



# *How to strengthen the position of farmers in the agri-food supply chain?*

## *European legislation and initiatives*

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## The Commission's policy mix

- 1 January 2018: **Omnibus Regulation increases** legal certainty for producer organisations (POs) and associations of producer organisations (APOs)
- April 2019: Adoption of the **Directive on Unfair trading practices in the agri-food supply chain**
- Ongoing: Measures to increase **market transparency**
- **CAP reform: Sectoral interventions**

# Benefits of producer organisation

Since 2013 the CMO takes a **horizontal approach** towards **RECOGNISED** POs, APOs and interbranch organisations.

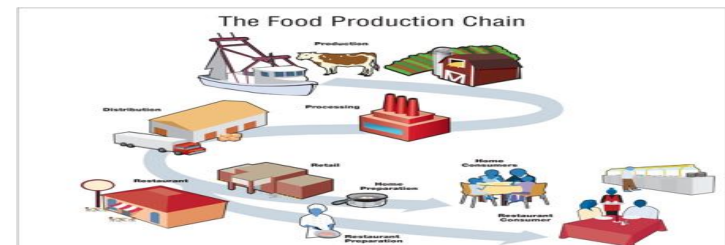
Producer cooperation is considered beneficial

## For the producer



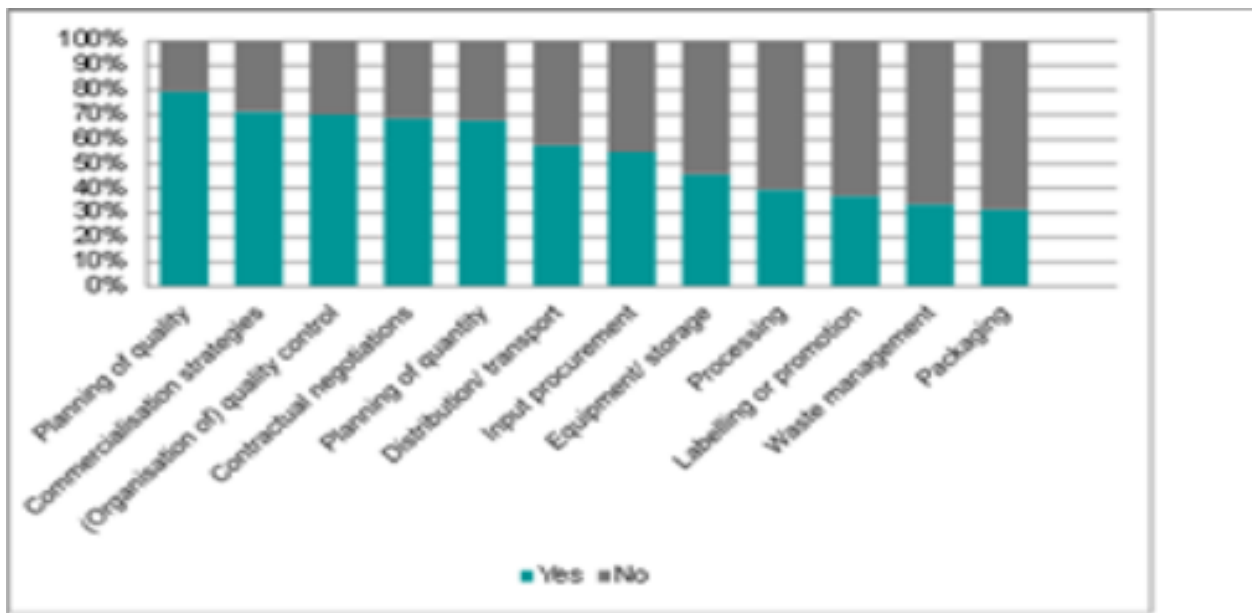
Strengthening the position and *bargaining power* of producers in the chain

## For the agri-food chain



Contributing to a *smooth functioning* of the chain

# Activities of producer organisations



DG COMP Study: Study on Producer Organisations and their activities in the olive oil, beef and veal and arable crops sectors

