



## New set of EU measures announced for the agricultural sector

The newly established European Board on Agriculture and Food (“**EBAF**”) held its very first meeting on 4 February 2025. The expert group discussed the future of agriculture and food in the EU, especially the objectives of ensuring a fair standard of living for farmers and profitability along the agri-food value chain. These items are high on the agenda of the European Commission (“**Commission**”), as is also evident from a recently announced package of measures. This package includes an amendment to the Regulation establishing a common market organisation (“**CMO Regulation**”) to enable non-recognised producer organisations to conduct price negotiations on behalf of their members. In addition, a new Regulation is proposed to give national authorities more tools to address cross-border unfair trading practices in the agricultural sector. And finally, the Commission has raised the threshold for financial support that public authorities can give farms without prior consent.

### The EBAF

The EBAF is a consultative body consisting of the Commissioner for Agriculture and Food and a select group of representatives from organisations including nature conservancy organisations, trade associations and farmers’ organisations. The EBAF has been established to foster the dialogue between these stakeholders and the Commission, advising the Commission on ways to make agriculture future-proof. A key issue is the position of farmers in the agri-food value chain. The EU has already taken major steps in the past few years to improve this, for example by introducing a Directive prohibiting certain unfair trading practices in the agricultural sector (“**UTP Directive**”) (see also our [previous News Update](#)) and rules to facilitate collaboration between farmers and other actors in the supply chain. Despite these efforts, these items remained high on the agenda at the first EBAF meeting.

## Amendment to the CMO Regulation

The CMO Regulation is the cornerstone of the EU's common agricultural policy. It prescribes the competition rules that apply to the agricultural sector, regulating aspects such as market protection, financing from Union funds, quality standards and contractual relations. The proposal contains a number of additions to these sector-specific competition rules.

### Contractual relations

The CMO Regulation's current provisions allow Member States to determine whether the sale of agricultural products to certain purchasers must be covered by a written contract (see, for example, [Article 168](#)). If a Member State decides to set this requirement, the CMO Regulation lays down the conditions that the contract must meet. For example, the contract must contain details on the volume and quality delivered, timing of deliveries, pricing and payment periods.

The proposal tightens these rules by introducing a new obligation to conclude a written contract before the delivery of practically all agricultural products. This obligation applies to transactions between processors, distributors or retailers on the one hand and farmers, producer organisations or associations of producer organisations on the other. Exceptions apply, for example for purchases by microenterprises, sales via cooperatives and situations of simultaneous payment and delivery. In addition, the Member States can limit the obligation in specific cases, for example when a delivery concerns products of very modest value. Finally, Member States can decide to expand the rules, for example by extending the contract requirement for sales by farmers, producer organisations or associations of producer organisations to include sales by other producers. The proposal furthermore provides that contracts with a duration longer than six months must include a revision clause that may be triggered by farmers and producer organisations. Member States must also establish a mediation mechanism to cover cases in which no agreement can be reached regarding a contract or its revision.

### More opportunity for collaboration

Another way in which the Commission seeks to strengthen the position of farmers is to reinforce producer organisations and associations of producer organisations. The current CMO Regulation includes an explicit exception to the cartel prohibition for recognised producer organisations that negotiate contracts, plan production or place products on the market on behalf of their members. The Commission proposal provides that, under certain conditions, this will also be possible for non-recognised producer organisations and recognised associations of producer organisations. In addition, the amended Regulation will allow Member States to recognise organic product producer organisations.

The proposal also expands the possibilities for collaboration within the supply chain. The current CMO Regulation provides that agricultural sector contracts that aim to apply a sustainability standard higher than mandated by Union or national law are exempt from the cartel prohibition. This may pertain to an environmental objective, but also, for example, initiatives to reduce the use of pesticides or to improve animal health and animal welfare (on this point, see the [Commission guidelines](#)). The proposal expands the concept of 'sustainability standard' to include standards that aim to improve working conditions or support small farms and young producers, provided that these standards are higher than mandated by law. In practice, only few producers seem to avail themselves of the current sustainability exception (see also our [publication](#) (in Dutch)). In addition, there are some examples of agreements to improve working conditions that were held permissible under the general competition rules (see also our older [News Update](#)).

## Cooperation among UTP Directive enforcement authorities

The UTP Directive protects agricultural producers against unfair trading practices by their usually larger customers. In the Netherlands, the Directive has been implemented in the Unfair Trading Practices (Agricultural and Food Supply Chain) Act (*Wet oneerlijke handelspraktijken landbouw- en voedselvoorzieningsketen*), which we discussed extensively in a previous [News Update](#). The national authorities are charged with supervising compliance with the UTP Directive. They indicated during meetings with the Commission that their experience is that gathering information, finding an infringement and imposing fines can be difficult where the buyer is located in another Member State. To address this challenge, the Commission has proposed a new Regulation, aimed at enhancing cooperation among the various enforcement authorities and giving them more tools to address cross-border unfair trading practices.

