

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2018/0082(COD) Procedure completed
Unfair trading practices in business-to-business relationships in the food supply chain	
Subject 3.10.03 Marketing and trade of agricultural products and livestock 3.45.03 Financial management of undertakings, business loans, accounting 3.45.05 Business policy, e-commerce, after-sales service, commercial distribution	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	AGRI Agriculture and Rural Development	 DE CASTRO Paolo	17/04/2018
		Shadow rapporteur	
		 MCGUINNESS Mairead	
		 MCINTYRE Anthea	
		 KATAINEN Elsi	
		 HEUBUCH Maria	
		 ZULLO Marco	
		 COLOMBIER Jacques	
	Committee for opinion	Rapporteur for opinion	Appointed
	DEVE Development	 MCAVAN Linda	11/07/2018
	ENVI Environment, Public Health and Food Safety		29/05/2018
		 AYUSO Pilar	
	IMCO Internal Market and Consumer Protection (Associated committee)	 TARABELLA Marc	23/04/2018

Council of the European Union	Council configuration General Affairs	Meeting 3685	Date 09/04/2019
European Commission	Commission DG Agriculture and Rural Development	Commissioner HOGAN Phil	
European Economic and Social Committee European Committee of the Regions			

Key events			
12/04/2018	Legislative proposal published	COM(2018)0173	Summary
02/05/2018	Committee referral announced in Parliament, 1st reading		
05/07/2018	Referral to associated committees announced in Parliament		
01/10/2018	Vote in committee, 1st reading		
01/10/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
10/10/2018	Committee report tabled for plenary, 1st reading	A8-0309/2018	Summary
22/10/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)		
25/10/2018	Results of vote in Parliament		
25/10/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71 - vote)		
23/01/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE638.583 GEDA/A/(2019)005252	
11/03/2019	Debate in Parliament		
12/03/2019	Decision by Parliament, 1st reading	T8-0152/2019	Summary
09/04/2019	Act adopted by Council after Parliament's 1st reading		
17/04/2019	Final act signed		
17/04/2019	End of procedure in Parliament		
25/04/2019	Final act published in Official Journal		

Technical information	
Procedure reference	2018/0082(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 043-p2

Other legal basis	Rules of Procedure EP 159
Mandatory consultation of other institutions	European Economic and Social Committee European Committee of the Regions
Stage reached in procedure	Procedure completed
Committee dossier	AGRI/8/12799

Documentation gateway

Legislative proposal		COM(2018)0173	12/04/2018	EC	Summary
Document attached to the procedure		SWD(2018)0091	12/04/2018	EC	
Document attached to the procedure		SWD(2018)0092	12/04/2018	EC	
Document attached to the procedure		SWD(2018)0093	12/04/2018	EC	
Committee draft report		PE623.672	18/06/2018	EP	
Committee of the Regions: opinion		CDR2906/2018	04/07/2018	CofR	
Amendments tabled in committee		PE625.561	20/07/2018	EP	
Amendments tabled in committee		PE623.674	20/07/2018	EP	
Committee opinion	ENVI	PE623.685	17/09/2018	EP	
Economic and Social Committee: opinion, report		CES2438/2018	19/09/2018	ESC	
Committee opinion	IMCO	PE625.314	26/09/2018	EP	
Committee opinion	DEVE	PE626.670	26/09/2018	EP	
Committee report tabled for plenary, 1st reading/single reading		A8-0309/2018	10/10/2018	EP	Summary
Coreper letter confirming interinstitutional agreement		GEDA/A/(2019)005252	14/01/2019	CSL	
Text agreed during interinstitutional negotiations		PE638.583	14/01/2019	EP	
Text adopted by Parliament, 1st reading/single reading		T8-0152/2019	12/03/2019	EP	Summary
Draft final act		00004/2019/LEX	17/04/2019	CSL	
Commission response to text adopted in plenary		SP(2019)393	30/04/2019	EC	
Follow-up document		COM(2021)0652	27/10/2021	EC	

Additional information

Research document	Briefing
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Final act

[Directive 2019/633](#)
[OJ L 111 25.04.2019, p. 0059](#) Summary

Unfair trading practices in business-to-business relationships in the food supply chain

PURPOSE: to establish in all Member States a minimum standard of protection against unfair commercial practices in the food supply chain.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: smaller operators in the food supply chain are more prone to face unfair trading practices (UTPs) due to their, in general, weak bargaining power in comparison to the large operators in the chain.

