EN

Report of the High Level Group on Milk[1]

final version 15 June 2010

[1] This report reflects solely the discussions of the High Level Group and does not prejudice the views of any of the institutions of the European Union.

Content: Report of the High Level Group on Milk

Summary of recommendations of the high level expert group on milk

HLG Recommendation on contractual relations

The HLG considers that there is a need to increase awareness and reinforce the responsibility of the operators in the dairy chain to better take into account the signals of the market and adapt supply to demand. Therefore the HLG invites the Commission to consider the most appropriate manner, whether by guidelines or a legislative proposal, to enhance on a voluntary basis the use of formal written contracts, made in advance, to cover deliveries of raw milk which should include the following four key aspects: (1) the price payable/price formula at delivery, (2) the volume which could and/or must be delivered, (3) the timing of deliveries during the season, and (4) the duration of the contract (which could be indefinite with a termination clause). Member States could make the use of these contracts compulsory. All the specific elements of the contract should be freely negotiated between the parties. The specific nature of cooperatives should be duly taken into account.

HLG Recommendation on bargaining power of producers

The HLG, whilst noting the divergent views of a minority of 5 delegations, invites the Commission to consider a legislative proposal for a provision under agricultural law to allow producer organisations constituted by dairy farmers to negotiate contract terms, including price, jointly for some or all of its members' production with a dairy, subject to an appropriate quantitative limit expressed as a percentage of EU milk production and to consider whether such a provision should be permanent or of a sufficiently long but temporary duration, and in either case be subject to review. The specific nature of cooperatives should be duly taken into account.

HLG Recommendation on interprofessional/interbranch organisations

The HLG suggests that the Commission examines further whether any of the current provisions for interprofessional organisations in the fruit and vegetables sector could also be applicable in the dairy sector. If so, the applicable legal restrictions on anti-competitive activities and the Commission's powers to control them, should equally apply, and the proper functioning of the internal market should be safeguarded.

HLG recommendations on transparency

The HLG invites the Commission to elaborate further the European Food Price Monitoring Tool, better using existing information. The HLG further invites EUROSTAT and the National Statistical Institutes to look for the possibility to communicate more information, subject to a reasonable cost, for example on volumes of milk and milk products.

HLG Recommendations on market measures and futures

The HLG generally regards the existing safety net as appropriate. Nonetheless the HLG invites the Commission to explore new WTO green box compatible instruments in the framework of the CAP after 2013, in order to reduce income volatility. It invites the Commission to consider facilitating the use of futures markets as a useful complementary tool, in particular via targeted training programmes. Supervision and regulation should be dealt with in the framework of the overall approach on derivatives and of the Directive for markets in financial instruments (MiFID).

HLG recommendations on marketing standards and origin labelling

The HLG has taken note of the ongoing activities regarding labelling and invites the Commission to follow closely the developments to ensure that imitation dairy products are distinguished properly, thereby avoiding the use of names and terms reserved to dairy products. On place of farming the HLG invites the Commission to consider the feasibility of different options for obligatory/voluntary place of farming labelling of basic primary dairy products. Both for rules on labelling of imitation product and on place of farming, coherence of dairy sector proposals should be ensured with the Food Information for Consumers legislation currently under consideration by the legislator.

HLG Recommendations on innovation and research

The HLG underlines the importance of innovation and research for the competitiveness of the dairy sector. The HLG therefore invites the Commission to propose a reinforcement of innovation in the Common Agricultural Policy after 2013, in particular in Rural Development Policy. The HLG further invites the Commission to improve the communication of the current possibilities for innovation and research within the existing framework of Rural development and research framework programmes. The HLG invites Member States to fully take advantage of the existing possibilities. As regards research the HLG calls upon stakeholders to define clear research priorities for the dairy sector in order to allow the sector to better benefit from national research programmes as well as the Community research framework programme. The dairy sector is also invited to intensify its participation in the ongoing developments that take place in the HLG on competitiveness of the food chain which also addresses the issue of innovation and research.

1. MANDATE OF THE HIGH LEVEL EXPERT GROUP ON MILK

On 5 October, in light of the difficult market situation for milk, the Commissioner for Agriculture and Rural Development, decided to establish a High Level Expert Group on Milk (HLG) with the purpose of discussing mid-term and long-term arrangements for the dairy sector given the expiry of dairy quotas on 1 April 2015. While respecting the outcome of the Health Check, the HLG should work on a regulatory framework to be put in place, which can contribute to stabilizing the market and producers' income and enhance transparency on the market.

The HLG, composed by representatives of all EU the Member States, has been chaired by the Director-General for Agriculture and Rural Development. 10 meetings were held from October 2009 until June 2010. An observer from the European Parliament's secretariat also participated at the meetings. The HLG invited major European stakeholder groups in the dairy supply chain to provide oral and written input into the discussions on the issues below (COPA-COGECA, European Milk Board, European Coordination Via Campesina (all three representing farmers), EDA (dairy processors), EUCOLAIT (dairy traders), EUROCOMMERCE (retailers) and the BEUC (consumers)). Furthermore, the HLG received valuable contributions from invited academic experts, 3rd country representatives (USA, New Zealand, Australia and Switzerland), DG COMP, National Competition Authorities and DG AGRI regarding some specific issues.

Finally a major dairy stakeholder Conference was held on 26 March 2010 allowing a larger number of actors in the chain to express their positions.

The following issues were addressed by the HLG:

Block 1	– Contractual relations between milk producers and dairies to better balance supply and demand on the dairy market – What can be done to strengthen the bargaining power of milk producers – Transparency for the benefit of milk producers, dairy industry and consumers
Block 2	– Are the existing market instruments appropriate[2] – A futures market in dairy
Linked to 1 &2	Experience of systems in place in countries outside the EU
Block 3	Information on markets and products (quality and labelling issues)
Block 4	Innovation and research with a view to render the sector more competitive

Stakeholder positions, contributions of academic experts, 3rd country representatives and other documents produced in the framework of the High Level Group can be found on: http://ec.europa.eu/agriculture/markets/milk/index_en.htm.

[2] The use of quotas as a market management tool to regulate the dairy market has not been part of the regular work of the HLG

2. BACKGROUND

Since 1984 when milk quotas were introduced, there has been a rather stable situation on the milk market until the first steps of reform of the milk market organisation started in 1999 with the Agenda 2000. Production was stable in most Member States at the level of the quota and prices to milk producers was around 5% above the safety net of 28,2 c/l. Market instruments in the form of intervention, export refunds, internal subsidies to increase consumption and private storage were used in a systematic manner to support the market price (see graph in Annex 6). Budgetary expenditure remained significant. In spite of the existence of quotas, there has been a significant reduction in the number of milk farmers. In 1984, when the quotas were introduced, there were 1,6 million dairy farmers in the "old" EU-10, today the figure is around 220.000, leaving only one out of seven in milk production.

In 1999 the milk market was subject to the same process of reform which started in 1992. Intervention prices for butter and skimmed milk powder were reduced by 15%. Direct payments for milk farmers were introduced as compensation. With the reform 2003 there was a further 10% cut in intervention prices for butter and milk quotas were prolonged until 2015. The logic of the CAP reform was and remains market orientation, letting price signals guide the decisions of farmers in terms of what and how much to produce. The direct payments in the order of 3.55 c/l were decoupled from milk production and subjected as other direct payments to cross compliance. The objective was to strengthen the competitive situation of the dairy sector and sustainability in the context of a globalised trade in dairy.

In the Health Check it was consequently decided that it was necessary to increase quotas gradually in order to ensure a so-called "soft landing", i.e. a smooth transition towards the expiration of milk quotas in 2015. It was decided to increase quotas by 1% per year from 1 April 2009 in five steps.

In parallel to the preparation of the Health Check, exceptional developments marked dairy markets. Initially, extreme weather conditions in Oceania brought about a significant decline in dairy supplies, leading to a rapid and significant increase in dairy prices. The resulting situation and the exceptional deactivation of export refunds for all dairy products for the first time in 40 years led the Council to anticipate an increase in the dairy quotas by 2% from 1 April 2008.

Yet while world dairy supplies had started their recovery, and dairy prices their return to more normal levels, the subsequent financial and economic crisis negatively affected EU dairy markets, aggravating price volatility. Initially feed and other input costs (including energy) increased significantly as a result of higher commodity prices. Subsequently, the drop in EU demand, including for dairy products, and stability in EU production led to a collapse of EU dairy prices, down to the lower safety net level. This sharp decline in dairy commodity prices failed to fully translate into lower dairy prices at consumer levels, generating a widening in the gross margin of the downstream sectors for most dairy products and countries, and preventing demand for dairy products to adjust to low commodity prices, slowing down price recovery and exacerbating the impact of low prices on milk producers.

This triggered the milk crisis, the unrest among milk producers, intensive discussions at the level of the Agricultural Council as well as at the level of the European

Council and with the Commission taking a number of measures to support the market and finally to the establishment of the High Level Group for Milk.

Block 1

3. CONTRACTUAL RELATIONS BETWEEN MILK PRODUCERS AND DAIRIES TO BETTER BALANCE SUPPLY AND DEMAND ON THE DAIRY MARKET

3.1. Current situation as seen in the HLG

The dairy producing and processing sectors are highly differentiated between Member States. There is also a highly variable situation between operators and types of operators within individual Member States. But concentration of supply is low in many cases with a resulting imbalance in bargaining power in the supply chain between farmers and dairies. This imbalance can lead to unfair commercial practices, in particular farmers not knowing what price they will receive for their milk when delivering (which is often fixed much later by dairies on a basis of the obtained added value, for non-cooperatives, often wholly out of the farmer's control). For dairies, the volume which will be delivered during the season is not always well planned. Indeed, the use of formalised, written contracts containing such basic elements made in advance of delivery is not widespread.

As regards co-operatives there are less issues of bargaining power between farmers and dairies but there might be a lack of adaptation of supply to demand. Farmers are obliged to deliver all their milk to their co-operative and the co-operative is obliged to accept all the milk. Given the fact that 58% of the milk is processed by co-operatives this might be an issue that need to be addressed.

Furthermore, during the crisis in 2009 the supply of milk did not react to lower demand. Rather to the contrary, in important producer Member States, in reaction to lower prices, farmers produced more then the year before.

3.2. HLG conclusions

After debate in the 12 January 2010 meeting, the HLG chair noted a general agreement to promote contracts whilst taking into account the specific nature of cooperatives and the national traditions. However, there were different views on the ways these contracts should be promoted. The baseline minimum acceptable for all was that guidelines should be established and good practices should be exchanged, all on condition that it would be voluntary. A second level, supported by quite a number delegations, would be that the principle of contracting should be enshrined in EU legislation, taking into account the specific nature of cooperatives and the national traditions, with essential elements as price/price formula, quantities, timing of delivery and duration. All the rest should be left to the parties and all the elements of the contract would have to be freely negotiated between the parties. At a third level some Member States would favour a more detailed EU framework contract. The latter group, however, would not find a majority among Member States.

