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**COMMISSION DECISION**

**of 5.3.2021**

**on the notification pursuant to Article 210 of Regulation (EU) No 1308/2013 by the  
Association Interprofessionnelle de la Banane ('AIB') – Market indicator for bananas at  
the wholesale stage**

# COMMISSION DECISION

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**on the notification pursuant to Article 210 of Regulation (EU) No 1308/2013 by the Association Interprofessionnelle de la Banane ('AIB') – Market indicator for bananas at the wholesale stage**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007<sup>1</sup>, and in particular Article 210 thereof,

Having regard to the notification to the European Commission by the Association Interprofessionnelle de la Banane ('AIB') pursuant to Article 210 of Regulation (EU) No 1308/2013,

Whereas:

## 1. PROCEDURE

- (1) By letter of 4 November 2020, registered on 5 November 2020, AIB, the recognised French interbranch organisation in the banana sector, notified the Commission pursuant to Article 210 of Regulation (EU) No 1308/2013 of its plans to create and disseminate a banana market indicator at the wholesale stage in metropolitan France<sup>2</sup> (hereafter 'AIB notification'). The Commission acknowledged receipt of this notification by letter of 11 November 2020<sup>3</sup>.
- (2) The Commission sent a request for information to the AIB on 16 December 2020<sup>4</sup>. AIB provided the information requested on 11 January 2021<sup>5</sup>. It provided further information on 16 February 2021<sup>6</sup>.

## 2. DESCRIPTION OF THE MEASURE

### 2.1. Object of the measure

- (3) The AIB envisages establishing a banana market indicator at the wholesale stage in metropolitan France ('indicator'), as there are currently no such national indicators representative of this level so far. The indicator should inform operators about the evolution of prices for bananas sold by wholesalers to retailers, purchases by mass caterers, restaurants and central purchasing bodies.

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<sup>1</sup> OJ L 347, 20.12.2013, p. 671.

<sup>2</sup> Ares(2020)6369096.

<sup>3</sup> Ares (2020)6604514.

<sup>4</sup> Ares(2020)8440055.

<sup>5</sup> Ares(2021)275751.

<sup>6</sup> Ares(2021)1314269.

- (4) According to the AIB, the establishment of the indicator will help to monitor price developments in metropolitan France and thus ‘improve knowledge and transparency of production and the market’, in line with the objectives that interbranch organisations may pursue as laid down in Article 157(1)(c)(i) of Regulation (EU) No 1308/2013.
- (5) AIB also considers that the indicator will improve market knowledge and transparency, because there is currently no publicly available indicator representative of the banana market in metropolitan France, either at the stage of first placing on the market (import), ripening (wholesale stage) or retail. Banana prices are highly volatile and also variable in the different regions.
- (6) Furthermore, AIB contends that the establishment of the indicator will foster contractualisation, i.e. longer-term relationships between producers and their trading partners governed by a (written) contract. AIB states that the indicator would provide operators with a tool for negotiation, based on a better understanding of available prices in the context of their contractual relations. This would be without prejudice to the necessity to respect contractual freedom, as the indicator would not fix or recommend a price between operators; operators would retain their independence in determining their pricing policy.
- (7) According to the AIB, the indicator will also enable the AIB to implement its tasks of developing and disseminating market indicators in accordance with the French Law No 2018-939 of 30 October 2018 on the balance of trade relations in the agricultural and food sector and healthy, sustainable and accessible food<sup>7</sup>.

