PGI Cheese	Supply management
Article 172 CMO Recognised PO	PDO PGI Ham	Supply management

Article 152 CMO after Omnibus

*Explicit derogation from Article 101 TFEU for activities of **recognised** POs and APOs.*

In order to be recognised, PO has to integrate an activity listed in 152 (1) b) CMO

Recognised PO/APO can rely on a derogation from Article 101 (1) TFEU, **provided that**

- PO/APO **genuinely exercises an integrated activity** of its members
- PO/APO **concentrates supply and places products of its members on the market**
- Difference with 169-171 CMO: No market threshold, no efficiency test

Article 152 CMO after Omnibus

*Note: **distinction** between POs which integrate activity and those PO which provide a service pursuing one of the objectives listed in 152 (1) c) CMO*

- *POs which integrate an activity under 152 (1) b) **i-vii**) can rely on the competition derogation*
- *POs which – according to Article 152 (1) b **viii**) integrate a service activity pursuing the objectives of Article 152 (1) c, cannot rely on the competition derogation*

Article 152 CMO after Omnibus

- ❑ *Limited to **recognised** POs/APOs*
- ❑ *Competition should not be excluded*
- ❑ *NCA can intervene to prevent competition from being excluded or if CAP objectives are jeopardised*
- ❑ **Allowed activities, if conditions are fulfilled:**
Production planning, placing on the market, production cost optimisation, contractual negotiations for supply contracts

CMO Derogations for Interbranch organisations

Article	Sector	Measure
Article 210 Recognised IBO	All agri sectors	Agreements, decisions, practices might not be subject to Article 101 TFEU, if notified to the European Commission
Article 222 CMO Recognised IBO	All agri sectors	Crisis management (after Omnibus without 'last resort character')



CMO Derogations for Interbranch organisations

Article 150 CMO Recognised IBO	PDO PGI Cheese	Supply management
Article 167 CMO Recognised IBO	Wine	Supply management by MS upon request of recognised IBO
Article 172 CMO Recognised IBO	PDO PGI Ham	Supply management

Recognised Interbranch organisations

- *Can notify their agreements to the European Commission for approval, see Article 210*
- *Important conditions*
 - **Recognised IBO**
 - **With the object of carrying out the activities in 157 (1) c) CMO**
 - **Suspensory effect, the agreement should not be implemented during/before the COM's investigation (2 months after receipt of full information)**
 - **The agreement should not have any of the effects of 210 (4) CMO**
 - May not lead to market partitioning
 - May not affect the sound operation of the market organisation
 - May not create distortions of competition which are not essential to achieve CAP objectives
 - Not entail price fixing or quota fixing**
 - May not create discrimination or eliminate competition in respect of a substantial proportion of the products in question



European
Commission

Contractualisation

Contractualisation - 148, 168 CMO

- ❑ *Right of a MS to impose written contracts, 148 for milk, 168 CMO for all sectors – without prejudice to Article 125 for the sugar sector*
 - ❑ Contract shall contain certain elements
 - ❑ Parties negotiate these elements freely, but MS may establish minimum duration or – for milk – ask for price/quantity relation
- ❑ ***With Omnibus***: *Right of producer, PO or APO to ask for a written contract, unless his trading partner is a SME, 148 1 a) and 168 1 a) CMO*
- ❑ **For both alternatives**: *Within a coop application only if not statutes which are similar.*

Value sharing 172 a) CMO

- Value sharing mechanism – beyond existing sugar provision now option for all agricultural sectors (Article 172 a)*
- Optional use, no obligation to agree a value sharing mechanism*
- Interbranch organisations can develop standard clauses, but parties free to use or not*