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2016/0319 (NLE)

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) No 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

By its judgment of 7 September 2016 in Case C-113/14, the Court of Justice annulled Article 7 of Regulation on the Common Organisation of the markets in the agricultural (Regulation (EU) No 1308/2013 of the European Parliament and of the Council) determining the reference thresholds for certain agricultural products on the grounds that these thresholds should have been adopted by the Council only, on proposal of the Commission, on the basis of Article 43(3) of the Treaty.

The Court also annulled Article 2 of Council Regulation (EU) No 1370/2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products that fixes the level of the public intervention prices on the grounds that this Article is inextricably linked to the annulled Article 7 CMO.

As the Court maintained the legal effects of the annulled provisions in both acts for a maximum period of five months following the date of the judgment, it is therefore necessary, before the end of the five month period, to amend Regulation (EU) No 1370/2013 by inserting into it the provisions on the reference thresholds and intervention price levels annulled by the Court and by making certain consequential adjustments.

- **Consistency with existing policy provisions in the policy area**

The proposal follows the judgment of the Court as regards the legal basis for the fixing of reference thresholds relating to the organisation of the markets in agricultural products.

- **Consistency with other Union policies**

N/A

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 43(3) of the Treaty on the Functioning of the European Union.

- **Subsidiarity (for non-exclusive competence)**

The proposal falls under shared competence between the EU and the Member States and complies with the subsidiarity principle.

- **Proportionality**

The proposal complies with the proportionality principle.

- **Choice of the instrument**

N/A

3. RESULTS OF EX-POST EVALUATIONS, CONSULTATIONS AND IMPACT ASSESSMENTS

STAKEHOLDER

- **Ex-post evaluations/fitness checks of existing legislation**

N/A

- **Stakeholder consultations**

N/A

- **Collection and use of expertise**

N/A

- **Impact assessment**

N/A

- **Regulatory fitness and simplification**

N/A

- **Fundamental rights**

N/A

4. BUDGETARY IMPLICATIONS

There are no budgetary implications arising from the proposal.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

N/A

- **Explanatory documents (for directives)**

N/A

- **Detailed explanation of the specific provisions of the proposal**

N/A

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By judgment of 7 September 2016 in Case C-113/14¹, the Court of Justice annulled Article 7 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council² determining the reference thresholds for agricultural products on the grounds that those thresholds should have been adopted by the Council, on a proposal from the Commission, on the basis of Article 43(3) of the Treaty on the Functioning of the European Union ('TFUE').
- (2) The Court of Justice also annulled Article 2 of Council Regulation (EU) No 1370/2013³ determining the level of the public intervention prices on the grounds that that Article is inextricably linked to the annulled Article 7 of Regulation (EU) No 1308/2013.
- (3) The Court of Justice declared that the legal effects of Article 7 of Regulation (EU) No 1308/2013 and of Article 2 of Regulation (EU) No 1370/2013 were to be maintained for a maximum period of five months from the date of delivery of the judgment.
- (4) It is therefore necessary to amend Regulation (EU) No 1370/2013 before the end of the five-month period by inserting the provisions on the reference thresholds and intervention price levels annulled by the Court and by making certain consequential adjustments.
- (5) In view of the time-limit set by the Court in its judgment, this Regulation should enter into force on the date of its publication,

¹ Judgment of the Court of Justice of 7 September 2016, Germany v Parliament and Council, C-113/14, ECLI:EU:C:2016:635.

² 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 (OJ L 347, 20.12.2013, p. 671).

³ Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products (OJ L 346, 20.12.2013, p. 12).

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1370/2013 is amended as follows:

- (1) The following Article 1a is inserted:

Article 1a

Reference thresholds

1. The following reference thresholds shall be fixed:
 - (a) for the cereals sector: EUR 101,31/tonne, related to the wholesale stage for goods delivered to the warehouse, before unloading;
 - (b) for paddy rice: EUR 150/tonne for the standard quality as defined in point A of Annex III to Regulation (EU) No 1308/2013, related to the wholesale stage for goods delivered to the warehouse, before unloading;
 - (c) for sugar of standard quality as defined in point B of Annex III to Regulation (EU) No 1308/2013, related to unpacked sugar, ex-factory:
 - (i) for white sugar: EUR 404,4/tonne;
 - (ii) for raw sugar: EUR 335,2/tonne;
 - (d) for the beef and veal sector: EUR 2 224/tonne for carcasses of male bovine animals of conformation/fat cover class R3 as laid down in the Union scale for the classification of carcasses of bovine animals aged eight months or more referred to in point A of Annex IV to Regulation (EU) No 1308/2013;
 - (e) for milk and milk products sector:
 - (i) EUR 246,39 per 100 kg for butter;
 - (ii) EUR 169,80 per 100 kg for skimmed milk powder;
 - (f) for pigmeat: EUR 1 509,39/tonne for pig carcasses of a standard quality defined in terms of weight and lean meat content as laid down in the Union scale for the classification of pig carcasses referred to in point B of Annex IV to Regulation (EU) No 1308/2013 as follows:
 - (i) carcasses weighing from 60 to less than 120 kg: class E;
 - (ii) carcasses weighing from 120 to 180 kg: class R;
 - (g) for the olive oil sector:
 - (i) EUR 1 779/tonne for extra virgin olive oil;
 - (ii) EUR 1 710/tonne for virgin olive oil;
 - (iii) EUR 1 524/tonne for lampante olive oil with two degrees of free acidity; this amount shall be reduced by EUR 36,70/tonne for each additional degree of acidity.
2. The reference thresholds provided for in paragraph 1 shall be kept under review by the Commission, taking account of objective criteria, notably developments in production, costs of production (particularly inputs) and market trends. When

necessary, the reference thresholds shall be updated in accordance with the procedure laid down in Article 43(3) TFEU in the light of developments in production and markets.

3. References to reference thresholds in Regulation (EU) No 1308/2013 shall be construed as references to the thresholds fixed in paragraph 1.'

(2) Article 2 is replaced by the following:

'Article 2

Public intervention prices

1. The level of the public intervention price:

- (a) for common wheat, durum wheat, barley, maize, paddy rice and skimmed milk powder shall be equal to the respective reference threshold set out in Article 1a in the case of buying-in at a fixed price and shall not exceed the respective reference threshold in the case of buying-in by tendering;
- (b) for butter shall be equal to 90 % of the reference threshold set out in Article 1a in the case of buying-in at a fixed price and shall not exceed 90 % of that reference threshold in the case of buying-in by tendering;
- (c) for beef and veal shall not exceed the level referred to in point (c) of Article 13(1) of Regulation (EU) No 1308/2013.

2. The public intervention prices for common wheat, durum wheat, barley, maize and paddy rice referred to in paragraph 1 shall be adjusted by price increases or reductions to those prices based on the main quality criteria for the products.

3. The Commission shall adopt implementing acts determining the increases or reductions to the public intervention prices of the products referred to in paragraph 2 of this Article under the conditions laid down therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).'

(3) Point (b) of Article 8 is replaced by the following:

'(b) the price of surplus sugar available on the Union market or, if there is no surplus sugar on that market, the reference threshold for sugar fixed in point (c) of Article 1a.'

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*