



# Guidelines regarding collaborations between farmers

## Guidelines regarding collaborations between farmers

**Our reference** : ACM/UIT/583192  
**Case number** : ACM/22/177044  
**Date** : 6 September 2022  
**Author** :  
**Version** :  
**Number of pages** : 20

## Contents

<b>Samenvatting</b>	<b>4</b>
<b>1 Introduction</b>	<b>5</b>
<b>2 Collaborations between farmers</b>	<b>6</b>
2.1 Recognized producer organizations	6
2.2 Recognized interbranch organizations	9
2.3 Other options for collaborations between farmers	11
2.4 Collaborations as part of sustainability initiatives	14
<b>3 The general competition rules</b>	<b>15</b>
3.1 Basic principles of the competition rules	15
3.2 Collaborations that are allowed in all economic sectors	16

## Summary

### *Collaborations between farmers, and competition: exploring the basic principles*

In these Guidelines, ACM discusses the most important opportunities for farmers to work together within the boundaries set by the competition rules. These Guidelines may serve as a first exploration of those opportunities.

Rules regarding competition are sometimes perceived as complicated, also in the agricultural sector. Yet, there are many opportunities for the agricultural sector to strengthen the market positions of farmers through collaborations, even ones that do not exist in other sectors of the economy. However, the conditions that collaborations in the agricultural sector must meet may result in people quickly losing track of the situation. All the more reason for ACM to provide more clarity about all of this in these Guidelines.

Farmers are allowed to collaborate in order to realize and sell their production. This may enhance their bargaining positions vis-à-vis buyers. That can sometimes be necessary, because, in many agricultural markets, individual farmers (as producers) are smaller (much smaller) market participants than buyers. In that way, more balance can be brought to their market positions. Some types of collaborations can be quite loose, but other types may be more organized: the producer organizations (POs). In the Netherlands, approximately 15 POs are active. The PO itself is also a market participant, which, in practice, means that they need a businesslike operation and a certain scale. As a result, POs will often also have a considerable number of members with equally considerable market influence.

Furthermore, collaborations can also be struck within chains, in the form of interbranch organizations (IOs). In such IOs, multiple links within a production chain, processing chain and distribution chain work together. Finally, there are collaborative opportunities for farmers and their buyers to make supra-statutory sustainability initiatives possible.

The core principle of any collaboration between farmers is that the European agricultural objectives are respected. These objectives have been the same for many decades. Think of increasing agricultural productivity, ensuring a fair standard of living for farmers, ensuring the availability of supplies, and ensuring reasonable prices for consumers. Collaborations are not bound by any pre-conditions such as thresholds or a maximum number of participants. There are boundaries however: conditions that prevent harmful effects to competition.

It should be noted that the competition rules will not play a role in each and every collaboration between farmers. If collaborations are forged by market participants that have very small market shares (relative to the total market production), they will hardly have an effect on the market. Such limited collaborations fall completely within the scope of the competition rules. The larger a collaboration is, the likelier it becomes that the competition rules will play a role. It can then be assessed whether and, if so, how collaborations can be possible while complying with the rules that apply specifically to the agricultural sector.

## 1 Introduction

1. The agricultural sector is a major pillar of the Dutch economy. However, as a farmer, you face many challenges such as changing rules concerning production, as well as society's desire for a more sustainable food chain. At the same time, many smaller undertakings must do business with a small number of larger buyers. One of the options for dealing with such challenges is to set up collaborations with other farmers. These guidelines seek to offer you more certainty about how to work together without violating the law. Through collaborations, the positions of farmers in the chain can be strengthened.
2. Agriculture has traditionally held a special position within the EU. In its agricultural policy, the EU has five objectives, which aim to<sup>1</sup>
  - I. Increase agricultural productivity
  - II. Ensure a fair standard of living for the agricultural community
  - III. Stabilize markets
  - IV. Assure the availability of supplies
  - V. Ensure that supplies reach consumers at reasonable prices
3. Under the European agricultural policy, special rules apply to collaborations in the agricultural sector. As a result thereof, certain types of collaborations that are prohibited under the general competition rules are actually allowed for farmers. Think of collaborations in areas such as production, sales, and sustainability. With regard to sustainability, collaborations are also possible between farmers and market participants on other levels of production, processing, and trade within the food supply chain.
4. The opportunities for collaboration in the agricultural sector have been fleshed out in the Regulation establishing a common organization of the markets in agricultural products (the CMO Regulation).<sup>2</sup> These European rules also offer opportunities to you as a Dutch farmer. For example, you may collaborate (1) within a recognized producer organization, (2) within a recognized interbranch organization, and (3) with farmers that are not members of such recognized organizations.
5. An explanation of the various forms of collaborations that are allowed according to the CMO is given below (chapter 2). Next is a discussion of the general principles of the competition rules (European and Dutch) and collaborative opportunities that apply to all economic sectors, including the agricultural sector (chapter 3). These are only relevant for you as a farmer if you do not meet the conditions for collaborations under the CMO but still wish to collaborate.
6. The aim of these guidelines is to explain the key conditions for collaborations in the agricultural sector in a brief and easy-to-understand manner, illustrated by examples. As a farmer, you need to conduct a self-assessment first to see if you meet the conditions for collaboration. This is not always easy. If you wish to collaborate, please consult these Guidelines. If you are still unsure whether or not you comply with the rules, you may consult your interbranch organization or a specialist lawyer. Also, you can submit your question or planned collaboration to ACM informally. This is also possible if the collaboration is aimed at promoting sustainability, and you are unsure whether a particular type of collaboration is allowed.