3.3. HLG Recommendation on contractual relations

The HLG considers that there is a need to increase awareness and reinforce the responsibility of the operators in the dairy chain to better take into account the signals of the market and adapt supply to demand. Therefore the HLG invites the Commission to consider the most appropriate manner, whether by guidelines or a legislative proposal, to enhance on a voluntary basis the use of formal written contracts, made in advance, to cover deliveries of raw milk which should include the following four key aspects: (1) the price payable/price formula at delivery, (2) the volume which could and/or must be delivered, (3) the timing of deliveries during the season, and (4) the duration of the contract (which could be indefinite with a termination clause). Member States could make the use of these contracts compulsory. All the specific elements of the contract should be freely negotiated between the parties. The specific nature of cooperatives should be duly taken into account.

4. WHAT CAN BE DONE TO STRENGTHEN THE BARGAINING POWER OF MILK PRODUCERS?

4.1. Current situation as seen in the HLG

As noted above, concentration of supply is low in many cases with a resulting imbalance in bargaining power in the supply chain between farmers and dairies. There is a (resulting) problem of price transmission along the chain, in particular as regards farm-gate prices. Value-added in the chain has become increasingly concentrated in the downstream sectors, notably with dairies.

Therefore the HLG looked at the issue of rebalancing the bargaining power of farmers in relation to dairies. This analysis examined existing competition law.

EU anti-trust competition law, in Articles 101-106 TFEU, is a fundamental aspect of a functioning internal market. The agricultural chapter of the TFEU in Article 40(1) underlines that common rules on competition are the basis for a common market organisation. Article 42(1) TFEU grants the Council and the European Parliament the power to determine the extent to which EU rules on competition apply to agriculture, taking into account the objectives of the CAP in Article 39 TFEU.

EU anti-trust competition law in Article 101(1) TFEU prohibits certain anti-competitive practices such as direct or indirect price fixing, market partitioning and production controls. It only applies however to practices which may affect trade between Member States, so small-scale issues fall only under national competition law, which varies between Member States.

Also, some practices might nevertheless be acceptable under Article 101(3) TFEU if they contribute to improving the production or distribution of goods or to promoting technical or economic progress, whilst allowing consumers a fair share of the resulting benefits and do not eliminate competition in respect of a substantial part of the products concerned.

Specific provisions on competition law in agriculture for farmers and their associations are set out in Article 176 of Regulation (EC) No 1234/2007, the single CMO Regulation, although they did not have a particular relevance to the issues discussed in the dairy HLG.

Application of these rules to the agricultural and in particular the dairy sector, notably as regards the collective negotiation by farmers of contract terms including price, jointly for some or all of their production with a particular dairy is examined in detail in the Annex 2.

International experience

Four countries outside the EU were asked to describe their dairy market organisation: USA, Switzerland, Australia and New Zealand. It appeared that all these countries apply exceptions to competition rules for farmers although the scope and size of the exceptions differed a lot. Australia only applies a possibility for farmers to negotiate a collective contract for raw milk processed into drinking milk. New Zealand adopted a law (Dairy Industry Restructuring Act) to derogate from their competition laws to create a dairy co-operative that processes more than 90% of the national milk production. The USA allows a grouping of farmers that produces 70% of US milk to impose a levy on all its members, used to reduce cow numbers to diminish supplies or to pay export refunds. Finally Switzerland extends the rules agreed by producer organisations and milk processors to all milk producers in Switzerland.

4.2. HLG conclusions on the current state of competition law

The 23 February meeting of the HLG saw a presentation by DG COMP and NCA's (National Competition Authorities with those from France and Germany acting as reporters) on the current situation of competition law and agriculture and a question and answer session. In particular it focussed on the extent to which farmers could collectively negotiate prices with processors under current competition law. The HLG chair took away three keys points:

– First, it is possible to negotiate a uniform price if the share in the relevant market is less than 5% and turnover does not exceed EUR 40 million. Beyond that a case-by-case analysis would be required, which would not necessarily be problematic.

– Second, it is possible to negotiate a uniform price under two conditions: if the buyer wants a single supply price (so this is in the processor's hands) and the market share is less than 15%.

– Third, if farmers form a joint venture with common assets such as trucks, tanks or storage facilities, they could negotiate a common price provided that the market share is less than 20%.

The market share is evaluated on the "relevant market" and the discussions showed that it is not easy to assess what the relevant market is.

4.3. HLG conclusions on the appropriateness of the current state of competition law

The 16 March meeting of the HLG looked further at the following four questions:

(1) Do you consider that the current state of competition law is adequate to allow farmers to increase their bargaining power? In particular, are the basic principles outlined in the 23 February HLG (see annex 2) easily understood, sufficient, and applicable at Member State level in a uniform way without further EU action?

(2) If the current situation is not adequate, would an appropriate response be to provide an exception to allow a producer organisation (made up of farmers only) to negotiate contract terms, including price, jointly for some or all of its members' production with a dairy?

(3) In order to ensure that the market remains competitive, should a maximum permitted output be imposed which should benefit from the exception? What would an appropriate limit be and should it be expressed in absolute or relative terms?

(4) If the exception is justified under the current market situation and structure, should it be made temporary with a re-examination at the end of a period to see whether conditions have changed? Would a period of running until four years after the end of the quota system be appropriate?

The HLG chair summarised the discussion on these questions as follows:

(1) A minority of Member States were in favour of operating within the existing competition rules, noting that significant benefits could be secured through an explanatory document providing transparency on what is already possible.

(2) The chair noted that a clear majority of Member States are in favour of an exception to competition rules to be set out in EU legislation. Indeed it seems there is probably a qualified majority in favour of an exception (even though the HLG is not a configuration of the Council). The chair noted five Member States against this possibility. The nature of the exception remains to be defined.

(3) There is a range of positions depending on different situations in national markets. However, Member States focussed on the importance of the notion of the "relevant market", which remains to be defined. It seems very difficult from a legislative point of view to clarify this concept. Under current competition rules a case-by-case analysis is made. The chair noted a range of positions on the definition of the appropriate size of the relevant market: regional, national, transnational, or even the EU. The majority of Member States are in favour of a definition of the maximum output in terms of a percentage of the relevant market. However, Member States with lower production levels drew attention to the problem that such a definition (in terms of percentage) might pose if applied at a national level. The chair underlined that this concern should be taken into account.

(4) A majority of Member States is in favour of a long or permanent exception with a review, even though some Member States are in favour of a temporary exception.

4.4. HLG Recommendation on bargaining power of producers

The HLG, whilst noting the divergent views of a minority of 5 delegations, invites the Commission to consider a legislative proposal for a provision under agricultural law to allow producer organisations constituted by dairy farmers to negotiate contract terms, including price, jointly for some or all of its members' production with a dairy, subject to an appropriate quantitative limit expressed as a percentage of EU milk production and to consider whether such a provision should be permanent or of a sufficiently long but temporary duration, and in either case be subject to review. The specific nature of cooperatives should be duly taken into account.

4.5. Current situation of interprofessional / interbranch organisations

A few Member States raised the issue of interprofessional or interbranch organisations ("IPOs") which cover the whole supply chain: farmers, processors, distributors and retailers.

In the CAP, there is explicit provision in several sectors including in particular fruit and vegetables and wine for the recognition of IPOs under a EU statute. IPOs may be also recognised under national statutes in other sectors under Article 124 sCMO.

The role of IPOs in those two sectors is set out in Article 123 of the single CMO (Annex 3)

There is an explicit provision in Article 176a of the single CMO for the fruit and vegetables sector exempting agreements and practices of IPOs carrying out these activities from Article 101(1) TFEU provided that: they are notified to the Commission, and that the Commission does not find them incompatible with Community rules. Certain anti-competitive agreements and practices are explicitly declared incompatible, namely those which may lead to the partitioning of markets, affect the sound operation of the market organisation, create distortions of competition, entail the fixing of prices or create discrimination or eliminate competition in respect of a substantial proportion of the products in question.

For wine, Article 113c of the single CMO provides for producer Member States to lay down marketing rules to regulate supply, particularly by way of implementing decisions taken by the inter-branch organisations provided that such rules are proportionate to the objective pursued and do not in particular relate to any transaction after the first marketing, do not allow for price fixing, for guidance or recommendation and do not render unavailable an excessive proportion of the vintage.

4.6. HLG conclusions on interprofessional / interbranch organisations

The 16 March HLG meeting also looked at this issue and the following questions were asked:

– As regards interprofessional organisations (composed of some or all members of the filière – farmers, dairies, industry and retailers), which specific provisions, if any, currently applied in the fruit and vegetables sector would have any relevance for the dairy sector, taking into account that in price fixing, market partitioning and elimination of competition is expressly excluded for that sector, as all others?

– Why would it be necessary to provide for these provisions at EU level, since interprofessions in various sectors – including the dairy sector - operate effectively without them?

On these questions, the HLG chair concluded that the situation is less clear than on bargaining power. However the HLG chair identified three groups of Member States. A first group is in favour of an extension to the milk sector of the provisions applied in the fruit and vegetables sector. Within this group, some Member States would like to go further and mentioned for example the provisions applied in the wine sector. A second group does not have any tradition as regards interprofessional organisations. This group is hesitant but adopts nevertheless a rather open attitude. A third, more limited, group of Member States does not see any interest in legislative activity in this area.

4.7. HLG Recommendation on interprofessional / interbranch organisations

The HLG suggests that the Commission examines further whether any of the current provisions for interprofessional organisations in the fruit and vegetables sector could also be applicable in the dairy sector. If so, the applicable legal restrictions on anti-competitive activities and the Commission's powers to control them, should equally apply, and the proper functioning of the internal market should be safeguarded.

5. TRANSPARENCY FOR THE BENEFIT OF MILK PRODUCERS, DAIRY INDUSTRY AND CONSUMERS

5.1. Current Situation as seen in the HLG

As indicated in the Communication of the Dairy market (COM(2009)385), price transparency and price transmission in the dairy sector are not functioning optimally. This is most notably the case for the downstream sectors. While consumer prices quickly followed commodity price increases in 2007, consumer prices did not come down when farm gate milk prices and ex factory prices for dairy commodities came down. The lack of adjustment of consumer prices to the fall in ex-factory prices is even more striking when assessed over a longer time period: whereas the ex-factory prices of many dairy products have now fallen below their levels before the price surge, dairy consumer prices have remained at high levels.

There could be several reasons why consumer prices of milk have remained stable while raw milk prices and ex-factory prices have declined as milk is only one of the costs in the consumer price of dairy products. However, the magnitude, the delay and asymmetry in the downward adjustment of dairy consumer prices - which is particularly marked in some Member States – clearly shows that the EU dairy supply chain does not function efficiently. Preventing consumers to benefit from lower prices constraints the development of demand for dairy products and thus hinders the strength and pace of recovery of the dairy sector. This situation also raises serious concerns regarding the distribution of value-added in the chain between farmers, milk processing factories, the dairy industry and retailers.

While competition issues have been dealt with in the previous chapters, the improvement of the effectiveness and efficiency of the dairy supply chain needs to address the lack of comprehensive and reliable data on prices and margins in the whole food chain. Greater transparency, a better understanding of value-added distribution and price transmission, and a clearer view of the structural factors would be a significant first step in identifying the appropriate measures which could contribute to improve the efficiency of the dairy supply chain and secure a fair outcome for each actor. This could in turn contribute to enhance the countervailing power of the actors concerned.