## 2.2. Specific features of the Union and French metropolitan banana markets

- (8) Bananas are the most traded fruit in the world (between 18 and 20 million tonnes per year). In 2017, the Union market was estimated at 6.1 million tonnes and thus represented the world’s largest market (34 % of the global market), with Union production of 700 000 tonnes (11.5 % of the Union market). In 2017, there was a drop in Union production and decrease in share in the Union market, particularly due to a hurricane that heavily hit French Antilles<sup>8</sup>.
- (9) On average, 840 000 tonnes of green bananas are imported annually into metropolitan France. The balance of the French metropolitan market depends on the development of the world market.
- (10) At the global level, the market is structurally subject to oversupply. Part of this surplus makes it possible to ensure that the markets are supplied in the event of adverse climatic / environmental events<sup>9</sup>. The balance of the sector therefore actually depends on these climatic hazards.
- (11) In the banana sector, while the Union market has significantly increased in volumes in recent years, that increase has been accompanied by a fall in value added in euros at the ‘green’ import stage, challenging the profitability of operators in the sector.

## 2.3. The AIB

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<sup>7</sup> [Law No 2018-938 of 30 October 2018](#) to balance trade relationships in the agricultural and food sector and provide food which is healthy, sustainable and accessible to all.

<sup>8</sup> Data in this section is taken from AIB notification, p. 7 *et seq.*

<sup>9</sup> <https://fred.stlouisfed.org/series/PBANSOPUSDM/>.

- (12) The AIB is an association within the meaning of the French Law of 1 July 1901<sup>10</sup>. It was established on 13 February 2012 and its current statute was approved on 28 September 2015<sup>11</sup>.
- (13) The AIB was recognised by the public authorities as an agricultural interbranch organisation by the Order of the Minister for Economic Affairs and Finance, the Minister for Agriculture, Agri-Food and Forestry of 9 September 2016<sup>12</sup>, pursuant to Article L. 632-1 of the Rural and Maritime Fisheries Code<sup>13</sup> and as an interbranch organisation within the meaning of Article 157 of Regulation (EU) No 1308/2013.
- (14) The AIB is made up of national professional organisations representing the banana professions along the chain (producers, importers, ripeners, wholesalers, specialised retailers and distributors)<sup>14</sup>. They are brought together in three separate colleges: (i) the College ‘Production’; ii) the College ‘Mise en marché en vert’; and (iii) the College ‘Commercialisation et Distribution en jaune’ (i.e. the Production College, the Green Market College and the Yellow Marketing and Distribution College).
- (15) Pursuant to its statute, the purpose of the AIB is to promote bananas of all origins and to protect the common professional interests in the sector, particularly by implementing all collective actions, in particular with a view to: (i) contributing to a better match between consumer demand and the supply of the different segments of the banana market; (ii) promoting and developing the national banana market, in particular by anticipating markets and adapting products more quantitatively and qualitatively; (iii) promoting communication and information on bananas on the markets; and (iv) fostering interprofessional dialogue and contractual arrangements between its members.

#### 2.4. Background of the measure – the French law on the equilibrium of the agricultural and food supply chain

- (16) The French Law No 2018-938 to balance trade relationships in the agricultural and food sector and provide food which is healthy, sustainable and accessible to all followed on from a discussion in the ‘États Généraux de l’Alimentation’ (‘EGalim’) initiated in 2017<sup>15</sup>, which inter alia encouraged interbranch organisations to develop indicators adapted to the sector for parties to possibly use in their contracts. Article L. 631-24 of the French Rural and Maritime Fisheries Code as amended by Law No 2018-938 states that a written contract of sale for an agricultural product to the first buyer must be preceded by an offer of the agricultural producer, which should have as an element the ‘price or criteria and modalities for determining the price and a price revision’. Article L. 631-24, as amended by Law No 2018-938, further specifies that the criteria and modalities for determining the price should take into account one or more indicators on the relevant production costs and their evolution, one or more indicators on the price of the agricultural and food product as evidence on the market

<sup>10</sup> [French Law of 1 July 1901](#) about the associations.

<sup>11</sup> AIB notification, Annex I.

<sup>12</sup> AIB notification, Annex II.

<sup>13</sup> French [Rural and Maritime Fisheries Code](#).

