

To: The European Commission

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The NFU represents 47,000 farm businesses in England and Wales. In addition we have 40,000 countryside members with an interest in farming and the country.

## European Commission consultation: Draft guidelines on the application of rules 169-170 of the CMO Regulation

The NFU welcomes the opportunity to respond to this consultation by the European Commission on the content of its draft guidelines concerning the application by producers in the olive oil, beef and veal and arable sectors of Articles 169, 170 and 171 of the CMO Regulation (the “Guidelines”). Those articles lay down rules which allow producer organisations (“POs”) in the relevant sectors to negotiate contracts for the supply of all or part of their members’ produce, provided certain conditions are met, including that the members’ cooperation creates significant efficiencies. POs which comply with these conditions will benefit from exemptions from competition law prohibitions.

As the European Commission intends for producers to be responsible for checking that their practices satisfy the relevant conditions themselves, the NFU is pleased to see that Guidelines are being published to assist them with this self-assessment exercise. We do, however, have some concerns regarding the suitability of the draft Guidelines which have been produced and hope that the Commission will take these comments into account before publishing a final version.

### General comments on the Guidelines

In our view the Guidelines are an extremely useful tool for lawyers and competition authorities. We are concerned; however, that certain parts are too technical for farmers, the majority of whom will have only a limited awareness of competition law and European legislation.

The first two chapters of the Guidelines, in particular, have not been drafted in a way which makes them accessible to someone without a legal or regulatory background. These sections set out the applicable legal framework against which a producer must assess his/her practices to determine whether or not they are compliant with competition law. Although the examples in text boxes are useful, the remaining parts of these sections are too detailed and too technical. The flow-chart at page 14 (which follows a 9 page summary of the applicable legislation) is a tool which could only be used by someone with an understanding of competition law – for example, the chart guides the user through various options set out in text boxes, which include “*Assessment of compliance with the Specialisation Block Exemption Regulation*” and “*Assessment under Article 101(3) TFEU on a case by case basis*”. Most farmers will not be familiar with block exemptions or the TFEU and it is unrealistic and unfair to expect them to take on all the responsibility that self-assessment entails without providing them with tailored and accessible guidance which has been pitched at an appropriate level.

Chapter 3, however, which contains sector specific sections, is very useful. The examples are a great way of helping farmers to understand how the competition law derogation will work in practice. In the current draft of the Guidelines, there are only one or two examples per sector. In our view, it would be really useful if the Commission could add further examples to Section 3 of the Guidelines so that they cover a wider range of scenarios. These will help farmers to understand what sort of efficiencies will qualify as being “significant” and, therefore, are covered by the derogation.

## **Responses to consultation questions**

The NFU has no further comments to make in relation to the remainder of the consultation.