



# The European Commission has published a report on the application of competition rules in the agricultural sector

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📌 SOCIETY, SUSTAINABILITY, EU AND COMPETITION, AGRI-FOOD

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In October 2018, the European Commission published its first report on the application of European competition law in the agricultural sector<sup>1</sup>.

European law grants a special status to the agricultural sector. According to Article 42 of the Treaty on the Functioning of the European Union (TFEU), the European competition rules

apply to the “... production of and trade in agricultural products only to the extent determined by the European Parliament and the Council within the framework of Article 43(2) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 39<sup>2</sup>...”. Moreover, the Court of Justice of the European Union in several instances recognised the precedence of the common agricultural policy over the objectives of the Treaty on the

<sup>1</sup> Report from the Commission to the European Parliament and the Council, The application of the Union competition rules to the agricultural sector, 26.10.2018, COM(2018) 706 final. Available at the following [LINK](#).

<sup>2</sup> The objectives are increasing productivity, achieving a fair living standard of the agricultural community, market stabilisation, assuring availability of supplies and ensuring reasonable consumer prices.



Functioning of the European Union in the field of competition<sup>3</sup>.

Regulation (EU) No 1308/2013 establishing a common organisation of the markets (CMO) in agricultural products<sup>4</sup> contains derogations from the application of Article 101 TFEU to agriculture. In order to monitor the application of these derogations, Article 225, letter d), of the Regulation states that the Commission must present periodic reports on the application of the competition rules to the agricultural sector.

The report covers the period from 1 January 2014 to mid-2017, regarding the derogations from the competition rules in Regulation (EU) No 1308/2013, and from 1 January 2012 to mid-2017 for the review of antitrust investigations. It is based on input from national competition authorities (NCAs), Member States and private organisations.

Article 209 of the Regulation provides for a general exemption from competition rules to agreements of farmers and their associations as long as they do not jeopardise the objectives of Article 39 TFEU<sup>5</sup>, do not entail an obligation to charge an identical price and do not exclude competition. Moreover, under Article 210 of the Regulation, recognised interbranch organisations (IBOs) can rely on a derogation from Article 101(1)

TFEU, provided they notify their agreements to the Commission and the Commission does not find them incompatible with Union rules within two months. The Regulation furthermore contemplates sector-specific derogations, such as the milk, olive oil, beef and veal and arable crops sectors<sup>6</sup>, as well as other sectoral derogations, including crisis measures.

The Commission found that recognised producer organisations and recognised interbranch organisations can help strengthen the farmers' position and contribute to a more efficient food supply chain. The report shows that the recognition of producer organisations by national authorities is widely used in the fruit and vegetables sector, where almost 50% of production is marketed by such producer organisations, but also in the milk, meat, olive oil and cereals sectors<sup>7</sup>. In addition, there are 128 recognised interbranch organisations in the EU, mainly located in France and Spain. Moreover, the specific sectoral tools available in the agricultural industry are being used for the benefit of farmers and the sector at large. For instance, the possibility of agreeing on a value-sharing mechanism on a voluntary basis in the sugar sector has been widely implemented, and market stabilisation measures in the wine sector have also been frequently used. Supply management measures were put in place

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<sup>3</sup> See CJEU 29.10.1980, Case 139/79, *Maizena*, paragraph 23; CJEU 05.10.1994, Case C-280/93, *Germany v. Council*, paragraph 61; CJEU 19.09.2013, Case C-373/11, *Panellionios Szdesmos Viomichanion Metapoliisis Paknou*, paragraph 39; CJEU 14.11.2017, Case C-671/15, *APVE and Others*, paragraph 37.

<sup>4</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 agriculture and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007. OJEU L 347 of 20.12.2013.

<sup>5</sup> Article 39 TFEU states that: "... *The objectives of the common agricultural policy shall be:*  
(a) *to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;*  
(b) *thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;*  
(c) *to stabilise markets;*  
(d) *to assure the availability of supplies;*  
(e) *to ensure that supplies reach consumers at reasonable prices...*".

<sup>6</sup> See paragraphs 23-28 of the report.

<sup>7</sup> See paragraphs 11-22 of the report.

for products with protected designations of origin or geographical indications in the cheese and ham sector<sup>8</sup>.

With regard to the review of antitrust action, the report notes that NCAs carried out 178 investigations in the agriculture sector in the relevant period. Almost one-half of the competition infringements found concerned agreements on prices (46%), in particular, horizontal agreements between competing processors setting the wholesale price, as well as vertical agreements between processors and retailers setting the retail price. Other infringements related to agreements on output (13%), information exchange (13%) and sharing of markets (10%)<sup>9</sup>. NCAs also provided guidance to farmers, other operators and Governments on how to interpret and apply competition law in the sector, such as on the farmers' sustainability initiatives or the publication of prices by sectoral organisations. Moreover, they proactively monitored the sector and conducted sectoral inquiries into the functioning of the supply chain, with a particular focus on the transmission of prices along the chain and the balance of bargaining power between farmers and other chain levels.

The report, though, found that some Member States tried to restrict imports of specific agricultural products from other Member States through, for instance, collective agreements. In such cases, the measures taken by NCAs helped both consumers in the Member States where imports could have been restricted and farmers in other Member States that would have been affected by the attempt to hinder cross-border trade.

The report is accompanied by the Commission Staff Working Document<sup>10</sup>, which provides additional information on the derogations and the antitrust investigations conducted.

The Commission will continue its dialogue with stakeholders in the agricultural sector, as well as with Member States, the European Parliament and the Council, on future policy choices concerning the application of competition rules to the agricultural sector. The Commission will also intensify its monitoring of the agricultural markets, in particular as regards collective agreements that result in forms of segmentation or partitioning.

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<sup>8</sup> See paragraphs 29-32 of the report.

<sup>9</sup> See paragraphs 47-53 of the report.


<sup>10</sup> Commission Staff Working Document accompanying the document "*Report from the Commission to the European Parliament and the Council. The application of the Union competition rules to the agricultural sector*", 26.10.2018, SWD(2018) 450 final. Available at the following [LINK](#).




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