

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

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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.