According to a 2013 survey of agricultural producers and agricultural cooperatives based on a wide definition of UTPs, the estimated damage from UTPs amounted to over EUR 10 billion per year.

In an agricultural policy environment that has become distinctly more market oriented, the good governance of the food supply chain has become more important for operators, in particular for agricultural producers.

The divergence of Member States regulatory approaches to UTPs results furthermore in dissimilar conditions of competition for operators.

In June 2016, a European Parliament [resolution](#) called on the Commission to submit a proposal for a Union legal framework concerning unfair trading practices. In December 2016, the Council invited the Commission to undertake, in a timely manner, an impact assessment with a view to proposing a Union legal framework or non-legislative measures to address unfair trading practices.

The proposed measures are complementary to measures existing in Member States and the code of conduct of the SCI (minimum harmonisation approach). The voluntary Supply Chain Initiative (SCI) is a private industry initiative that seeks to govern UTPs.

IMPACT ASSESSMENT: the option chosen is partial harmonisation of UTP rules in the EU food supply chain while introducing a common minimum protection standard in the EU to help achieve the objective of reducing the occurrence of UTPs.

Concretely formulated prohibitions targeting specific UTPs will also reduce legal uncertainty for commercial transactions that may derive from a more general prohibition.

CONTENT: the present proposal for a Directive aims at reducing the occurrence of UTPs in the food supply chain by introducing a minimum common standard of protection across the EU that consists of a short list of specific prohibited UTPs.

The protection applies only to SME suppliers in the food supply chain as regards their sales to buyers which are not SMEs.

Prohibition of unfair trading practices: Member States shall ensure that the following trading practices are prohibited:

- a buyer pays a supplier for perishable food products later than 30 calendar days after the receipt of the suppliers invoice or later than 30 calendar days after the date of delivery of the perishable food products, whichever is the later;
- a buyer cancels orders of perishable food products at such short notice that a supplier cannot reasonably be expected to find an alternative to commercialise or use these products;
- a buyer unilaterally and retroactively changes the terms of the supply agreement concerning the frequency, timing or volume of the supply or delivery, the quality standards or the prices of the food products;
- a supplier pays for the wastage of food products that occurs on the buyer's premises and that is not caused by the negligence or fault of the supplier.

Member States shall ensure that the following trading practices are prohibited, if they are not agreed in clear and unambiguous terms at the conclusion of the supply agreement:

- a buyer returns unsold food products to a supplier;
- a buyer charges a supplier payment as a condition for the stocking, displaying or listing food products of the supplier;
- a supplier pays for the promotion of food products sold by the buyer.

Designated enforcement authority: the proposal provides that Member States will have to designate a public authority to enforce the new rules. Enforcement authorities are vested with the necessary powers to start an investigation on their own initiative or based on a complaint, to gather information, terminate an infringement and to impose fines and publish the decisions taken to achieve a deterrent effect.

They shall be able to deal with confidential complaints and to protect, where requested, the identity of the complainant. Coordination and cooperation between enforcement authorities is foreseen. This covers annual meetings facilitated by the Commission and annual reports that the enforcement authorities will submit.

The proposal clarifies that Member States may provide for additional rules designed to combat UTPs going above and beyond this minimum Union standard as long as those rules respect the rules pertaining to the internal market.

BUDGETARY IMPLICATION: the proposal would have a limited impact on the EU budget. It would entail one annual coordination meeting of Member States enforcement authorities in Brussels and the creation and management of a basic website for the information exchange by the Commission.

Unfair trading practices in business-to-business relationships in the food supply chain

The Committee on Agriculture and Rural Development adopted the report by Paolo DE CASTRO (S&D, IT) on the proposal for a directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commissions proposal as follows.

Scope: the proposed Directive shall apply to certain unfair trading practices which occur in relation to the sales of agricultural and food

products by a supplier to a buyer, as well as to the related services provided by a buyer to a supplier, which are ancillary to the sale of agricultural and food products.

Members seek to extend the scope of the proposed Directive to:

- suppliers in the food supply chain which are not SMEs, in order to include producer organisations and avoid possible trade diversions away from SMEs;
- all agricultural products, i.e. not only to food products, in order to include the horticultural sector, feed industry, and other agricultural sectors not falling under food production.

Definitions: the text proposed extend the definition of buyers to include those operators that, though established outside the EU, buy and sell products in the EU market. The aim is to avoid that a buyer can escape the provisions of the Directive by simply moving its place of establishment outside the EU.