---

<sup>1</sup> See Article 39, paragraph 1, Treaty on the Functioning of the European Union (TFEU).

<sup>2</sup> Regulation 1308/2013, establishing a common organization of the markets in agricultural products, 17 December 2013. Most recent amendment on 2 December 2021. Hereafter also: CMO Regulation.

7. In several situations, you have the opportunity to ask the European Commission for an opinion on your planned collaboration. These Guidelines explain in what situations you can do so.
8. The provisions of the CMO Regulation change every now and then. That is why ACM will update these guidelines whenever necessary.

## 2 Collaborations between farmers

9. In order to know whether the rules of the CMO Regulation apply, you need to determine first whether the collaboration concerns 'agricultural products'. Agricultural products are products from 24 agricultural sectors that have been listed in the CMO.<sup>3</sup> For example, these are products that (whether or not after processing) are suitable for human consumption, such as cereals, fruit and vegetables, potatoes, dairy, meat, and eggs, but also flowers and plants, and products, such as cattle feed and certain sowing seed. Fishery and aquaculture products do not fall under the CMO. These are subject to other rules, which are not discussed in these Guidelines.
10. The CMO Regulation offers various types of collaborations for you as a producer of these agricultural products. Collaborations can be with or without a formal organizational structure. For example, collaborations can take place within an association of farmers, a cooperation, or a trade association (interbranch organization), but also outside of such structures. In addition, the CMO Regulation awards a special status to producer organizations and interbranch organizations that are recognized by the government. Collaborations as part thereof offer more opportunities.
11. Below is an explanation of the conditions under which the various types of collaborations are allowed.

### 2.1 Recognized producer organizations

12. If you wish to collaborate with other farmers, you may consider setting up a producer organization (PO) or joining an existing one. This may strengthen your position in the distribution chain. That is because the PO as a market participant can concentrate and sell the supply of its members. It does not matter how many members a PO has, and members can be registered in different countries. The PO does need to be recognized first by the Dutch government. In order to be recognized, several criteria need to be met, which will be explained below.
13. For the sake of completeness, it should be noted that POs can unite in an association of producer organizations (APOs). This can be an interesting option if you are active in an international market. APOs have the same collaborative opportunities as do POs.

#### Recognition criteria

14. POs must consist of farmers. In addition, POs must carry out at least one of eight possible activities from the CMO, such as joint processing or joint distribution. In addition, POs must pursue at least one out of a possible eleven objectives from the CMO, such as joint planning or joint selling. A complete overview of possible activities and objectives for POs can be found in Annex 1 to these Guidelines.

---

<sup>3</sup> See Annex 1 to these Guidelines for an overview. For a more detailed overview, please refer to the [CMO Regulation](#).

15. For more information about the conditions for recognizing a PO or APO, we refer to [this](#) page (in Dutch) on the website of the Netherlands Enterprise Agency (RVO), which processes requests for recognition. The remainder of this document will refer to recognized POs.

#### What can POs do?

16. Recognized POs have collaborative opportunities that are prohibited for non-farmers under the competition rules.<sup>4</sup> POs can (i) plan production, (ii) optimize production costs, (iii) place products on the market, and (iv) negotiate contracts for the supply of agricultural products.
17. As a member of a PO, you can still decide to sell a share of your production yourself, if allowed by the PO. POs determine what volume you can sell yourself.
18. These collaborations are only allowed if POs meet several conditions. Please note that these conditions are in place in addition to the criteria for recognition of POs. We will explain these conditions using an example. First, we discuss the example.
19. [Imagine a recognized PO in the Netherlands of which 70% of all Dutch beef producers are a member. The 'PO Beef' has as its objectives: \(i\) Assurance that production is planned, and is matched to demand, and \(ii\) Concentration of the supply and sales of its members. In addition, the PO carries out the transportation of its members' products as a CMO activity. You are a member of this PO or you wish to become one.](#)
20. [The PO determines that its member sell 80% of their production through the 'PO Beef'. This calculation is based on the production volumes of the previous year. The remaining share of their production is sold by members themselves. The PO negotiates with buyers, and determines price, quality, and volume. For the upcoming year, the PO decides that beef production of its members is reduced by 15% because of the projected drop in demand.](#)

#### Condition 1

21. The PO must actually carry out one or more activities listed in the CMO. It can choose any of eight activities. These are the activities for which recognition can be requested. These are listed in Annex 1.
22. [In the example, the PO Beef carries out the activity 'joint transportation'. This is one of the activities on the list from the CMO<sup>5</sup>. The PO thus meets this condition.](#)