<sup>14</sup> AIB is made up of a number of organisations. For details on the representativeness of those organisations, see AIB notification, Annex III, p. 4 *et seq.*

<sup>15</sup> LOI n° 2018-938 du 30 octobre 2018 pour l’équilibre des relations commerciales dans le secteur agricole et alimentaire et une alimentation saine, durable et accessible à tous <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000037547946/>, Article 1 (modifying Article L. 631-24 of the French Rural and Maritime Fisheries Code).

in which the buyer operates as well as one or more indications on quantity, quality, composition, origin and traceability of the product. The relevant passage of Article L. 631-24 of the French Rural and Maritime Fisheries Code, as amended by Law No 2018-938, reads as follows:

*Les critères et modalités de détermination du prix mentionnés au 1° du présent III prennent en compte un ou plusieurs indicateurs relatifs aux coûts pertinents de production en agriculture et à l'évolution de ces coûts, un ou plusieurs indicateurs relatifs aux prix des produits agricoles et alimentaires constatés sur le ou les marchés sur lesquels opère l'acheteur et à l'évolution de ces prix ainsi qu'un ou plusieurs indicateurs relatifs aux quantités, à la composition, à la qualité, à l'origine et à la traçabilité des produits ou au respect d'un cahier des charges. Dans le cadre de leurs missions et conformément au règlement (UE) n° 1308/2013 du Parlement européen et du Conseil du 17 décembre 2013 précité, les organisations interprofessionnelles élaborent et diffusent des indicateurs, qui servent d'indicateurs de référence.*

- (17) Article L. 631-24-1 of the French Rural and Maritime Fisheries Code, as amended by Law No 2018-938, further provides that once such indicators are chosen in the first contract between the producer and the first purchaser, these indicators should be taken into account for further contracts downwards in the supply chain. Article L. 631-24-1 of the French Rural and Maritime Fisheries Code, as amended by Law No 2018-938 reads as follows:

*Lorsque l'acheteur revend des produits agricoles ou des produits alimentaires comportant un ou plusieurs produits agricoles, le contrat de vente prend en compte les indicateurs mentionnés à l'avant-dernier alinéa du III de l'article L. 631-24 figurant dans le contrat d'achat conclu pour l'acquisition de ces produits.*

*Dans l'hypothèse où le contrat conclu pour l'acquisition de ces produits comporte un prix déterminé, le contrat de vente mentionné au premier alinéa du présent article prend en compte un ou plusieurs indicateurs relatifs aux prix des produits agricoles concernés.*

*L'acheteur communique à son fournisseur, selon la fréquence convenue entre eux et mentionnée dans le contrat écrit ou l'accord-cadre écrit, l'évolution des indicateurs relatifs aux prix des produits agricoles et alimentaires constatés sur les marchés sur lesquels il opère.*

- (18) Moreover, Article L. 443-4 of the French Commercial Code<sup>16</sup> states that:

*Pour les produits agricoles ou les produits alimentaires comportant un ou plusieurs produits agricoles, lorsque les indicateurs énumérés au neuvième alinéa du III de l'article L. 631-24 et aux articles L. 631-24-1 et L. 631-24-3 du code rural et de la pêche maritime ou, le cas échéant, tous autres indicateurs disponibles dont ceux établis par l'Observatoire de la formation des prix et des marges des produits alimentaires existent, les conditions générales de vente mentionnées à l'article L. 441-1 du présent code, ainsi que les conventions mentionnées aux articles L. 441-3, L. 441-4, L. 441-7 et L. 443-2 y font référence et explicitent les conditions dans lesquelles il en est tenu compte pour la détermination des prix.(...).*

## 2.5. Description of the measure

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<sup>16</sup> French [Commercial Code](#).

