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An Comhchoiste um Thalmhaíocht, Bia agus Muir

Aighneacht ón gComhchoiste um Thalmhaíocht, Bia agus Muir maidir leis an
Treoir le Cleachtais Éagóracha Trádála i gCaidrimh Gnólacht le Gnólacht i
Slabhra an tSoláthair Bia

Nollaig 2019

Joint Committee on Agriculture, Food and the Marine

Submission of the Joint Committee on Agriculture, Food and the Marine on the
Directive on Unfair Trading Practices
in Business to Business Relationships in the Food Supply Chain

December 2019

Department of Agriculture, Food & the Marine's public consultation on the transposition of Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on Unfair Trading Practices in Business-to-Business Relationships in the Agricultural and Food Supply Chain

The Joint Committee of Agriculture, Food and the Marine (the Committee) welcomes the Department of Agriculture, Food and the Marine's public consultation in relation to Unfair Trading Practices in the Food Supply Chain. The Committee has been very active in engaging with the issue of Unfair Trading Practices as part of its Work programme in 2018 and 2019 through scrutiny of EU proposals and its Report '*The Future of the Beef Sector in the context of Food Wise 2025*' which was published in June 2019.

The Committee previously examined this Directive when it was a proposal (COM(2018)173) in October 2018 and held discussions with several stakeholders. The Committee submitted a Political Contribution and is of the opinion that the matters raised therein remain valid. Accordingly, the Committee reiterates its views and recommendations. Please see [Appendix 1](#) for the Committee's Political Contribution on this proposal.

The Committee notes that the Directive has since been agreed on 17 April 2019 and is now for transposition. The Committee welcomes the Directive as it is very important in addressing alleged imbalances within the market for food supply, in particular the imbalance between the strong bargaining power of retailers and the relatively weak bargaining power of primary producers.

Under the following headings specified in the public consultation process, please see the Committee's observations:

1. Discretionary elements of the Directive

There is discretion* in the Directive to allow Member States maintain current law in this area or to include stricter rules when transposing the Directive. Should this discretion be exercised? If you think it should, in what area, how, and what do you consider should be included?

*Relevant Articles in the Directive:

Article 3.1(b) – *"the buyer cancels orders of perishable agricultural and food products at such short notice that a supplier cannot reasonably be expected to find an alternative means of commercialising or using those products; notice of less than 30 days shall always be considered as short notice; Member States may set periods shorter than 30 days for specific sectors in duly justified cases;"*

The Committee has no observations to make on this matter.

Article 7 – “Without prejudice to the right of suppliers to submit complaints under Article 5, and the powers of enforcement authorities under Article 6, Member States may promote the voluntary use of effective and independent alternative dispute resolution mechanisms, such as mediation, with a view to the settlement of disputes between suppliers and buyers regarding the use of unfair trading practices by the buyer.”

The Committee recommends that mediation services are considered as part of the enforcement mechanisms within the Directive, noting the importance of strong commercial relationships to a vibrant food supply chain.

Article 9 – “1. With a view to ensuring a higher level of protection, Member States may maintain or introduce stricter rules aimed at combating unfair trading practices than those laid down by this Directive, provided that such national rules are compatible with the rules on the functioning of the internal market. 2. This Directive shall be without prejudice to national rules aimed at combating unfair trading practices that are not within the scope of this Directive, provided that such rules are compatible with the rules on the functioning of the internal market.”

The Committee has no observations to make on this matter.

2. Enforcement Authority

The Committee reiterates its recommendations made in its Political Contribution (October 2018) and it supports the initiative for an enforcement authority for Unfair Trading Practices. Since the Directive was agreed in April this year, the Committee has engaged with the Competition and Consumer Protection Commission (CCPC) and the UK Grocery Code Adjudicator on this matter. The Committee has considered the remit of each organisation and remains of the opinion that the competent authority for the Directive should take the form of a sectoral regulator.

The Committee recommends that the independent sectoral regulator should be funded by the State rather than by a levy on buyers. It is the Committee's view that the regulator's remit should include mediation, arbitration, investigation and the ability to enforce penalties. The UK Grocery Code Adjudicator has a similar role, however, its current remit only covers thirteen regulated retailers and their direct suppliers. This Directive requires a body which will cover the food supply chain in its entirety and the Committee reiterates its recommendation of an independent sectoral regulator. The Committee notes that a sectoral regulator to implement the Directive will require more resources and funding than the UK Grocery Code Adjudicator as this proposed independent sectoral regulator's scope would be greater.