#### Condition 2

23. The second condition is that the PO concentrates *and* sells the supply of its members (or a share thereof). This means that, for this production supply, the PO determines the selling price, quality, and volume. The PO decides on the sales on behalf of its members. From the European Commission's perspective, the EU opted for this combination of activities in order to strengthen the position of farmers in the bargaining process. ACM follows the European Commission's position.
24. [In the example, the PO Beef concentrates and sells a share \(80%\) of the supply of its members. The PO thus meets the second condition. Now that the PO Beef meets both conditions, the PO's activities are allowed.](#)

---

<sup>4</sup> This has been laid down in Article 152, paragraph 1a, CMO Regulation

<sup>5</sup> See Article 152, paragraph 1, under b), ii) CMO

#### Points of attention for POs

25. As already mentioned, members of POs can sell a share of their production themselves if allowed by the PO in question. With regard to its 'own share', which the farmer does not have to transfer to the PO, they need to set the production volumes, selling price and other elements of the sale themselves. The PO cannot decide this for the farmer, or exert any influence over this.

26. In the PO Beef example, you as a member of PO Beef sell a share of your production yourself. With regard to that share of your production, you set your own selling price, volume, and quality.

27. Furthermore, the above-described type of collaboration is only allowed between the members of one and the same PO. Coordination between various POs regarding volumes and prices are not allowed. Interbranch organizations or market participants in other links of the chain, too, cannot be involved in such processes. POs *can* unite in a recognized APO. The APO subsequently makes decisions over the activities that the participating POs have transferred to the APO. These can be the same activities as those that the PO carries out.

#### Fruit and vegetable sector

28. The conditions for POs in the fruit and vegetable sector are slightly stricter. POs in this sector must sell the entire production of their members.<sup>6</sup> In addition, POs in the fruit and vegetable sector must pursue at least one of the following three objectives: (1) planning of production, (2) concentration and sale of the supply of its members, and (3) optimization of production costs and stabilization of producers' prices. As seen in recital 14, POs in other sectors can choose from more objectives. The next example is about the fruit and vegetable sector.

##### *PO tomatoes*

In the Netherlands, there is a PO of which half of the Dutch tomato growers is a member. This PO seeks to plan production, and to concentrate and sell the products. The activities of the PO are packaging and transportation of the products of its members. The PO matches the supply and variety of its tomatoes to demand. That is why the PO decides for the coming year:

- Production of tomato type A is reduced by 25% because of the projected decrease in demand;
- Tomato species A, B, and C are grown in accordance with projected demand.

##### *Assessment*

The example concerns a recognized PO. The PO determines production and sales of the tomatoes on behalf of its members. These activities are allowed if the PO meets the two abovementioned conditions. The first condition is that the PO actually carries out one or more activities from the CMO. The PO Tomatoes meets this condition. It takes care of packaging and transportation of the products of its members. Both activities are mentioned in the CMO.

The second condition is that the PO concentrates the supply of its members, and places them on the market. The PO Tomatoes also meets this condition. It concentrates the supply of its members, and takes care of the sales. In the fruit and vegetable sectors, members must sell their entire production through the PO.<sup>7</sup> In this example, that is the case.

Based on this assessment, the PO Tomatoes can continue carrying out these activities without any problem.

---

<sup>6</sup> Article 160 CMO.

<sup>7</sup> Tomatoes are an agricultural product to which the CMO applies, and fall specifically under the fruit and vegetable sector. CMO, Annex 1, Part IX.



## 2.2 Recognized interbranch organizations

29. Many farmers are members of an interbranch organization (IO). IOs serve the interests of market participants in the chain, without themselves being involved in production, processing, or trade. This sets IOs apart from POs. IO membership can also offer you benefits. IOs can promote collaborations between the various links in the chain (farmers, processors, and buyers). This may lead to a better organization of production, processing, and sales of the agricultural products. In addition, IOs can promote 'best practices' and market transparency.

### Recognition

30. Just like POs, IOs can be recognized by the Dutch government.<sup>8</sup> In order to be so, IOs must meet several criteria. For more information about the criteria for recognition of an IO, please refer to this [page](#) of the Netherlands Enterprise Agency (RVO).

31. A recognized IO pursues a specific objective in order to serve the interests of its members and of consumers. In the CMO Regulation, 16 objectives are specifically mentioned, including improving transparency in the production chain or helping to coordinate better the way in which the products are placed on the market.<sup>9</sup> Another activity of the IO is the drawing-up of standard sales or supply contracts for agricultural products. One benefit of a written agreement is that the conditions under which the farmer will sell and supply a product are explicitly laid down.<sup>10</sup> For a complete overview, see Annex 1 to the Guidelines. The remainder of this document will refer to recognized IOs.

### What are recognized IOs allowed to do?

32. IOs can make agreements that are necessary for achieving the chosen objectives from the CMO. They are allowed insofar they meet the conditions from the CMO. We will list these conditions below, followed by an example in which the conditions are discussed.<sup>11</sup>

#### Condition 1

33. Agreements of IOs cannot lead to the partitioning of markets within the European Union in any form. Imagine you are active on an international market. In that situation, agreements of the IO cannot result in a restriction of the import or export, or that Dutch products can only be sold in the Netherlands.

