

Copa and Cogeca contribution to the Commission public consultation on draft revised Horizontal Guidelines on horizontal co- operation agreements and Sustainability agreements

• Competition Policy supporting the EU Green Deal

Copa and Cogeca welcome the possibility to contribute to the public consultation on the [draft revised Horizontal Guidelines on horizontal co-operation agreements](#) and will further contribute also to the ongoing European Commission consultation on [Sustainability agreements in agriculture](#) related specifically to the guidelines on antitrust derogation in application for art. 210a of Regulation (EU) No 1308/2013 (Single CMO).

Food security is highly strategic and even more very relevant in the current crisis context. Throughout the COVID-19 pandemic, EU farmers and agri-cooperatives were able to maintain a steady supply of safe, high-quality, and nutritious food for citizens across the EU, thus ensuring food security. This required hard work and sacrifices throughout the food supply chain.

The entire European farming community is now carefully considering with deep sorrow the development of the war in Ukraine. This war which affects Europe will have worldwide repercussions for several years to come. Most sectors will be directly or indirectly impacted. Some sectors are already heavily affected by the price increases resulting from the Covid and energy crises, and they must be supported without delay. Other farmers need clear policy guidance as they start sowing.

With the rise of the Green Deal, the CAP remains the main European policy and the historical cement of the EU, but it is clear to us that the CAP is no longer the only policy that has a significant impact on agriculture. The Farm to Fork Strategy, the Biodiversity Strategy for 2030, the Soil Strategy, the Forest Strategy for 2030, and the Fit for 55 Package are all initiatives whose guiding principles were sketched out in 2021 and which will have to be translated into legislative proposals from 2022 onwards.

These initiatives propose profound changes and major investments that will redefine our agricultural model for the decades to come. On the ground, European farmers are engaged in these multiple transitions.

In order to deliver on the European Green Deal objectives, including those set out in the Farm to Fork Strategy, responsibility needs to be shared among all actors across the entire food chain.

Additionally, achieving ambitious goals requires synergies between sectors and players in the value chains. In this context, Copa and Cogeca would like to underline that cooperation among farmers is crucial to reach the economic, environmental and social goals. This cooperation allows for the implementation of innovative and sustainable actions that foster job creation and contribute to vibrant rural areas and from which everybody can benefit, from farmers to agri-cooperatives, from consumers to the value chain as a whole.

Cooperation among farmers engaged in promoting sustainability in addition to ways of ensuring a fair distribution of the added value created by sustainable products and actions with producers need to be supported. This includes addressing how the competition rules regarding collective

initiatives can be clarified. Sustainability and competition often go hand in hand. Just as competition can stimulate innovation in the form of new or improved products and processes, so can it stimulate sustainability. Investments and improved production processes that use raw materials more efficiently not only offer businesses competitive advantages but are also in the interest of sustainability.

The ability for producers/traders, operating through a co-operative or PO, on matters conferring a genuine sustainability benefit is currently permissible under legislation and many different styles of both vertical and horizontal sustainable agreements are already a feature of the EU market. However, formal express clarification on the subject of such sustainability agreements is a positive and useful development.

In recent years it has become more and more evident that the EU's competition rules can conflict with other policy areas, such as environmental policy. Above all, the increasing importance of animal and environmental protection as well as sustainable economic practices should also be taken into account in competition law.

It should be noted that in order to further develop the Green Deal, appropriate measures must be taken in all political areas. This also includes competition law.

- **Sustainability agreements which put at the center the key role of farmers**

Farmers may use collective action and horizontal cooperation to achieve common interests related to their agricultural business. Collective action can cover all of the (commercially) relevant activities of farmers from the planning of production to the placing of products on the market. Incentives to act collectively relate to commercial or other benefits (e.g. concerning landscapes, sustainability, climate change, animal welfare) that are achieved less efficiently – or not at all – by acting alone¹.

The European Commission initiatives to end the confusion that currently reigns over the limits of producer cooperation in the agricultural sector are welcome. Such clarification ought to dispel the ambiguities and favour clear and workable rules over overly wrought nuances which are mainly of academic consequence. Doing so, it must be cognizant of the primacy of CAP objectives over those of competition policy as stipulated by the ECJ².

Therefore, European farmers and agri-cooperatives welcome the intention of the Commission, to clarify the competition rules for collective initiatives that promote sustainability in supply chains. We support as well that the Commission will work with co-legislators to improve agricultural rules that strengthen the position of farmers (e.g. producers of products with geographical indications), their cooperatives and producer organisations in the food supply chain.

In particular where an agreement is vertical there is real justification for inserting protections for producers as it will typically (on sustainability initiatives) be the producer who bears the higher (in relative terms) burden of investment cost. Having a formal agreement and contractual obligations, would provide better security for producers.

- **Horizontal co-operation agreements and Sustainability**

We take note that the draft guidelines on to horizontal co-operation agreements, “*do not apply to agreements, decisions and concerted practices of producers of agricultural products that relate to the production of or trade in agricultural products and that aim to apply a sustainability standard higher than mandated by Union or national law and exempted from Article 101(1) pursuant to Article 210a of Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products*” and “*are without prejudice to the Guidelines the Commission will issue in accordance with Article 210a(5) of that Regulation*”.

¹ Report of the Agricultural Markets Task Force, November 2016, page 39

² Report of the Agricultural Markets Task Force, November 2016, page 44

It is clearly stated that “*however, agreements, decisions and concerted practices of producers of agricultural products that relate to the production of or trade in agricultural products and that do not meet the conditions of Article 210a, are subject to Article 101(1)*”.

In this respect and in particular on the relation between the guidelines expected for art. 210a for reg. 1308/2013 and Horizontal co-operation agreements we would underline the following:

- **The guidelines expected to be published by 8 December 2023 in art. 210a, should fully respect the tenure of the article without limiting the scope of it.** The same should be true for the horizontal co-operation agreements for which the guidelines should not overcome the provisions of art. 201a.
- **Sustainability agreements in application of art. 210a do not include quality labels** (the latter being the subject of specific provisions in the single CMO Regulation) and that should not be called into question in any way as for any initiative **undertaken among farmers** (development of brands, introducing progress in terms of farmers' remuneration, or linked to animal welfare).
- For **both quality labels and farmer-to-farmer initiatives**, the criteria used in the guidelines **must not call into question the approaches taken by farmers**. In particular, this should apply to the criteria aimed at guaranteeing effective and non-discriminatory access to the labelling process for companies that have not participated in the process of drawing up the standards on the one hand, and on the other hand, the criteria linked to the prohibition of sustainability agreements that would lead to an increase in product prices.