# Where do interests of POs and buyers coincide and where not?

## ***Producer perspective***

*bargaining / sales*

*reduction transaction  
cost*

*information sharing*

*quality management*

*co-innovation*

*logistic efficiency*

## ***Buyer perspective***

*Bargaining / purchase*

*reduction transaction  
cost*

*information sharing*

*quality management*

*co-innovation*

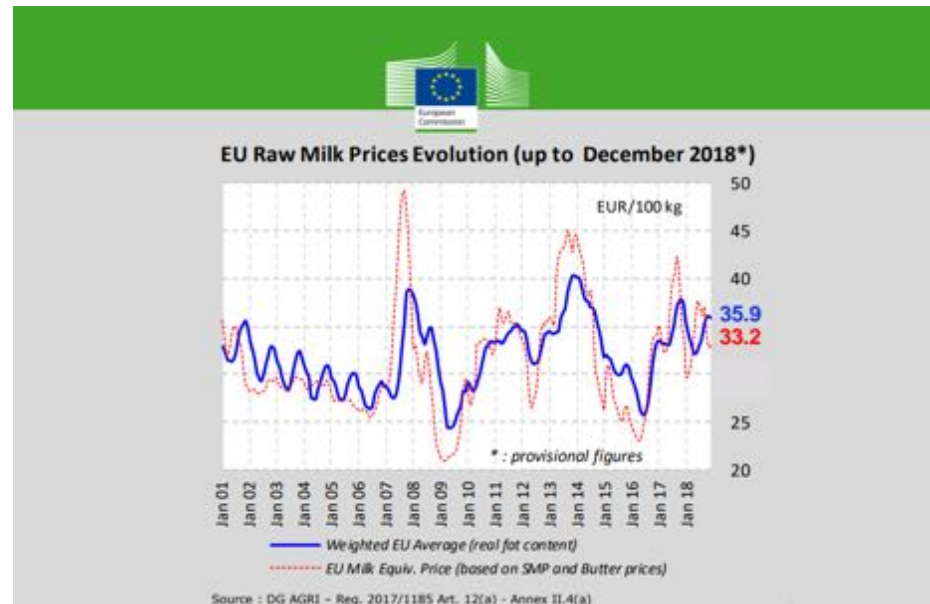
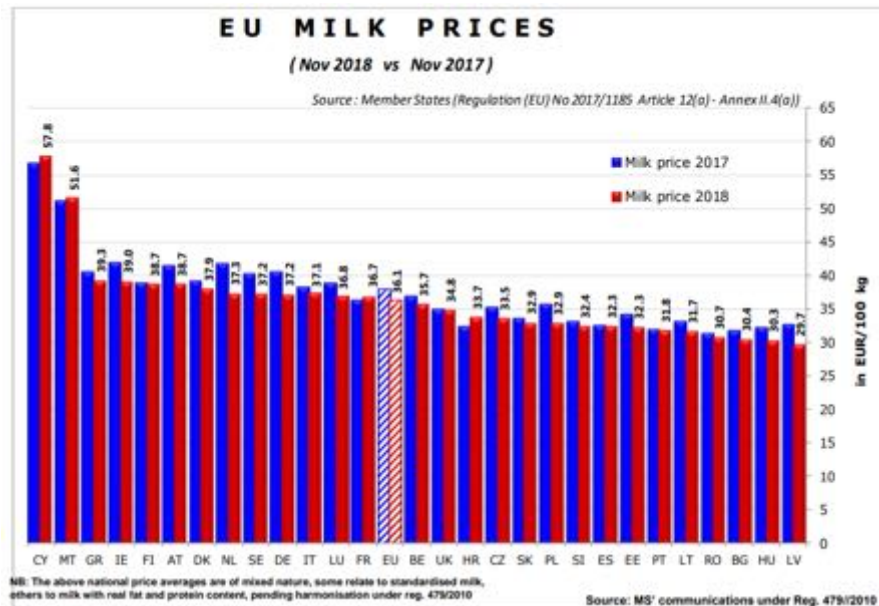
*logistic efficiency*

*CSR activities*

# Prices in competitive supply chains

Space

Time





# CMO: Recognition of POs/APOs

- National recognition by the MS ("may recognise")
- By respecting requirements of CMO (statutes, democratic scrutiny by members)
- What are the benefits\*:
  - E.g. in FV sector, EU financing for operational programmes is granted to recognised POs
  - Rural development funding for setting up recognised POs
  - Credibility in the chain, when working with other actors
  - (Derogation from the competition rules)
- Take note: Also **cooperatives** can obtain recognition as POs and have been recognised.

\*Surveys among producers and POs in DG COMP Study on producer organisations in the olive oil, beef/veal and arable crops sector and DG AGRI ongoing study on the best ways for producer organisations to be formed, carry out their activities and be supported.

