Commission Implementing Regulation (EU) 2020/599 of 30 April 2020 authorising agreements and decisions on the planning of production in the milk and milk products sector

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007[(1)], and in particular Article 222 thereof,

Whereas:

(1) Due to the current pandemic of COVID-19 and the extensive movement restrictions on persons put in place in the Member States, the milk and milk products sector is experiencing an economic disruption that is leading to financial difficulties and cash-flow problems for farmers.

(2) The spread of the disease and the measures in place limit the availability of labour, compromising notably the stages of production, collection and processing of milk. This adds to the difficulties of the sector, as the processing industry needs to find alternative solutions to collect the raw milk that continues to flow while facing difficulties in their factories.

(3) The mandatory closure of shops, outdoor markets, restaurants and other hospitality establishments has also brought the operation of the hospitality and catering industry to a halt, leading to significant changes in demand patterns for milk and milk products. Consumer demand has shifted towards essential foodstuffs to the detriment of specialty milk products. The hospitality and catering industry is traditionally responsible for the consumption of approximately between 10 and 20 %, depending on the product, of the Union milk and milk products production. As a result, there has been a drop in demand for certain products in the milk and milk products sector sold in the hospitality and catering industry. For example, more than half of the Union mozzarella cheese production is destined for the food service industry. The increase in consumption of certain milk products in the retail sector has not compensated for the drop in demand in the hospitality and catering industry.

(4) In addition, buyers of milk and milk products in the Union and on the world market are cancelling contracts and delaying the conclusion of new ones in anticipation of further price falls. Moreover, exports of milk and milk products are affected by logistical

challenges, as the start of the pandemic of COVID-19 in China has led to significant port congestion there and elsewhere. The period of increased blank sailings is expected to continue at least until June 2020, leading to containers being scarcer, rates increasing significantly and exporters seeing their shipments postponed. Third-country exports represent approximately 15 % of the total Union production, in volume, of milk and milk products.

(5) As a result, the processing of raw milk intake is partially being diverted into bulk, long shelf life, storable products that are less labour intense, such as skimmed milk powder and butter, beyond the regular market demand. Yet, many manufacturing sites in the Union do not have the capacity to process milk into different products, and have to continue producing milk products for which there has been a sharp drop in demand.

(6) This supply-demand imbalance is generating economic disruption to the milk and milk products sector. As a result of that imbalance, wholesale prices for milk and milk products have suffered significant drops, notably since the beginning of March 2020: 19 % for skimmed milk powder, and 14 % for butter. Skimmed milk powder and butter prices have been the first to experience a significant drop, being the products into which surplus raw milk is processed when the flow of milk exceeds demand. On the basis of skimmed milk powder and butter prices, it is estimated that the raw milk equivalent wholesale price experienced a 24 % drop between early February and the first week of April. The price drop is exceptional this spring due to the parallel emergence of demand changes linked to movement restriction measures and the seasonal peak in milk production Milk and milk products prices are expected to drop further as the volume of milk production is set to increase during the spring and summer, which is the high production season in the milk and milk products sector.

(7) The above circumstances lead to a qualification of these events as a period of severe market imbalance.

(8) In order to help the milk and milk products sector find a balance in this period of severe market imbalance, it is appropriate to allow for agreements and decisions of farmers, farmers' associations, associations of such associations, recognised producer organisations, associations of recognised producer organisations and recognised interbranch organisations. Such agreements and decisions could include a collective effort of operators to plan the production of raw milk in accordance with the changing demand patterns.

(9) Any agreement or decision on planning of production should be temporarily authorised for a period of 6 months, coinciding with spring and summer, which is the high production season in the milk and milk products sector and should therefore have the most significant impact.

(10) Considering that the severe market disturbance has been observed since the beginning of April 2020, the period of 6 months should start from 1 April 2020.

(11) In accordance with the first subparagraph of Article 222(1) of Regulation (EU) No 1308/2013, an authorisation is to be given, if it does not impair the functioning of the internal market and that the agreements and decisions strictly aim at stabilising

the sector. These specific conditions exclude agreements and decisions that directly or indirectly lead to partitioning markets, to discrimination based on nationality or to fixing prices. If the agreements and decisions do not fulfil these conditions, or no longer fulfil these conditions, Article 101(1) of the Treaty applies to these agreements and decisions.

(12) The authorisation provided for in this Regulation should cover the Union territory given that the severe market imbalance is common to the whole Union.

(13) In order for the Member States to be in a position to assess whether agreements and decisions do not undermine the functioning of the internal market and strictly aim to stabilise the milk and milk products sector, information should be provided to the competent authorities of the Member State, including the competition authorities of that state, having the highest share of estimated volume of milk production covered by those agreements or decisions on the agreements concluded and decisions taken and on the production volume and the time period covered by them.

(14) Given the severe market imbalance and the run-up to the seasonal peak, this Regulation should enter into force on the day following that of its publication.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Without prejudice to Articles 152(1a), 209(1) and 210(1) of Regulation (EU) No 1308/2013, farmers, farmers' associations, associations of such associations, recognised producer organisations, associations of recognised producer organisations and recognised interbranch organisations in the milk and milk products sector are hereby authorised, during a period of 6 months starting from 1 April 2020, to conclude agreements and take common decisions on planning the volume of raw milk to be produced.

Article 2

Member States shall take the necessary measures to ensure that the agreements and decisions referred to in Article 1 do not undermine the proper functioning of the internal market and strictly aim to stabilise the milk and milk products sector.

Article 3

The geographic scope of this authorisation is the Union territory.

Article 4

1 As soon as the agreements or decisions referred to in Article 1 are concluded or taken, the farmers, farmers' associations, associations of such associations, recognised producer organisations, associations of recognised producer organisations and recognised interbranch organisations concerned shall communicate those agreements or decisions to the competent authorities of the Member State having the highest share of estimated volume of milk production covered by those agreements or decisions, indicating the following:

a the estimated production volume covered;

b the expected time period of implementation.