

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

2018/0082(COD) - 12/04/2018 - Legislative proposal

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.