3. Practical Implications

In its Political Contribution (October 2018), the Committee recommended that further examination was afforded to this Directive in order to explore how practices operated by cooperatives, and other member-based organisations, may be accommodated in the legislation. The Directive's inclusion of a 30-day payment deadline for perishable goods may create some challenges for the cooperative sector, particularly on the analysis of milk produced and the monthly setting of prices for milk cheques.

The Committee notes that this issue was discussed in the correspondence received by the Department from the EU Commission in May 2019, however, it reiterates its view that this may create some challenges.

4. Broader Considerations

With the impending withdrawal of the UK from the EU, the Committee believes that similar protections for goods sold to the UK to those in this Directive must be included by the EU Institutions in any final free trade agreement and recommends that such protections are included. **As the UK is a significant destination of many Irish exports, the Committee is acutely aware that such protections are very important for EU producers who export to the UK, as well as primary producers based in the UK who export their produce to the Single Market.**



An Comhchoiste um Thalmhaíocht, Bia agus Muir

**Cion Polaitiúil – COM(2018)173
Treoir Bheartaithe maidir le Cleachtais Éagóracha Trádála i gCaidrimh
Gnólacht le Gnólacht i Slabhra an tSoláthair Bia**

Deireadh Fómhair 2018

Joint Committee on Agriculture, Food and the Marine

**Political Contribution – COM(2018)173
Proposed Directive on Unfair Trading Practices
in Business to Business Relationships in the Food Supply Chain**

October 2018

32/AFM/22

Introduction

The Joint Committee on Agriculture, Food and the Marine (the Committee) welcomes the European Commission's proposal: its first ever attempt to address the use of unfair trading practices (UTPs) in the food supply chain. This proposal is very important in addressing alleged imbalances within the market for food supply, in particular the imbalance between the strong bargaining power of retailers and the relatively weak bargaining power of primary producers.

On initial examination, the intention of the proposed Directive is to protect farmers and SMEs from the UTPs of larger companies within the food supply chain, which are attributable to the greater bargaining power and strength of such large companies in the market. The Committee also notes the proposal's stated legal basis and supports the objective of that legal basis: to ensure a fair standard of living for farmers.

The Committee has been monitoring the impact of trading practices on primary producers in its considerations, particularly in the dairy and beef sectors and the market impacts of price reductions in recent years. For example, the Committee was made aware that the primary producer only receives 21% of the final cost of a product, with 51% going to the retailer. The Committee also observes that the food-supply chain has a number of unique aspects, such as the presence of farmer-owned initiatives such as cooperatives, the presence of joint purchasing arrangements between smaller retailers, and the presence of perishable goods on a wider scale.

The Committee notes some of the initial details of the proposed Directive, including the prohibited UTPs (Article 3.1) and the UTPs prohibited unless they are agreed in clear and unambiguous terms at the conclusion of the supply agreement (Article 3.2). Of particular importance is the scope of UTPs covered by the proposed Directive, with a number of additional practices suggested by both the European Parliament and the Council. The Committee in particular supports the following extensions of the scope:

- The extension to agricultural products as well as food products;
- The right of a supplier to lodge a complaint in their own Member State; and
- A requirement for a written contract between the supplier and the buyer.

However, despite the scope available to Member States to set additional rules, the Committee is concerned that the current proposal does not go far enough to address the range of unfair trading practices throughout the food supply chain, and believes that proposals from both the Council and the Parliament to extend the UTPs covered by the Directive warrant detailed consideration. In particular, the positions of cooperatives and joint purchasing arrangements, which both assist smaller operators, must be preserved provided that such groupings act fairly.

The Committee understands that following the assent of the European Parliament to the position of its Agricultural and Rural Development Committee (COMAGRI), trilogue negotiations are planned to begin. The Committee highlights the importance of this process in securing the passage of draft legislation into law before its third reading, and noting the positions of both institutions, has arrived at the decision set out in this Political Contribution.

