



Council of the
European Union

Brussels, 26 October 2018
(OR. en)

13543/18

Interinstitutional File:
2018/0082(COD)

AGRI 500
AGRILEG 170
CONSOM 286
CODEC 1786
PECHE 428
INST 410
PARLNAT 248

COVER NOTE

From:	Chair of the Joint Committee on Agriculture, Food and the Marine of the Houses of the Oireachtas (Parliament of Ireland)
date of receipt:	24 October 2018
To:	The President of the European Council

Subject:	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 [doc. 7809/18- COM(2018)173] - Letter from the Chairman of the Joint Committee on Agriculture, Food and the Marine of the Irish Houses of Oireachtas to the President of the European Council and the Committee's political contribution on the legislative proposals for the Common Agricultural Policy post 2020
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Delegations will find attached the above mentioned letter and the political contribution of the Joint committee as part of the European Commission's political dialogue process with national parliaments.



Tithe an
Oireachtais
Houses of the
Oireachtas

An Comhchoiste um
Thalmhaíocht, Bia agus
Muir

Teach Laighean
Baile Átha Cliath 2
D02XR20

Guthán: (01) 618 3717
Guthán P.I.: (076) 100 1745
R/phost: afm@oir.ie

Joint Committee on
Agriculture, Food and
the Marine

Leinster House
Dublin 2
D02XR20

Tel: (01) 618 3717
I.P. Tel: (076) 100 1745
Email: afm@oir.ie

Our Ref: AFM-i-509-2018

23 October 2018

Mr Donald Tusk
President
European Council
Rue de la Loi/Wetstraat 175
B-1048 Brussels
Belgium

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

Dear President Tusk

The Joint Committee on Agriculture, Food and the Marine has considered the above proposal and has agreed the attached contribution for consideration as part of the European Commission's political dialogue process with national parliaments.

Pat Deering T.D.
Chairman

Cuirfear fáilte roimh chomhfhreagras i nGaeilge



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
25 September 2018	Briefing on the Proposed Directive Department of Agriculture, Food and the Marine
16 October 2018	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