# Producer cooperation and competition law

## Article 101 (1) TFEU

- prohibits restrictions of competition by agreements of competitors
- in particular price fixing, allocation of markets or customers

## Derogations

**Article 101 (3) TFEU** and  
Competition Block Exemptions  
(covers joint production, but with  
market threshold of 20%)

Agricultural derogations  
in the CMO Regulation





# AGRI derogations from the competition rules

There are a number of agricultural derogations from the competition rules for producer organisations

- Some apply to all sectors: **Article 152 CMO**
- Some apply to specific sectors: F&V, milk (raw milk contractual negotiations), sugar, supply management PDO and PGI cheese and ham, supply management wine
- Some are geared towards specific situations: Crisis management
- Some apply to all farmers: Article 209 CMO, production and sale of agricultural products
- Some apply to recognised POs: Article 152 CMO and raw milk contractual negotiations (Article 149 CMO)

# Article 152 CMO– all agri sectors

## 1. Recognition (of 'economic' and 'service' POs)

- created and controlled by **agricultural producers**
- formed on the initiative of these producers,
- which carry out (=integrate) at least one activity such as transport, storage, joint input purchase.
  - Nota bene: the provision of **services** to the members of the PO is also an acceptable activity which allows for recognition
- Follows at least one objective such as research, adjustment of production to demand, technical assistance, etc.

# Article 152 CMO– all agri sectors

## 2. Derogation from the competition rules, if

- Recognised PO genuinely exercises one the of the activities mentioned in Article 152 1 (b) (i) –(vii).
  - Nota bene: Mere service POs cannot profit from this derogation
- PO/APO concentrates supply and place product on the market = safe harbor for certain activities of the PO
- Allowed activities (no market threshold, but should not exclude competition):
  - Contractual negotiations
  - Production planning
  - Adjusting production costs
  - Placing on the market

Also for APOs, if they fulfill the above rules

! Competition authorities can scrutinize and act for the future!

# Sector specific rules

## 1. Milk and milk products sector - Article 149 CMO

- Contractual negotiations for the delivery of raw milk ("bargaining")
- Different criteria from Article 152 CMO
  - No need to genuinely exercise an activity aimed at economic integration,
  - No legal requirement to concentrate supply and place on the market, but market threshold
    - of 3,5% of Union production
    - 33% of national production

## 2. For fruit and vegetables sector, e.g. Article 33 CMO

- Sector specific recognition requirements in Regulation 2017/8
- See Article 160 CMO: market the entire production via the PO, but further details in sector Regulation 2017/891
- Crisis prevention measures in operational programmes of POs, Article 33.

# Number of recognised POs/APOs

- **3500 recognised POs and APOS in the Union**
  - 3430 POs
  - 70 APOs
- 50% of those POs/APOs are recognised in FV sector. Other important sectors: milk, milk products/olive oil, wine, beef and veal, cereals and pig meat.
- Some MS do not have any recognised POs: EE, LT and LUX
- IE: two POs, both in the FV sector (one organized as coop)
- In general, there are many more non-recognised producer cooperations than recognised POs (factor of 5)



# CAP reform process – COM proposal

- CAP Strategic Plans Regulation proposal by the COM:
- FV sector regime kept intact, in accordance with the rules of the CMO
- But other sectoral interventions should be possible
  - Stay financially neutral = the corresponding financial allocation should be deducted from the category 'interventions' of direct payments
- As for FV, operational programmes to be implemented by recognised POs or APOs



# **The Directive on unfair trading practices in business-to-business relationships in the **agricultural and food supply chain****





# The Directive on unfair trading practices

**Adoption:** scheduled for **April 2019**

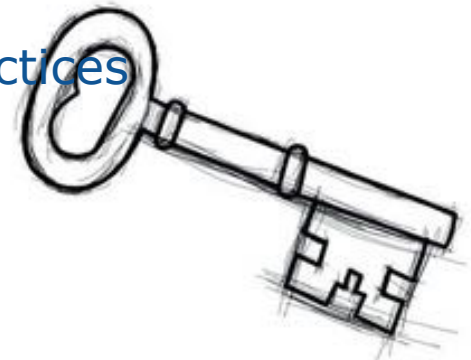
Transposition into national law: **24 months** after entry into force

