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ANNEX

## COMMISSION OPINION

**on the request for opinion pursuant to Article 210(2) of Regulation (EU) No 1308/2013 by the Association interprofessionnelle des fruits et légumes frais ('INTERFEL') - Inter-branch agreement on 'Apples – sizing by weight'**

### 1. PROCEDURE

1. In accordance with Article 210(2), first subparagraph, of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products<sup>1</sup> ('CMO Regulation'), an interbranch organisation ('IBO') recognised under Article 157 of the CMO Regulation may request an opinion from the Commission concerning the compatibility of agreements, decisions and concerted practices with Article 210(1) of the CMO Regulation i.e. whether they are necessary in order to meet the objectives listed in Article 157(1), point (c), of the CMO Regulation and are not incompatible with Union rules under Article 210(4) of the CMO Regulation.
2. In accordance with Article 210(2), second subparagraph of the CMO Regulation, the Commission shall send the IBO its opinion within four months upon receipt of a complete request.
3. On 19 October 2023<sup>2</sup>, INTERFEL, the recognised French IBO of fresh fruit and vegetables, requested an opinion from the Commission concerning the compatibility with Article 210(1) of the CMO Regulation of an agreement pursuant to which, as of 2025 marketing year, INTERFEL's members calibrate and indicate the size of apples placed on the market in metropolitan France (referred to as 'French market') by reference to the weight in grams, simultaneously introducing a minimum size of apples at 90 grams (the 'agreement').
4. On 22 December 2023<sup>3</sup>, the Commission sent a request for additional information to INTERFEL.
5. On 21 February 2024<sup>4</sup>, INTERFEL replied to that request for additional information.

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<sup>1</sup> Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ L 347 20.12.2013, p. 671.

<sup>2</sup> ARES (2023) 7153472.

<sup>3</sup> ARES (2023) 8841566.

6. The present opinion is based on the information provided by INTERFEL in its request of 19 October 2023 and its reply of 21 February 2024 to the request for additional information and concerns only the agreement.

## **2. DESCRIPTION OF THE MEASURE**

### ***2.1. Object of the measure***

7. The agreement introduces a minimum size at 90 grams for apples produced in the French market and intended to be placed on the French market. However, the agreement allows apples of a smaller size to be placed on the French market if their refractometric index is equal to or greater than 10,5° Brix and if their size is not less than 70 grams.
8. The agreement applies solely to apples produced in the French market and intended to be delivered fresh to final consumers in the French market.
9. For INTERFEL's members that size their apples by reference to diameter, INTERFEL has established a correlation grid, enabling those members to continue sizing to diameter while displaying the size on the packaging with reference to weight in grams, in accordance with the agreement. This correlation grid comprises the different densities considering the diversity of apple varieties.
10. In accordance with Annex I, part B, section III to Commission Implementing Regulation (EU) No 543/2011<sup>5</sup>, the size of apples is determined either by the maximum diameter of the equatorial section or by weight. In addition, "the minimum size is 60 mm, if measured by diameter or 90 g, if measured by weight. Fruit of smaller sizes may be accepted, if the Brix level of the produce is equal to or greater than to 10,5° Brix and the size is not smaller than 50 mm or 70 g".
11. The agreement takes advantage of the alternative methods for calibration provided in Commission Implementing Regulation (EU) No 543/2011 and requires marking by reference to the minimum and maximum weights in grams, as fixed by the ranges in the agreement.
12. The sizing ranges of the agreement, although refined as the reference is to minimum size, apply to the same categories of apples as those covered by Commission Implementing Regulation (EU) No 543/2011.

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<sup>4</sup> ARES (2024) 1404040.

<sup>5</sup> Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors, OJ L 157 15.6.2011, p. 1.