The Commission published at the end of October 2009 a first version of the European Food Prices Monitoring tool that should contribute to better understanding how milk and dairy prices evolve. This European Food Prices Monitoring tool should be further developed to cover a greater number of food products and chains -at producer, processor and retail levels- (starting from the summer of 2010) in the context of the implementation of the proposals put forward in the Commission Communication adopted on the 28th October 2009 "A better functioning food supply chain in Europe" – COM(2009)591. This development relies on the cooperation of National Statistical Institutes which should collect the necessary data. More transparent price information should then provide visibility on food price evolution in each country and sector, and should contribute to increasing pressure on stakeholders to speed up price transmission.

Consideration was also given to what extent information on volume flows along the various stages of the chain should be equally addressed to further boost transparency. Furthermore, it was felt that transparency should be encouraged and developed at aggregate level in order to respect confidentiality and competition law.

5.2. HLG Conclusions

The High Level group showed broad agreement to enhance transparency, without, however, creating additional red tape. The High Level Group referred to the Commission Communication on "A better functioning food supply chain in Europe" that was discussed in the Agricultural Council of 29 March, notably the Commission proposal to develop further the European Food Price Monitoring Tool, under the leadership of EUROSTAT and in cooperation with national statistical institutes. Already available information should be exploited without creating new data which could be going too far. At the same time this transparency should be encouraged and developed at aggregated level in order to respect confidentiality and competition law.

5.3. HLG recommendations on transparency

The HLG invites the Commission to elaborate further the European Food Price Monitoring Tool, better using existing information. The HLG further invites EUROSTAT and the National Statistical Institutes to look for the possibility to communicate more information, subject to a reasonable cost, for example on volumes of milk and milk products.

Block 2

6. MARKET MEASURES

6.1. Current situation as seen in the HLG

6.1.1. Market management in 2009

The Commission has taken active steps to rebalance the market in 2009. This has prevented commodity market prices to fall below the safety net, where prices have stabilized during the summer of 2009. Prices started to increase in the second half of 2009. The list of measures taken is included in Annex 4.

As a result of the duration of the period of low prices for almost a year, many stakeholders were asking for additional measures to support the market.

The High Level Group discussed the appropriateness of the current market measures and whether introduction of new or reintroduction of old measures would be necessary to help manage the dairy market in the future.

6.1.2. Current market measures

Despite the long list of measures in Annex 4, the number of market management tools has been reduced during several reforms. The dairy market organisation is left with three essential market support instruments:

(1) Intervention

(2) Private storage for butter

(3) Export refunds

These market measures prevent milk prices to go to very low levels when supply exceeds demand. On the other hand, due to the relatively low levels of support, it will not structurally provoke additional milk production; thus avoiding the creation of permanent surpluses.

Intervention for milk fat (butter) and milk protein (skimmed milk powder) is acting as a safety net only and not as a standard outlet due to the much reduced intervention prices. The price at which butter is bought in into intervention is fixed at 221.75 €/100kg (90% of the reference price) and for skimmed milk powder at 169.80 €/100kg (reference price). Quantities are bought in at this price until a limit of 30,000 tonnes is reached for butter and 109,000 tonnes for skimmed milk powder. These limits represent 1.5% of EU butter production and 10% of EU SMP production. Above these limits the Commission may decide to continue buying in by tender. Accepted prices in a tender cannot be higher than the reference price for skimmed milk powder and higher than 90% of the reference price for butter, as referred to above.

While there are still supply restrictions (milk quota), they have become less relevant in recent years. This is the logical consequence of the market oriented CAP reforms, paving the way for the soft landing.

Private storage for butter helps to pay for storage costs of butter in times of high butter production. Milk production is seasonal which leads to higher production of butter in certain periods and much less in other periods. Private storage serves as an alternative to intervention (public storage).

The ongoing reform has increased the competitiveness of the sector. At the same time world market prices have increased. This has allowed refunds to be fixed at lower levels than before and even some periods without any refunds at all.

Recently a number of market tools were abolished: private storage for skimmed milk powder and cheese, internal disposal measures for butter fat. Other measures are no longer compulsory but optional like internal disposal measures for skimmed milk and skimmed milk powder.

Several strict marketing rules have been eased, like restrictive provisions on protein content in milk powders and possibilities to use casein in cheese production.

However, it is to be noted that the compensatory payments for reductions of intervention (reference) prices are important in the producer's income. Currently these payments are decoupled from production but coupled to cross compliance conditions. This provides a constant element in the income of farmers, while allowing farmers to become more market oriented.

The income safety net (direct payments) and the price safety net (intervention, private storage and export refunds) work together as complementary tools to help the farming sector.

It should be noted that the Commission can take the necessary measures under Article 186 sCMO in cases of market disturbance where prices in the EU market for milk products rise or fall significantly provided existing measures of the sCMO appear insufficient.

6.1.3. New market instruments

Some Members of the High Level Group expressed ideas for new market measures. It was mentioned to keep intervention for butter and SMP open during the whole year. This provision was abolished for SMP in 1987 and for butter in 2004. Note that this was one of the exceptional measures taken in 2009. However, no product entered intervention during the extension of the period.

Other ideas mentioned were insurance schemes or other income stabilisation tools, without further specifying the preferred options.

Finally a few Members expressed the wish to reintroduce private storage for SMP and cheese. However, it should be noted that this is already possible under article 186 of the single CMO, where the Commission has been granted additional powers for the dairy sector, in case of disturbances.

6.1.4. Futures markets

The functioning of futures markets was discussed intensively. In the EU futures markets exist for some agricultural sectors like cereals, potatoes and pork, but not for dairy so far. One of the major reasons is the fact that in the past markets have been stabilised by the EU policy, taking away the need for a risk managing tool like futures markets in dairy.

In the view of abolishment of the quota system in the EU and the increased price volatility, some of the sector participants turn their interest towards futures market for managing their price risk (as evidenced by the plans by NYSE EURONEXT to start trading European dairy futures in 2010).

A functioning futures market exists in the USA where there are contracts for butter, whey powder and milk used for cheese making. However, concerns have been expressed concerning sufficient liquidity and transparency levels for proper functioning of these futures. It should be noted that the New Zealand's exchange (NZX) is also to launch a WMP futures contract in 2010:

What was clear from the discussion is that the instrument is not likely to reduce price volatility. In fact futures markets constitute a tool to mitigate price risks. Another important advantage is that it serves as a tool for price discovery.

Due to the nature of the futures contracts the products traded must be standardised. Making butter and powder the most likely candidates for futures contracts. The large variety of EU fresh products and cheeses make these less suitable for futures trading. Also raw milk has variable contents of milk constituents between and within Member States and during the season. Furthermore milk is a highly perishable good and it is difficult to establish a physical place of delivery for the raw milk. It will therefore not be easy to define a raw milk contract, while this would be the kind of contract a farmer is primarily interested in.

Concerns were expressed as to the effects of speculators in futures markets. The total amount of money involved in futures in general is much bigger than specific futures in agricultural products. Small changes could therefore have big impacts on agricultural futures prices. On the other hand speculators are necessary to provide liquidity, which is needed, in turn, for proper functioning of a futures market.

6.2. HLG Conclusions

The 2 February meeting of the HLG looked at the issue following three questions:

(1) In the framework of market orientation and competitiveness, are the current intervention measures (combination of public and private storage) correctly tailored to work as a safety-net in times of crisis without becoming a permanent outlet?

(2) Even with less extreme price volatility, there is a risk of high income volatility for farmers. Which new tools could be developed to help farmers better face market risks in order to reduce their income volatility? Could such tools be WTO green-box compatible

(3) Do you see the development of a dairy futures market in the EU as relevant and adequate to enhance price transparency and improve the management of price risk? What would be the conditions necessary for such an instrument to function efficiently?

The chair summarised the discussion as follows:

On the first question, a large majority of Member States (MS) was in favour of keeping the intervention system, more or less, in its current form, with a few slight changes, as a safety-net but not as a permanent outlet.

On the second question, two main opinions were distinguished. Firstly according to a majority of MS direct payments to farmers should be maintained in order to reduce income volatility. Some of the MS expressed that Axis 1 measures in Rural Development were important in that context. Secondly a majority of MS was open to explore new supplementary instruments respecting two conditions: those instruments should be cost efficient and WTO-green box compatible.

As regards the specific issue of futures markets:

– A large majority of Member States expressed an open position towards further examination of a futures market in dairy and consider it as a useful complementary tool, despite the apparent complexity.

– The futures market does not correspond to a safety-net, but it is a risk management tool (not the most important one) that could enhance transparency and could reduce extreme price risks.

– A futures market is compatible with a safety-net intervention tool, provided the safety net level is not higher than the current level.

– Dairy commodity products like butter or milk powders could be traded on a futures market. There is, however, scepticism about the possibilities for trading liquid milk.

– A futures market would have to be a private initiative in a market oriented environment. Authorities would rather play a role in training, supervision and regulation in a broader context, not specifically on agricultural products.

6.3. HLG Recommendations on market measures and futures

The HLG generally regards the existing safety net as appropriate. Nonetheless the HLG invites the Commission to explore new WTO green box compatible instruments in the framework of the CAP after 2013, in order to reduce income volatility. It invites the Commission to consider facilitating the use of futures markets as a useful complementary tool, in particular via targeted training programmes. Supervision and regulation should be dealt with in the framework of the overall approach on derivatives and of the Directive for markets in financial instruments (MiFID).

Block 3

7. QUALITY AND LABELLING

7.1. Current situation as seen in the HLG

In several Member States the appearance of imitation dairy products became the subject of intense debate when prices were low. Vegetable-based product, referred to as "analogue cheese", was the major source of concern as it is produced with vegetable fats, water, starch, protein powders and flavours, used to and replace cheese. These imitation products are cheaper than cheese; food technology and innovation make them acceptable to consumers by adding cheese aromas; they are relatively easy to produce and are promoted with health claims, like "low cholesterol". On the other hand, the imitation products suffer from a poor image as "imitations" and are considered likely to mislead consumers. For example, it is not easy to discover on the labelling of a pizza, whether or not imitation product has been used instead of genuine cheese, and often both are used.

Since imitation products replace the genuine dairy products and keeping in mind that the crisis was due to a reduction in demand there was strong pressure to adapt labelling rules for such imitation products.

The second subject was the notification by Member States of a number of national schemes and initiatives designed to identify the origin of dairy. These have been assessed under the Labelling Directive (No 2000/13/EC) or under the Technical standards legislation (Directive 98/34/EC) and mostly opposed by the Commission as being protectionist.

7.1.1. Marketing standards general

Existing legislation on labelling protects dairy products. First of all the current labelling Directive 2000/13/EC includes provisions that prohibit misleading of consumers in general.

Furthermore the single CMO, Regulation (EC) No 1234/2007, Article 114 and Annexes XII and XIII lay down provisions on protected designations for milk and milk products and for drinking milk. Milk products are defined as "products derived exclusively from milk, on the understanding that substances necessary for their manufacture may be added provided that those substances are not used for the purpose of replacing, in whole or in part, any milk constituent". A number of designations like milk, butter and cheese are reserved for milk products. Sales descriptions like "whole milk", "semi-skimmed milk " and "skimmed milk" are accordingly reserved for drinking milk with a certain fat content.

Article 115 and Annex XV refers to spreadable fats, regulating the designations of a) milk fats, b) fats and c) fats composed of plant and/or animal fats, covering in particular the designations "butter", 'three-quarter butter", "half butter" and "dairy spread x%"

Both for milk designations and for spreadable fats the prohibition to use the designations for non-compliant products does not apply to the designation of products "the exact nature of which is clear from traditional usage and/or when the designations are clearly used to describe a characteristic quality of the product". These derogations have to be approved by the Commission and are laid down in Decision 88/566/EEC and Regulation (EC) No 445/2007

In this context, competing products like "soy drinks" are not allowed to be designated as "milk."

