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**COMMISSION DECISION**

**of 13.4.2021**

**on the notification pursuant to Article 210 of Regulation (EU) No 1308/2013 by the  
Centre national interprofessionnel de l'économie laitière ('CNIEL') - Market indicator  
for four protected designations of origin ('PDOs') in the French Auvergne region**

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**on the notification pursuant to Article 210 of Regulation (EU) No 1308/2013 by the Centre national interprofessionnel de l'économie laitière ('CNIEL') - Market indicator for four protected designations of origin ('PDOs') in the French Auvergne region**

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 Centre national interprofessionnel de l'économie laitière ('CNIEL') pursuant to Article 210 of Regulation (EU) No 1308/2013,

Whereas:

1. Procedure

- (1) By letter of 16 November 2020, the French interbranch organisation, CNIEL, an interbranch organisation in the milk and milk products sector, notified the Commission pursuant to Article 210 of Regulation (EU) No 1308/2013 of its intention to create and disseminate a market indicator for four cheeses with a protected denomination of origin ('PDO') in the French Auvergne region (hereafter 'CNIEL notification')<sup>2</sup>. The Commission acknowledged receipt of this notification by letter of 19 November 2020<sup>3</sup>.
- (2) The Commission sent a request for additional information to CNIEL on 22 December 2020<sup>4</sup>. CNIEL replied to that request on 19 February 2021<sup>5</sup>.

2. Description of the measure

2.1. Object of the measure

- (3) CNIEL intends to create a market indicator for four PDO cheeses (Cantal, Auvergne blue, Ambert and Saint-Nectaire) and their co-products (butter and whey powder - 'poudre de lactosérum') ('indicator').
- (4) CNIEL intends to disseminate the indicator through one of its sections, the Centre régional interprofessionnel de l'économie laitière (hereinafter 'CRIEL') Alpes Massif Central.

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

<sup>2</sup> Ares(2020)6804578.

<sup>3</sup> Ares(2020)6914589.

<sup>4</sup> Ares(2020)7878233.

<sup>5</sup> Ares(2021)1397011.

- (5) According to CNIEL, the indicator will pursue a number of aims.
- (6) First, the indicator aims to reflect the value of milk (which needs to be local, from the Auvergne region) used for the production of those four PDO cheeses by providing milk producers and dairy undertakings with information in the context of their contractual negotiations with downstream cheese producers for the purchase of milk produced in Auvergne for the manufacture of those cheeses.
- (7) Second, the indicator aims to improve knowledge of the value chain for actors in the dairy sector of Auvergne.
- (8) Third, the indicator aims to raise the interest of dairy producers in the four PDO cheeses, thereby making it possible for producers to meet better the expectations of consumers.

## 2.2. Specific features of the European and French milk markets

- (9) In 2017, France produced 24.3 million litres of raw milk, ranking second among milk producing countries in the Union, behind Germany. In 2016, the milk industry in France generated 17% of the total turnover of the French agri-food industry. In 2017, there were 57 000 milk producers (including mountain milk production) and, in 2016, 743 milk processing plants. Raw milk in France is mainly processed into cheese (34.3%), fresh products – drinking milk, yoghurt and cream – (24%), butter and dairy fats (19.8%) and milk powders (15.8%)<sup>6</sup>.
- (10) In 2017, French exports (both to third countries and intra-EU trade) of dairy products reached EUR 7.2 billion, while imports amounted to EUR 4 billion, generating a positive trade balance of EUR 3.2 billion. Of the products exported, cheeses accounted for 42%, and other products of general consumption such as yogurts, butter and cream, for 17%<sup>7</sup>.
- (11) According to the AGRESTE 2019 Milk Annual Survey<sup>8</sup>, Cantal, Auvergne blue, Ambert and Saint-Nectaire accounted for only around 2% of the production volumes of cows' cheeses in the dairy industry in France in 2019. In that same year: (i) Cantal and Saint Nectaire accounted for 9% of the milk production of uncooked pressed cow's cheese (6% and 3% respectively); (ii) Bleu d'Auvergne and Fourme d'Ambert (also including Fourme de Montbrison) accounted for 37% of the production of blue-veined cow's cheese dairy industry, 18% and 19% respectively; and (iii) blue-veined cow's cheeses accounted for only 2.2% of the annual production of cows' cheeses.
- (12) Based on the data collected by FranceAgriMer, a public administrative institution attached to the Ministry of Agriculture<sup>9</sup>, milk prices have been affected by a

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<sup>6</sup> Commission Decision of 29.11.2019 on the notification pursuant to Article 210 of Regulation (EU) No 1308/2013 by the Centre national interprofessionnel de l'économie laitière (CNIEL) - Dashboard and observatory of economic indicators for the French milk and milk products sector, COM C(2019) 8645 final, page 2.

