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NOTE

from: French delegation
to: Council

Subject: Memorandum to encourage a responsible organisation of agri-food sectors in the interests of farmers and consumers

Delegations will find attached a note submitted by the French delegation, to be dealt with under "Any other business" at the Council (Agriculture and Fisheries) on 18 and 19 February 2008.

MEMORANDUM
TO ENCOURAGE A RESPONSIBLE ORGANISATION OF AGRIFOOD SECTORS
IN THE INTERESTS OF FARMERS AND CONSUMERS

The reforms of the Common Agricultural Policy that have been undertaken since 1992, like the greater openness of agricultural trade under the auspices of the World Trade Organisation (WTO), subject the agricultural and agrifood sector to constantly intensifying competition and greater exposure to market instability. The prospects for population growth at global level also confirm the seriousness of the problem of food supply and heighten the imperative need for the diversification of outlets. This context underscores the strategic role of the agriculture and agrifood industries.

However, the competitive circumstances prevailing in agriculture's markets are far from being "pure and perfect" competition in which all economic agents have equal access to information and enjoy a level playing field in their trading relationships. The agricultural sector is typified in particular by the high level of risk accepted by farmers and growers, by forms of asymmetry leading to imbalances in dealings that prejudice the upstream segments of supply chains, and by uncertainties as to the quality of products offered to consumers and prices resulting from the clash between supply and demand. The agricultural sector is thus characterized by numerous market weaknesses and flaws that are not conducive to sustainable and effective development of competition beneficial to the consumer.

The common organisations of the market (CMOs) put in place for given products have until now permitted the development of market regulation tools whose effects have been beneficial for all those involved in the relevant supply chain and especially for the actors at production level. On the other hand, policies aimed at facilitating the structuring and stabilisation of vertical and horizontal relations between operators have been less ambitious. For example, inter-branch arrangements such as the economic structuring based on producer organisations (POs) or associations of producer organisations (APOs) have seen only limited and very patchy development, varying widely between regions and industry sectors.

At the same time, the special nature of the agricultural sector has certainly been acknowledged where competition law is concerned, with the aim of facilitating the structuring of a fragmented agricultural sector, but only very limited use has been made of the possibilities offered for adjustment.

At the present time, the tools for the prevention and management of unpredictable natural, technical, health-related and economic hazards need to be developed at each of the appropriate intervention levels. Risks of systemic nature require tools managed at Community level. Risks at the level of the individual agricultural holding require insurance-type mechanisms, with incentives from EU funds managed within the framework of subsidiarity.

But these two levels must be supplemented by **the setting up of a robust organisation of agricultural sectors to ensure the flexible, reliable and effective functioning of supply chains, enabling optimum competitive operation of the markets for food products.**

Economic agents must be able to develop such organisations within a regulatory framework that has been clarified, made more secure and overhauled to allow, as the Treaty provides, adjustment of the competitive conditions applicable to the agricultural sector in order to promote the wellbeing of the consumer with due regard for the interests of each of the links in the relevant supply chains from producer to distributor.

I. A New Context Confirming The Special Nature Of Agricultural Markets

A. An evolving context which affects agricultural markets

Economic analysis¹ shows that the special nature of the agricultural sector recognised at the time of the introduction of the Common Agricultural Policy (CAP), is still relevant.

¹ Cf. for example: INRA, results of 2013 Agriculture Forecasting, Proceedings of the Symposium of 4 October 2007; Application of competition law to agrifood sector, *Revue d'économie rurale* [journal of rural economics] 277-278, September-December 2003 ; *Revue de la Concurrence et de la Consommation* [competition and consumerism journal] no. 148-149 October-December 2006.

The objectives of the CAP, while they may have changed over time, are even more relevant today. Furthermore, new consumer expectations make effective organisation of production and agricultural sectors even more crucial.

The agricultural sector is in fact characterised by numerous factors of uncertainty and market volatility due to **the very nature of the activity: unpredictable** climatic and health-related **hazards**, an **unavoidable time gap between change in demand and response in terms of supply**, making forward-looking strategies problematic for operators, in addition to the frequently **perishable** nature of the products, the extreme **fragmentation** of market supply, the **difficulty of redeploying tangible assets** (long-term crops, for example) or/and **the unavoidable bond between agricultural production and the factor of production, the soil**. Certain agricultural markets also feature major information asymmetries between the various actors in the agricultural supply chain, resulting in biased market signals.

