

HELLENIC COMPETITION COMMISSION

Athens, 22.5.2020

Subject: Commission Implementing Regulations authorising agreements and decisions on market stabilisation measures in the potatoes sector, in the live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage sector and on the planning of production in the milk and milk products sector

The European Commission published on 4.5.2020 the latest package of exceptional measures to further support the agricultural and food sectors most affected by the coronavirus crisis. These exceptional measures, announced on 22.4.2020, include private storage aid for the dairy and meat sectors, the temporary authorisation to self-organise market measures by operators in hard hit sectors, and flexibility in the implementation of market support programmes. In addition to these measures, the Commission proposed to allow Member States to use rural development funds to compensate farmers and small agri-food businesses with amounts of up to €5,000 and €50,000, respectively.

The exceptional measures also include the **temporary derogation from EU competition rules**. In particular, in accordance with Article 222 of the Common Organisation of the Markets in Agricultural Products Regulation (EU 1308/2013), the Commission is empowered to adopt implementing acts to the effect that Article 101(1) TFEU is not applicable to agreements and decisions of recognised producer organisations and their associations in situations of severe market imbalances provided that such agreements and decisions do not undermine the proper functioning of the internal market, and that they strictly aim at stabilising the sector concerned.

Following the procedure laid down in Article 229(2) of EU Regulation 1308/2013, the Commission published the relevant Implementing Regulations, which provide that agreements and decisions of farmers, farmers' associations, associations of such associations, recognised producer organisations, associations of recognised producer organisations and recognized interbranch organisations may not be prohibited under Article 101(1) TFEU for the milk and milk products sector, live trees and flowers sector and the potatoes-for-processing sector. The exceptional treatment of such agreements allows operators to self-organise and implement market intervention measures aiming at stabilising their sector, in the context of the internal market functioning, **for a maximum period of 6 months**.

Specific reference to competition provisions is made in the following Regulations:

- [Commission Implementing Regulation \(EU\) 2020/593](#) of 30.4.2020 on authorising agreements and decisions on market stabilisation measures in the potatoes sector

- [Commission Implementing Regulation \(EU\) 2020/594](#) on authorising agreements and decisions on market stabilisation measures in the live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage sector

- [Commission Implementing Regulation \(EU\) 2020/599](#) on authorising agreements and decisions on the planning of production in the milk and milk products sector

Specifically, in order to help producers of potatoes, the live trees and flowers sector and the milk and milk products sector find a balance in this period of severe market imbalance, it is appropriate to allow for agreements and decisions of these operators on a temporary basis for a period of 6 months. In particular:

With regard to **potatoes for processing**, such agreements and decisions could include:

- market withdrawals and free distribution (e.g. withdrawals of potatoes from the market for orderly product destruction or free distribution to food banks or to public institutions);
- transformation and processing (e.g. processing potatoes for other purposes such as animal feed, production for methanisation);
- storage (e.g. creating and finding storage capacities and preparing potatoes for longer storage periods);
- joint promotion (e.g. promoting the consumption of processed potatoes products); and
- temporary planning of production (e.g. planning measures to reduce volumes for future plantations and adjusting existing contracts for potatoes from the 2020 campaign);

The starting date of the six-month period is 5.5.2020.

With regard to **live plants and flowers**, such agreements and decisions could include:

- market withdrawals and free distribution (e.g. collective market withdrawals for an orderly destruction of live plants and flowers);
- joint promotion (e.g. promotion measures inviting consumers to buy live plants and flowers); and
- temporary planning of production (e.g. collective production planning to coordinate the planting of live plants and flowers in view of the future lifting of restrictions)

The starting date of the six-month period is 5.5.2020

With regard to **milk and milk products**, such agreements and decisions could include:

- collective effort of operators to plan the production of raw milk in accordance with the changing demand patterns, on a temporary basis for a period of six months, coinciding with spring and summer, which is the peak production season in the milk and milk products sector

The starting date of the six-month period is 1.4.2020

It is noted that the authorisation is to be given if the said agreements and decisions do not impair the functioning of the internal market and strictly aim at stabilising the sector. The Hellenic Competition Commission (HCC) will examine such agreements and decisions by analogy in the light of both Article 1 of Law 3959/2011 and Article 101 TFEU.

These specific implementing acts exclude agreements and decisions that directly or indirectly lead to market sharing, discrimination based on nationality or price fixing. Such agreements and decisions shall be assessed in the light of Article 1(1) of Law 3959/2011 and of Article 101 (1) TFEU and in the event all four cumulative conditions of paragraph 3 of the same article are not met, they shall be prohibited according to the established EU legislation and case law. Prohibited practices may (indicatively) refer to direct or indirect fixing of purchase or selling prices or of any other trading conditions, through illegal agreements. The HCC, in the context of its powers, will examine as an immediate priority any such case which may be brought to its attention and it will impose severe sanctions on undertakings – associations of undertakings adopting any such anti-competitive practices.

According to the above Implementing Regulations, information should be provided by any interested party to the competent authorities of the Member State, **including the competent competition authorities**.

In view of the above, we hereby **inform the interested parties** [indicatively, farmers, farmers' associations (agricultural cooperatives), associations of such associations (associations of agricultural cooperatives), recognised producer organisations, associations of recognised producer organisations, recognized interbranch organisations] that **they are under the obligation**, in the context of the above Regulations, to submit to the Directorate-General for Competition of the HCC, notably to the following e-mail addresses: food@epant.gr and protokolo@epant.gr

- **within 5 days** from their conclusion, any agreement and decision, as well as information on a) the estimated production volume covered by the specific agreement or decision and b) the envisaged period covered by any such agreement or decision.
- **no later than 25 days after the end of the six-month period** referred to above, information concerning the actual production volume covered by the agreement or decision.

The HCC remains at your disposal to answer questions and provide clarifications (210 8809247, 210 8809343 and 210 8809219), as our common goal is to deal with the crisis affecting the above sectors avoiding any medium - and/or long-term irreversible effects on the competitive food market structure, whilst ensuring the proper functioning of the distribution chain.