<sup>7</sup> Commission Decision of 29.11.2019 on the notification pursuant to Article 210 of Regulation (EU) No 1308/2013 by the Centre national interprofessionnel de l'économie laitière (CNIEL) - Dashboard and observatory of economic indicators for the French milk and milk products sector, COM C(2019) 8645 final, page 2.

<sup>8</sup> AGRESTE, Enquête annuelle laitière 2019 - Principaux résultats, 16 November 2020, <https://agreste.agriculture.gouv.fr/agreste-web/disaron/Chd2013/detail/>.

<sup>9</sup> CNIEL notification, p. 10, and additional information provided by CNIEL on 19 February 2021, pp. 5-6.

considerable variation in the period 2006-2019, where in some instances they increased – and in some others they decreased – by 10% from a year to the other<sup>10</sup>.

### 2.3. CNIEL

- (13) CNIEL is an interbranch organisation in the milk and milk products sector, which was created on 21 March 1974 (Law No 74-639<sup>11</sup>) and recognised under Article 163 of Regulation (EU) No 1308/2013 by France on 2 June 2014<sup>12</sup>. It is composed of the main associations representing the French dairy sector: the milk producers (Fédération Nationale des Producteurs de lait (FNPL)), the milk cooperatives (Fédération Nationale des Coopératives Laitières (FNCL)) and the milk industry (Fédération Nationale de l'Industrie Laitière (FNIL))<sup>13</sup>.
- (14) CNIEL's role is to facilitate the relations between the different levels of the milk and milk products sector, as well as to promote and defend the image of milk and milk products in order to increase its demand in France and abroad. It carries out collective actions in diverse fields, such as economic knowledge of the sector, quality of raw milk, the quality procedures, monitoring and research, advertising, promotion, information on milk and milk products.
- (15) Article 2 of CNIEL Statutes dated 19 September 2019 ('the Statutes') lists CNIEL's objectives. This list includes in point (b) the objective of improving and promoting the knowledge and transparency of production and the market, through, inter alia, the publication of statistical data, the conduct of analyses of potential future market developments at regional, national or international level, and the creation and development of a permanent information and economic forecast system<sup>14</sup>.
- (16) In terms of organisation, according to Article 5 of the Statutes, CNIEL is composed of four colleges representing milk producers, milk cooperatives, milk industry and milk trade, distribution and catering. Pursuant to Article 7 of the Statutes, decisions of CNIEL can only be taken by unanimous vote of the four colleges<sup>15</sup>.
- (17) CNIEL works with eight regional centres, Centres Régionaux Interprofessionnels de l'Économie laitière ('CRIELs'), which are legally autonomous structures composed of representative organisations from the milk producers, the milk cooperatives and the milk industry in their own territorial areas. The CRIELs implement CNIEL's policies and decisions at a regional level.
- (18) Created by the merger of CRIEL South-East and CRIEL Auvergne-Limousin on 25 June 2018, CRIEL Alpes Massif Central is an association within the meaning of the French Law on associations of 1901<sup>16</sup>, bringing together breeders, cooperatives and private industry.

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

- (19) 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

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<sup>10</sup> Additional information provided by CNIEL on 19 February 2021, p. 11.

<sup>11</sup> [Law No 74-639 of 12 July 1974](#) on the dairy interbranch organisation.

<sup>12</sup> CNIEL notification, Annex I.

<sup>13</sup> CNIEL notification, page 3.

<sup>14</sup> CNIEL notification, Annex IVa.

<sup>15</sup> CNIEL notification, Annex IVa.

<sup>16</sup> [French Law of 1 July 1901](#) about the associations. For the Statutes of CRIEL Alpes Massif Central, see CNIEL notification, Annex VI.

followed on from a discussion in the 'États Généraux de l'Alimentation' ('EGalim') that were initiated in 2017<sup>17</sup>. 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 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.*

- (20) 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.*

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<sup>17</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).