- (19) By decision voted unanimously by the ‘assemblées générales’ meetings of the AIB on 14 June 2018 and 10 December 2019<sup>17</sup>, the AIB undertook to develop a market indicator at the wholesale stage aiming at keeping track of the evolutions of the price of banana products. By the same decision, it undertook to endorse the methodology established by the ‘organisme français de recherche agronomique et de coopération internationale pour le développement durable des régions tropicales et méditerranéennes’ (hereinafter ‘CIRAD’), the development of which had been previously commissioned by AIB and to notify the indicator under Article 210 of Regulation (EU) No 1308/2013.
- (20) The indicator will refer only to the prices charged for the French metropolitan market at the wholesale stage (the closest to the ripening exit step), i.e. the prices charged by ripeners and/or wholesalers to their customers. Due to the structure of the French metropolitan banana market, and in particular the plurality of actors active at the wholesale stage, the indicator refers to prices practiced by three types of ripeners/wholesalers: (i) ripeners that are not wholesalers and whose main activity is to ensure the ripening of bananas that will be later sold to wholesalers; (ii) ripeners that are also wholesalers and that ensure the ripening and the marketing of bananas directly to their clients; and (iii) wholesalers that are not ripeners that buy bananas from the latter and are only active in selling them to their clients<sup>18</sup>. While the indicator will consist of a weighted average of prices charged by these three categories of actors, on the basis of the information at its disposal, AIB estimates that it will be mainly influenced by those practiced by ripeners (wholesalers or not)<sup>19</sup>.
- (21) In order to be consumable, bananas that arrive green (as the pulp is still in the form of starch) must be ripened as close as possible to the consumer markets, so ripening is a mandatory step in the production of the final product. The envisaged indicator would therefore monitor price developments in the market for yellow bananas at the wholesale level, after the banana has ripened from green stage to yellow stage.
- (22) The indicator will cover conventional and organic bananas from all origins, particularly within a range of African, American and DOM origins<sup>20</sup>.
- (23) In terms of methodology, AIB asked CIRAD to elaborate the indicator, solely on the basis of already existing public and freely available data, collected by a number of competent national public bodies, as specified in the notification<sup>21</sup>. The relationship between AIB and CIRAD is clarified in a contract<sup>22</sup>.
- (24) CIRAD<sup>23</sup> will build on existing and open access data collected by the ‘Réseau des Nouvelles des Marchés’ (‘RNM’) and the ‘Institut national de la statistique et des études économiques’ (‘INSEE’), in order to develop the indicator<sup>24</sup>.

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<sup>17</sup> AIB notification, Annex IV.

<sup>18</sup> Additional information provided by AIB on 11 January 2021, p. 3.

<sup>19</sup> Additional information provided by AIB on 11 January 2021, p. 3.

<sup>20</sup> AIB notification, Annex V.

<sup>21</sup> AIB notification, p. 11 *et seq.*

<sup>22</sup> Additional information provided by AIB on 11 January 2021, Annex I.

<sup>23</sup> CIRAD is a public body under the supervision of the Ministry of Higher Education and Research and the Ministry of Foreign and European Affairs.

<sup>24</sup> The aim of RNM is to determine and follow the developments of price of agri-food products in the whole of metropolitan France. INSEE is a Directorate-General of the French Ministry of Economic Affairs and, inter alia, contributes to the production and spread of public statistics. Both entities are public. See also additional information provided by AIB on 11 January 2021, p. 2.