#### Condition 2

34. The sound operation of the market organization cannot be affected. This means that agreements of IOs should not make the market less transparent. Many activities of the IO will, in fact, seek to enhance transparency.

#### Condition 3

35. Activities of IOs cannot create any distortions of competition which are not essential to achieving the objectives pursued by the IO. For example, business-confidential or strategic information cannot be exchanged if less far-reaching options also exist for achieving the objectives of the IO.

#### Condition 4

---

<sup>8</sup> Article 157 CMO.

<sup>9</sup> Article 157, paragraph 1, under c) of the CMO.

<sup>10</sup> In this context, the Dutch Act regarding unfair commercial practices in the agricultural and food supply chains (in Dutch: *Wet oneerlijke handelspraktijken landbouw- en voedselvoorzieningsketen*) is relevant. This act prohibits unilateral changes of agreed upon purchase and delivery conditions.

<sup>11</sup> See Article 210, paragraph 4 of the CMO.

36. The agreements of the IO cannot entail the fixing of prices or the fixing of quotas. This means that the IO cannot determine the prices of production volumes for you or that you may coordinate these with other members within the IO.

**Condition 5**

37. The activities of the IO cannot create discrimination or eliminate competition in respect of a substantial proportion of the products in question. The IO therefore cannot refuse market participants that meet the pre-determined objective criteria for membership. Finally, sufficient competition must remain in the market. Generally speaking, this condition will be met if the agreements of the IO meet conditions 3 and 4.
38. IOs are not required to seek prior approval from the European Commission for its decisions. However, it can ask the European Commission for an opinion on whether a decision is compatible with the abovementioned conditions. The Commission sends the IO its opinion within four months after receiving the full request.

*Decision of the European Commission on the notification filed by the recognized French interbranch organization (AIB) in the banana sector<sup>12</sup>*

The AIB is an interbranch organization recognized by the French government. The AIB is made up of producers, wholesalers, and retailers. The AIB wishes to create a national 'indicator' for the banana market. This indicator can inform market participants about the evolution of wholesale prices of bananas. According to AIB, the indicator will improve knowledge and transparency of production and the market. It believes that it is in line with the objectives that IOs may pursue. The AIB asks the Commission whether or not this is allowed.

*Decision of the European Commission*

First, the Commission establishes that the AIB is a recognized IO in the banana sector, and that decisions that are aimed at market transparency fit with the objectives of recognized IOs. AIB's indicator will increase transparency, which will bring more price stability in the market. Market participants can choose to refer to the indicator in their contracts. The publication of the indicator can also improve the understanding of certain trends among market participants, on the basis of which production and investment decisions can be adjusted.

The Commission subsequently assesses whether the indicator is in line with the conditions of the CMO. The Commission discusses each of those conditions:

- The indicator will not lead to the partitioning of markets, because it has neither the object nor the effect of limiting or controlling imports or exports. In addition, the indicator is available to everyone.
- The indicator will not affect the sound operation of the market organization; rather, it will increase its transparency. At the same time, no competition-sensitive information will be shared.
- The indicator will not create distortions of competition that are not essential to achieving the objectives of the AIB. The indicator will enable market participants to make better-informed decisions in their contractual negotiations. The indicator cannot show which undertaking uses what price. As a result market participants cannot use the indicators for collusion purposes
- The indicator does not entail the fixing of prices or the fixing of quotas. The indicator is based on past data, which cannot show which undertaking uses what price. Also, the use of the indicator is voluntary.
- The indicator will not create discrimination or eliminate competition in respect of a substantial proportion of the products in question because the indicator will be disseminated publicly and without restriction to all market participants.

---

<sup>12</sup> Commission decision of 5 March 2021 on the notification of AIB. See [link](#). Since the amendment of 2 December 2021 to the CMO, notification of measures are no longer needed, but an IO can still ask the Commission for an opinion.

The Commission thus ruled that AIB's indicator is allowed.

### 2.3 Other options for collaborations between farmers

39. If you wish to collaborate with other farmers outside a PO or IO, you have the following options:
- A. Agreements that restrict competition with other farmers but that do contribute towards the five objectives of the European Common Agricultural Policy (CAP);
  - B. Agreements with competitors regarding production, sales, or use of equipment under specific conditions.

#### A. Agreements that serve the five objections of the European agricultural policy

40. Do you wish to make agreements with competitor farmers or with market participants in the chain regarding production or sales, you can do so under the condition that the agreements are necessary for realizing the five objectives of the CAP (see recital 2). Besides farmers, other market participants in the chain, such as processors and buyers, can also be involved in these agreements.
41. The five objectives can partially contradict each other. For example, think of an agreement that improves the incomes of farmers (objective 2), but that also jeopardizes reasonable prices for consumers (objective 5). Each of the objectives must be met, but the degree to which may vary. there are currently no real-life examples of collaborations where all five objectives are attained to a sufficient extent. That is why this exception may be less useful to farmers.