### More stringent rules on communication among enforcement authorities

The proposal provides that an enforcement authority must notify all other enforcement authorities within one month after adopting a decision establishing the occurrence of an unfair trading practice with a cross-border dimension. Enforcement authorities will also have the option to send other authorities a request for information. The requested authority must provide the requested information within 60 days, unless agreed otherwise. If it refuses to provide this information, it must indicate the reasons for its refusal.

### Request for mutual assistance

The proposal includes a procedure that enforcement authorities can use to request mutual assistance. The procedure starts when the applicant enforcement authority sends a request to the requested enforcement authority. The request must provide any information necessary to enable the requested enforcement authority to provide the assistance requested. To simplify such requests, the proposal prescribes the use of standard forms.

Enforcement authorities can ask each other to provide any information necessary to establish the occurrence of an unfair trading practice with a cross-border dimension in their Member State. A requested enforcement authority can only refuse to comply with this request if it turns out that the requested information is not needed, or if criminal investigations or judicial proceedings have already been initiated against the same buyer in the Member State of the applicant enforcement authority or of the requested enforcement authority.

### Request for enforcement measures

Enforcement authorities can also ask each other to take the enforcement measures laid down in the UTP Directive. These may include initiating and conducting investigations, sending requests for information to the parties being investigated and carrying out unannounced on-site inspections. Officials of the applicant enforcement authority are permitted to assist in this, under the supervision of the requested enforcement authority. The national law of the requested enforcement authority continues to apply. The requested enforcement authority is required to inform the applicant enforcement authority about the steps taken and the steps that it intends to take.

An applicant enforcement authority can also ask other enforcement authorities to enforce a decision imposing a penalty or to impose interim measures on the author of an infringement. It is only permitted to do so to the extent that, after having made reasonable efforts in its own territory to execute the decision imposing a penalty, it has ascertained that the infringer against which the penalty is enforceable does not have sufficient assets in the Member State of the applicant enforcement authority. This request can only pertain to a final decision. In addition, the request is governed by the limitation periods for the enforcement of penalties and

interim measures applicable in the requested enforcement authority. The requested enforcement authority can only refuse to comply with a request for enforcement measures if any of the following applies: criminal investigations or judicial proceedings have already been initiated, a judgment has been given or a court settlement has been reached in respect of the same unfair trade practice in the Member State of the requested enforcement authority; the exercise of the necessary enforcement powers has already been initiated or an administrative decision has already been adopted in respect of the same intra-Union infringement and against the same trader in the Member State of the requested authority; a criminal investigation or judicial proceedings have already been initiated as regards the same buyer in respect of the same unfair trade practice before the judicial authorities of the applicant; or the applicant enforcement authority has not provided the information necessary. If it refuses to comply with a request, the requested enforcement authority must inform the applicant enforcement authority of the reasons for that refusal.

### **Coordinated action against widespread unfair trading practices**

The proposal also describes an investigation and enforcement mechanism for widespread unfair trading practices involving at least three Member States (“**widespread unfair trading practices**”). Where there is a reasonable suspicion that there may be a widespread unfair trading practice, the enforcement authorities concerned must launch a coordinated action, notify the Commission and designate an enforcement authority to be the coordinator. These authorities conduct investigations and notify the results to the other enforcement authorities. The coordinator ensures that the enforcement authorities concerned are duly informed of the progress made and coordinates the necessary documents and contacts among the parties concerned. During the coordinated action, the enforcement authorities seek to conduct investigations and take enforcement measures simultaneously in a coordinated manner. They set out the outcome in a common position, which they will publish if possible.

Enforcement authorities can refuse to take part in a coordinated action only if a criminal investigation or judicial proceedings have already been initiated, a judgment has been given, or a court settlement has been reached in respect of the same buyer and concerning the same unfair trading practice, if investigations have already been initiated or an administrative decision has been adopted to bring about the cessation of the same unfair trading practice or if the unfair trading practice has not occurred in the Member State concerned. The authorities must in all cases inform the Commission and the other enforcement authorities concerned of the reasons for any refusal.

The action ceases if the unfair trading practice has ceased in all Member States concerned. The coordinator notifies the enforcement authorities concerned of the cessation. When issuing alerts about possible widespread unfair trading practices, the enforcement authorities provide detailed information and can request other Member States to verify whether the same practices may be taking place in their territory. The coordinator plays a key role in coordinating these actions and ensuring effective collaboration among the enforcement authorities.

### **Revision of the Agricultural De Minimis Regulation**

By [Regulation 2024/3118](#), the ‘de minimis aid amount’ that undertakings in the agriculture sector can receive without this qualifying as State aid has been increased from EUR 20,000 to EUR 50,000. This ceiling applies to all undertakings within the same group and pertains to a consecutive period of three years. The de minimis aid can be provided not only in the form of grants, but also, for example, in the form of loans and guarantees, provided that the benefit provided in this way is made transparent beforehand.

## Contact

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