

Working Document

Procedure on IBO agreements, decisions and concerted practices in the dairy sector Art 177a sCMO Regulation (as inserted by the Milk Package (Reg 261/2012) in Reg 1234/2007)

Article 177a(1) of Council Regulation 1234/2007 (the Single CMO) provides that Article 101(1) TFEU shall not apply to agreements, decisions and concerted practices of recognised interbranch organisations (IBOs) for the purpose of carrying out the activities referred to in Article 123(4)(c) of Regulation 1234/2007.

Article 177a(1) applies subject to the conditions, set out in Article 177a(2) of Regulation 1234/2007, specifically that the agreements (etc) have been notified to the Commission and, within 3 months after receipt of all the details required, the Commission has not found those agreements (etc) incompatible with Union rules.

IBOs are free to decide if they want to notify their agreement (etc) but only agreements (etc) that are notified in accordance with Article 177a(2) and which are not found by the Commission to be incompatible with Union rules can benefit from the exemption under Article 177a(1). If the IBO decides to notify its agreements (etc), it shall notify them to the Commission (AGRI-C4-ANIMAL-PRODUCTS@ec.europa.eu) which will issue a receipt of the notification.

As guidance, it is suggested that the notification:

- contain the agreement, decision or concerted practice at stake and all other relevant documents;
- contain a short description of the agreement, decision or concerted practice;
- explain why these should be exempted under Article 177a(1).

As declared in Council, the Commission will inform the Member State concerned and seek its view when taking a decision on whether an agreement, decision or concerted practice is incompatible with Union rules. The information will be sent to the Committee delegate of the Member State concerned.

Should the Commission consider that a notified agreement, decision or concerted practice is incompatible with Union rules, the Commission will notify its Decision to the IBO and the concerned national authorities will be informed thereof.

Even though it is not required, the Commission services intend to send a letter to the IBO and the Member State concerned in the case where the Commission has not found the agreement (etc) incompatible with Union rules. Where the IBO has received such a letter of comfort, it can start applying the agreement (etc) from the date of receipt of that letter without awaiting the end of the 3 months period referred to in Article 177a(2)(b).

Agreements, decisions and concerted practices that were existing previous to the date of application of the Milk package (2nd April 2012 for Article 177a of Regulation 1234/2007), can be notified in accordance with Article 177a(2) once the IBO has been recognised under Article 123(4) of Regulation 1234/2007 (as added by the Milk Package). These existing agreements, decisions and concerted practices can continue to apply under the "normal competition rules" (so "without exemption" as was the case before the Milk Package). After the Commission has examined those agreements (etc) and has not found them incompatible with Union rules, the IBO can continue to apply them under the provisions of Article 177a(1) ("with exemption").