#### B. Agreements regarding production, sales, or use of equipment

42. If you wish to make agreements specifically regarding production, sales, or the use of joint installations, the CMO offers you that option under several conditions.
43. In principle, market participants must assess by themselves whether or not agreements are allowed (self-assessment). At this point, we know of very few concrete cases that provide guidance. We recommend submitting the analysis to the Commission when in doubt. This opportunity is specifically offered for this type of collaboration.<sup>13</sup> The Commission recently issued an opinion involving Spanish olive oil producers. That opinion is included at the end of this chapter.
44. We will discuss the conditions using the below example. Imagine you wish to collaborate with other farmers to restrict the production of kale because of reduced demand for kale. For this purpose, you jointly created an organization of which only kale producers are a member. The agreement's objective is to prevent overproduction. In previous years, supply was 10% higher than demand. That is why you and other farmers wish to match next year's production with projected demand better. Next year's demand is expected to remain the same. That is why all of you agree to reduce production by 10% in order to stabilize the market. Your question is whether or not this is allowed.

#### Condition 1

45. This option is only available to farmers. Non-farmers, such as an IO or a buyer, cannot be involved in this type of collaboration. Farmers can make this agreement in different compositions:
- Between farmers outside any organizational structure or;
  - The organization of farmers or;
  - The association of farmer organizations or;

---

<sup>13</sup> See Article 209, paragraph 2, CMO. Interested parties may request opinions by sending an email to [AGRI-NOTIFICATION-209-CMO@ec.europa.eu](mailto:AGRI-NOTIFICATION-209-CMO@ec.europa.eu).

- The recognized producer organization or;
- The recognized association of producer organizations.

46. In the example of the production agreements about kale, this condition has been met. All of the participants are farmers, and form an organization. It should be noted that it is not mandatory to establish an organization for this.

### Condition 2

47. The agreement must concern one or more of the following activities:

- The production of agricultural products
- The sale of agricultural products
- The use of joint agricultural installations

48. The agreement in this example is about regulation of the production of an agricultural product, which is kale.<sup>14</sup> As such, the second condition is also met.

### Condition 3

49. The third condition is that the agreements cannot jeopardize the five objectives of the CAP. These objectives are listed in the introduction of these Guidelines. We will discuss these using an example. If one of these objectives is jeopardized, the planned collaboration will not be possible.

#### Objective 1

50. Objective 1 seeks to increase agricultural productivity through technical progress (efficiency) and the optimal utilization of factors of production. In the example of the kale agreement, this objective is not jeopardized.

#### Objective 2

51. The second objective seeks to ensure a fair standard of living for the agricultural community. This objective, too, is not jeopardized by the agreement.

#### Objective 3

52. The third objective is stabilization of the market. In the example, the planned matching of supply and demand may help stabilize the market for kale. Overproduction and price fluctuations are thus prevented.

#### Objective 4

53. The fourth objective is assuring the availability of supplies. The objective of this agreement is to prevent overproduction. This will not jeopardize the supply of kale. One point for attention, though, is that the agreements should not result in a shortage on the kale market.

#### Objective 5

54. The fifth objective is to ensure reasonable prices for consumers. Whether this objective is jeopardized depends on whether or not the agreement has an appreciable effect on prices. We refer back to the part about market definitions. The farmers that are involved in the agreement will have to make an estimate of the potential influence that the agreement has on consumer prices.

55. In the example, you and the other producers have estimated that your market share is 30%. The planned production restriction of all participants is 10% in a market where last year's demand was

---

<sup>14</sup> See Article 209, paragraph 1, second paragraph, and Article 1 CMO. The latter article shows that kale is an agricultural product that falls under the CMO.

lower than supply. On the basis of these factors, it seems unlikely that the agreement would have such an effect that it could jeopardize reasonable prices for consumers. In these types of situations, where the objectives are truly weighed against each other, it would be wise to submit your analysis to the Commission.

#### Condition 4

56. The agreement should not entail any obligation to charge certain minimum prices or to use fixed prices. Farmers can jointly sell their products to buyers. The selling price is the result of market forces in negotiations with buyers. In addition, farmers can jointly agree on a surcharge (for example 10%). This will not lead to identical selling prices.
57. The agreement between kale producers is about a production restriction, and does not concern the price. The agreement thus meets the fourth condition.

#### Condition 5

58. Competition cannot be fully excluded by the agreement. In other words, there must be sufficient competitors left that are not involved in the agreement, or there must be sufficient other competition parameters that are left untouched such as price and quality.
59. In the example, the participants estimate their combined market share at 30%. On that basis, it is unlikely that the agreement excludes competition from the market. Sufficient competitors remain in the market that are not involved in the agreement.
60. In this example, all of the conditions seem to have been met. The agreement is therefore allowed.

#### Several real-life examples

61. We provide two real-life examples below, which illustrate the application of this type of collaboration. The first example is a ruling of the Dutch administrative court. The second example is an opinion of the European Commission requested by Spanish olive oil producers.