Member States are responsible for the application of the EU legislation and so must control and prohibit the use of designations which do not respect the protected designations.

To this end Member States should annually report to the Commission on developments in the market in milk products and competing products in the context of the protected designations in order to enable the Commission to make a report to the Council. The last report was made in 2007 but only 10 MS reacted and the information was not very extensive.

Marketing standards policy is a dynamic area and several initiatives are currently in process.

(1) The Commission, presented a Commission paper on agricultural product quality in May 2009[3] in order to inter alia streamline existing marketing standards into a more comprehensive and coordinated set of regulations.

(2) In the context of the proposal for a Regulation on Food Information to consumers, replacing the current Labelling Directive No 2000/13/EC[4], "Imitation" products and origin labelling issues are among the subjects discussed in the European Parliament[5].

Cheese sold in retail "as such" cannot be an imitation product, not even partly, because if that would be the case it could not be sold as cheese. Therefore enforcement is relatively easy.

Nevertheless, for cheese as an ingredient the situation is more complex[6]. Even when respecting the current legislation, if an imitation product is used in combination with real cheese and the ingredients are properly labelled (vegetable fat, protein, casein, starch salt), it is difficult to distinguish for consumers that an imitation product has been used in a product. Therefore at several occasions, including the HLG meetings,

[3] COM(2009)234

[4] COM (2008)40

[5] It should be noted that in the current PDO-PGI legislation, the use of "imitation" is expressly cited as a type of abuse (Reg. 510/2006 art 13.1.b). For example under current legislation, the use of the label "imitation Comté" would be prohibited, while the amendments of the European Parliament aim at making this a legal label.

[6] A recent study showed that 22% of the cheese in FR, DE, IT, UK, PL & ES is used as an ingredient. The study estimated that about 3% (most probably more) of the cheese used as ingredient concern imitations. This means at least 43,000 tonnes or 0.7% of the total consumption.

different Member States insisted on supplementary provisions for the clear labelling as an "imitation", especially for cheese.

7.1.2. *Marketing standards: origin labelling*

Current EU rules on labelling of origin (Directive No 2000/13/EC) are based on the principle that origin is optional except in cases where the consumer would be misled if origin was omitted. The exception is interpreted restrictively and has limited general application. Under current proposals for labelling, (the above mentioned proposal on Food Information for Consumers), the basic rule for origin labelling is maintained (optional unless omission would mislead the consumer).

To respond to many consumers' and farmers' preferences for labelling that identifies the place where agricultural product was farmed, the Commission has undertaken in the agricultural product quality Communication to consider appropriate labelling within marketing standards for agricultural products, while taking into account the specificities of some sectors, in particular concerning processed agricultural products.

In addition, some private schemes not operated or overseen by public authorities have been developed to guarantee origin from a particular region. These labels appeal to the local loyalty of consumers.

7.2. HLG Conclusions

The 13 April meeting of the HLG looked at the following two questions:

(1) Do you consider that the current EU regulation to protect designations and sales descriptions of dairy products is sufficient? If not, what should be changed? Should the enforcement of these standards be improved?

(2) To what extent is labelling of place of farming in the dairy sector a) feasible, and b) appropriate to meet the needs of the sector? In considering these questions, the following elements should be taken into account:

– What products of the dairy sector would labelling apply to?

– Would origin of milk or place of processing be considered?

– Which geographical level – EU, national or regional?

– Would labelling remain optional or be obligatory?

The chair summarised the discussion as follows:

On marketing standards a general support was noted to consider that the current EU regulation is by and large satisfactory. However certain improvements and clarifications could be considered. Some Member States mentioned in particular the possibility to have a closer link between EU legislation and the Codex Alimentarius.

On origin labelling different views were expressed. There is at least a general support, with a few exceptions, for the possibility to indicate the place of production of the raw materials on the label on a voluntary basis. Furthermore, there was clear support for further clarification of the place of processing, which should not be problematic on the basis of the current veterinary and hygiene legislation in force.

For the indication of the place of farming Member States are divided in two groups, more or less equal in size. One group is in favour of a compulsory labelling with indication of the country for basic products and lightly processed products. Another group does not want to go further than an optional approach.

7.3. HLG recommendations on marketing standards and origin labelling

The HLG has taken note of the ongoing activities regarding labelling and invites the Commission to follow closely the developments to ensure that imitation dairy products are distinguished properly, thereby avoiding the use of names and terms reserved to dairy products. On place of farming the HLG invites the Commission to consider the feasibility of different options for obligatory/voluntary place of farming labelling of basic primary dairy products. Both for rules on labelling of imitation product and on place of farming, coherence of dairy sector proposals should be ensured with the Food Information for Consumers legislation currently under consideration by the legislator.

Block 4

8. INNOVATION AND RESEARCH

8.1. Current situation as seen in the HLG

During the dairy crisis there was a strong demand for more efforts into research an innovation to help the sector deal with the gradual easing of the quota constraints in a more market oriented environment.

The dairy sector has a high technology demand for high valued added food products (e.g. milk production automation, animal breeding and health, milk processing development, packaging, logistical improvements). As a consequence the EU dairy sector is represented in many of the groupings where discussion and elaboration of research agendas is taking place (i.e. High level Group for Competitiveness of the Food Industry; European Technology Platform "Food for Life"). However, it is not clear what is the current situation with regard to research and innovation strategies in the sector, and which private and public institutions have participated.

It is difficult to see the dairy sector in isolation; it is rather a part of the entire food chain. The High Level Group on the Competitiveness of the Agro-Food Industry has also discussed the issues of innovation and research and proposed three specific recommendations in its report of 2009:

– Recommendation 21: Enhance the research and innovation efforts.

– Recommendation 22: Make better use of the instruments available in the context of the European research and innovation policy and

– Recommendation 23: Support the development of new food technologies

8.1.1. Innovation

In its "Strategy 2020" the Council has identified innovation as a key driver for a prosperous future and to enhance Europe’s global economic competitiveness. Innovation plays a critically important role in Europe's ability to respond effectively to the challenges and opportunities of the global economy as well as to other major challenges, such as climate change. Innovation policy measures should cover, inter alia, education, research, entrepreneurship and promotion of innovation culture.

The European dairy sector has an extraordinary potential for innovation. Europe has a long-standing tradition of break-through inventions. With the single market it provides the opportunity to commercialise products on a large scale.

The second pillar of the Common Agricultural policy (rural development) already provides for instruments to enhance innovation. The Community Strategic Guidelines on rural development spell out the role of innovation in order to improve the competitiveness of Europe's agricultural sector and rural areas. Accordingly, one of the rural development policy's priorities is to improve the competitiveness of agriculture and forestry by supporting restructuring, development and innovation. In the context of increased competition on global markets it is important to ensure that the agriculture and food sector can take advantage of market opportunities through widespread innovative approaches and practices in developing new products, processes and technologies.

Under axis 1 "Improving competitiveness of the agricultural and the forestry sector" support can be granted for innovative actions in particular under:

– Measure 111 "Vocational training and information actions, including diffusion of scientific knowledge and innovative practices, for persons engaged in the agricultural, food and forestry sector." This measure's objective is human capacity building. This measure could also be important to disseminate knowledge on innovative approaches in the dairy sector. This can be complemented by activities of farm management and farm advisory services which can be supported in the rural development framework under measure 115.

– Measure 121 "Modernisation of agricultural holdings": The objective is to improve the economic performance through better or innovative use of the production factors including modernisation of buildings and technical equipment, and improvement of energy efficiency.

– Measure 123 "Adding value to agricultural and forestry products" allows the improvement of processing and marketing of dairy products, for instance through investments in equipment for milk collection and milk processing, and production of higher quality products.

– Measure 124 "Cooperation for development of new products": This measure aims at supporting cooperation for the development of new products, processes and technologies in the agricultural and food sector. The cooperation may include partners from the primary sector, processing industry and research institutes to develop new competitive products. While this is the most obvious measure for innovative projects, the overall budget of this measure accounts for 0.4% of the total programmed rural development expenditure for the period 2007-2013.

– Measure 125 "Improving and developing infrastructure related to the development and adaptation of agriculture and forestry": Some modern farming methods can only be applied if the necessary agricultural infrastructure is in place.

Under Axis 3 "the quality of life in rural areas and diversification of the rural economy" support of innovative actions can be granted in particular under:

– Measure 311 "Diversification into non-agricultural activities": This offers several possibilities, e.g. support for the development of new economic activities, for instance related to the production of renewable energy.

Innovation is also at the core of Leader (Axis 4). By definition the Leader approach shall comprise "the implementation of innovative approaches". One of the advantages of such an approach is that projects are designed and executed by local partnerships to address specific local problems.

Under Rural Development it is up to the Member States to choose the most efficient instrument out of the toolkit on the basis of the available budget and the results of a strengths and weaknesses analysis (SWOT).

The Health-Check of the CAP and the Recovery Package provided an additional funding for rural development of about € 4.9 billion for the period 2010-2013. Both funding options had to be used for tackling a number of Community priority areas for investments, among which was the restructuring of the dairy sector[7].In this context, "Cooperation for the development of new products, processes and technologies in the agricultural and food sector and in the forestry sector" has been mentioned as measure accompanying the restructuring of the dairy sector. A major revision of all rural development programmes was done in 2009/2010 to allow the spending of the additional budget.

As a result of this major re-programming about 14.5% of the additional budget will be invested for operations that accompany the dairy restructuring. The priority area is supported by 21 Member States and funds have been allocated to measures from axis 1 and axis 2 of the rural development policy. They target the competitiveness of the sector, the development of new products, support farmers in achieving higher standards of animal health, welfare and nutrient management, and promote co-operation and innovation. Nevertheless, allocations to the specific measure promoting innovation in the dairy sector only account for less than 1% of the allocations to dairy restructuring. The extent to which Member States have programmed innovative operations under other measures in the programme is not visible from the available information.

8.1.2. Research

Beyond the research actions carried out in the Member States of the EU, which represents the bulk of activity, the 7th Framework Program has earmarked € 1.9 billion for the research Theme "Food, Agriculture and Fisheries." The primary aim of funding of this theme is to build a "European Knowledge Based Bio-economy". The earmarked amount represents less than 4% of the total amount available in 7th Framework Program. Around € 50 million may be explicitly linked to milk and dairy production and/or processing, which represents close to 2% of the Food, Agriculture and Fisheries program.

Dairy is one of the most technologically advanced sectors in the EU agro-food industry. Any sense of inaction in terms of research, in the face the crisis in the sector, could be, in part, a reflection of the inadequacy of existing structures and possibilities for organising the sharing, transfer and application of research results to address practical problems. More needs to be known about what is the current status of research mobilisation in Member States and the uptake of the possibility to use research results in innovation projects under the Rural Development measures post-Health Check.

[7] Other priorities include climate change, bio-diversity, water management, renewable energy and broadband.

8.2. HLG Conclusions

The 13 April meeting of the HLG looked at the following three questions:

(1) What are the main driving factors for innovation in the dairy sector? What are the factors which limit innovation?