- (25) There is so far no publicly available indicator representative of the banana market in metropolitan France, either at the stage of first placing on the market (import), ripening (wholesale stage) or retail. The indicators currently available vary according to the place of quotation concerned, the variety, the method of production and the origin of the bananas. They also show that certain quotation places are under-represented or over-represented since they are not cross-checked with the demographic data of each quotation place, whereas the quantities of ripened bananas are directly correlated with the population of their consumption basin, given their fragility, which makes them unfit for transport and perishable. Moreover, the price surveys carried out by the RNM are carried out at frequencies that vary according to the market places concerned. The current indicators therefore concern only local markets that are sometimes under-represented or over-represented because they do not take into account the size of their population / number of consumers and are not representative at national level or for all banana varieties of any origin. Therefore, they do not provide sufficient knowledge of the trends of the wholesale banana market at national level.
- (26) The AIB will ensure the anonymity of the data collected and the respect of privacy and confidentiality. The data used will exclusively refer to the past and will be aggregated. This past character of the data varies according to the date of publication of the RNM quotation for each market place and the date of collection of the data used for that quotation. The information will then be transmitted via the CIRAD to AIB, which will publish the indicator based on past data of the previous week. The aggregation will occur in such a way that the indicator will also take into account data collected more than one week before publication (namely data relating to the beginning of the previous week). The data used by the AIB for the compilation of the indicator is itself public and aggregated since it is an average of prices charged by a representative sample of operators over one or more days of the week. The AIB is neither willing nor in a position to manipulate the data, which is elaborated and disseminated by independent public bodies<sup>25</sup>. With regard to the methodology, the indicator will include multiple levels of aggregation. First, the average prices published by the RNM for each marketplace will form aggregate data collected over one or more days of the week from a representative sample of operators. Second, these average prices per marketplace will be weighted according to the size of the population for each market place. Third, the final indicator will be an average of these weighted average prices per marketplace.
- (27) The AIB will disseminate the indicator on a weekly basis. The indicator will be publicly available on the websites of AIB and of CIRAD, without any code of access required.
- (28) The AIB envisages that the indicator will take the form of tables highlighting in graphical form: (i) the average wholesale selling prices for each week of a given year; and (ii) the four-year average of the average wholesale selling prices for each week<sup>26</sup>.

### 3. LEGAL ASSESSMENT

- (29) Article 210(1) of Regulation (EU) No 1308/2013 provides that Article 101(1) of the Treaty on the Functioning of the European Union ('the Treaty') shall not apply to agreements, decisions and concerted practices of recognised interbranch organisations

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<sup>25</sup> AIB notification, p. 18.

<sup>26</sup> See an example in AIB notification, Annex V.

recognised under Article 157 of the Regulation with the object of carrying out the activities listed in Article 157(1)(c) of the Regulation.

- (30) In order for an agreement, decision or concerted practice to be exempted from the application of Article 101(1) of the Treaty, Article 210 of Regulation (EU) No 1308/2013 provides that four cumulative conditions must be met: (i) the agreement, decision or concerted practice must be notified to the Commission by an interbranch organisation recognised under Article 157 of the Regulation; (ii), the Commission must not have made a finding, within two months of receipt of all the details required, that the agreement, decision or concerted practice is incompatible with Union rules; (iii) the notified agreement, decision or concerted practice must not have been put into effect before the expiry of the two-month period following their notification to the Commission; and (iv) the agreement, decision or concerted practice must be compatible with Union legislation, in particular the provisions of Article 210(4) of the regulation.

### 3.1. Recognised interbranch organisation

- (31) For the purposes of Article 210(1) of Regulation (EU) No 1308/2013, the AIB is an interbranch organisation in the banana products sector recognised in accordance with Articles 157(1) and 158 of that Regulation.

### 3.2. Agreement, decision or concerted practice by the interbranch organisation

- (32) The notified measure constitutes a decision adopted by unanimous vote of the members of the ‘assemblées générales’ of the AIB.

### 3.3. No previous implementation of the measure

- (33) The AIB has not yet implemented the notified measure<sup>27</sup>.

### 3.4. Objective of Article 157(1)(c) of Regulation (EU) 1308/2013

- (34) Article 210 of Regulation (EU) 1308/2013 provides that the measure must have the object of carrying out activities listed, for the banana products sector, in Article 157(1)(c) of that Regulation.

- (35) Decisions by interbranch organisations relating to market transparency form part of the legitimate scope of action of interbranch organisations in accordance with Article 157(1)(c) of Regulation (EU) No 1308/2013. According to Article 3 of its Statute, the AIB pursues the objective of promoting communication and information on the banana market.