Application under national law: **30 months** after entry into force

Compliance of existing contracts: **36 months** after entry into force

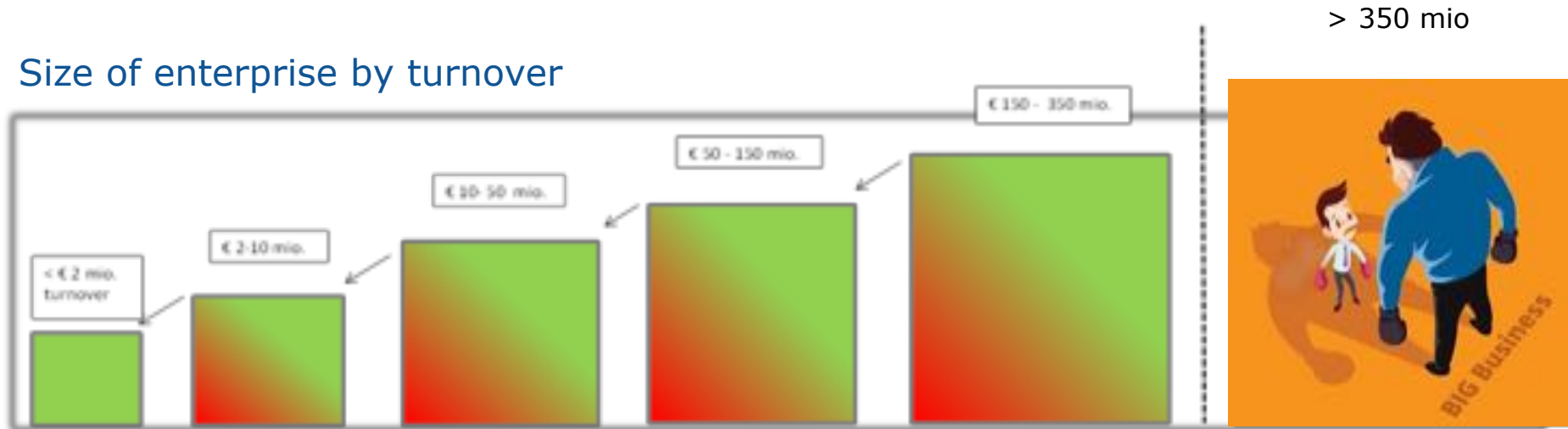
# Key elements

- Legal basis: Article 43 TFEU
- The Directive:
  - protects weaker suppliers against stronger buyers (B2B) against UTPs occurring in the food supply chain
  - links to agri- and food products
  - follows minimum harmonisation approach (MS can go beyond and be stricter)
  - protects against 16 specific unfair trading practices
  - provides for minimum enforcement power
  - foresees coordination between MS authorities



# Protecting the weak against the strong –

Size of enterprise by turnover




- Turnover calculation according to Commission SME Recommendation
- Foreign suppliers / foreign buyers (territorial competence)

# Distinction between black and grey UTPs – Article 3

- The distinction between black and grey UTPs in the Commission's proposal has been retained.
- Article 3 (1) : **Black UTPs**. Prohibited, whatever the circumstances.
- Article 3 (2): **Grey UTPs**. Prohibited, if the parties do not clearly and unambiguously agree beforehand.

# Unfair trading practices prohibited – black

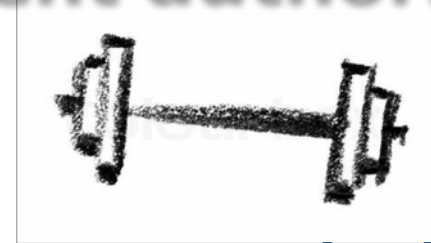
- 
1. Payments later than 30 days for *perishable* agricultural and food products
  2. Payment later than 60 days for other agri-food products
  3. Short-notice cancellations of perishable agri-food products
  4. Unilateral contract changes by the buyer
  5. Money not related to a specific transaction
  6. Risk of loss and deterioration transferred to the supplier
  7. Refusal of a written confirmation of a supply agreement by the buyer, despite request of the supplier
  8. Misuse of trade secrets by the buyer
  9. Commercial retaliation by the buyer
  10. Transferring the costs of examining customer complaints to the supplier



# Unfair trading practices prohibited – grey

- 11. Unsold products
- 12. Payment of the supplier for stocking, display and listing
- 13. Payment of the supplier for promotion
- 14. Payment of the supplier for marketing
- 15. Payment of the supplier for advertising
- 16. Payment of the supplier for staff of the buyer, fitting out premises

# **Powers of the enforcement authority –**



- **MS have to designate an enforcement authority**
  - Can be an existing authority
- **Vested with powers:**
  - Power to act upon a complaint or act ex officio
  - Power to investigate
  - Power to terminate an infringement
  - Power to levy fines and impose other penalties
  - Power to publish decisions



# Background slides

# Reasons why farmers do not join a producer organisation

## External reasons

- Lack of trust
- Lack of models to follow
- Desire to be independent

## Factors related to the producer organisations

- Not having a say
- Slower decision making process
- Need to commit and invest (time & money)
- Lack of professional management
- Not clear enough benefits



# Agricultural derogations from the competition rules

## General provisions

- Article 152 CMO – recognised POs/APOS in all sectors **(amended by Omnibus)**
- Article 209 CMO – farmers and farmers' associations **(amended by Omnibus)**