As regards the definition of the buyer, the provision of related services should be included into the scope, together with processing, importing, exporting, marketing, distribution, retail and sale to final consumers of agricultural and food products.

The amendment text also clarifies the possibility for Member States to have a more ambitious approach with regard to the number of unfair trading practices they intend to prohibit.

Prohibition of unfair trading practices: Members introduced a provision whereby the payment term for non-perishable products at 60 days from the receipt of the invoice, as also provided for in Directive 2011/7/EU on late payment. Another amendment aims at better defining the notion of short notice (when a buyer cancels orders of perishable food products) with a fixed time-limit of 60 days.

Written contracts: the use of written contracts in the agricultural and food supply chain reinforces the responsibility of operators and helps to avoid certain unfair commercial practices. In order to incentivise the use of such contracts suppliers, or their associations, shall have the right to request a written contract. The refusal by a buyer to enter into a written contract with a supplier despite the supplier having requested such a contract in accordance with this Directive, when terms have been agreed between them, shall be considered as an unfair trading practice and be prohibited.

Complaints: they shall be addressed to the enforcement authority of the Member State in which the buyer suspected to have engaged in a prohibited trading practice is established. Where the buyer is established outside the Union, the complaint shall be addressed to the enforcement authority of the Member State in which the supplier is located. That enforcement authority shall take action.

Where the enforcement authority considers that there are sufficient grounds for acting on a complaint, it shall initiate and conduct an investigation, which shall be concluded within six months from the initiation of the investigation.

Members proposed the introduction of the possibility for Member States to promote the use of mediation or an alternative dispute resolution mechanism.

Lastly, they introduced the obligation for Member States to include in their annual report to the Commission of an evaluation on the effectiveness of the implemented measures in order to ban unfair trading practices.

Unfair trading practices in business-to-business relationships in the food supply chain

The European Parliament adopted by 589 votes to 72 with 9 abstentions a legislative resolution on the proposal for a directive of the European Parliament and of the Council on unfair commercial practices in business-to-business relations in the food supply chain.

The position of the European Parliament adopted at first reading under the ordinary legislative procedure has amended the Commission proposal as follows:

Protecting producers from unfair trade practices

Within the agricultural and food supply chain, significant imbalances between the bargaining power of suppliers of agricultural and food products and that of buyers of these products are frequent.

In order to combat practices that depart from good commercial conduct, are contrary to good faith and loyalty, and are unilaterally imposed by one trading partner on another, the proposed new directive establishes a minimum list of prohibited unfair commercial practices in the relations between buyers and suppliers in the agricultural and food supply chain.

Thus, Member States should ensure that at least all subsequent unfair commercial practices are prohibited:

- payment for perishable products made more than 30 days after delivery or, where the products are regularly delivered, 30 days after the expiry of an agreed delivery period, or 30 days after the date on which the amount to be paid is established;
- payment for other agricultural and food products made more than 60 days after delivery or, where the products are regularly delivered, 60 days after the expiry of an agreed delivery period, or 60 days after the date on which the amount to be paid is established;
- cancellations of orders for perishable products notified within less than 30 days;
- unilateral modification by the buyer of contractual terms and conditions that have been approved, such as deregistering products covered by a supply agreement;
- the buyer's request to the supplier to pay for the deterioration or loss of agricultural and food products at the buyer's premises or after the transfer of ownership to the buyer;
- the buyer's refusal to confirm in writing the terms of a supply agreement between the buyer and the supplier on which the supplier has requested written confirmation;
- the threat of the buyer to take commercial retaliation actions against the supplier if the supplier exercises its contractual or legal rights;
- a claim for compensation from the supplier for the cost incurred in investigating customer complaints in connection with the sale of the

supplier's products despite the absence of negligence or fault on the part of the supplier.

Other commercial practices would also be prohibited unless they have been clearly agreed in advance in the supply agreement:

- the return by the buyer of unsold products to the supplier without paying for such unsold products or without paying for the disposal of such products;
- the obligation for the supplier to make a payment for his products to be stored, displayed or referenced or made available on the market;
- the request to the supplier to bear all or part of the costs associated with any discounts on products sold by the buyer as part of promotional actions;
- the request to the supplier to pay for the advertising made by the buyer for the products;
- the buyer charges the supplier for the personnel responsible for arranging the premises used for the sale of the supplier's products.