(21) Moreover, Article L. 443-4 of the French Commercial Code<sup>18</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.(...).*

(22) CNIEL's work is covered by Article L. 632-2-1(c) of the Rural and Maritime Fisheries Code, which invites interbranch organisations to 'publier des données statistiques agrégées relatives aux coûts de production, aux prix, accompagnées le cas échéant d'indicateurs de prix, aux volumes et à la durée des contrats précédemment conclus'.

## 2.5. Description of the measure

(23) The indicator will take the form of a numerical parameter in euros expressed per 1000 litres (€/1000 litres)<sup>19</sup>. While the indicator will be common for the four PDO cheeses, operators will remain free to individualise it for each PDO cheese during their negotiations<sup>20</sup>.

(24) The indicator will be calculated based on official data published by governmental organisations, thus ensuring its neutrality and objectivity. These organisations are – first – the Direction Régionale de l'Agriculture et de l'Alimentation et la Forêt d'Auvergne Rhône-Alpes ('DRAAF'), a decentralised department of the Ministry of Agriculture at regional level; and – second – FranceAgriMer.

(25) In addition, all data used will be past, anonymous and aggregated information<sup>21</sup>.

(26) The data for the four PDO cheeses concerned will come from the annual survey of PDO Auvergne cheese carried out by DRAAF<sup>22</sup>. DRAAF and FranceAgriMer already have in place procedures that ensure adequate representativeness, neutrality and scientific reliability of data collection<sup>23</sup>. Data is collected for year 'n-1' in April/May of year 'n'. The individual pieces of data will then be aggregated by DRAAF for publication in such a way that no individual piece of data can be identified.

(27) CNIEL will ensure that no sensitive data collected by DRAAF will be transmitted to the employees of CRIEL Alpes Massif Central that will be responsible for calculating the indicator<sup>24</sup>.

(28) CRIEL will draw up a three-step formula establishing the indicator: (i) weighting of the different milk products for each PDO cheese; (ii) volume weighting per PDO; and (iii) determining the indicator on the basis of the average price for 2009<sup>25</sup>.

(29) The first step will be substantiated through a formula where a weighting factor of 50% will be applied to qualify the weight of the four PDO cheeses in the indicator (in

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<sup>18</sup> French [Commercial Code](#).

<sup>19</sup> Additional information provided by CNIEL on 19 February 2021, p. 1.

<sup>20</sup> Additional information provided by CNIEL on 19 February 2021, p. 3.

<sup>21</sup> CNIEL notification, p. 10.

<sup>22</sup> A copy of this study for 2019 is present in CNIEL notification, Annex VII.

<sup>23</sup> CNIEL notification, pp. 11-12.

<sup>24</sup> CNIEL notification, p. 11.

<sup>25</sup> CNIEL notification, pp. 12-15.

relation to other milk products such as butter and whey powder). This weighting factor will be determined by consensus by milk producers and cheese producers following the conclusion that the value of cheese must be distributed equally within this indicator (50/50) between the upstream and downstream stages of the chain<sup>26</sup>. Data on the recovery of butter and whey powder will come from the monthly milk survey carried out by FranceAgriMer.

- (30) In the second step, a weighting factor based on the volume produced for each PDO cheese concerned will be taken into account. These percentages will be updated as necessary to ensure the robustness of the indicator. CRIEL commits to include in the formula any variation of more than one percentage point in the volume percentages of each of the four PDO cheeses (as will be communicated annually by the ‘organismes de défense et de gestion’ – ODG<sup>27</sup>) before the publication of the indicator as soon as the data is available<sup>28</sup>.
- (31) With regard to the third step, the choice to use the year 2009 as benchmark for the development of the indicator will be in line with the common intention of the stakeholders to initiate a process of valorisation of PDOs at that time based on reliable and objective downstream valuation data<sup>29</sup>.
- (32) Economic operators will be free to choose to refer to the indicator in their respective contracts.
- (33) The indicator will be published once a year, in June or July of year ‘n’<sup>30</sup>. Accordingly, as indicated above (Recital 26), the data at the moment of their publication will be at least one year old.
- (34) The indicator will be available via CRIEL Alpes Massif Central website to the general public. In addition, it will be distributed via a dedicated newsletter for colleges of CRIEL and their members<sup>31</sup>. The indicator will also be disseminated to all operators concerned via CRIEL Alpes Massif Central colleges and the producer organisations of the Auvergne Region recognised by the public authorities<sup>32</sup>.

### 3. Legal Assessment

- (35) 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 recognised under Article 157 of the Regulation with the object of carrying out the activities listed, for the milk and milk products sector, in Article 157(3)(c) of the Regulation.
- (36) 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

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<sup>26</sup> Additional information provided by CNIEL on 19 February 2021, p. 2.