| Règlement d'exécution n° 543/2011  | Accord interprofessionnel |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
|--|---------------------------|-------------------------|--------|------|-----------|------|---------|------|---|---|--------------|--------------|--|---|---------------|---------------|---------------|--------------|--------------|---------------|--------------|---------------|---------------|---------------|---------------|---------------|---------------|
| <p>→ Fruits de catégorie « Extra » et fruits des catégories I et II présentés en couches rangées :</p> <table border="1"> <thead> <tr> <th>Fourchette (g)</th> <th>Différence de poids (g)</th> </tr> </thead> <tbody> <tr> <td>70-90</td> <td>15 g</td> </tr> <tr> <td>91-135</td> <td>20 g</td> </tr> <tr> <td>136-200</td> <td>30 g</td> </tr> <tr> <td>201-300</td> <td>40 g</td> </tr> <tr> <td>&gt; 300</td> <td>50 g</td> </tr> </tbody> </table> | Fourchette (g)            | Différence de poids (g) | 70-90  | 15 g | 91-135    | 20 g | 136-200 | 30 g | 201-300   | 40 g  | > 300        | 50 g         | <p>→ Fruits de catégorie « Extra » et fruits des catégories I et II présentés en couches rangées ou litées dans un même colis :</p> <table border="1"> <thead> <tr> <th>Fourchette de calibrage cat Extra ou pommes rangées</th> </tr> </thead> <tbody> <tr> <td>70 g / 85 g</td> </tr> <tr> <td>80 g / 95 g</td> </tr> <tr> <td>95 g / 115 g</td> </tr> <tr> <td>115g / 135 g</td> </tr> <tr> <td>136 g / 165g</td> </tr> <tr> <td>150 g / 180 g</td> </tr> <tr> <td>170g / 200 g</td> </tr> <tr> <td>190 g / 220 g</td> </tr> <tr> <td>201 g / 240 g</td> </tr> <tr> <td>230 g / 270 g</td> </tr> <tr> <td>265 g / 305 g</td> </tr> <tr> <td>301 g / 350 g</td> </tr> <tr> <td>350 g / 400 g</td> </tr> </tbody> </table> <p>A partir de 400g, les pommes d'un même colis doivent respecter une homogénéité de 50 g entre la plus légère et la plus lourde</p> | Fourchette de calibrage cat Extra ou pommes rangées | 70 g / 85 g   | 80 g / 95 g   | 95 g / 115 g  | 115g / 135 g | 136 g / 165g | 150 g / 180 g | 170g / 200 g | 190 g / 220 g | 201 g / 240 g | 230 g / 270 g | 265 g / 305 g | 301 g / 350 g | 350 g / 400 g |
| Fourchette (g)   | Différence de poids (g)   |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 70-90  | 15 g                      |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 91-135   | 20 g                      |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 136-200  | 30 g                      |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 201-300  | 40 g                      |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| > 300  | 50 g                      |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| Fourchette de calibrage cat Extra ou pommes rangées  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 70 g / 85 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 80 g / 95 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 95 g / 115 g   |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 115g / 135 g   |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 136 g / 165g   |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 150 g / 180 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 170g / 200 g   |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 190 g / 220 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 201 g / 240 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 230 g / 270 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 265 g / 305 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 301 g / 350 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 350 g / 400 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| <p>→ Fruits de catégorie I emballés dans l'emballage de vente ou présentés en vrac dans l'emballage</p> <table border="1"> <thead> <tr> <th>Fourchette (g)</th> <th>Homogénéité (g)</th> </tr> </thead> <tbody> <tr> <td>70-135</td> <td>35</td> </tr> <tr> <td>136 – 300</td> <td>70</td> </tr> <tr> <td>&gt; 300</td> <td>100</td> </tr> </tbody> </table>   | Fourchette (g)            | Homogénéité (g)         | 70-135 | 35   | 136 – 300 | 70   | > 300   | 100  | <p>→ Fruits de catégorie I présentés en vrac dans un même emballage (sachets, caisses vrac, bins etc.)</p> <table border="1"> <thead> <tr> <th>Fourchette de calibrage pommes catégorie I vrac</th> </tr> </thead> <tbody> <tr> <td>80 g / 115 g</td> </tr> <tr> <td>95 g / 130 g</td> </tr> <tr> <td>115g / 150 g</td> </tr> <tr> <td>136 g / 200 g</td> </tr> <tr> <td>190 g / 240 g</td> </tr> <tr> <td>230 g / 300 g</td> </tr> <tr> <td>301 g / 400 g</td> </tr> </tbody> </table> <p>A partir de 400g, les pommes d'un même colis doivent respecter une homogénéité de 100g entre la plus légère et la plus lourde.</p> | Fourchette de calibrage pommes catégorie I vrac | 80 g / 115 g | 95 g / 130 g | 115g / 150 g   | 136 g / 200 g                                       | 190 g / 240 g | 230 g / 300 g | 301 g / 400 g |              |              |               |              |               |               |               |               |               |               |
| Fourchette (g)   | Homogénéité (g)           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 70-135   | 35                        |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 136 – 300  | 70                        |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| > 300  | 100                       |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| Fourchette de calibrage pommes catégorie I vrac  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 80 g / 115 g   |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 95 g / 130 g   |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 115g / 150 g   |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 136 g / 200 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 190 g / 240 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 230 g / 300 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |
| 301 g / 400 g  |                           |                         |        |      |           |      |         |      |   |   |              |              |  |   |               |               |               |              |              |               |              |               |               |               |               |               |               |

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13. The agreement does not apply either to miniature apples, apples intended for industrial processing or apples directly transferred to final consumers in the French market by the producers concerned at the place of their holding and resulting from their production.

