

## **COPA AND COGECA MEMBER'S ANSWERS**



EUROPEAN COUNCIL FOR RURAL LAW

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**Questionnaire**

<b>COMPETITION RULES IN AGRICULTURE</b>
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## INTRODUCTION

In a largely liberalised agricultural market competition law is of particular importance. In general the purpose of competition law is to achieve the greatest possible and fair competition among market operators. Apart from the general prohibition of unfair trading practices there are in particular the three instruments of anti-trust law, as the ban on cartels, the prohibition of abuse of a dominant market position and the merger control which are intended to pursue that purpose. While in the agricultural sector the provisions on control of abuse of a dominant position and on merger control apply without particular exceptions, there are specific rules in European and US anti-trust law which provide for exemptions from the general prohibition of cartels.

These particular rules were introduced due to the structural disadvantages primary agricultural producers are suffering from in comparison with the downstream processing and retail sectors. That is why Article 42 of the Treaty on the Functioning of the European Union (TFEU) stipulates that the general competition rules in the TFEU apply to the production of and the trade in agricultural products only as far as the EU legislator so decides. Although the EU legislator decided that the general competition rules are in principle applicable to the agricultural sector it made important exceptions from that principle.

The exceptions contained for decades in EU agricultural anti-trust law reflect exceptional clauses which had already before been and still are in place in national agricultural anti-trust law. In this context it is first of all important that EU agricultural market law takes precedence over general anti-trust law. This follows currently from the first subparagraph of Article 206 of Regulation (EU) No 1308/2013. Secondly the cooperation between agricultural holdings is largely exempted from the general cartel prohibition, as it is laid down in the second subparagraph of Article 209(1) of Regulation (EU) No 1308/2013.

The cooperation between agricultural holdings has significantly gained in importance over the last decade due to comprehensive provisions on the public recognition of producer organisations and their associations enacted at EU level. In addition, it has been made possible to recognise interbranch-organisations in the agricultural sector. On top of that, recognised agricultural organisations have been given specific powers under competition law. For example quantitative ceilings for negotiations on the sale of certain agricultural primary products were set out. There are also provisions according to which decisions of recognised agricultural organisations may be made extended by the state to non-members. The provisions on recognised agricultural organisations were also based on examples in national law.

At EU level these rules are currently set out in Articles 149, 152 to 175, 210 and 222 of Regulation (EU) No 1308/2013 as well as in the European Commission's relevant implementing provisions. One should also highlight the provisions in Article 125, 148 and 168 of Regulation (EU) No 1308/2013 concerning the regulation of contracts concluded by farmers on the sale of their agricultural primary products with third parties.

Given the intensive discussion on the strengthening of the position of primary producers in the marketing chain it is expected that agricultural competition law will play an important role in the framework of the next reform of the Common Agricultural Policy (CAP) for the years as of 2021. First discussions on that theme have just been held in the Agricultural Markets Task Force established by the European Commission which published its report in November 2016. There are currently many issues that need to be clarified. Highlighted may be inter alia the question as to where the line should be drawn between EU agricultural competition law and national agricultural competition law. A similar question concerns the borderline between agricultural market law and agricultural competition law.

## QUESTIONNAIRE

### 1. National competition law

**1.1. Are there in your country general national anti-trust provisions with regard to the prohibition of cartels, the control of abuse of dominant positions and merger control?**

**LKÖ, Austria:**

Yes, the current version of the Kartellgesetz (Austrian Cartel Act) 2005.

**DAFC, Denmark:**

Yes.

**MTK, Finland:**

Yes. In Finland we have copied the EU provisions regarding this.

**DBV, Germany:**

Yes, the prohibition of cartels, and the rules on the control of abusive practices by dominant companies and on merger control are regulated in the German Restriction of Competition Act and are monitored by the German Federal Cartel Office.

**Confagri, Portugal:**

Yes – the Legal Framework on Competition, Decree-Law No. 19/2012 of 8<sup>th</sup> May.