<sup>27</sup> As clarified by the Institut national de l'origine et de la qualité (INAO) – a public body under the supervision of the ministère de l'Agriculture et de l'Alimentation (French Ministry of agriculture and food) – an ODG can be set up on the initiative of a group of producers and/or processors producing the same product to ensure recognition of a quality mark, from the drafting of the specification to the protection and valorisation of the product. See <https://www.inao.gouv.fr/Espace-professionnel-et-outils/Les-organismes-de-defense-et-de-gestion-ODG>.

<sup>28</sup> Additional information provided by CNIEL on 19 February 2021, p. 3.

<sup>29</sup> Additional information provided by CNIEL on 19 February 2021, p. 5.

<sup>30</sup> CNIEL notification, p. 15.

<sup>31</sup> Additional information provided by CNIEL on 19 February 2021, p. 2.

<sup>32</sup> CNIEL notification, p. 15.

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

(37) For the purposes of Article 210(1) of Regulation (EU) No 1308/2013, CNIEL is an interbranch organisation in the milk and milk products sector recognised in accordance with Articles 157(3) and 163 of that regulation.

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

(38) The notified measure constitutes a decision adopted on 5 February 2020 by the members of the Management Board of CNIEL<sup>33</sup>.

### 3.3. No previous implementation of the measure

(39) CNIEL has not yet implemented the notified measure<sup>34</sup>.

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

(40) Article 210 of Regulation (EU) 1308/2013 provides that the measure must have the object of carrying out activities listed, for the milk and milk products sector, in Article 157(3)(c) of that regulation.

(41) Decisions by interbranch organisations relating to market transparency form part of the legitimate scope of action of interbranch organisations in accordance with Article 157(3)(c) of Regulation (EU) No 1308/2013. According to Article 2(b) of its Statutes, CNIEL pursues the objective of improving and promoting the knowledge and transparency of production and the market in its work.

(42) The indicator will increase market transparency as economic operators in the supply chain for PDO cheeses in Auvergne will be offered a large array of information. Such a regularly available indicator may enable operators to improve their perception of the market at all stages, thereby reducing information asymmetry and price volatility. It may also help to bridge the gap related to higher production costs in the mountainous region of Massif Central, estimated to be 120€/1000 litres higher than in the lowland areas. Similarly, the indicator may improve understanding of market trends by all operators in the supply chain, including changing market conditions against which better-informed operators can adjust their production and investment decisions.

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

(43) 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.

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<sup>33</sup> CNIEL notification, p. 2 and Annex III.

<sup>34</sup> CNIEL notification, p. 2; additional information provided by CNIEL on 19 February 2021, p. 9.



- (44) First, the notified measure will not lead to the partitioning of markets within the Union in any form.
- (45) 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. Thus, dairy producers that will use the indicator in their contracts will be able to supply their milk in other French regions or in other Member States and obtain milk from operators in other French regions or in other Member States. The inclusion of the indicator will remain optional. As stated above (Recital 23), the indicator will be common for the four PDO cheeses, but operators will remain free to individualise it for each PDO cheese during their negotiations. Economic operators will thus be free to choose to refer to the indicator in their respective contracts and to determine freely their contractual conditions<sup>35</sup>.
- (46) Equally, processors in other Member States that will use the indicator in their contracts will be able to obtain milk from producers in Auvergne and freely determine the contractual conditions governing the supply of such milk.
- (47) 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 CNIEL to achieve the objective of market transparency.
- (48) 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 indicator 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 milk products.
- (49) Moreover, the indicator is careful to ensure confidentiality via sufficient aggregation of data to ensure that market operators cannot use the indicators for collusion purposes.
- (50) In addition, the indicator is a voluntary offer to operators, which may refer to these indicator in their contracts if they so wish, without being under an obligation to do so.
- (51) Fourth, the notified measure will not impose prices or result in price fixing between operators.
- (52) 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 (Recital 45), the inclusion of the indicator will remain optional.
- (53) 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.
- (54) Finally, the indicator will not be a reference price for operators since it will be based solely on past data.

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<sup>35</sup> CNIEL notification, p. 15.

(55) 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

(56) 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 Centre national interprofessionnel de l'économie laitière 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 Centre national interprofessionnel de l'économie laitière of this Commission Decision by means of the letter in the Annex.

Done at Brussels, 13.4.2021

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