Decision of the Committee

The Joint Committee on Agriculture, Food and the Marine:

Supports

- The extension of the proposed Directive to cover all agricultural goods, noting the possible benefits this may have, but also suggests that some scope is afforded within the proposed Directive to address emergencies, particularly where the buyers are farmers or SMEs.
- That suppliers impacted by UTPs are allowed to lodge a complaint in their own Member State.
- The view that the competent authority envisaged by the Directive takes the form of a sectoral regulator and notes a possible model that may be followed is the UK Grocery Code Adjudicator, as referenced in the Explanatory Memorandum to the Directive.

Believes

- That, in principle, UTPs should be regulated across all operators within the food supply chain. However, the Committee is also concerned that the legal basis of the proposal, and particularly the objective of that legal basis, may significantly limit its impact.

Is Concerned

- That any proposal on below-cost selling and the impact on consumers must be balanced to the interests of producers and consumers. While the Committee heard that the percentage of the Irish household income spent on food has decreased from 30% in the 1960s to 10-15% today, it is mindful that the Common Agricultural Policy is intended to provide high quality food to consumers at a reasonable price. While the use of loss leaders may have benefits to consumers, the Committee believes that more clarification is needed that balances the interests of consumers and the support of a fair price to food producers, particularly farmers.
- That any change to payment dates under the proposal could have a profound impact on farmer-led features of the food supply chain, most notably cooperatives. The Committee believes that the position of cooperatives under the proposal must be clarified, in particular on the assessment of dairy products provided and processes they use to pay farmers. The Committee heard that while the relationship is one of buyer and seller, it is also one of member, owner and decision-maker. Essentially, the position of a farmer who is a member of a cooperative may require re-examination, particularly if that cooperative is the buyer of his or her produce. The Committee also heard that it is questionable whether this is a transfer of ownership.
- That the position of joint retail groups / symbol groups in buying produce from suppliers may be adversely impacted by the proposed Directive. The Committee would like clarification on whether a ban on UTPs may lead to a ban on joint purchase arrangements. The Committee believes this may be counterproductive as it may significantly limit the bargaining power of groupings of small retailers such as family-run greengrocers and small independent retailers.
- That the use of mediation services may not be as encouraged in dispute resolution under the proposed Directive when it enters into force.

Recommends

- That an implementation period for the proposed Directive is at least two years, but emphasises the need for clarity on how the Directive will apply to existing and new supply contracts during and following its implementation.
- That consideration be given to the introduction of a wider protection for all operators in the food supply chain on a more appropriate legal basis, recognising that such practices are indeed unfair regardless of the size of business, notwithstanding its observation on the legal basis above.
- That further examination is afforded to this proposal in order to explore how practices operated by cooperatives, and other member-based organisations, may be accommodated in the legislation. The proposal's inclusion of a 30-day payment deadline for perishable goods may create some challenges for the cooperative sector, particularly on the analysis of milk produced and the monthly setting of prices for milk cheques.
- That mediation services are considered as part of the enforcement mechanisms within the Directive, noting the importance of strong commercial relationships to a vibrant food supply chain.
- That explicit reference is made in the text to the need for a written supply contract, as in the absence of such a reference, it may be very difficult for a supplier that is a small enterprise to prove the existence of a UTP, particularly if selling to a larger buyer.
- That Member State rules on below cost selling on beverages and alcohol goods are not compromised in any way by the proposed Directive, noting the public health grounds upon which additional duties on such products are maintained.

Impact of the UK Withdrawal from the EU

Finally, with the impending withdrawal of the UK from the EU, the Committee believes that similar protections for goods sold to the UK to those in the proposed Directive must be considered by the EU institutions in any final free trade agreement and recommends that such protections are included. As the UK is a significant destination of many Irish exports, the Committee is acutely aware that such protections are very important for EU producers who export to the UK, as well as primary producers based in the UK who export their produce to the Single Market.

Appendix - Scrutiny of the Proposed Regulation

The Committee considered the proposal through engagement with stakeholders at public hearings, and the transcripts of these hearings are accessible via the below links.

Date	Action / Organisation
10 July 2018	Initial Consideration of the Proposed Directive – EU Scrutiny
<u>25 September 2018</u>	Briefing on the Proposed Directive Department of Agriculture, Food and the Marine
<u>16 October 2018</u>	Session A – Enforcement and Current Regulations Competition and Consumer Protection Commission (CCPC) Session B – Stakeholder Impact Irish Farmers’ Association (IFA) Irish Creamery and Milk Suppliers’ Association (ICMSA) Irish Cooperation Organisation Society (ICOS) Retail Ireland