**1.2. Does your country's Constitution contain provisions on privileges for agriculture under anti-trust law?**

**If yes, what is the content of these provisions?**

**LKÖ, Austria:**

No.

**DAFC, Denmark:**

No.

**MTK, Finland:**

No, the Finnish Constitution contains no such provisions.

**DBV, Germany:**

No, it does not. Privileges for agriculture under antitrust law fall within the scope of the German Restriction of Competition Act and the Agricultural Market Structure Act.

**Confagri, Portugal:**

No.

**1.3. Is there in your country a specific national anti-trust law for the agricultural sector?**

**If yes, what is the content of these provisions and where are they laid down?**

**LKÖ, Austria:**

Paragraph 2, section 2, line 5 of the Austrian Cartel Act states that the following are exempt from the prohibition of cartels:

*"Agreements, decisions and practices of farmers, farmers' associations or associations of such associations which concern*

- a) *the production or the sale of agricultural products or*
- b) *the use of joint facilities for the storage, treatment or processing of agricultural products, provided there is no obligation to charge identical prices and that this does not exclude competition. Plant and animal breeders are also considered to be farmers as well as any person operating a business at the level of crop or livestock farming. Agricultural products are those products listed in Annex II of the Treaty establishing the European Community as well as goods obtained through the treatment or processing of these products, which is usually carried out by farmers or farmers' associations."*

**DAFC, Denmark:**

No.

**MTK, Finland:**

Yes. In Finland we have copied the EU provisions and are changing the wording of the said provisions to be the same as the provisions in Regulation (EU) No 1308/2013.

**DBV, Germany:**

Paragraph 28 of the German Restriction of Competition Act stipulates that rules on the prohibition of cartels in accordance with paragraph 1 do not apply to agreements and decisions of farmers, farmers' associations as well as associations of such associations which concern:

- a) the production or the sale of agricultural products or
- b) the use of joint facilities for the storage, treatment or processing of agricultural products, provided there is no obligation to charge identical prices and that this does not exclude competition.

Moreover, provisions of the Agricultural Market Structure Act and the Agricultural Market Structure Regulation are the subject of national antitrust regulations for the agricultural sector. These legal provisions include antitrust privileges for agricultural organisations, such as producer organisations as well as their associations and interbranch organisations. Interbranch organisations have not been created in Germany. However, it is important to note that antitrust privileges for these organisations do not include any agreements on prices and quantities.

**Confagri, Portugal:**

No.

**1.4. Is in your country the application of agricultural anti-trust law entrusted to specific authorities?**

**LKÖ, Austria:**

No.

**DAFC, Denmark:**

Non applicable.

**MTK, Finland:**

No. All application of antitrust law is entrusted to the Finnish Competition and Consumer Authority.

**DBV, Germany:**

No, that is not the case. For the agricultural sector too, compliance with antitrust rules is monitored by the Federal Cartel Office and the regional cartel offices. In the federal states, specific authorities from the agricultural sector are responsible for the recognition of agricultural organisations listed under point 1.3.

**Confagri, Portugal:**

No.

**1.5. Were there in your country in the last decade particularly important national administrative or judicial procedures underpinning agricultural anti-trust law (prohibition of cartels; control of misuse of dominant positions; merger control)? If yes, what was the content of these procedures and were the decisions taken on the basis of national or Union law?**

**LKÖ, Austria:**

No.

**DAFC, Denmark:**

Non applicable.

**MTK, Finland:**

Yes, there were. The decisions were taken on the basis of national law (which is a copy of Union law). Valio, owned by milk cooperatives, was found guilty of misuse of its dominant position.

**DBV, Germany:**

In recent years, antitrust proceedings relating to the agricultural sector and the entire food supply chain have played an increasingly important role. These have included, among others, merger control procedures for dairies, ongoing proceedings on the prohibition of plant protection product and tractor cartels as well as proceedings on the control of abusive practices during takeovers by large food retailers. In addition, extensive sectoral inquiries have been carried out, including on the milk market and on the market power of the food retail sector. A proceeding launched by the Federal Cartel Office investigating the delivery arrangements between milk producers and dairies is currently underway.

