



**DRAFT GUIDELINES**  
**on the application of the specific rules**  
**set out in Articles 169, 170 and 171 CMO**  
**Regulation for the Olive Oil, Beef and**  
**Veal and Arable Crops Sectors**

*Civil Dialogue Group Olive oil,  
19 November 2015*

## Why is there need for Guidance?

- ❑ *CMO Regulation acknowledges role of Producer Organisations (PO) and Associations of POs (APOs)*
- ❑ *CMO Regulation stipulates that competition law applies in the agricultural sector, **save as otherwise provided** in the CMO Regulation*
- ❑ *Some activities of POs might conflict with competition law*
- ❑ *Derogations in Articles 169-171 CMO for POs/APOs need to be explained in greater detail, see Article 169 for olive oil*

## Producer organisations and competition law

- ❑ *Producers can join forces to improve efficiency by establishing a Producer organisation*
  
- ❑ *Activities of POs typically include:*
  - Joint decisions on production
  - Related activities (e.g. promotion, joint use of equipment, common logistics etc.)
  - See catalogue in Article 152 CMO Regulation, but...
  - there are constraints under the competition rules. In particular on **'joint selling'**.

## Producer organisations and competition law

- ❑ **Joint selling** by competitors typically subject to Article 101(1) TFEU → prohibition
- ❑ Article 101(3) TFEU: general derogations to prohibition
- ❑ In CMO → specific derogations for certain agricultural activities (see Article 206 CMO, 'save as otherwise provided...')
- ❑ E.g.: Articles 169-171 CMO → **derogation for negotiations** by POs in three sectors ("safe harbour" = 'the derogation') **of supply contracts**

## Conditions for the derogation

*The derogation is subject to certain conditions*

- Recognition as PO/APO in olive oil, beef/veal or arable crops in a MS*
- PO pursues **specific objectives***
- Integrates activity (ies) and activity (ies) create(s) **significant efficiencies***
- Cap on the product quantities subject to contractual negotiations, stipulated by CMO Regulation, 15% (beef/veal, crops) of national production or 20% (olive oil) of the relevant market*
- Notification obligation*

# Guidelines explain requirements to apply the derogations

## Guidelines

- ❑ *explain each condition of the derogation in greater detail*
- ❑ *give concrete examples of efficiency enhancing activity for each sector*
- ❑ *do not only list negative examples, but in particular positive examples when the derogation can be used.*
- ❑ *provide flowcharts for self-assessment by producers and POs/APOs and to illustrate relationship between competition law and CMO Regulation*

## Adoption of the Guidelines - Process

- Public consultation on Draft Guidelines from January to May 2015**
- Conference with stakeholders 4 March 2015**
- 8 June 2015: Commissioners at COMAGRI (EP)**
- Advisory Committee with Member States on 23 September 2015**
- Publication of Guidelines expected before the end of 2015**

Thank you for your attention !

## Conditions for the derogation - PO must pursue certain objectives

*One or more of these objectives must be pursued by the PO*

- Concentrate supply*
- Placing of products on the market*
- Optimise production costs*

## Condition for the derogation – the Significant efficiencies test (SET)

(1) *First condition: **integration of activities by the PO*** – commercialisation strategy

(i) PO carries out *directly* the activities

(ii) PO *outsources* the activities to third parties, see upcoming Delegated Regulation on Producer Cooperation

(2) *Second condition: the activities are likely to **generate efficiencies***

(3) *Third condition: **the activities are significant enough*** so that PO contributes to fulfilment of CAP objectives

## Significant efficiencies test (SET)

Simplified method	Alternative method
<p>PO carries out <b>at least one</b> of the potentially efficiency enhancing activities listed in Articles 169-171 CMO</p> <ul style="list-style-type: none"> <li>- <b>Joint</b> distribution, promotion, organising of quality control, use of equipment and storage, management of waste, procurement of inputs (can be combined).</li> </ul>	<p>Activity <b>other</b> than those listed in Articles 169-171 CMO</p>
<p>Activity is <b>significant</b> in terms of <u>volume</u> of the product concerned and the <u>costs</u> of production and placing on the market</p>	<p>E.g. investment requires some time to materialise (often relevant for new POs)</p>