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ICOS Response to the EU Proposal for a Directive on Unfair Trading Practices in business-to-business relationships in the food supply chain

ICOS very much welcomes the EU initiative to tackle Unfair Trading Practices (UTPs) in business-to-business relationships in the food supply chain. Farmer-owned cooperatives play an important part in this supply chain- they integrate the roles of the producer, processor, and marketer to add value and increase the economic weight of farmers. ICOS therefore supports action being taken which will further protect farmers and their cooperatives and create a fairer and more equitable food supply chain.

We wholly support the aims of the proposed directive, which seeks to prohibit certain UTPs across the EU, including for example charging a supplier for wasted or unsold food products or for the stocking, displaying or listing of products; short notice cancellation or unilateral and retroactive changes to contracts and unfair payment delays. These are practices which Irish cooperatives are still continuously subject to both in Ireland and in our other EU export markets.

We equally support the proposal to establish an independent regulator in each member state to act upon anonymous complaints and address abuses through the use of sanctions, together with the introduction of minimum enforcement standards across the EU. With many Irish cooperatives exporting to other EU countries and beyond, the current landscape of varied national legislation and mechanisms to address UPTs are cause for concern. The status quo provides inadequate enforcement and is contributing to a fragmented internal market.

These features of the proposal are vitally important to ensure the directive addresses the pitfalls of the current varied and voluntary EU approach. However, I would like to highlight three aspects of the proposal which we are particularly concerned with and which we feel need to be addressed within the final agreed text of the directive, in order to protect the functioning of farmer-owned cooperatives and enhance the effectiveness of the directive overall.

The Directive must protect cooperatives and their relationship with their members

The Directive must protect cooperatives and respect their functioning, as farmer-owned cooperatives are themselves the most effective way of increasing the bargaining power of farmers, which is the ultimate goal of this initiative. The directive must take account of the unique relationship between a cooperative and its members, which is not simply one of buyer and supplier, but one of member, owner and decision-maker.

This is why we are very supportive of the proposed wording within the Councils negotiating position with regard to payment terms, which will protect the current structures within the dairy cooperative sector in Ireland and introduce wording relating to instances where a producer does not provide an invoice to his buyer, rather as in our dairy sector, the cooperative provides an invoice to the supplier with an analysis of the delivered milk's contents. This new wording would allow for the continuation of the market orientated and democratic price setting structures within our dairy cooperatives which is vitally necessary and greatly welcomed.

The Scope of the directive must apply to all businesses

Unfair trading practices are unfair and damaging to all businesses, no matter their size. If a practice is recognised within the directive as being unfair and contrary to good commercial conduct, it should be prohibited in all cases.

90% of Irish Cooperatives are SMEs. However, the remaining 10% represent the vast majority of the Irish dairy production pool. Therefore, in order to ensure protection for the vast majority of Irish dairy farmers, it is necessary to include non-SME suppliers within the scope of the directive. Additionally, approximately 90% of retailers in the EU are SMEs and therefore excluded from the current scope of the directive. The size of their business should not entitle them to operate using unfair trading practices.

In order to create a truly level playing field for farmers, cooperatives and their downstream buyers, and prevent competition distortions, the legislation must be applicable to all business.

The List of prohibited UTPs must be expanded to protect Irish cattle farmers

ICOS has long highlighted the unfair trading practices Irish farmers are subject to by meat processors, and in particular the penalties imposed by the so-called “Quality Payment System” on more than four movements between farms prior to slaughter or movement within the last 70 days before slaughter.

These issues are not addressed within the list of UTPs proposed in the Commission draft directive. We call for the list of prohibited UTPs to therefore be extended to cover these practices which are subverting the free trade of factory fit cattle in Ireland, stifling competition and are therefore hugely impacting prices for the entire livestock industry.

We would therefore like to see a provision included within the list of prohibited UTP relating to the unilateral imposition of quality standards which are not based on current legislation, quality schemes, science or current practices, and which have a distorting effect on free trade.