**Confagri, Portugal:**

No.

**1.6. Are there in your country legal provisions or a non-binding code of conduct on unfair trading practices in the food chain (for example with regard to the pricing of agricultural products)? Would you consider it reasonable to regulate such unfair practices and if yes, what should be the content of such regulation?**

**LKÖ, Austria:**

Austria has no special rules on the food chain. The general rules of antitrust, competition and commercial law apply.

We would welcome a framework regulation at EU level on unfair trading practices. A "code of conduct" should address the following elements in particular: risk transfer, commercial practices, unjustified restriction of freedom of choice and exploitative abuse.

**DAFC, Denmark:**

A number of voluntary initiatives have been introduced by the High Level Forum. The voluntary code of practice is supported by the Danish Agriculture & Food Council as a guideline regarding unfair trading practices.

Complex initiatives and legislation risk leading to increased administrative burdens for the sector and slowing down the market orientation of the sector, which is facing growing competition from

emerging countries with low production costs.

**MTK, Finland:**

There are no legal provisions but we had a Finnish Supply Chain Initiative national platform. As it did not function, we, the farmers, decided to leave it. There is now a non-binding board, but the Finnish farmers are not represented in it as we decided not to join.

Yes, we think that unfair trading practices should be regulated. There should be a black list with clearly forbidden practices, an ombudsman with powers to investigate independently, and sanctions for breaking the rules. Anonymity for complainants is also extremely important because of the fear factor.

**DBV, Germany:**

No direct legal regulation on unfair trading practices in the food chain exists in Germany. The restrictions on business relationships between companies are set out in the ruling on general business practices in the German Civil Code. In order to protect smaller food suppliers, the German Restriction of Competition Act prohibits the four large German food retailers which dominate the market from even occasionally selling food below the cost price.

Moreover, the German Farmers' Association is a member of the national digital platform to implement the "Supply Chain Initiative". Extra-judicial dispute settlement instruments have been developed for this purpose; however, in practice, they have shown no proven effectiveness. In principle, the German Farmers' Association is in favour of regulating unfair trading practices in the food supply chain at European level. Such a regulation should declare specific trading practices to be inadmissible based on a list of prohibitions.

**Confagri, Portugal:**

A. Decree-Law No. 2/2013 – regulates the maximum payment deadlines in food sales contracts signed between commercial companies.

Decree-Law No. 166/2013 – legal framework on restrictive trading practices and abusive practices.

B. PARCA, the "Platform for monitoring relations in the agri-food chain", which has representatives in production and industry, signed a "**Code of Good Trading Practices for the Agri-Food Supply Chain**" in December 2016. This is a voluntary code.

**2. EU anti-trust law**

**2.1. In your country how many producer organisations, associations of producer organisations and interbranch organisations have been recognised in accordance with Regulation (EU) No 1308/2013 (broken down by sectors, as appropriate)? Are there official statistics or a publicly accessible register on such recognised agricultural organisations?**

**LKÖ, Austria:**

Producer organisations in the following sectors have been recognised:

Fruit and vegetables	10
Cereals	4
Cereals and potatoes	2
Potatoes	1
Pigs	5
Cattle	8
Sheep/goats	1
Poultry	1
Flowers	1
Eggs	1
Wine	1

So far there are no recognised interbranch organisations in Austria.

**DAFC, Denmark:**

There are only registered and recognised POs in the fruit and vegetables sector in Denmark.

**MTK, Finland:**

There are only four recognised producer organisations in Finland, and only three of them are currently functioning. They are all fruit and vegetable producer organisations.

**DBV, Germany:**

In Germany, there are numerous producer organisations and some associations of producer organisations in various sectors. However, interbranch organisations as defined in European antitrust law have not yet been established. A study has been carried out on this at EU Commission level and includes statistics for Germany.