##### *Example of silverskin onions' production restriction*

Several producers of silverskin onions made agreements in order to restrict production of silverskin onions. They made agreements on the maximum sown area of silverskin onions.

Following an investigation, ACM established that this agreement was prohibited. The producers went to court, because they believed that the agreements were allowed under the CMO, more specifically that the agreements did not jeopardize any of the five CAP objectives.

The court assessed whether or not the agreements jeopardized the five CAP objectives.<sup>15</sup> The court came to the conclusion that the agreements jeopardized the objective of 'reasonable prices for users'. The evidence showed that the production restriction had the objective of realizing a higher price level for the farmers themselves. This collaboration was therefore not allowed.

##### *Case of the Spanish producers of olive oil*

The CAA is an association that represents the interests of Spanish agricultural cooperatives in the different Spanish regions. The CAA proposes to regulate supply in order to stabilize production. If there is a surplus on the olive oil market, the Spanish olive producers may collectively agree on olive oil storage. The maximum volume that can be stored is limited to the volume of olive oil available in Spain that exceeds 125 % of the estimated market needs. The CAA has asked the Commission for an opinion about this mechanism.

---

<sup>15</sup> See the [ruling](#) (in Dutch) of the Dutch Trade and Industry Appeals Tribunal (CBb) of 24 March 2016. See points 4.5.4 and 4.6.3, among other points.

*Opinion of the European Commission*<sup>16</sup>

The Commission established that the CAA is an association of farmers' organizations, and that the agreements concern the sale of agricultural products. If the mechanism is activated, part of the olive oil will not immediately be sold, but rather stored. The Commission subsequently assessed whether the agreement jeopardized the five objectives of the CMO. The Commission discusses each of the objectives:

- I. The agreement does not jeopardize agricultural productivity, as each farmer is free to determine production.
- II. The agreement seeks to contribute to the stability of the market and to alleviate the impact of production volatility. This will reduce uncertainty among market participants.
- III. The mechanism is expected to contribute to ensuring a fair standard of living for the agricultural community, as farmers will have a self-regulation tool to deal with fluctuations in the production cycle.
- IV. The availability of supply (olive oil) will not be jeopardized, because the mechanism can only be triggered in situations when the available olive oil exceeds needs by more than 25%.
- V. There are no indications that the temporary reduction of supply will jeopardize reasonable consumer prices, because overproduction is not ruled out. The market will still have an oversupply of 25%.

On the basis hereof, the Commission ruled that the agreement is allowed.

## 2.4 Collaborations as part of sustainability initiatives

62. Since December 2021, farmers enjoy more latitude for sustainability initiatives. Agreements between farmers or between farmers and their suppliers or buyers in the agricultural sector are allowed. The only condition is that these are necessary for attaining higher sustainability standards than those prescribed by the law.<sup>17</sup>
63. In this context, what is meant by sustainability is the environment, sustainable production (reduction of pesticides) or animal welfare. Producers are allowed to pursue initiatives together or with other market participants in the food production chain with which they have a vertical trading relationship. These are, for example, processors or buyers, including supermarkets.
64. This type of collaboration is useful for all producers of agricultural products, so not just POs or IOs. The agreements can concern anything, including selling prices or production volumes, as long as they are indispensable for the realization of the statutory sustainability standards (or even higher standards). For example, IOs may promote certain measures in connection with sustainability improvements, among other reasons, such as the creation and/or management of mutual funds with an eye to payments of financial compensations to farmers. This is in the interests of their members *and* of consumers.<sup>18</sup>
65. Another option is that producers agree with retailers that part of their farmlands will be dedicated to the production of certain plants in the interest of protecting biodiversity. In that situation, producers would receive financial compensations from the retailers to cover the additional costs involved and/or to cover the reduction in income.

---

<sup>16</sup> The Commission's opinion can be found [here](#).

<sup>17</sup> See Article 210A CMO.

<sup>18</sup> Article 157, paragraph 1, under c), preamble and under xvi CMO Regulation.

66. Collaborations are allowed if the agreements meet the following condition.

**Condition 1**

67. The agreements must be necessary for achieving the sustainability objective. In that context, collaborations may be forged at a horizontal level between farmers, but also in the vertical trading chain with suppliers and/or buyers, including supermarkets. In that context, it must be assessed whether the sustainability objectives can also be achieved in a way that is less anticompetitive, for example, an agreement about reducing the use of pesticides or an agreement about additional measures aimed at reducing CO2 emissions can be necessary for achieving certain sustainability objectives. It may not be necessary to agree a certain surcharge for this, as well. It can also be left to the individual farmers whether and, if so, to what extent they pass on the higher production costs. For example, surcharges are less anticompetitive than agreed upon selling prices. If you are also able to achieve the benefits without working together, then the agreement is not necessary either. It is not yet clear how this condition will be applied in real life by the Commission. The European Commission will publish no later than December 8, 2023, guidance explaining the applicability of this type of collaboration. Once these new guidelines will have been published, market participants will also be able to ask the Commission for an opinion on their sustainability initiatives. Until then, ACM's Guidelines regarding sustainability agreements (draft version) (in Dutch: "*Leidraad duurzaamheidsafspraken*") also offer more opportunities for sustainability initiatives of farmers. ACM can already be contacted for advice on this opportunity.