(2) What factors could improve the use of the tools to support innovation which are already available under Rural Development?

(3) Considering the problems that the dairy sector is facing today and the opportunities offered from research, what is the state-of-the-art with regard to research in the dairy sector and its relation to the EU research agenda; and what could be done to improve the mobilisation of research expertise and know-how to address today's situation.

While there are many possible measures to support innovation under the rural development policy as part of the Common Agricultural Policy, Member States requested higher flexibility and to extend the scope of existing measures e.g. in terms of eligible products and size of beneficiaries. It has to be noted that the existing support possibilities are based on the framework established by the Treaty and the principles established to ensure complementarities between rural development policy and regional policy.

The chair summarised the discussion as follows:

For innovation the pursuit of high-value added products was considered as one of the main driving factor. Furthermore, other factors were mentioned that are linked to new challenges (environmental issues) and different aspects of "public goods" considerations. Rural Development can play an important role to promote innovation and allows already several actions. However, the existing tools in RD could be used more extensively. Nevertheless, there would be room to examine improvements notably as regards greater flexibility in the scope of the measures.

On research the chair noted a need for more awareness for the specificities of the agricultural dimension in the EU Framework Programme and in other specific programmes. He also marked the need for a better coordination between the CAP and the research policy and the need for enhancing dissemination of research results, without, however, underestimating the issues like patents and copy rights.

8.3. HLG Recommendations on innovation and research

The HLG underlines the importance of innovation and research for the competitiveness of the dairy sector. The HLG invites the Commission to propose a reinforcement of innovation in the Common Agricultural Policy after 2013, in particular in Rural Development Policy.

The HLG further invites the Commission to improve the communication of the current possibilities for innovation and research within the existing framework of Rural development and research framework programmes. The HLG invites Member States to fully take advantage of the existing possibilities.

As regards research the HLG calls upon stakeholders to define clear research priorities for the dairy sector in order to allow the sector to better benefit from national research programmes as well as the Community research framework programme.

The dairy sector is also invited to intensify its participation in the ongoing developments that take place in the HLG on competitiveness of the food chain, which also addresses the issue of innovation and research.

ANNEX

ANNEX 1 : POSITIONS OF STAKEHOLDERS

The complete version of all stakeholder positions and presentations can be found on: http://ec.europa.eu/agriculture/markets/milk/index_en.htm

Summary of stakeholder positions regarding block 1: Contractual relations between milk producers and dairies, reinforcement of the bargaining power of milk producers, transparency.

For COPA-COGECA[8] concentrating milk supply would contribute to a better balance in business relations with the rest of the milk supply chain. Robust collective bargaining should be allowed under EU competition law. The recognition of producer-owned organisations, in particular dairy cooperatives, and their associations will make a substantial contribution to strengthening the bargaining power of milk producers. These organisations should operate on a voluntary basis. The recognition of inter-branch organisations at all levels may help to better organise the whole sector.

Formalised raw milk delivery contracts can contribute towards containing the impact of market volatility. Contracts can have an important role in milk supply planning, particularly if they are linked to the operation of producer organisations. Given the specificity of existing cooperative organisations, contracts should not be made obligatory at EU level but could be promoted. The EU should set basic provisions ensuring that any raw milk contracts are formalised, fairly evenly among Member States (EU guide). EU legislation should seek to avoid unfair contractual practices too.

Market transparency needs to be enhanced at EU level, both in relation to prices and the distribution of profit margins along the whole supply chain. Milk producers will need more publicly available, reliable, timely and more transparent market information and they should be allowed to exchange market information between them.

The European Milk Board (EMB) is convinced that asymmetry in bargaining power can not be rectified by contracts. Dairy farmers have to be enabled to adjust their milk supply actively and flexibly to demand. This will strengthen their position on the market and balance forces in the market. The EU Commission ought to set up a European milk market configuration agency to stipulate a milk volume that corresponds to society's interest in sustainable supply of high-quality milk and guarantees cost-covering farm-gate prices. This agency (producers, processors, policy-makers, civil society) determines market needs and follow cost developments to determine a cost covering price and the corresponding volume. The role of EU Commission would be to create general applicability by ratifying the decisions taken by the Agency and declaring those decisions generally binding on every market player. A levy, paid by all producers, should be used to adapt supply whenever

[8] The Committee of Professional Agricultural Organisations in the European Union (COPA) and the General Confederation of Agricultural Cooperatives in the European Union (COGECA).

necessary. As a first step quotas should be reduced to match demand. Transparency is certainly needed but more importantly market players need to be given the tools to react to this price information.

European Coordination Via Campesina is not in favour of contracts replacing public supply management and has a strong preference for improvement of milk quotas at a level adapted regularly to the demand, allocated in such a way that sustainable milk production can take place in al regions in the EU with relevant agro-climatic conditions for milk production. This implies that without public supply management, compulsory contracts would not improve the farmers' position. Regarding bargaining power, the experience in the fruit and vegetables sector should be evaluated. They give priority to a public supply management scheme, with no marketable rights to produce, discussed with all stakeholders. They are in favour of transparency of prices along the milk chain and prohibition of selling at loss along the chain.

EDA believes that guidelines for contracts could be useful but that there should be no regulation at EU level on compulsory contracts. It stresses that contracts will not translate into management of total EU milk supply. EDA believes that the best model for collective producer action is the existing producer co-op model and that producer organisations that only act as selling agents should not be exempt from current competition rules. EDA warns that recommendations from the HLEG should not undermine the integrity of producer co-ops or discriminate against private dairies. Transparency increases market efficiency but it puts the supply chain under greater competitive pressure.

EUCOLAIT worries about concentration of bargaining power and pleas for more market information. Interprofessional organisations can lead to infringement of the free market principles. Prices should be determined by sound market forces and not set by cartels contrary to present competition rules. Generic information would be welcomed on for instance production, storage, consumption, exports and imports which are among the basic data operators in the market will need to manage their business.

EUROCOMMERCE claims that it has no direct relation with farmers and is therefore not the main party in this discussion. They have no particular opinion on contracts. They are in favour of promoting producer organisations by changing the single CMO in order to offer more pooling possibilities to producers not only for oil or silkworm but also for milk. It should focus the attention to relations between farmers and processors. On transparency they stress to study the entire food chain, margins and market power and not only the retailers margins.

The "Bureau Européen des Unions de Consommateurs" (BEUC) is favourable towards more transparency but nevertheless sees that despite more transparent data in some Member States the consumer did not benefit in all cases of the lower farm gate milk prices. It wants to address the issue of price transmission.

Summary of stakeholders positions regarding block 2: existing market instruments and "futures" market in dairy.

COPA-COGECA wants to maintain EU dairy market instruments at a sufficient level in order to help farmers in times of crisis. Intervention and private storage is the most efficient instrument which, as a safety net, guarantees the EU market price of milk. EU market access policy must continue to be proficient at keeping the intervention price floor effective. Dairy export incentives should be part of the future EU dairy policy too Futures may become one of the possible tools for dairy farmers and cooperatives, allowing them to hedge and transfer/share market risks. Futures should be EU-wide, accessible to the highest number of milk producers and their organisations possible and to cover liquid milk too.

The European Milk Board' preferred market tool is a system to adapt EU supply mainly to EU demand, where supply is organised by farmers via an exception of the cartel ban for milk producers. The current safety net is of minor importance and EMB stresses that any stocks, whether private or public, will put pressure on prices later on. Export refunds are not needed in such a system. EMB does not see dairy futures as an instrument to stabilise prices at a cost covering level.

European Coordination Via Campesina is not in favour of export refunds which do not tackle the overproduction at its root and dumps it outside the EU. Fair prices, tariffs and no export under average production costs, direct payments for dairy farms in less favoured areas and supply management should replace the present policy. . Intervention can be a good instrument in times of conjunctural crisis. Quota/rights to produce, organized by public authorities, at individual level is a good market tool. Furthermore quota should be redistributed between farms, between regions, between countries (towards the South and the East of the EU). A new instrument is support for cultivation of plant proteins in the EU in order to become less dependant on protein imports. They are not in favour of futures markets, saying that it is an instrument favourable to financial companies and industry, but not to producers.

EDA believes that the Commission should continue to play a role in managing the EU dairy market to minimise extremes of price volatility. EDA wants intervention to be open all year round and to stabilise both downward and upward price movements. Tendering should be abolished. Aid for private storage for SMP and cheese should be reintroduced. Aid for disposal of skimmed milk powder into animal feed and production of casein from skimmed milk can be abolished. Refunds should be kept as long as possible and used when needed.. Market access to third countries should be improved and a minimum protection via specific tariffs (i.e. no ad valorem duties) for imports should be maintained. As regards futures, EDA stresses that futures cannot stabilise markets, they can only be an instrument to deal with volatility. They stress that more real time market information is needed to make futures work.

EUCOLAIT insists on an active approach for intervention as an emergency/stabilization measure. Eventually the present intervention policy should be turned into a buffer stock policy. Exports refunds as a tool proved to be useful but possible application depends on how far the EU limits herself under the WTO. EUCOLAIT is generally positive about futures if certain conditions are met, for example availability of better market information.

EUROCOMMERCE did not express a specific position on market instruments. A "futures" market in dairy could mitigate the effect of reduce short term volatility but would not guarantee long term price stability. They should not be encouraged unless they foresee the physical delivery of commodities to the buyer and develop within freely tradable instruments. Speculation should be avoided.

BEUC did not express their opinion on this issue.

Summary of stakeholders' opinions regarding block 3: Information on markets and products (quality and labelling issues)

COPA-COGECA is in favour of clear labelling to improve transparency and information. The current EU marketing standards for dairy have proven to be appropriate and useful, especially in granting protection against competing products from non-animal origin. Rules should remain in force and be enforced properly. However labelling of ingredients need to be improved notably to avoid misleading information on dairy substitute/imitation products. EU quality should be distinguished from imported products. There should be at least obligatory labelling of EU and non-EU origin. It should be possible to market dairy products using reserved terms like "mountain product" based on common EU standards. EU promotion tools should be enhanced in order to communicate the quality of EU dairy products, labelling alone is not enough.

EMB specifically requests a better labelling of cheese in relation to imitation products and a label that distinguishes clearly between fresh milk and longer lasting milk like ESL and UHT milk. . Origin labelling on a regional level is preferable in terms of a more climate-friendly food chain and catering for consumer wishes for products from the region. Products imported from third countries to the EU should be clearly labelled as well

European Coordination Via Campesina is in favour of clear labelling of dairy products, which should be made exclusively from milk and a clear labelling of fresh milk as opposed to longer lasting milk. As regards origin labelling region of production and processing should be obligatory labelled. Region should be the highest level, i.e. no national and EU labelling. They favour labelling according to production method like "organic", "produced without genetically modified feed" or "milk from grass".

EDA does not see any need for additional labelling requirements. It favours a further elaboration of dairy market standards taking into consideration Art. 5 (3) Reg. 178/2002 (Codex Dairy Standards) and a better enforcement of existing rules. Any additional mandatory origin labelling, either for place of manufacture / country of origin or place of farming / ingredients, would undermine the internal market and hinder free trade. It would also cause severe difficulties when processing milk and be a burden to the sector, the administration and impact consumer prices. Voluntary schemes may create value by market differentiation.