According to the Agricultural Market Structure Act and the Agricultural Market Structure Regulation from 2013, the aforementioned agricultural organisations must be entered into a register of agricultural organisations, for which the German Federal Agency for Agriculture and Food is responsible. The authorities responsible for the recognition of agricultural organisations must transfer the relevant information to the German Federal Agency for Agriculture and Food.

**Confagri, Portugal:**

Currently, only 123 producer organisations (and no associations of producer organisations) are recognised in Portugal in the following sectors:

- Wine	- 6
- Fruit and vegetables (including "other fruits")	- 64
- Olive oil	- 3
- Cereals (including maize), oilseeds and protein crops	- 15
- Cereals (including maize and rice)	- 1
- Flowers	- 1
- Milk and dairy products	- 4
- Rice	- 7
- Potatoes	- 2
- Bananas	- 2
- Beef	- 7
- Beef and sheepmeat	- 4
- Beef and poultry	- 1
- Beef, sheepmeat and goatmeat	- 1
- Goatmeat	- 1
- Sheepmeat	- 1
- Pigmeat	- 3

Four interbranch organisations are recognised in the following sectors: olive oil, milk and dairy products, rice and wine.

This data is published on the website of the IFAP, a public institute of the Ministry for Agriculture.

**2.2. Do you consider that agricultural organisations recognised in accordance with Regulation (EU) No 1308/2013 are only exempted from the prohibition of cartels under Article 101 TFEU or are they also exempted from any national prohibition of cartels?**

**If they are not exempted from national prohibitions of cartels, does this pose a problem and if yes, how is this issue addressed by national law?**

**LKÖ, Austria:**

See 1.3.

**MTK, Finland:**

Finnish national law contains the same provisions as those in Article 101 TFEU. Producer

organisations are therefore exempt from the prohibition of cartels under both Article 101 TFEU and under national law.

**DBV, Germany:**

The German Agricultural Market Structure Act and the Agricultural Market Structure Regulation also serve to implement Regulation (EU) No 1308/2013. In this way, the agricultural organisations concerned are recognised nationally and also benefit from corresponding exemption from national antitrust law and its requirements. Differentiating between European exemption from antitrust rules and national rules on privileges would lead to massive demarcation problems when applying the law.

**Confagri, Portugal:**

They are not exempt under national law.

**2.3. Do you consider the quantitative ceilings in Articles 149, 169, 170 and 171 of Regulation (EU) No 1308/2013 to be reasonable? Are these provisions used in practice in the sense that the jointly managed volumes are actually reported as required in the said provisions?**

**LKÖ, Austria:**

In Austria, these provisions are not applied as the ceilings are too low. Moreover, there is nothing to counterbalance the concentration in the food retail sector.

**DAFC, Denmark:**

These provisions are not used in Denmark due to the high level of cooperatives in Denmark. For this reason, we are not in a position to speculate on whether these ceilings are reasonable.

**MTK, Finland:**

No, the quantitative ceilings in the abovementioned Articles are not reasonable. As they currently stand, the ceilings consider the market as a national market. In a small market like the Finnish market this is a problem. Firstly, is the market national? Secondly, one can argue that farmers that join forces and create a producer organisation are probably more successful farmers than the average. This means that their yield is probably higher than the average. As a result, if there is a problem with their crop, this might only be a minor issue for them. Moreover, if crop yields fall on average in a given year, the drop will be less significant for them. Consequently, producer organisations do not dare come close to the 15 percent ceiling, for example. Indeed, in a bad year, they might then exceed the ceiling. It would have been better to set a higher percentage, especially in a small market with fluctuations. The current ceiling means that in order to be on the safe side, a producer organisation is likely to opt for a market share of around 10 or 11 percent.

**DBV, Germany:**

There are varying opinions on the level of the quantitative ceilings. In line with the degree of concentration in the subsequent stages of the food supply chain, correspondingly high quantitative ceilings should be applicable to agricultural organisations too. Efforts should be made to adapt this. However, competition should also not be completely excluded. In Germany, the quantitative ceilings set by EU law have not been a handicap to agricultural organisations. Nevertheless, producer organisations in the milk sector are already approaching the relevant quantitative ceiling.