14. Moreover, for apples intended for export, the agreement allows the size to be identified and indicated by reference to the minimum or maximum weight in grams, by the minimum or maximum diameters in millimeters or, in the case of fruit put up in rows, by the number of pieces presented in layers.

15. Finally, the agreement does not apply to apples imported in the French market.

## 2.2. Specific features of the French market

<sup>6</sup> INTERFEL request, ARES (2023) 7153472.

16. Most producer members of INTERFEL do not condition the apples themselves and therefore do not calibrate them. Rather, the sizing is essentially carried out by the producer organisation or cooperative to which the producer belongs or, for independent producers, by fruit stations with which they have concluded a dispatch contract.

### **2.3. INTERFEL**

17. INTERFEL is an IBO in the fruit and vegetable sector, which was established on 5 July 1976 and recognised by France in accordance with Article 158(1) of the CMO Regulation on 2 June 2014 (Decree No 2014-572). It brings together national professional organisations whose activities represent a significant proportion of production and marketing, including mass catering.

18. Article 2 of INTERFEL statute lists its objectives<sup>7</sup>. Those objectives include the development of interprofessional agreements and enforcement, strengthening food and health security measures, in particular through product traceability for the benefit of users and consumers and support quality collective approaches, and putting in place all measures to optimise the availability of fresh fruit and vegetables to the various groups of the population<sup>8</sup>.

19. In terms of organisation, according to Article 4 of INTERFEL's statute, it is comprised of fifteen organisations representing the production sector of apples, marketing of apples, distribution and mass catering activities of fruit and vegetables, including of apples<sup>9</sup>.

20. In accordance with Article 11 of INTERFEL's Statute<sup>10</sup>, the national professional organisations that form INTERFEL are divided into two colleges: the AMONT (upstream) college and the AVAL (downstream) college. All decisions for the adoption of interprofessional agreements require unanimity by the two colleges<sup>11</sup>.

### **3. LEGAL ASSESSMENT**

21. In accordance with Article 210(1) of the CMO Regulation, Article 101(1) TFEU does not apply to agreements, decisions and concerted practices of IBOs recognised under Article 157 of this Regulation which are necessary in order to meet the objectives listed in

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<sup>7</sup> INTERFEL request, Annex I, Statute as amended on 3 December 2019.

<sup>8</sup> INTERFEL request, Annex IV.

<sup>9</sup> Fédération Nationale des Producteurs de Fruit (FNPF), Les Producteurs de Légumes de France (French Vegetables), Fédération Française de la Coopération Fruitière, Légumière et Horticole (FELCOOP), Economic Governance of Fruit and VegEL (GEFeL), Coordination Rurale, Confédération Paysanne, National Association of Expeditors and Exporters of Fruit Vegetables (ANEFFEL), Union Nationale du Commerce de Gros en Fruits et Légumes (UNCGFL), Fédération des Entreprises du Commerce et de la Distribution (FCD), Saveurs Commerce, Restaun'Co, Restauration collective; SNRC; Chamber of French Importers of Fresh Fruit and Vegetables (CSIF) National Union of Importers/Exporters of Fruit and Vegetables (SNIFL); Cooperative and Associate Trade Federation (FCA – Food Section).

<sup>10</sup> INTERFEL request, Annex I, Statute as amended on 3 December 2019.

<sup>11</sup> INTERFEL request, Annex IV.

Article 157(1), point (c), of this Regulation, and which are not incompatible with Union rules under Article 210(4) of this Regulation.

22. In accordance with Article 210(4) of the CMO Regulation agreements, decisions and concerted practices are to be declared incompatible with Union rules if they: (a) may lead to the partitioning of markets within the Union in any form; (b) may affect the sound operation of the market organisation; (c) may create distortions of competition which are not essential to achieving the objectives of the CAP pursued by the interbranch organisation activity; (d) entail the fixing of prices or the fixing of quotas, or (e) may create discrimination or eliminate competition in respect of a substantial proportion of the products in question.

### ***3.1 Recognised IBO***

23. INTERFEL is an IBO in the fruit and vegetables sector recognised by France in accordance with Article 158(1) of the CMO Regulation.