For EUCOLAIT current rules are sufficient. The marketing standards for dairy products are working well and should consequently be maintained. There is however room for improvement for labelling imitation products. The indication of the place of farming and/or country of origin should remain voluntary in the future. Present rules already ensure that consumers are not mislead as regards the origin of products. Mandatory origin labelling would significantly weaken the internal market and have a trade restricting effect. Especially the obligation to label the provenance of individual ingredients of a multi-ingredient food would cause severe operational difficulties and increase administrative burden. Origin labelling should preferably be dealt with separately in each sector.

EUROCOMMERCE considers the current rules on marketing standards sufficient and wants to maintain them. They are not in favour of stricter mandatory rules on origin labelling which are requested by 6% of consumers only (Eurostat). Mandatory provisions create a restraint to the Single Market. For transformed products a mandatory place of farming of different ingredients will cause real difficulties in the description of final products (administrative burden). This label would come aside other labels on food labelling (6 different items), recycling, packaging…Too much information kills the information.

BEUC did not present its opinion

Summary of stakeholders' opinions regarding block 4: Innovation and research in the dairy sector

According to COPA-COGECA the main goal of EU support for innovation and research in the dairy sector should be to make the sector more competitive and to adapt and mitigate the impact of climate change. Measures for innovation which were recently introduced under the rural development policy can address certain issues and shall continue in the future. EU research on dairy related issues should be funded by EU research programmes. It is crucial that innovation and research results are applicable to practice and disseminated to end users with their direct involvement. Public authorities could assist by facilitating the creation of exchange platforms between scientists, farm advisors and dairy producers.

For EMB the innovations that are advantageous for the milk producers are those that relate to the process quality of the milk production and enable the producers to create more added value. The most effective support for innovations in product development on the dairy level is ensuring fully functioning competition among dairies for unprocessed milk. Supporting the processing and marketing of agricultural products in such a way that it strengthens the producers' bargaining position in the food chain. Research is needed about the impact of surplus volumes of milk on producers' income and on supply security for European consumers.

European Coordination Via Campesina: The current driver of research is objective to reach the lowest possible costs of production, often at the expense of the environmental and social costs. The WTO and industrial hygiene requirements are the main factors that limit innovation. The first axis of the Rural Development policy should be reoriented towards favouring sustainable family farms, which better answer the multifunctionality, biodiversity and environmental objectives. Rural development should support shorter milk chain, quality of milk products and the conversion of intensive production based on imported inputs towards production based on local feed.

EDA: Research and innovation should be focussed on new product development and dealing with animal diseases, minimising environmental impacts, exploiting by-products and improving efficiency. To improve innovation more funds could be made available. The current research frameworks are not easily accessible for the dairy industry. Co-ordination of research activities should be improved and legislation should create a stable environment for the use of new technologies. Innovation will be prevented by the current implementation of Reg. (EC) 1924/2006 on Nutrition and health claims. The latter will reduce the incentive to develop new products and will give a competitive advantage to food processors manufacturing substitutes for dairy products.

EUCOLAIT: Innovation and research should be focussed on developing tailor made ingredients and not only focus on competition with third countries but also competition with other sectors. It should be avoided that new oversimplified regulations, like the one on nutrient profiles, stifle innovation for dairy products.

EUROCOMMERCE wants greater freedom to use new ingredients and techniques in product development. Furthermore research should be focused on more efficient and/or more sustainable production methods and education in order that farmers develop innovative products with high added value.

BEUC did not present its opinion.

ANNEX 2 : EU COMPETITION LAW

A2.1 General

Article 101(1) TFEU prohibits restrictive agreements and concerted practices between undertakings and decisions by associations of undertakings in so far as they are capable of affecting trade between Member States. The agreements and practices concerned include those which:

(a) Directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) Limit or control production, markets, technical development, or investment;

(c) Share markets or sources of supply;

(d) Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

As an exception to this rule Article 101(3) TFEU provides that the prohibition contained in Article 101(1) TFEU may be declared inapplicable in case of agreements which contribute to improving the production or distribution of goods or to promoting technical or economic progress. At the same time, such agreements must allow consumers a fair share of the resulting benefits, and must not impose restrictions which are not indispensable to the attainment of these objectives. Furthermore, such agreements must not enable the undertakings involved to eliminate competition in respect of a substantial part of the products concerned.

A2.2 Effect on trade between Member States

The application of Article 101(1) TFEU to any cooperation agreements between farmers requires therefore as a pre-condition that such agreements are capable of appreciably affecting trade between Member States.

A case-by-case analysis is necessary in order to determine if this condition is fulfilled, taking account of the particular characteristics of the agreements and markets at issue. In this regard, as laid down in the Guidelines on the effect of trade concept contained in Articles 81 and 82 of the TFEU[9], trade between Member States is not deemed to be appreciably affected if the parties to the agreement have a combined market share of less than 5% on any relevant market affected by such agreement, as well as an EU aggregate turnover in these markets of less than EUR 40 million. However a € 40 million limit represents only about 130.000 tonnes of milk or, taking the average EU dairy farm, roughly 450 farms.

[9] OJ C 101, 27.04.2004, p. 81. Articles 81 and 82 of the Treaty have been renumbered as Articles 101 and 102 TFEU.

If these conditions are cumulatively met, cooperation agreements between farmers, even in the form of collective bargaining groups deciding on common prices and/or volumes, will not fall under the scope of EU competition rules which will consequently not be infringed. Such will normally be the case of agreements involving small farmers who act in markets of regional or local scope, with respect to which it can be assumed that they will not be capable of affecting trade between Member States to any significant extent.

However these agreements will be subject to the national competition rules of the Member States. National Competition Authorities ("NCAs") can thus assess these cooperation agreements under their own legal competition systems which may include legal provisions or exceptions differing from EU competition rules in certain cases. In their analysis, NCAs will also take into account the specificities and structural conditions which characterise milk markets at national level.

Above the aforementioned thresholds, a more careful, case by case examination is required to determine to what extent an agreement is capable of having a minimum level of cross-border effects within the Union.

A2.3 Co-operation between farmers capable of affecting trade between Member States

With respect to those agreements between farmers capable of appreciably affecting trade between Member States and therefore subject to EU competition law, the analysis under Article 101(1) and (3) should be made under the general competition rules applicable to horizontal agreements between competitors. These rules are contained in the Guidelines on the applicability of Article 81 of the TFEU to horizontal cooperation agreements ("Horizontal Guidelines")[10].

As indicated in the Horizontal Guidelines (paragraph 20), whether the agreement is able to cause negative market effects depends on the economic context taking into account both the nature of the agreement and the parties' combined market power which determines – together with other structural factors – the capacity of the cooperation to affect competition to a significant extent. The nature of the agreement relates to factors such as the area and objective of the cooperation, the competitive relationship between the parties and the extent to which they combine their activities. These factors indicate the likelihood of the parties coordinating their behaviour in the market.

As far as the assessment of cooperation agreements between farmers in the framework of producer organisations or other forms of associations is concerned, two main categories of agreements could be distinguished depending on the aims pursued and the level of integration of activities: joint production agreements and commercialisation agreements.

A2.4 Joint commercialisation agreements

EU competition rules will allow under certain conditions joint commercialisation of raw milk, including through intermediate organisations or associations. In general,

10 OJ C 3, 06.01.2001, p. 2.

such agreements are accepted if the agreement does not involve, directly or indirectly, any price fixing and the farmers who participate in the agreement have an aggregated share of the relevant market not exceeding 15%. Above such a market share threshold, the agreement is not presumed to be illegal, but a case-by-case assessment is necessary.

Farmers may also appoint a joint structure or a broker to act as commercial agent on their behalf. In this scenario, producers would retain the ownership of their milk until it is sold to the buyers, and each one of them individually would inform the agent of the reserve price which he wants to obtain. The agent, who would not bear any significant financial or commercial risk in relation to the contracts concluded and/or negotiated on behalf of the participating farmers, would pool together the volumes of all the producers and negotiate the best possible price with each interested buyer. The milk would be then sold at the best price negotiated with each buyer. If the selling price is below the reserve price of one or more individual producers (which can however change over time according to the conditions agreed in the contract with each producer concerned), the corresponding volumes would remain unsold. Such type of arrangements could be allowed under EU competition rules as long as farmers do not exchange price information with each other and the agent is not used as a mere cover for colluding on pricing and marketing strategies. In general, a case-by-case assessment may be necessary, taking into account the market power of the agent, entry/exit barriers, the position of other competitors on the same market, the countervailing power of customers, etc. The objective of this analysis would be to ensure that competition between milk suppliers is preserved and that farmers have alternative supply channels to turn to if they so wish.

If the farmers wish to market and sell their milk jointly and also agree on a common price for their milk, when an agreement between competitors involves price fixing and affects trade between Member States, this would normally be considered as a form of cartel prohibited by EU competition rules.

Nevertheless, there are exceptional cases in which a commercialisation agreement affecting trade between Member States and involving price fixing may be acceptable insofar as it is considered as indispensable for the implementation of the agreement. Such limited exceptions arise in two cases:

(a) If a large buyer does not want to deal with a multitude of prices and requests a single supply price;

(b) If farmers agree on jointly launching a new product, such as a common brand of milk, and such an initiative can only be credibly achieved if all aspects of marketing, including price, are standardised.

However, this favourable assessment applies only if the collective entity does not hold a significant market power, which is normally the case if its market share does not exceed 15%.

It must be also noted that if the farmers decide to cooperate in the area of production, collection or processing of their milk, EU competition rules will likely allow, as pointed out in the following answers, that they also market their milk with a common price.

A2.5 Joint production agreements

EU competition rules recognise the substantial economic benefits stemming from this type of joint production agreements and provide for a flexible approach when assessing such forms of cooperation between competitors. For instance, if parties agree on the output directly concerned by the production agreement and/or the setting of sales prices for the products that are distributed jointly, there will be no presumption that the agreement is illegal, insofar as such joint decisions on prices and output are deemed indispensable for the implementation of the agreement.

Joint production, whatever its scope and form, always involves an integration of economic activities, capacities or assets between participating companies. In the milk and dairy sector, joint production agreements can be structured in different forms and levels, going from cooperation at the upstream phase of the milk supply chain (i.e. joint collection of raw milk) to downstream integration into joint processing and marketing of dairy products such as butter, cheese, milk powder, long-life milk.

Such is typically the case of agricultural cooperatives whereby farmers group together their complementary milk outputs with the aim of producing processed dairy products (i.e. fresh and long-life milk, butter, milk powder, cheese, etc.). These products are sold at a price decided by the cooperative and this means that the same price is paid to farmers for the same quality of supplies.

European Courts have expressly recognised cooperative organisations as pro-competitive structures which contribute to the modernization and rationalization of the agricultural sector by enabling a large number of small producers to participate in the economic process on a wider geographical basis.

However, EU competition rules view such agreements favourably if the farmers involved in these forms of cooperation do not collectively hold a level of market power such as to restrict competition in the market to the detriment of consumers.

Indeed, if a number of dairy farmers were to organise the collection of their raw milk through the joint use of common facilities (e.g. trucks, tanks), either directly or through an association or a collection cooperative, EU competition rules would very likely allow them to jointly decide on sales targets and milk prices. These activities are block exempted if the combined market shares of the parties are not exceeding 20% in the relevant market[11]. Above that limit a case by case analysis is necessary. The joint collection of milk involves efficiency gains since it allows small farmers to group together their individual milk outputs in larger quantities, thereby meeting the needs of large buyers who may not want to deal with a wide number of suppliers. Moreover, such agreements may help strengthen farmers' bargaining power vis-à-vis their buyers.