### 3 The general competition rules

68. In most cases, farmers will be able to take advantage of the collaborative opportunities offered by the CMO Regulation. If that is not possible, their collaborations will fall under the regular competition rules. A brief explanation is given below of which collaborations are allowed under the regular competition rules, and which are not.

#### 3.1 Basic principles of the competition rules

69. In order to have effective and fair competition, the basic principle is that undertakings must decide on their own market conduct independently from each other. Undertakings cannot eliminate the normal level of uncertainty that competitors experience regarding their market conduct (planned or otherwise) by concluding agreements among each other. That is why agreements between undertakings that restrict competition are not allowed.<sup>19</sup> This refers to agreements made between undertakings that are each other's direct competitors. However, cartel agreements between suppliers and buyers are not allowed either.

70. Examples of agreements that are, in principle, prohibited because they restrict competition are agreements concerning selling prices, restriction of production, or market-sharing.

#### *Market shares of the collaboration partners*

71. In order to be able to determine whether agreements between market participants may be anticompetitive, the combined market position is assessed, among other aspects.

---

<sup>19</sup> Section 6, paragraph 1, Dutch Competition Act (Mw) and Article 101, paragraph 1, Treaty on the Functioning of the European Union (TFEU).



72. Some types of collaborations are only allowed if the combined market share of the collaboration partners is not too large. This is to prevent the collaboration partners from attaining too strong a position on the market, and, as a result, from being able to influence prices and supplies too much. Below, we discuss several rules of thumb for determining the combined market share.<sup>20</sup> This concept is relevant in several places in these Guidelines.

73. First, you need to determine which undertakings compete with each other, and which do not. Competitors are undertakings that (i) make similar products and (ii) sell their products in the same geographical area. Undertakings make similar products if buyers see those products as interchangeable. The geographical selling area can be regional, national, or European. Agricultural products that are made in the Netherlands are often also sold in other countries. This is an indication of a market that is larger than just the Netherlands.

74. Once you have determined who your competitors are, you can estimate the market size. The market size is often expressed in terms of turnover or volumes (sales volumes). The collaboration partners can subsequently see what their combined position on the market is. You can determine this by assessing your combined turnover/sales volume first. Next, you compare this with the total turnover/sales volume of the entire market. The percentage that follows from this comparison is the market share of the collaboration partners. If this information is not available, please refer to your interbranch organization. The exact market share is relevant for the assessment of the collaborative opportunities.

### **3.2 Collaborations that are allowed in all economic sectors**

75. The cartel prohibition does not apply to each and every situation in which undertakings collaborate. The situations to which the cartel prohibition does not apply will be briefly explained below.

#### **Exceptions for agreements with little to no effect on competition**

76. The cartel prohibition does not apply to agreements between a limited number of small undertakings. Also, the cartel prohibition does not apply to agreements between undertakings with small market shares or to agreements that hardly have an effect (or none at all) on prices, quality, and innovation. The rationale behind these exceptions is that undertakings that are small or have small combined market shares are not able to restrict competition effectively. For more information, please refer to the ACM Guidelines regarding arrangements between competitors.<sup>21</sup>

#### **Exceptions for efficiency improvements**

77. Collaborations between competitors that restrict competition and have a significant effect on price, quality or innovation may nevertheless be allowed if they also generate economic benefits. That is because the benefits of a collaboration between competitors may offset the potential anticompetitive costs thereof.<sup>22</sup> These will be briefly discussed.

78. In order to qualify for this exception, four criteria need to be met.

- There needs to be an improvement of production or distribution, or promotion of technical or economic progress (“benefits”);

---

<sup>20</sup> For more information, see the Commission Notice on the definition of relevant market for the purposes of Community competition law OJ 1997, C372/5: [https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:31997Y1209\(01\)&from=NL](https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:31997Y1209(01)&from=NL)

<sup>21</sup> Link: [Guidelines regarding arrangements between competitors](#)

<sup>22</sup> This exception is included in both the TFEU and the Dutch Competition Act (Mw). See Article 101, paragraph 3, TFEU and Section 6, paragraph 3, Mw.



- Users that are harmed by the costs are allowed a fair share of the efficiency improvement;
- The restriction to competition has to be indispensable to the attainment of the efficiency improvement;
- Sufficient competition must remain in the market.

79. The European Commission has indicated in several documents in what circumstances this exception applies to certain common types of collaborations. This is the case in research and development (R&D) agreements, purchasing agreements, commercialization agreements, and standardization agreements.<sup>23</sup>

80. For more information about this general exception, we refer to the ACM Guidelines regarding arrangements between competitors.<sup>24</sup> In addition, the draft ACM guidelines regarding sustainability claims<sup>25</sup> contains recommendations on possible forms of collaborations for realizing a more sustainable production within the boundaries of the competition rules. The guidelines specifically describe situations in which the realization of sustainable objectives is sought through collaborations.