### ***3.2 Agreement, decision or concerted practice by the IBO***

24. The agreement constitutes an agreement within the meaning of Article 210(1) of the CMO Regulation<sup>12</sup>.

### ***3.3 Objectives listed in Article 157(1), point (c), of the CMO Regulation***

25. The agreement pursues five of the objectives listed in Article 157(1), point (c), of the CMO Regulation.
26. First, the agreement improves the knowledge and transparency of production and the market of INTERFEL's members within the meaning of Article 157(1), point (c)(i), by increasing the predictability for upstream operators and simplifying the relationship of downstream operators. By enabling all market data regarding the size to be depicted in the same unit, the agreement eases statistics, and contractual relationships of those operators.
27. Second, the agreement helps INTERFEL's members to coordinate better the placing on the market of products within the meaning of Article 157(1), point (c)(iii). More specifically, sizing by weight implies simplified marketing rules since the reference to a single marketing method eliminates uncertainties and potential conflicts that could arise between operators in the French market and enhances better coordination of placing of apples on that market.
28. Third, the agreement allows INTERFEL's members to exploit to a fuller extent the potential of products within the meaning of Article 157(1), point (c)(vi). The ranges provided for in the agreement contain 'overlaps' (see table above under paragraph 11), allowing operators to choose the sales segment in which they wish to position their products, according to demand requirements. This approach therefore makes it possible to eliminate uncertainties and optimise sales.

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<sup>12</sup> INTERFEL request, Annex II, agreement adopted on 6 July 2023 by the members of INTERFEL.

29. Fourth, the agreement develops methods and instruments for improving product quality at all stages of production and, where applicable, of processing and marketing within the meaning of Article 157(1), point (c)(ix). Sizing by weight presents less risks of bruising the fruit. It also allows the operators to take into consideration the density of the product and its sugar content, ensuring that the products placed on the French market are ripe.
30. Fifth, the agreement contributes to the reduction and management of waste by INTERFEL's members within the meaning of Article 157(1), point (c)(xiv). Sizing by weight is more precise and limits the handling at the purchasing stage, which reduces the deterioration of the product and the losses while responding to consumer expectations.

### ***3.4 Article 210(4) of the CMO Regulation***

31. For the reasons set out below, the agreement is not incompatible with Union rules under Article 210(4) of the CMO Regulation.
32. First, the agreement cannot lead to the partitioning of markets within the Union.
33. The agreement applies only to apples produced by INTERFEL's members in the French market and intended to be placed by INTERFEL's members on the French market, while it does not affect imports or apples intended for exports (see paragraph 14 above).
34. Second, the agreement does not affect the sound operation of the market organisation. In the first place, the agreement is limited to INTERFEL's members. In the second place, the agreement does not go beyond the needs of INTERFEL's members to ensure the quality of their products and the better coordination of the placing on the market of their products, since: (i) the agreement takes advantage of the alternative methods for calibration provided in Commission Implementing Regulation (EU) No 543/2011 (see paragraph 11 above); and (ii) the sizing ranges of the agreement, although refined as the reference is to minimum size, apply to the same categories of apples as those covered by Commission Implementing Regulation (EU) No 543/2011 (see paragraph 12 above).
35. Third, the agreement does not entail the fixing of prices or the fixing of quotas. Rather, the agreement merely sets minimum technical requirements for apples produced by INTERFEL's members in the French market. Moreover, the agreement applies to all apples meeting the criteria laid down in the agreement, irrespective of their volume.
36. Fourth, the agreement does not create discrimination or eliminate competition in respect of a substantial part of the products concerned. In the first place, the agreement is limited to INTERFEL's members. In the second place, INTERFEL's members can still use diameter sizing while displaying sizing by weight on the packaging at the marketing stage, using the corresponding correlation grid, in accordance with the agreement (see paragraph 9 above). In the third place, the sizing ranges of the agreement, although refined as the reference is to minimum size, apply to the same categories of apples as those covered by Commission Implementing Regulation (EU) No 543/2011 (see paragraph 12 above).
37. Fifth, the agreement does not create distortions of competition which are not essential to achieving the objectives of the CAP pursued by INTERFEL. In the first place, the

agreement does not affect imports and exports of apples in the French market (see paragraphs 14-15 above). In the second place, the sizing ranges of the agreement, although refined as the reference is to minimum size, apply to the same categories of apples as those covered by Commission Implementing Regulation (EU) No 543/2011 (see paragraph 12 above).

#### **4. CONCLUSION**

38. Based on the information provided by INTEREL, the Commission is of the opinion that the agreement is necessary for INTEREL's members to meet the objectives listed in Article 157(1), point (c), of the CMO Regulation and is not incompatible with Union rules under Article 210(4) of the CMO Regulation.
39. The Commission has not assessed the compatibility of the agreement with other Union rules, in particular Article 164 of the CMO Regulation, which is for France to assess and not for the Commission (see paragraphs 3, 21 and 22 above). Equally, the Commission has not assessed the compatibility with Article 210(1) of the CMO Regulation of other agreements of INTERFEL, in particular the four agreements concerning the marketing years 2021-2023 that, on 10 June 2020, INTERFEL requested France to extend to operators that are not members of that association in accordance with Article 164(1) of the CMO Regulation.
40. In accordance with Article 210(2), third subparagraph, the Commission may change the content of an opinion at its own initiative or at the request of a Member State, in particular if INTERFEL has provided inaccurate information or misuses the opinion.