**Confagri, Portugal:**

As far as production is concerned, the level of organisation is not very high in Portugal. Concentration in large structures tends to be at distribution level. Against this backdrop, the ceilings set in the Regulation are not an issue.

**2.4. What is your assessment of the specific time-limited exemptions of cartels in the dairy sector as provided for by Regulation (EU) No 2016/558 and by Regulation (EU) No 2016/559?**

**Do you consider such exemptions to be an appropriate instrument for dealing with market crises?**

**LKÖ, Austria:**

Generally speaking, yes. The proposed period is too short for a final evaluation.

**DAFC, Denmark:**

These provisions have not been used in the Danish dairy sector. Moreover, the temporary nature of the provisions meant – to the best of our knowledge – that there was only very limited use in the EU. DAFC would be against regulating market failures through adaptation of the competition rules.

**MTK, Finland:**

We haven't used these in Finland. We do not oppose these kind of exemptions.

**DBV, Germany:**

The abovementioned time-limited cartel exemptions should be reserved for tackling actual market crises, as provided for in EU law. In Germany, however, the time-limited quantity regulations were not used by economic players.

Agreements among economic players on quantitative ceilings are deemed relatively ineffective due to the global world market and the European single market.

**Confagri, Portugal:**

This tool has not yet been used by the dairy sector in Portugal but we believe that it can help the production sector.

**2.5. Is there exercise in your country of the option to make decisions of recognised agricultural organisations extended to non-members and to provide for obligatory contributions of non-members to the financing of agricultural organisations (Articles 164 and 165 of Regulation (EU) No 1308/2013)?**

**Do you consider this instrument to be reasonable and fit for application in practice?**

**DAFC, Denmark:**

No, this is not the case. DAFC is against extending membership obligations to non-members as this would restrict the fundamental freedom of organisation among farmers.

**MTK, Finland:**

No, there is not. We do not oppose this instrument.

**DBV, Germany:**

When implementing EU law, both the process of extending collective decisions of recognised agricultural organisations and the process of providing obligatory contributions to the financing of agricultural organisations were given a legal basis in the Agricultural Market Structure Act and the Agricultural Market Structure Regulation. Due to the lack of suitable agricultural organisations to date, these instruments have not yet been used.

The German Farmers' Association believes that these instruments could be very useful, in particular for large-scale interbranch organisations.

**Confagri, Portugal:**

No.

**2.6. Should, in addition to recognise agricultural organisations, agricultural cooperatives and other agricultural groupings also enjoy privileges under anti-trust law?**

**If yes, do you consider the provisions in the second subparagraph of Article 209(1) of Regulation (EU) No 1308/2013 to be sufficient?**

**LKÖ, Austria:**

The relationship between EU competition law and the Common Agricultural Policy has not been definitively clarified. Concrete proposals have been developed recently in the Agricultural Markets Task Force chaired by Cees Veerman. The final report is now available and the recommendations must be implemented. In order to increase the share of agriculture in the value chain, further exceptions to competition law are required under Articles 206 and 209 of Regulation (EU) No 1308/2013.

It would also be worth considering whether preliminary rulings by competition authorities should be introduced in accordance with Article 209, section 2 of Regulation (EU) No 1308/2013.

**MTK, Finland:**

We should go back in time. Competition policy and agricultural policy used to be equally strong. Now agricultural policy has been subjected to competition policy. In Article 42 of the TFEU it is stipulated that the general competition rules in the TFEU apply to the production of and the trade in agricultural products only as far as the EU legislator so decides. It now seems to have been forgotten that competition law was not initially applied at all to the production of and the trade in agricultural products. The first regulation stating that competition rules would also be applied to the production of and the trade in agricultural products was published in the late 1960s.