---

<sup>23</sup> See also: [Communication from the Commission — Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements](#), OJ, 2011/C 11/01.

<sup>24</sup> Link: [Guidelines regarding arrangements between competitors](#)

<sup>25</sup> Link: [Guidelines on Sustainability Agreements](#)

## Annex 1: Parts of the CMO to which the Guidelines refer

### Overview of agricultural products according to the CMO Regulation:

1. cereals,
2. rice,
3. sugar,
4. dried fodder,
5. seeds,
6. hops,
7. olive oil and table olives,
8. flax and hemp,
9. fruit and vegetables,
10. processed fruit and vegetable products,
11. bananas,
12. wine,
13. live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage,
14. tobacco,
15. beef and veal,
16. milk and milk products,
17. pigmeat,
18. sheepmeat and goatmeat,
19. eggs,
20. poultrymeat,
21. ethyl alcohol of agricultural origin,
22. apiculture products,
23. silkworms,
24. other products,

### Recognized producer organizations (activities and objectives)

According to the CMO, POs can carry out any of the following eight activities:

1. joint processing;
2. joint distribution, including joint selling platform or joint transportation;
3. joint packaging, labelling or promotion;
4. joint organizing of quality control;
5. joint use of equipment or storage facilities;
6. joint management of waste directly related to the production;
7. joint procurement of inputs;
8. any other joint service activities pursuing one of the objectives listed in point (c) of this paragraph.

According to the CMO, POs can pursue the following eleven objectives:

1. ensuring that production is planned and adjusted to demand, particularly in terms of quality and quantity;
2. concentration of supply and the placing on the market of the products produced by its members, including through direct marketing;
3. optimizing production costs and returns on investments in response to environmental and animal welfare standards, and stabilizing producer prices;
4. carrying out research and developing initiatives on sustainable production methods, innovative practices, economic competitiveness and market developments;

5. promoting, and providing technical assistance for, the use of environmentally sound cultivation practices and production techniques, and sound animal welfare practices and techniques;
6. promoting, and providing technical assistance for, the use of production standards, improving product quality and developing products with a protected designation of origin, with a protected geographical indication or covered by a national quality label;
7. the management of by-products and of waste in particular to protect the quality of water, soil and landscape and preserving or encouraging biodiversity;
8. contributing to a sustainable use of natural resources and to climate change mitigation;
9. developing initiatives in the area of promotion and marketing;
10. managing of the mutual funds referred to in operational programmes in the fruit and vegetables sector referred to in Article 31(2) of this Regulation and under Article 36 of Regulation (EU) No 1305/2013;
11. providing the necessary technical assistance for the use of the futures markets and of insurance schemes;

### **Recognized interbranch organizations (objectives)**

According to the CMO, IOs can pursue any of the following 16 objectives:

1. improving knowledge and the transparency of production and the market, including by publication of aggregated statistical data on production costs, prices, including, where appropriate, price indices, volumes and duration of contracts which have been previously concluded, and by providing analyses of potential future market developments at regional, national or international level;
2. forecasting of production potential, and recording public market prices;
3. helping to coordinate better the way the products are placed on the market, in particular by means of research and market studies;
4. exploring potential export markets;
5. without prejudice to Articles 148 and 168, drawing up standard forms of contract, compatible with Union rules, for the sale of agricultural products to purchasers and/or the supply of processed products to distributors and retailers, taking into account the need to achieve fair competitive conditions and to avoid market distortions;
6. exploiting to a fuller extent the potential of the products, including at the level of market outlets, and developing initiatives to strengthen economic competitiveness and innovation;
7. providing the information and carrying out the research necessary to innovate, rationalize, improve and adjust production and, where applicable, the processing and marketing, towards products more suited to market requirements and consumer tastes and expectations, in particular with regard to product quality, including the specific characteristics of products with a protected designation of origin or a protected geographical indication, and protection of the environment;
8. seeking ways of restricting the use of animal-health or plant protection products, better managing other inputs, ensuring product quality and soil and water conservation, promoting food safety, in particular through traceability of products, and improving animal health and welfare;
9. developing methods and instruments for improving product quality at all stages of production and, where applicable, of processing and marketing;
10. taking all possible actions to uphold, protect and promote organic farming and designations of origin, quality labels and geographical indications;
11. promoting and carrying out research into integrated, sustainable production or other environmentally sound production methods;

12. encouraging healthy and responsible consumption of the products on the internal market and/or informing about the harm linked to hazardous consumption patterns;
13. promoting consumption of, and/or furnishing information concerning, products on the internal market and external markets;
14. contributing to the management of by-products and the reduction and management of waste;
15. establishing standard value sharing clauses within the meaning of Article 172a, including market bonuses and losses, determining how any evolution of relevant market prices of the products concerned or other commodity markets is to be allocated between them;
16. promoting and implementing measures to prevent, control and manage animal health, plant-protection and environmental risks, including by setting up and managing mutual funds or by contributing to such funds with a view to paying financial compensation to farmers for costs and economic losses arising from the promotion and implementation of such measures.