In addition, agricultural production is obliged at the present time to cope with a **high degree of concentration**, downstream in particular, as large retail chains take advantage of their unparalleled buying and negotiating power. This situation is not one of balanced competition but one of commercial inequality prejudicial to production. Moreover, **the series of reforms of the common agricultural policy** undertaken since 1992 have resulted in global market deregulation, while **multilateral trade negotiations** have expanded the openness and geographical scope of competition and put the Community preference under pressure.

Above all, an **ever more difficult economic context** typified by the **increasing frequency** of health, energy and climate-related **crises**, the **unprecedented development of new sectors** making use of agricultural raw materials for non-food purposes, and the **appearance of new international operators** (countries and companies) are increasing the instability of pricing systems and **can have a substantial impact** on product prices, safety and quality, as well as on the viability of supply chains over the long term and/or innovation programmes initiated by individual industry sectors. **The consumer is inevitably exposed to these new risks.**

These factors complicate forward-looking strategies for those involved. They open the door to irrational choices of production likely to worsen price fluctuations or to have negative impacts on the health and environmental quality of the products supplied to the food processing industry or directly to the consumer. The situations of price volatility thus observed in the recent past, which are highly likely to be structural in nature, have highlighted the need for appropriate regulation and contractual strategies aimed at **offering the consumer, over the long term, stable prices along with high levels of quality and safety.**

Therefore, in an economic environment typified by concentration downstream which is less exposed to hazards and activity cycles, there is a need to strengthen **producer organisations**, which provide original solutions for the enhancement of farmers' economic power, and **inter-branch organisations**, which facilitate the implementation of measures to prevent and address the unpredictable hazards affecting their sectors or encourage strategies for innovation.

There is all the more need to encourage **such organisational programmes** because they can facilitate the implementation of instruments that are potentially less costly and more efficient than the tools available for use once the crisis has arisen, including situations where market supply is insufficient. **Lastly, they contribute to the appropriate structuring of agricultural sectors in the interests, over the long term, of the whole community from farmer to consumer.**

It is therefore essential to encourage such a development by adding maximum value to the role and methods for action of such collective organisations, whether they relate to production alone or to inter-branch arrangements. Greater use should be made of the **possibilities for adjustment of competition law** expressly provided for in the legislation in order to facilitate development in this direction.

B- The special nature of agriculture as acknowledged by EU law

The Treaty establishing the European Community has acknowledged and taken into consideration the specific character of the agricultural sector in terms of competition law. However, in actual practice, only a small number of derogation regimes have been established as part of common organisations of the market.

CMOs may thus include provision for derogations from ordinary competition law, as is stated by Articles 175 and 176 of Regulation (EC) No 1234/2007, the “Single CMO Regulation”, notably in connection with the activities of producer organisations and inter-branch organisations. In that regard, the various CMOs have therefore encouraged the development of producer organisations in certain sectors such as fruit and vegetables, tobacco, wine producers, fisheries and aquaculture¹.

Similarly, **the Commission has emphasised the positive role of inter-branch organisations**, referring particularly to the need for sectors to follow changes in institutional market support instruments and the need to regulate supply². EU law expressly provides for the existence, and even the status and prerogatives, of such organisations, especially for sectors covered by “streamlined” CMOs.

II. OPENING UP THE POSSIBILITIES PROVIDED BY CERTAIN CMOs

A. The introduction for all sectors of provisions on producer organisations along the lines of those in some CMOs, keeping room for competition.

CMOs establish special regimes applicable to programmes conducted by producer organisations, authorising more or less extensive forms of cooperation and coordination, according to case, for the application of economic organisational arrangements.

Provision is made for the existence of producer organisations (or operator organisations) in several CMOs without any precise details of how are they are to function (hops and olive oil sectors), or **with a definition of their objectives, competencies and recognition regime** (the wine, tobacco, fruit and vegetables and banana sectors)³. And lastly, **the possibility of rule extension** is provided for in the tobacco, fruit and vegetable and banana sectors.

