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From: General Secretariat of the Council  
To: Special Committee on Agriculture/Council

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Subject: Draft DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL on unfair trading practices in business-to-business relationships  
in the agricultural and food supply chain **(first reading)**  
- Adoption of the legislative act  
- Statements

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**Joint statement by the European Parliament, the Council and the Commission**

The European Parliament, the Council and the Commission stress that the transparency of agricultural and food markets is a key element of a well-functioning agricultural and food supply chain, in order to better inform the choices of economic operators and public authorities as well as to facilitate the understanding of operators on market developments. The Commission is encouraged to continue its ongoing work to enhance market transparency at EU level. This may include the strengthening of the work on EU market observatories and improving the collection of statistical data necessary for the analysis of price formation mechanisms along the agricultural and food supply chain.

### **Statement by Denmark**

Denmark supports the compromise reached on the directive on unfair trading practices in the food supply chain with the following considerations in mind.

Firstly, Denmark recognizes the importance of strengthening the position of farmers in the food supply chain. In Denmark, the high level of organization of farmers in cooperatives is key to ensure this. Therefore, Denmark has during the negotiations strived to ensure that the directive is compatible with the cooperative model. It is the Danish understanding that the final compromise protects the cooperative as a model since it addresses the specificities of cooperatives in relation to payment deadlines and written contracts.

Secondly, in relation to the scope of the directive, Denmark has continuously supported the Commission proposal to protect small and medium-sized enterprises since this closely corresponds to the legal basis of the directive in the Treaty and the objective to ensure a fair standard of living for the agricultural community.

Thirdly, it is essential that fighting unfair trading practices does not compromise the well-functioning of the internal market nor a continued market orientation of the agricultural policy. Therefore, Denmark stresses the importance of ensuring that national rules going beyond the directive should respect the rules of the internal market.

### **Joint statement by Germany and Luxemburg**

Germany and Luxembourg assume that the second sentence of Article 5 (1) does not give rise to any powers of intervention for the authorities of one Member State in the territory of another Member State.

## Statement by the Czech republic

As part of a constructive approach, the Czech Republic supports the compromise text of the proposal for a Directive on unfair trading practices in business-to-business relationships in the food supply chain. **However, it continues to regard the scope of the Directive, based on the ‘dynamic model’ under Article 1(2) of the proposal for a Directive, as a flaw in the proposal.**

In the Czech Republic’s view, the proposed scope of the Directive does not contribute significantly to improving the functioning of the European Union’s internal market. Among other things, the proposal submitted does not resolve the issue of the proliferation of economic activities, their territorial extension, or interconnection or partnerships between economic operators. As regards the implementation of this proposal in practice, compliance with the principle of simplification and reducing the administrative burden also cannot be guaranteed.

Unfair trading practices, which have a domino effect throughout the food supply chain, remain unfair regardless of the size of the operator adversely affected by them.

They have a negative impact on employment and lead to a loss of competitiveness and a reduction in investment and innovation.

In the Czech Republic’s view, nothing prevents the proposal for a Directive being expanded to cover all buyers. The Directive can also protect all suppliers without changing the legal basis (Article 43(2) TFEU). The Court of Justice has stated that the Treaty on the Functioning of the EU does not define the type of entity which may be regulated under the CAP provisions of the Treaty. In fact, automatically excluding entities which are not small and medium-sized enterprises would violate the prohibition of discrimination under Article 40(2) TFEU, which forbids the unequal treatment of producers which are in a similar situation.

The case-law of the Court of Justice of the European Union also indicates that agricultural measures which have the specific objective of safeguarding the standard of living of the agricultural community, such as the current proposal on unfair trading practices, may also regulate entities which are not small and medium-sized enterprises (judgment of 23 March 2006 in Case C-535/03, Unitymark and North Sea Fishermen's Organisation, judgment of 13 November 1990 in Case C-331/88, Fedesa and others). Expanding the scope to include large suppliers would therefore ensure that protecting all agricultural producers continues to take priority.

**An unfair trading practice is unfair regardless of the size of the supplier or buyer adversely affected by it. In the interests of a sustainable and well-functioning food supply chain, the Directive should protect all suppliers against all buyers, irrespective of the size of their turnover.** Only then will the EU have a food supply chain which is fair for suppliers and buyers. Accordingly, the Czech Republic requests the European Commission to monitor the functioning of the proposed Directive in practice and, if appropriate, propose expanding the scope of the Directive to cover all entities.

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