

Single Common Market Organisation: Commentary

Article-by-Article Commentary of the Legal Framework for Agricultural Markets in the European Union

von

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in the European Union –

edited by

Rudolf Mögele
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Foreword

For many years, the Common Agricultural Policy (CAP) was aimed almost exclusively at regulating the agricultural markets on the basis of common prices. Over the years, however, with successive reforms, the centre of gravity has shifted to a more market-liberal concept with direct income support to farmers, consisting of the Single Payment Scheme, and a development policy of for rural areas, known as the Rural Development Policy. This new approach has proved to be successful in that it has contributed to the strengthening of the competitiveness and market orientation of the European farming sector, ended the times of overproduction at the expense of the taxpayer and stabilised the income of farmers. At the same time, it has added important societal values to the CAP such as the protection of the environment and of farmed animals, as well as supporting the social fabric of rural areas in the EU. As we prepare our policy options for the CAP after 2013, we are looking to adapt our approach to better respond to the future challenges of food security, sustainable management of natural resources and the maintenance of the economic, social & environmental landscape of rural areas.

Within this context, I am sometimes asked if this will mean the end of the common organisation of agricultural markets. To my mind that is out of the question. Indeed, as recent market crises have shown very sharply, market regulation is still an indispensable instrument in the CAP's tool box. In a globalised world economy, markets are less stable than they used to be. Price volatility is likely to be a regular problem that will challenge European farmers in the future much more often than in the past. The erratic ups and downs of the milk price in recent years are just an example of a trend that is also present in other sectors such as cereals or pig meat. Against this background, market regulation should provide a stable safety net that can buffer and even out excessive fluctuations.

Furthermore one should not forget that the common organisation of agricultural markets goes far beyond mechanisms of market intervention. Common rules concerning the marketing and production of agricultural products are not only a precondition of the free movement of these products in the internal market; they also ensure the protection of the consumers' interests. Equally, common rules for trade in agricultural products allow European farm products to be present effectively on the world market. In the same vein we have learnt in the recent past that the farmers' position in the food chain needs to be beefed up. To this end, common rules can help strengthen the collective bargaining power of farmers in their interactions with the food industry.

Against this background it becomes clear that the single CMO Regulation which sets out the legal framework for the regulation of agricultural markets in the EU needs all our attention. It continues to be a major component of the CAP's first pillar.

It was an important achievement for the CAP when the Council agreed in 2007 on the Commission's initiative to merge the 21 basic CMO Regulations and a considerable number of further texts into one comprehensive legal act. In the meantime the single CMO Regulation has become complete due to the incorporation of the CMOs for fruit and vegetables and wine which were in 2007 still subject

Foreword

to ongoing reform processes. Despite the legalistic complexities that resulted from its progressive completion and the various amendments that have been adopted since its creation, the single CMO Regulation is undoubtedly an important element of legislative simplification of the CAP and, thus, a successful contribution to the Commission's better regulation strategy. In addition, in terms of policy development, the single CMO Regulation forms a very good basis for designing the changes that should be envisaged to prepare the CAP for its new challenges in the years to come.

I therefore warmly welcome the publication of this commentary on the single CMO Regulation. It is very useful for those working in this complex area to know the genesis of its rules, to put these rules in their legal and economic context and to learn about their application in the administrative and judicial practice. This is all the more true with regard to the single CMO Regulation which, despite its considerable practical relevance, is a piece of legislation which is not in the focus of academia and academic legal doctrine.

I am therefore delighted that a group of experienced practitioners from within and outside the Commission services has made the investment of writing this book and of commenting each provision of this Regulation. I can only hope that it will make its way into the hands of those for whom interpreting and applying the sCMO provisions forms a constant part of their professional tasks.

Dacian Cioloş

Member of the European Commission responsible for Agriculture and Rural Development

Brussels, February 2011

Editor's preface

The idea to produce this commentary was born at a time when the single CMO Regulation was still under construction. As was already clear at the time, this Regulation has considerably changed the set-up of the Common Agricultural Policy's legal framework. By integrating, progressively, all 21 sector-specific basic CMOs and a number of further schemes into one text it allows, for the first time in 50 years, the agricultural market rules of the EU to be codified, streamlined and shaped, as much as possible, according to common criteria. This made it possible to consider filling a gap in the legal literature by editing, for the very first time, a detailed commentary of one of the central legal frameworks of the CAP.

Article-by-article, this commentary explains the purpose and objective of each provision of the sCMO Regulation as well as its scope and exegesis. It puts each provision in its systematic place in the larger legal framework, explains and comments on its content and sets out its practical application and its interpretation given, in particular, by the European Courts. In addition, each Article or block of Articles is preceded by an apparatus providing the reader with the relevant recitals of the sCMO and/or its precursor Regulations, the applicable implementing provisions, Court judgements rendered on the provisions and the literature available on the subject dealt with. The text of the recitals of all the Regulations that have amended the single CMO Regulation in the meantime are printed out in the Annex.

In order to serve as a practitioner's tool, it was possible to gather around this project specialists on the different areas covered by the single CMO Regulation who combine practical experience in the issues concerned with a wider knowledge and understanding of the CAP. While being a commentary of a legal act, not all provisions have been commented on by lawyers as for some provisions we considered that the book would gain from a more economic or agronomical approach. While most of the authors of this book are officials of the European Commission, in particular its Directorate General for Agriculture and Rural Development as well as its Legal Service, some are working for national administrations or are in private practice. All views expressed in this book are of course strictly personal and should not be construed as representing the views of the organisations which the authors serve.

The texts were mostly finalised in October 2010; further developments could be added only exceptionally. Unsurprisingly, the single CMO Regulation is as little carved in stone as is the economic sector it regulates. Consequently, when this book is published there are already several Commission proposals for amendments in the pipeline, three with a view to adapt certain sector specific rules, in particular in the milk sector, and one, which would replace the current sCMO, aiming at aligning the Regulation to the new legal framework set by the Lisbon Treaty and consolidating the current text.

We are proud and grateful that it was possible to prepare this book in a very short period of time, allowing it to stay up to date. This was only possible thanks to the commitment of all the authors and the constructive attitude and efficiency of the C.H. Beck Verlag, in particular Dr. Wilhelm Warth, where the manuscripts

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were processed with great care and expediency. Finally we offer our wholehearted thanks to our wives Angelika and Ania and our families who supported us with a lot of patience all along the way.

We hope that this commentary will be a useful tool to facilitate access to this fascinating but complex area.

Rudolf Mögele, Friedrich Erlbacher
Brussels, February 2011



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