- (36) The indicator will increase market transparency as economic operators in the banana products supply chain will be offered a large array of information, covering both conventional and organic bananas. Such a regularly available economic indicator could allow operators to improve their perception of the French metropolitan market, which could be useful to reduce price volatility in this market. Indeed, the French metropolitan market has experienced price volatility, documented since 2018 when the RNM started to provide a prospectus of evolutions of weekly prices (though only for some major French cities)<sup>28</sup>. The publication of the indicator may also improve understanding of trends by all operators in the supply chain, including changing market conditions against which better-informed operators can adjust their production and investment decisions.

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<sup>27</sup> AIB notification, p. 10.

<sup>28</sup> AIB notification, p. 19 and Annex VI.



3.5. Article 210(4) of Regulation (EU) No 1308/2013

- (37) The notified measure does not satisfy the conditions in Article 210(4) of Regulation (EU) No 1308/2013 and does not therefore need to be declared incompatible with Union law.
- (38) First, the notified measure will not lead to the partitioning of markets within the Union.
- (39) The indicator has neither the object nor the effect of limiting or controlling imports or exports, or of treating domestic sales more favourably than export sales. Rather, the indicator will take into account bananas from all origins and based all production methods (conventional and organic).
- (40) In addition, the indicator will be published and disseminated in an open and free manner on the websites of the AIB and the CIRAD. It will therefore be consultable by national operators as well as by operators established in another Member States.
- (41) Second, the notified measure will not affect the sound operation of the market organisation; rather, it will increase its transparency. The notified measure will only involve the distribution of past data in an aggregated format. It will therefore not go further than the needs expressed by the AIB to achieve the objective of market transparency.
- (42) Third, the notified measure will not create distortions of competition that are not essential to achieving the objectives of the CAP pursued by the interbranch organisation activity. The notified measure aims at creating greater transparency, thereby enabling market operators to make better-informed decisions in their contractual negotiations. The notified measure may therefore allow operators to understand better the valorisation of the banana products.
- (43) Moreover, the notified measure is careful to ensure confidentiality via sufficient aggregation of data to ensure that market operators cannot use the indicators for collusion purposes.
- (44) In addition, the notified measure is a voluntary offer to market operators, which may refer to these indicators in their contracts if they so wish, without being under an obligation to do so.
- (45) Fourth, the notified measure does not entail the fixing of prices or the fixing of quotas.
- (46) The indicator is based on past, aggregated (and therefore anonymous) data. Such aggregated data is collected and disseminated publicly free of charge by public entities. The indicator does not involve the handling of strategic or confidential individual data. As indicated above, the use of the indicator is also fully voluntary.
- (47) Moreover, the indicator is developed by the CIRAD, which is entirely independent of the AIB. The compilation of the indicator involves a second aggregation of the data by the AIB with an average and a weighting by the population size of the region corresponding to each market where the population is placed.
- (48) In addition, operators will remain free to set their own prices and to decide whether to refer to the indicator, or another indicator, in their contracts.
- (49) Finally, the indicator will not be a reference price for operators since it will be based solely on past data.

(50) Fifth, the notified measure will not create discrimination or eliminate competition in respect of a substantial proportion of the products in question because the indicator will be disseminated publicly and without restriction to all operators.

3.6. Compatibility with other Union rules

(51) The measure is not incompatible with any other Union rule.

HAS DECIDED AS FOLLOWS:

*Article 1*

Article 101(1) of the Treaty on the Functioning of the European Union (TFEU) does not apply to the measure notified by the Association Interprofessionnelle de la Banane to the Commission, pursuant to Article 210 of Regulation (EU) No 1308/2013, and the measure is not required to be declared incompatible with Union law pursuant to Article 210(4) of that Regulation.

*Article 2*

The Directorate-General for Agriculture and Rural Development shall inform the Association Interprofessionnelle de la Banane of this Commission Decision by means of the letter in the Annex.

Done at Brussels, 5.3.2021

*For the Commission*  
*Janusz WOJCIECHOWSKI*  
*Member of the Commission*