The new rules would protect small and medium-sized suppliers with an annual turnover not exceeding EUR 350 million. These suppliers would be divided into five sub-categories (for turnover of less than two million, 10 million, 50 million, 150 million and 350 million EUR).

Complaints

Suppliers would be able to complain either to the enforcement authority of the Member State in which they are established or to the enforcement authority of the Member State in which the buyer who is suspected of having engaged in a prohibited commercial practice is established. The enforcement authority to which the complaint is addressed would be competent to enforce the prohibitions. The enforcement authority receiving the complaint should inform the complainant within a reasonable time after receiving it of how it intends to deal with the complaint.

Member States could promote the voluntary use of effective and independent alternative dispute resolution mechanisms.

Unfair trading practices in business-to-business relationships in the food supply chain

PURPOSE: to combat unfair trade practices in the food supply chain.

LEGISLATIVE ACT: Directive (EU) 2019/633 of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.

CONTENT: the Directive establishes a minimum list of prohibited unfair trading practices in relations between buyers and suppliers in the agricultural and food supply chain and lays down minimum rules concerning the enforcement of those prohibitions and arrangements for coordination between enforcement authorities.

Its objective is to prevent the weaker bargaining position of small and medium-sized farmers from being exploited by large operators and also to avoid the costs of such practices from being passed on to primary producers.

The new rules would protect small and medium-sized suppliers with an annual turnover not exceeding EUR 350 million. These suppliers would be divided into five sub-categories (for turnover of less than two million, 10 million, 50 million, 150 million and 350 million EUR).

Prohibition of unfair trading practices

The Directive prohibits the most obvious unfair trading practices, namely:

- late payments for perishable products (payments made more than 30 days after delivery);
- cancellations of last minute orders (notified within less than 30 days) concerning perishable products;
- unilateral or retroactive changes to supply agreements;
- the buyer's request to the supplier to pay for the deterioration or loss of agricultural and food products at the buyer's premises or after the transfer of ownership to the buyer;
- the buyer's refusal to confirm in writing the terms of a supply agreement between the buyer and the supplier on which the supplier has requested written confirmation;
- the misuse by the buyer of confidential information;
- the threat of the buyer to take commercial retaliation actions against the supplier if the supplier exercises its contractual or legal rights;
- a claim for compensation from the supplier for the cost incurred in investigating customer complaints relating to the sale of the supplier's products despite the absence of negligence or fault on the part of the supplier.

Member States shall ensure that at least all the following trading practices are prohibited, unless they have been previously agreed in clear and unambiguous terms in the supply agreement or in a subsequent agreement between the supplier and the buyer:

- the buyer returns unsold agricultural and food products to the supplier without paying for those unsold products or without paying for the disposal of those products, or both;
- the supplier is charged payment as a condition for stocking, displaying or listing its agricultural and food products, or of making such products available on the market;
- the buyer charges the supplier for staff for fitting-out premises used for the sale of the supplier's products.

Each Member State shall designate one or more authorities to enforce the prohibitions at national level (enforcement authority), and shall inform the Commission of that designation.

Complaints and confidentiality

Suppliers may address complaints either to the enforcement authority of the Member State in which the supplier is established or to the

enforcement authority of the Member State in which the buyer that is suspected to have engaged in a prohibited trading practice is established. The enforcement authority to which the complaint is addressed shall be competent to enforce the prohibitions.

Member States shall ensure that, where the complainant so requests, the enforcement authority shall take the necessary measures for the appropriate protection of the identity of the complainant or the members or suppliers and for the appropriate protection of any other information in respect of which the complainant considers that the disclosure of such information would be harmful to the interests of the complainant or of those members or suppliers. The complainant shall identify any information for which it requests confidentiality.

Powers of the competent authorities

Member States' enforcement authorities should have the necessary powers and expertise to (i) carry out investigations, (ii) collect factual information, (iii) carry out unannounced on-site inspections, (iv) order the cessation of a prohibited practice, where appropriate, and (v) impose fines and other equally effective sanctions and take provisional measures against the author of the infringement.

Member States may promote the voluntary use of effective and independent alternative dispute resolution mechanisms.

Lastly, Member States shall ensure that enforcement authorities cooperate effectively with each other and with the Commission and assist each other in investigations with a cross-border dimension.

ENTRY INTO FORCE: 30.4.2019.

TRANSPOSITION: 1.5.2021.

APPLICATION: from 1.11.2021.