Today, we accept that competition rules apply. However, we need to enable producers to cooperate more, as the system is not working. The EU legislator needs to realise that competition rules cannot be stronger than the rules on agricultural policy in the TFEU. Farmers still have the right to “a fair standard of living”. At the moment, competition policy is standing in the way of this. Competition policy seems to prevent farmers from cooperating and being treated in the same way as the much stronger retailers and food industry. This needs to change.

**DBV, Germany:**

In a highly concentrated food retail sector, agricultural cooperatives owned by farmers should also be granted privileges under antitrust law in order to enable them to negotiate on an equal footing with large food retailers.

Consequently, possible coordination between agricultural cooperatives should be included in the antitrust privileges in Article 209.

**Confagri, Portugal:**

Yes to the first question.

No, the provisions are not sufficient. Specific and express reference to cooperative societies and their associations (unions and federations) needs to be made.

**2.7. What is the understanding in your country of the meaning of the provision in relation to charge an identical price in the third subparagraph of 209(1) of Regulation (EU) No 1308/2013 and do you see a need for further clarification?**

**LKÖ, Austria:**

Article 209, section 1, subparagraph 3 of Regulation (EU) No 1308/2013 should be removed.

**DAFC, Denmark:**

In Denmark, this has not been tested due to the current high levels of farmer-owned cooperatives. In general, we do see a point in seeking clarity on the exact meaning.

**MTK, Finland:**

There have been no cases concerning producer organisations. The provision is seen as a clear ban on giving price recommendations or pricing guidelines. Clarification is never a bad thing, except when clarification actually widens the scope of the article, which is a real risk if DG COMP were to provide further clarification on the matter.

**DBV, Germany:**

This provision should not be interpreted as meaning that agricultural organisations are not allowed to recommend prices to or agree on prices with their large buyers. That is precisely the aim of an association of producer organisations: to develop negotiating power equivalent to that of their large customers. However, binding obligations for buyers to charge identical prices for the resale of the products are not permitted.

**2.8. What is the understanding in your country of the meaning of the provision in relation to the exclusion of competition in the third subparagraph of 209(1) of Regulation (EU) No 1308/2013 and do you see a need for further clarification?**

**LKÖ, Austria:**

Article 209, section 1, subparagraph 3 of Regulation (EU) No 1308/2013 should be removed. Due to high concentration in the food retail sector, the producer side needs to be strengthened. For example, the three largest food retailers in Austria have a market share of 86%.

**DAFC, Denmark:**

In Denmark, this has not been tested due to the current high levels of farmer-owned cooperatives. In general, we do see a point in seeking clarity on the exact meaning.

**MTK, Finland:**

It is a “trash bin” for other ways of warping competition. It is another way of excluding competition besides agreements on prices. Clarification is never a bad thing, except when clarification actually widens the scope of the article, which is a real risk if DG COMP were to provide further clarification on the matter.

**DBV, Germany:**

Thanks to the quantitative ceilings set out in EU legislation, there is currently no real risk of exclusion of competition.

**2.9. Is the option to regulate contractual relations (Articles 148 and 168 of Regulation (EU) No 1308/2013) used in your country?**

**If yes, which agricultural products are subject to such regulation? Do you consider this instrument to be useful?**

**LKÖ, Austria:**

No.

**DAFC, Denmark:**

Denmark has not chosen to regulate on milk contracts, as cooperative statutes have a similar effect. DAFC has supported this position.

**MTK, Finland:**

No, it is not used in Finland.

**DBV, Germany:**

The instrument for regulating contractual relations mentioned above has not yet been used in Germany. 75% of milk is delivered and processed by cooperative dairies. In line with the

cooperative principle, members in cooperative bodies decide on how they organise their delivery arrangements. Discussions are currently underway on adapting milk delivery contracts or delivery orders, including on determining milk prices in advance, on notice periods as well as on volume management. If market players take no action in the medium term as far as these issues are concerned, there may be demands to adapt.