## Sector specific provisions

- Article 33 CMO - Crisis prevention measures F&V sector
- Article 149 CMO – Milk
- Article 125 CMO – Sugar
- Article 150 CMO - Supply management PDO and PGI cheese
- Article 167 CMO - Market stabilisation measures wine
- Article 172 CMO - Supply management PDO and PGI ham

## Special situations

- Article 222 CMO - Crisis agreements **(amended by Omnibus)**

# Article 209 CMO– all agri sectors

## Derogation from the competition rules

- For farmers, farmers associations, recognised POs and recognised APOs
- For the sale and production of agricultural products, use of joint facilities for storage
- If they **do not**
  - Jeopardize CAP objectives
  - Exclude competition
  - Charge an identical price

Since Omnibus, the above entities can ask the COM for an opinion.



*European Court of Justice*

*C-671/15 - Endives*

*Judgment of 14 November  
2017*

## *The right of POs/APOS to fulfill their missions – Endives judgment of ECJ (C-671/15)*

Court distinguishes inter- and intra PO/APO activities

- ❑ Court stated that practices **between POS** and APOs or not recognised entities fall within the competition rules and in casu are prohibited
- ❑ Activities of producers **within a recognised PO/APO** may **not be subject to the competition rules**, under certain conditions

## Findings of the Court - details

- Agricultural objectives **take precedence** over competition law objectives
- Practices established *between* several POs or APOs and involving entities not recognised by a Member State in the context of the implementation of the CAP in the sector concerned are subject to the competition rules (in casu collective fixing of minimum sales price, concertation of quantities), exchange sensitive information
- Practices agreed by the members of the same PO/APO recognised by a MS may escape the competition rules, under strict conditions: See next slide





# Findings of the Court - details

## Intra PO activities

- Practices applied by a PO or an APO **duly recognised** by a Member State,
- remaining solely **within that PO or APO**,
- escape the prohibition of agreements, decisions and concerted practices only
- if the practices are **strictly necessary for and proportionate to the pursuit of one or more of the objectives assigned to the PO or APO concerned in compliance with EU legislation**



## Findings of the Court - details

These allowed practices (examples) might be:

- exchanges of strategic information,
- the coordination of volumes of agricultural products put on the market and
- a certain form of coordination of pricing policy, **however**
- the setting of a **minimum price** within the PO/APO for the sales of products by the members outside a PO/APO is **not proportionate**



## Of interest...?

**Report: Report on the application of the competition rules to the agricultural sector**

**[https://ec.europa.eu/agriculture/sites/agriculture/files/producer-interbranch-organisations/exemptions/report-comp-rules-agri-sector\\_com2018-706-final\\_en.pdf](https://ec.europa.eu/agriculture/sites/agriculture/files/producer-interbranch-organisations/exemptions/report-comp-rules-agri-sector_com2018-706-final_en.pdf)**

**[https://ec.europa.eu/agriculture/sites/agriculture/files/producer-interbranch-organisations/exemptions/staff-working-document travail service part1\\_en.pdf](https://ec.europa.eu/agriculture/sites/agriculture/files/producer-interbranch-organisations/exemptions/staff-working-document_travail_service_part1_en.pdf)**



## Of interest...?

**Brochure DG AGRI: Conference on “The contribution of producer organisations to an efficient food supply chain”**

**[https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/news/documents/conference-pos-brochure-sept2018\\_en.pdf](https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/news/documents/conference-pos-brochure-sept2018_en.pdf)**

**Material from the conference**

**[https://ec.europa.eu/info/events/contribution-producer-organisations-efficient-agri-food-supply-chain-2018-sep-21\\_en](https://ec.europa.eu/info/events/contribution-producer-organisations-efficient-agri-food-supply-chain-2018-sep-21_en)**



## **Of interest...?**

**DG AGRI study – Analysis of the best ways forward for producer organisations to be formed, carry out their activities and be supported – ongoing, spring 2019**

**DG COMP Study on producer organisations in the olive oil, beef and veal and arable crops sectors**

**<http://ec.europa.eu/competition/publications/reports/kd0218732enn.pdf>**

**JRC Study on 'Factors Supporting the Development of Producer Organizations and their Impacts in the Light of Ongoing Changes in Food Supply Chains: A Literature Review'**

**<https://ec.europa.eu/jrc/en/publication/factors-supporting-development-producer-organizations-and-their-impacts-light-ongoing-changes-food>**

**JRC The impact of producer organisations on farm performance: A case study of large farms in Slovakia**

**<http://publications.jrc.ec.europa.eu/repository/handle/JRC108059>**