EU competition rules recognise the efficiency gains stemming from the integration of milk collecting activities, which may imply an overall favourable assessment. This positive view may also be extended to any decisions on sales targets and farm gate and sales prices, insofar as these decisions are deemed directly related to and necessary for the implementation of the joint collection agreement as such. However,

[11] OJ C 3, 06.01.2001, p. 2-30

as pointed out in the previous question, EU competition rules view such agreements favourably if the farmers involved in these forms of cooperation do not collectively hold a significant market power

A2.6 Particular EU competition rules in the agricultural sector

Article 175 of the Single CMO Regulation (EC) No 1234/2007 provides for the general application of anti-trust competition rules to the agricultural sector subject to three exceptions in Article 176(1). These three exceptions only concern Article 101 TFEU. Article 102 TFEU (abuse of a dominant position) therefore remains fully applicable to the agricultural sector.

In accordance with Article 176(2) of the Single CMO Regulation the Commission has sole power to determine which agreements, decisions and practices fulfill the conditions required by the above exceptions. The Commission shall undertake such determination either on its own initiative or at the request of a competent authority of a Member State or of an interested undertaking or association of undertakings.

As regards the first exception on agreements forming part of national market organisations, it is clearly of very limited importance given that the majority of products (including milk and milk products) are now covered by a the single CMO, which has superseded market organisations operating at national level.

The second exception applies to agreements necessary for the attainment of the objectives of the Common Agricultural Policy ("CAP") as set out by Article 39 TFEU. In the light of the Court of Justice's analysis of this exception, it would seem difficult to apply it to arrangements concluded between farmers in the form of producer organisations or other forms of associations, in which price mechanisms regarding the purchase or sale of raw milk were to be agreed. Such agreements may indeed respond to the need of ensuring a fair standard of living for farmers, but the rest of the objectives foreseen under Article 39 of the TFEU would also have to be met.

In order to apply the third exception, three cumulative conditions must be met:

(a) The agreements must be concluded between farmers, farmers' associations or associations of farmers' associations belonging to a single Member State.

(b) The agreements must concern the production or sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products, and under which there is no obligation to charge identical prices.

(c) The agreements may not exclude competition or jeopardize the objectives of the CAP.

The requirement that there be no obligation to charge identical prices would appear to make this exception inapplicable to collective bargaining for an identical price.

ANNEX 3 : CURRENT ACTIVITIES ALLOWED FOR IPOS IN THE FRUIT AND VEGETABLES AND WINE SECTORS UNDER ARTICLE 123 OF THE SINGLE CMO REGULATION (EC) NO 1234/2007

Carrying out one, and in the case of the fruit and vegetables sector, two or more, of the following activities in one or more regions of the EU, taking into account the interests of consumers, and, without prejudice to other sectors, in the wine sector taking into account public health and the interests of consumers:

- Improving knowledge and the transparency of production and the market;

- Helping to coordinate better the way the products of the fruit and vegetables and the wine sectors are placed on the market, in particular by means of research and market studies;

- Drawing up standard forms of contract compatible with EU rules;

- Exploiting to a fuller extent the potential of the fruit and vegetables produced, and the potential of production in the wine sector;

- Providing the information and carrying out the research necessary to adjust production towards products more suited to market requirements and consumer tastes and expectations, in particular with regard to product quality and protection of the environment;

- Seeking ways of restricting the use of plant-health products and other inputs and ensuring product quality and soil and water conservation;

- Developing methods and instruments for improving product quality at all stages of production and marketing and, as regards the wine sector, also vinification;

- Exploiting the potential of organic farming and protecting and promoting such farming as well as designations of origin, quality labels and geographical indications;

- Promoting integrated production or other environmentally sound production methods;

- With regard to the **fruit and vegetables** sector, laying down rules, as regards the following production and marketing rules, which are stricter than EU or national rules:

  – *Production rules*

  – choice of seed to be used according to intended destination (fresh market/industrial processing);

  – thinning in orchards.

  – *Marketing rules*

- specified dates for commencement of cropping, staggering of marketing;
- minimum quality and size requirements;
- preparation, presentation, packaging and marking at first marketing stage;
- indication of product origin.

- With regard to the **wine** sector:
  - Providing information on particular characteristics of wine with a protected designation of origin or a protected geographical indication,
  - Encouraging moderate and responsible consumption of wine and informing on the harm linked to hazardous consumption patterns,
  - Carrying out promotion actions for wine, especially in third countries.

ANNEX 4 : LIST OF MEASURES TAKEN DURING THE 2009 DAIRY CRISIS.

- **Advanced Private storage aid for butter**: Start on 1 January 2009 instead of 1 March 2009. 135 000 t entered storage until 15 August, the normal closing date for private storage in previous years.

- **Extended Private storage aid for butter:** Extended beyond 15/8/09 till 28/2/2010 and maximum storage period was increased from 227 to 365 days while aid rates were kept stable (based on a high interest rate). Under the extended period some 13,000 tonnes have been offered, predominantly in January and February 2010.

- **Re-activation export refunds**: Start on 23 January 2009 at operational levels allowing EU exporters to compete on the world market. Export licences issued in 2009:

Product	Licences issued	Refund fixed at zero
SMP	255 261 tonnes	23 October 2009
Cheese	262 145 tonnes	6 November 2009
WMP	556 810 tonnes	6 November 2009
Condensed milk	224 311 tonnes	6 November 2009
Fresh products	48 467 tonnes	6 November 2009
Other dairy products	37 889 tonnes	6 November 2009
Butter	132 511 tonnes	19 November 2009
Butter oil	29 874 tonnes	19 November 2009

The reintroduction of export refunds has been done in a very prudent and cautious manner and world market prices did not decline since the reintroduction in any significant manner, in spite of the criticism of some of our trading partners.

- **Minimum free at frontier price for cheese exports**: the minimum price has been abolished as from 16 August 2009, allowing export refunds to be granted on cheese, the price of which had fallen below the minimum price level.

- **Intervention buying-in of butter and skimmed milk powder**: Quantities bought beyond the 30 000 t butter ceiling at fixed price and the 109 000 t SMP ceiling at fixed price. Respective ceilings reached in 3 days for butter and in 45 days for SMP. After that, butter and SMP buying-in prices set by tender, close to the fixed buying-in prices. Total buying-in:

– 83 222 t butter (= 4.5 % of the annual production in 2009); after corrections (quantities withdrawn or rejected), total stocks are reported at 76 000 t. 51 000 t will be released under the most deprived persons' scheme in May 2010.

– 282 587 t SMP (= 27.4 % of the annual production in 2009); after corrections (quantities withdrawn or rejected), total stocks are reported at 257 000 t. 65 000 t will be released under the most deprived persons' scheme in May 2010.

- **Extension of intervention buying-in**: Beyond the obligatory period March-August, guaranteeing an uninterrupted safety net until end of August 2010 and if need be until end of August 2011. In practice, intervention buying-in stopped for butter in early September 2009 and in early October 2009 for SMP.

- **Intervention payment period for SMP shortened**: For tenders as of July 2009 payment has to be made within 45 to 65 days instead of 120 to 140 days (two-and-a-half months earlier payment than before), improving cash-flow and mitigating credit problems.

- **School milk:** The school milk scheme was revised as recently as summer 2008, granting a higher rate of subsidy for all kinds of drinking milk, extending the scope to secondary schools, incorporating new and more attractive products. In 2009 a proposal to add dairy products with higher fruit content to the list of eligible products was adopted.

- **Promotion:** Increased activities, specifically for dairy products up to an amount of 20 M€ in addition to promotion activities that was already programmed in 2009.

- **Advanced direct payment:** 70% of the direct payments could be paid from 16 October 2009 instead of 1 December 2009 as an option for Member States.

- **State aid:** State aid up to 15 000 € per undertaking was included in the Temporary Crisis Framework, operative from November 2009.

- **Economic Recovery Package**: Extension of the financial envelope available for the dairy sector under Rural Development. Under the Health Check decisions these measures would only be available as of 2010.

- **Milk added to the products covered by article 186, disturbance clause**: This gives the Commission more power to act even quicker if needed, in case of a serious market disturbance like the one in 2009.

- **Specific support measure in the dairy sector:** To counter the fall of dairy product prices in the EU that has strongly affected the farm gate prices, Member States were granted a total financial envelope of € 300 million (allocated on the basis of 2008/09 milk production within quota) to be distributed to dairy farmers that are severely affected by the dairy crisis and encounter liquidity problems, on the basis of objective criteria and in a non-discriminatory way, avoiding any market and competition distortions. (based on the extended Article 186 disturbance clause)

- **Bought up quota not taken into account for super levy**: national buying up schemes for quota were mainly used for restructuring purposes, i.e. redistributed to priority groups of dairy farmers. In the 2009 situation some Member States expressed the wish to keep the quota in their national reserve. However, this would still mean that other producers could increase production as there would be room for more production before the national quota ceiling would be reached. In order to prevent this, the bought-up quotas were allowed to be neutralized and not taken into account for calculating the super levy. This could have the effect of reducing production. The Commission proposal, formulated as an option for Member States was adopted but was not used by any Member State.

- **Extension Article 68 deadline**

MS wishing to grant, from 2010, specific support measures as referred to in Reg. 73/2009 had to take a decision by 1.08.2009 on the use of their national ceiling for financing those measures. Following the Communication from the Commission to the Council of 22.07.2009, and in view of the dairy market situation, derogation from that deadline was adopted on 30.11.2009 in order to allow MS under certain conditions to grant, from 2010, specific support in favour of farmers in the dairy sector. The deadline of 1.08.2009 is replaced by 1.01.2010 and the support is financed only by using the amounts of the national reserve in the case of MS applying SPS or by reducing the annual financial envelope in the case of new MS applying SAPS. Following the adoption of the derogation, Germany and Bulgaria have notified specific support measures in the dairy sector to be implemented as from 2010.

Germany decided to allocate € 2 million per year in 2010 and 2011 to a "basic amount of grassland premium" granted to dairy farmers in extensive grassland areas, in conjunction with a State aid of € 111 million Euro per year implemented in accordance with Article 182(7) of Reg. 1234/2007. Bulgaria decided to allocate € 11.7 million Euro in 2010 and € 14.5 million Euro in 2011 to a coupled support to dairy farmers (size of the farm or location in certain areas).

ANNEX 5 : NATIONAL LABELLING IN EU LEGISLATION

Community legislation provides compulsory indication of the origin/place-of-farming for certain products.

General labelling Directive (2000/13)	No compulsory information is provided except if the absence of information could mislead consumers
Fruit and vegetables (fresh)	Country (Member state or third Country)
Dairy and meat products *	
Bananas	Country (Member state or third Country)
Olive oil	Country (MS or third country) or EU <u>Blends:</u> "Community" or "Community and non-Community"" or "non-Community Where applicable: obtained in (…) from olives harvested in (Community/ Member State or 3country concerned)’.
Wine	Country (MS/Community or third country) Blends: EU , or expressed in equivalent terms, Where applicable: *wine obtained in (…) from grapes harvested in* (…)
Beef and veal	Country (MS or third country) where the animal is born, reared or slaughtered (only once if it is the same)
Eggs	Country code (MS or third country)
Poultry	Only imports from third Country: Country
Honey	Country of harvest (MS or third country) EC/non-EC as an alternative for blends
Organic farming	– ‘EU(and or Member State) Agriculture’, where the agricultural raw material has been farmed in the EU,

	– ‘non-EU (and or third Country) Agriculture’, where the agricultural raw material has been farmed in third countries, – ‘EU/non-EU Agriculture’, where part farmed in the Community and a part farmed in a third country.