In the fruit and vegetable sector, according to the unvarying interpretation of the inspection departments of the EAGGF, now the EAGF, **POs are to take responsibility for marketing the products of their members, without any requirement of transfer of ownership of those products**. Furthermore, **associations of POs in the fruit and vegetables sector are empowered** by CMO provisions (Article 5 of Council Regulation (EC) No 1182/2007, as detailed in its implementing instrument) **to carry out all or part of the tasks assigned to POs**, including the placing of products on the market and laying down sales disciplines, with no obligation for such APOs to transfer ownership of the products concerned or to ensure their sale.

Other than for the few products referred to above, most forms of agricultural production do not benefit from measures encouraging the grouping of supply through producer organisations. While Article 124(1) of Regulation (EC) No 1234/2007, the “Single CMO Regulation”, authorises Member States to recognise producer organisations under their national legislation, it does not say what regime applies to them where competition is concerned.

That is why the introduction of Community provisions clarifying this regime for all products, along the lines of the existing provisions benefiting POs and Associations of POs in the fruit and vegetables sector, while leaving, for the consumer’s benefit, sufficient room for competition on the market concerned, would provide the security that is essential, as well as giving strong encouragement to the efforts being made in certain sectors to group market supply.

¹ Cf. Council Regulations (EC) No 1182/2007, No 2077/92, No 1493/99 and No 104/2000.

² Cf. Communication of the Commission to the Council dated 26 October 1990.

³ Cf. Council Regulations (EC) Nos 1182/2007 and 2075/92.

B- The provision of the various sectors with legal and financial levers to ensure better market stabilisation

Not all CMOs are equally explicit on the concept of inter-branch organisation. Some put in place a regime allowing derogations from competition law and provide for the means of financing their activities.

This Community framework thus allows an inter-branch organisation **to implement measures to regulate the volumes of product placed on the market** (in the wine sector), or puts in place a **derogation from Article 1 of Regulation (EC) No 1184/2006, subject to strictly defined conditions** that may themselves vary (in the tobacco, fresh fruit and vegetables, fisheries and aquaculture sectors). It also **makes certain rules compulsory by extension** (in the tobacco, fruit and vegetables, banana, fisheries and aquaculture sectors) or **lays down the terms for purchase of products under inter-branch agreements** without the inter-branch structure in fact being defined (in the sugar sector¹).

Finally, **Community rules allow for the concentration and coordination of supply and the marketing of the produce of members** in the tobacco and olive oil sectors or **for the financing of their activities by means of contributions freely determined** by the relevant trade groups, and **subsequently made compulsory** by extension by the authorities (tobacco, fresh fruit and vegetables, fisheries and aquaculture sectors).

In any sector not covered by a CMO, Member States are offered the possibility of recognising inter-branch organisations (Article 124(1), Regulation (EC) No 1234/2007, previously quoted) but without conferring upon them any particular status with regard to competition law. However, the successive CAP reforms since 1992, especially the introduction of the decoupled aid destined for general application, and the adoption of a single CMO, amount to going back on the sectoral approach initially adopted by the Commission in this area.

This context confers legitimacy on the emergence of a coherent Community regulatory framework setting out the precise regime applicable to inter-branch organisations while at the same time allowing an adequate level of competition to be maintained. This approach could take the following form:

- **Harmonisation of practices** already authorised by certain CMOs, taking as a model the existing formulation most favourable to sector organisation.
- **Provision of the various sectors with appropriate legal levers** allowing them to stabilise markets more effectively. The aim would be to encourage a good fit between supply and demand through appropriate volumes and to implement instruments to help structure the sectors concerned and prevent or manage unpredictable hazards, along with the development of standard contracts. Finally, this approach should encourage strategies for research and experimentation.
- **The financing of the activities of inter-branch organisations** by means of contributions freely determined by the professionals in the industry.
- **The possibility for the Authorities to extend** the disciplines and contributions decided upon in order to carry out the above tasks, as is already provided for in some CMOs.

The provisions required to achieve the proposed policy changes in terms of the organisation both of production and inter-branch cooperation could be introduced in the various sections of the “Single CMO Regulation” and the remaining sectoral CMOs.

Such is the burden of the proposal made by the French authorities, and this proactive approach constitutes most notably one of the three pillars of the new policy for the prevention and management of risks which has France’s wholehearted support. As has already been said, it is important, according to the level of the risks, also to maintain instruments for managing certain crises at Community level and to facilitate individual approaches to the coverage of a number of risks relating to individual agricultural holdings and benefiting from European funding.

¹ Cf. Council Regulation (EC) No 318/2006 of the Council.