### **3. General questions**

#### **3.1. Has in the last decade a public discussion taken place in your country regarding the question as to whether the legal position of agriculture in the marketing chain should be strengthened?**

**If yes, what was or is the content of this discussion? Did it lead to reforms or reform proposals?**

##### **LKÖ, Austria:**

Yes.

Agriculture is the weakest link in the food chain. It is sandwiched between a highly concentrated upstream sector (plant protection products, fertilisers, seeds, the agricultural machinery industry) and a highly concentrated downstream sector (food retail).

One solution is to increase concentration in the area of processing by creating more cooperatives and producer organisations. In addition, an interbranch organisation is currently being set up (for fruit and vegetables).

The creation of an ombudsman's office and binding rules on unfair trading practices are also being discussed.

##### **DAFC, Denmark:**

There has in general been little discussion on this point. Most national discussions have focused on getting members of the entire food chain to sign up to the voluntary Supply Chain Initiative against unfair trading practices.

##### **MTK, Finland:**

Yes, there have been discussions regarding this. The competition authorities have looked into the market power of the retailers (highly concentrated market in Finland) and also into the negotiating power of farmers in the food chain. Farmers are the weakest link in the food chain and the competition authorities have found a lot of foul play. For example, producers do not obtain written agreements and when written agreements are concluded they can be changed retrospectively by the stronger partner.

We tried to implement a national platform for the Supply Chain Initiative but it did not work.

There have been discussions of a national law. The current government's programme states that it will strengthen the position of producers in the food chain but so far nothing has happened.

##### **DBV, Germany:**

Yes, this discussion has been ongoing since 2010 and was the subject of various hearings in the German Parliament. During the process to amend the German Restriction of Competition Act, the provisions on abuse were tightened in the agricultural sector and the previously provisional ban on the occasional sale of food below the cost price was extended for an indefinite period and made clearer.

#### **3.2. When you look at your national agricultural competition law or EU agricultural competition law as a whole, do you consider that there is a need for reform? If yes, which points should the reform concentrate on?**

##### **LKÖ, Austria:**

There is a pressing need to reform the way in which EU competition law and the Common Agricultural Policy are delimited from each other. This will strengthen the position of farmers in

the food chain. To do so, Articles 152, 206, 209 and 210 of Regulation (EU) No 1308/2013 need to be thoroughly revised.

The aim of the reform should be to:

- Safeguard agriculture's special status = create general exceptions in antitrust law for agriculture and agricultural cooperatives (Article 206 of Regulation (EU) No 1308/2013)
- Associations of farmers (in the form of cooperatives and producer organisations) must be exempt from competition law (Article 209 of Regulation (EU) No 1308/2013); competition authorities should be able to give preliminary rulings
- Strengthen the legal possibilities of interbranch organisations (Article 210 of Regulation (EU) No 1308/2013)
- Binding price reporting throughout the supply chain
- European framework regulation against unfair trading practices
- Handle the sale of products below the cost price more stringently and ban this practice EU-wide
- Crisis management measures must continue to be possible
- Expand regional products and protection of origin
- The definition of a "relevant market" on the producer side should make it possible to counterbalance concentration on the food retailer side

### **MTK, Finland:**

Producers should be allowed to work together. Competition policy should take a step back and let farmers cooperate. Indeed, we have a problem here. It is a fact that farmers are just as weak as consumers, and yet there is consumer protection but no farmer protection. Rather than allowing farmers to cooperate, they are treated in the same way as big food retailers and/or the food industry.

### **DBV, Germany:**

According to current information, national antitrust rules vary considerably between Member States in terms of the food supply chain and the tools to implement it. The German Farmers' Association therefore supports an EU framework legislation which would directly ban specific unfair trading practices as well as set minimum standards which ensure the implementation of bans, sanction mechanisms and guarantee the anonymity of complainants. In this regard, the Agricultural Markets Task Force has also taken on board long-standing demands of the European farmers' association COPA and the German Farmers' Association in its recommendations. Member States should be able to make their own decisions on how to implement these minimum standards, taking into account existing competition rules and institutions.

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