* Country of processing – MS (2-letter code Health mark identifying the processing plants)

For dairy products the country where the product has been processed can be identified through the identification mark (FR: marque d'identification) that is compulsory according to Reg 853/2004 laying down specific hygiene rules for food of animal origin.

It allows to identify the dairy where processing took place.

DE
BY 000
EG

No information is given as to the place where the milk was milked.

For some processed products like wine and olive oil, the question has already been addressed by legislation in force, that takes into account both the cultivation of raw materials and the processing place (if not the same both have to be indicated)

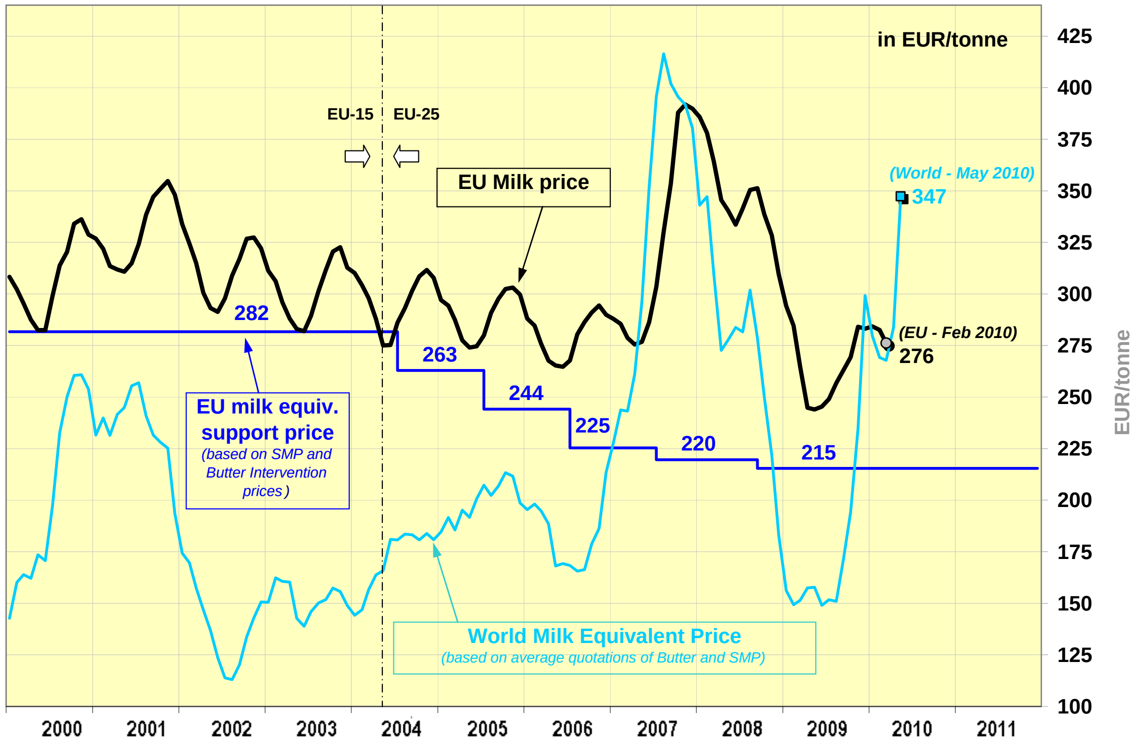
For beef, the Country of origin is the place where the animal is born, reared or slaughtered (only once if it is the same).

Some problems could arise with processed or multi ingredient products as some dairy products.

No compulsory information is provided by existing legislation for meats other than beef and for dairy products, nor for cereals, rice, sugar, table olives, EU poultrymeat, and some processed products.

Nevertheless voluntary information on origin or provenance of a food and its primary ingredient is possible on the basis of Directive 2000/13.

ANNEX 6 : DAIRY PRICE SAFETY NET



Please note that Bulgarian milk prices are included as of 1 January 2007 and Romanian milk prices included as of 1 January 2009.

ANNEX 7 : PARTICIPANTS AT THE HIGH LEVEL EXPERT GROUP ON MILK

Chairman	Mr	DEMARTY	Jean-Luc	European Commission DG Agriculture and Rural Development	Director-General

Member States	**Mr/Ms**	**Name**	**1stName**	**Organisation**	**Rank**
Belgium	Mr	HOOYBERGHS	Herman	Vlaamse Overheid Dep. Landbouw en Visserij	Directeur
	Mr	RENARD	José	Min. Reg. Wallonie	Inspecteur Général ff.
Bulgaria	Mrs	SLAVOVA	Dilyana	Min. Agriculture	Dairy and EU matters Counsellor at the Ministry of Agriculture and Food
Czech Republic	Mr	KOZAK	Stanislav	Min. Agriculture	Deputy Minister of Agriculture
Denmark	Mr	MIKKELSEN	Anders	Min. Agriculture	Deputy Permanent Secretary
Germany	Mr	LINDEMANN	Gert	Min. Agriculture	State Secretary replaced by:
	Mr	KLOOS	Robert	Min. Agriculture	State Secretary
Estonia	Mr	OOPKAUP	Andres	Min. Agriculture	Deputy Secretary General Agriculture & Trade Policies
Ireland	Mr	MORAN	Tom	Min. Agriculture - EU Division DIR GENERAL	Director General
Greece	Mr	ZACHAROPOULOS	George	Min Rural Dev.&Food	Director General
Spain	Mrs	VILLAURIZ IGLESIAS	Alicia	Min. Envir-Rural-Marine Affairs	General Secretary
France	Mr	BOURNIGAL	Jean-Marc	Min. Agriculture	Directeur Général
Italy	Mr	CATANIA	Mario	Min. Agriculture	Director General
Cyprus	Mr	XYSTOURIS	Petros	Permanent	Agricultural

				Representation	Counsellor
Latvia	Mr	LAPINS	Aivars	Min. Agriculture	Director of the International Affairs and Strategy Analysis Department
Lithuania	Mr	CIAKAS	Laimonas	Min. Agriculture	Director
Luxembourg	Mr	SCHMIT	Frank	Service Economie Rural	Directeur
Hungary	Mr	MÁHR	András	Min. Agriculture	State Secretary
Malta	Mr	GRIMA BEZZINA	Karl	Min. Resources &Rural Affairs	
Netherlands	Mr	HOOGEVEEN	Hans	Min. Agriculture	Director General
Austria	Mrs	KLAUSER	Edith	Min. Agriculture	Director General
Poland	Mrs	KRZYZANOWSKA	Zofia	Min. Agriculture and Rur. Dev.	General Counsellor
Portugal	Mr	DINIZ	Eduardo	Min. Agriculture	Director Agri-Food chains
Romania	Mr	IRIMESCU	Achim	Permanent Representation	Minister - counsellor
Slovenia	Mr	MRALJAK	Gvido	Permanent Representation	Counsellor AGRI/SCA
Slovakia	Mrs	HRDA	Andrea	Min. Agriculture	
Finland	Mr	LIND	Jouni	Min. Agriculture	State Secretary
Sweden	Mr	LINDEN	Carl-Johan	Permanent Representation	Agriculture Counsellor
United Kingdom	Mrs	PHIPPARD	Sonia	Min. Agri- Dep Environment, Food and Rural Affairs	Director FFG
Stakeholders	Mr	WALSHE	Padraig	COPA-COGECA	President COPA
	Mr	BRICHART	Henri	COPA-COGECA	Chairman Working Group Milk
	Mr	PETIT	Arnaud	COPA-COGECA	Director
	Mrs	MARTILLA	Juha	COPA-COGECA	Vice-chairman Working Group Milk
	Mr	PESONEN	Pekka	COPA-	Secretary-

				COGECA	General
	Mr	JAS	Stanislav	COPA-COGECA	Advisor Working Group Milk
	Mr	SCHABER	Romuald	EMB	President EMB
	Mrs	VAN KEIMPEMA	Sieta	EMB	Vice-president
	Mr	SMEENK	Willem	EMB	OPL/France
	Mr	POULSEN	Kjartan	EMB	EMB Denmark
	Mr	DE MARTINES	Fredy	EMB	EMB Luxemburg
	Mrs	SENRA	Lidia	EC Via Campesina	Milk expert ECVC
	Mr	SAUVAGET	Yves	EC Via Campesina	Milk expert Confédération
	Mr	DELWARTE	Xavier	EC Via Campesina	Secretary General FUGEA (B)
	Mr	CHOPLIN	Gerard	EC Via Campesina	
	Mrs	PALACH	Josian	EC Via Campesina	
	Mr	PARMENTIER	Stéphane	EC Via Campesina	
	Mr	BUCK	Werner	EDA	President EDA
	Mr	KLEIBEUKER	Joop	EDA	Secretary General
	Mr	ANDERSEN	Henrick	EDA	Arla Food Denmark
	Mr	RIEKE	Jorg	EDA	Milch Industrie Verband DE
	Mr	DAWSON	Peter	EDA	Dairy UK
	Mr	ZANETTI	Attilio	EDA	Zanetti SPA
	Mr	BAINES	Jack	EUCOLAIT	President
	Mr	KLOOSTERBOER	Wim	EUCOLAIT	Secretary General
	Mr	LIKITALO	Jukka	EUCOLAIT	Legal advisor
	Mr	GOMEZ DE TERAN	Carlo	EUCOLAIT	Assocaseari IT
	Mrs	BAX	Willemien	BEUC	Deputy Director general
	Mr	DURIEU	Xavier	EUROCOMMERCE	Secretary General
	Mrs	GALLUS	Britta	EUROCOMMERCE	German Retailers Association
	Mr	GOMEZ DE TERAN	Carlo	EUROCOMMERCE	Assocaseari IT
Academics	Mrs.	BURRELL	Alison	JRC/IPTS Sevilla	
	Mr.	REQUILLART	Vincent	INRA Gremaq Université de Toulouse	

	Mr.	THEUVSEN	Ludwig	Dep. Agric. Econ. University of Göttingen	
	Mr.	SZAJNER	Piotr	IERiGZ-PIB institute Warszawa	
	Mr.	PENNINGS	Joost	University of Wageningen & Maastricht (NL)	
Joint Working Team on Milk (Nat. Comp. Auth and DG Comp.	Mrs	KRÜGER	Birgit	Rapporteur Nat. Comp. Authorities Germany	
	Mr	GUSSONE	Peter	Rapporteur Nat. Comp. Authorities Germany	
	Mrs	BELLULO	Liza	Rapporteur Nat. Comp. Authorities France	
	Mr	BELORGEY	Jean-Marc	Rapporteur Nat. Comp. Authorities France	
Third countries	Mr	CHAVAZ	Jacques	Switzerland	FOAG
	Mr	KOVAL	Matthew	Australia	Min Agriculture Minister Counsellor
	Mr	KENNEDY	Peter	New Zealand	Ambassador
	Mr	GLAUBER	Joseph	USA	US Department Agriculture