



Framework for producer organisations in the milk sector

The relationship of agriculture and competition law

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Competition law

Article 101 TFEU

*Agreements between undertakings which restrict competition **are prohibited** – in particular cartels between 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)



Competition law - background

Article 101 TFEU Agreements between undertakings

Agreements between undertakings
Decisions by associations
Concerted practice

which have as their object (e.g. price fixing) or as their effect the restriction of competition, **are prohibited**

Examples:

- Fixing of sales or purchase prices
- Limit of production
- Market partitioning
- Customer allocation
- Discrimination
- Bundling

Article 102 TFEU Abuse of dominance

Abuse of a dominant position within the internal market or in a substantial part

Dominant position:

Define the **relevant market** in product terms and geography
Establish **dominance**: high market shares are a good indication, but not sufficient (entry barriers, market conditions)

Examples of abuse:

Unfair prices or trading conditions
Limitation of production
Discrimination
Bundling



Article 101 TFEU

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

- 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 in the CMO applies
- justified under **Article 101 (3) TFEU**
- they fall under **Competition Block Exemption Regulation**

Agricultural Derogations

- Article 42 gives **special status** to the agricultural sector: Competition rules apply only to the extent determined by the legislator
- Special status confirmed by the ECJ, recently again in Endives judgment, **agricultural objectives take precedence** over competition law objectives
- Article 206 CMO: Competition rules apply to the agricultural sector, *unless the CMO states something different*= see derogations in the CMO



CMO Derogations - background

General derogations for all sectors

Article 209: Agreements between farmers on production and sales

Article 210: Interbranch organisations

Article 222: Crisis cartels for a limited period of time

Sector specific rules

*Article 125: Agreements within the trade **sugar***

*Article 149: Contractual negotiations **milk***

*Article 150,167, 172: Supply management **PDO/ PGI cheese, wine, ham***

*Article 169-171: Contractual negotiations **olive oil, beef/veal and arable crops***



CMO Derogations relevant for milk POs

Article 149 CMO: Contractual negotiations by **recognised** POs

Article 152 CMO: **Recognised** POs all sectors (see Endives judgment)

Article 150 CMO: Supply management **PDO/PGI** cheese

Article 209 CMO: Agreements between **farmers, farmers associations or recognised POs** on joint production and sales

Article 222 CMO: Crisis cartels in situations of severe market imbalances, temporarily allowed for 6 months



Contractual negotiations

- *The right to conduct contractual negotiations for supply contracts is granted to POs various sectors*
- *Common objective: increasing the bargaining power of producer organisations towards other operators in the chain. But the **conditions differ** depending on the sector*
- ***Activities differ too:** Only in the milk sector mere **bargaining activities** are allowed*
 - ❑ the PO is allowed to negotiate a price for the milk sales of its members without itself integrating an activity of its members
 - ❑ no condition that the PO itself concentrates supply and places products on the market

Milk PO 149 CMO Milk	Fruit & vegetables - 160 CMO and sector regulation	Olive oil, beef/veal and arable crops 169-171 CMO
Recognised PO (mandatory recognition, Article 161 CMO)	Recognised PO under Article 152 CMO (mandatory recognition, 159 CMO)	Recognised PO under Article 152 CMO, not compulsory for MS
Fulfills one of the objectives of 152 (3) CMO	Fulfills one of the objectives of 152 (1) CMO	Fulfills one of the objectives of 152 (1) CMO
<ul style="list-style-type: none"> No further condition 	<ul style="list-style-type: none"> PO markets the entire production of its members, sector regulation: 75% of the production Sector Regulation: Main activity shall relate to concentration of supply and placing on the market 	<ul style="list-style-type: none"> PO must concentrate supply + place products of member on the market PO must integrate at least one activity of its members, which is likely to achieve efficiencies
<ul style="list-style-type: none"> Subject to market threshold of 33 % Volume of raw milk of negotiations does not exceed 3.5 % of total 	-	<ul style="list-style-type: none"> Subject to market threshold of 15% of national production or 20% of the relevant market for olive oil

The right of POs/APOS to fulfill their missions – Endives judgment of ECJ (C-671/15)

- Court stated that practices **between POS** and APOs or not recognised entities fall within the competition rules and in casu are prohibited (price fixing, exchange of sensitive information)*

- Activities of producers **within a recognised PO** may **not be subject to the competition rules**, if
 - PO is formally recognised by MS
 - Practices are strictly necessary for and proportionate to objectives assigned to PO/APO by EU legislation



New Article 152 CMO after Omnibus

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

! 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**
- No market threshold, no efficiency test



New 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

Article 101 TFEU – Justified agreements

Justification under Article 101 (3) TFEU –

- Agreements needs to contribute to improved production or distribution of goods and
- Allow consumers a fair benefit

while not

- Imposing conditions which are not indispensable
- Eliminating competition

Self-assessment by the parties relying on this provision !

Specialisation Block Exemption

- *Applies to all sectors of the economy, also to agriculture*
- *Allows for joint sales by competitors under conditions:*
 - **The parties must produce the products jointly**
 - **And together not > 20% of the market for the processed products**
- *Allows also for production planning or joint collection*