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NOTE

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

Subject: Commission non-paper on the position of farmers in the food supply chain:
next steps

With a view to the Special Committee on Agriculture meeting on 18 March 2024 and the “Agriculture and Fisheries” Council on 26 March 2024, delegations will find in the Annex a Commission non-paper on the above-mentioned subject.

COMMISSION NON-PAPER

POSITION OF FARMERS IN THE FOOD SUPPLY CHAIN: NEXT STEPS

Introduction

Along the recent protests of farmers, the claims for a fairer remuneration by the market (prices) and fairer treatment by other actors of the food supply chain feature consistently high in farmers' requests and are reflected in calls from civil society and stakeholders.

The agri-food supply chain is characterised by different degrees of concentration. Within the agricultural inputs and food industry sectors, a small number of large companies are predominant on the market, even if food industry counts over 95% micro or small enterprises¹. By contrast, with 9.1 million farms, the agricultural sector remains highly fragmented and heterogeneous (with average farm size of 17.4 hectare in the EU). Even the largest farms find themselves often in a vulnerable position in the agri-food supply chain due to limited bargaining power² vis-à-vis highly concentrated and stronger actors concerning provision of inputs, food industry and food retail, the latter being considered as "gatekeepers to consumer markets"³. A second reason for the vulnerable position of farmers is the nature of the agricultural activity and products, characterised by long production cycles, the perishability and seasonality of products, the uncertainties due to climatic conditions or biological processes and an inelastic demand.

The European Union has already adopted several measures aiming at addressing this situation and ensuring a robust and equitable agri-food supply chain, enabling farmers to leverage the benefits of market opportunities. Among these measures are some exclusions from competition rules, provisions supporting farmer cooperation, contractualisation and increased market transparency laid down in the **Common Market Organisation Regulation (CMO)**⁴, which entered into force in 2013 and was last amended in December 2021. It has also enacted a prohibition of certain abusive behaviours by buyers with the **Directive on Unfair Trading Practices (UTP Directive)**⁵, which entered into force on 1 May 2019 and required Member States to transpose it into national laws before 1 May 2021. Such regulatory measures increase trust and cooperation in the chain. Private actors and public authorities should fully seize the potential offered by these instruments.

While business risks are inherent in all economic activities, agriculture is particularly prone to uncertainties. The last years have been marked by an unprecedented peak of energy-related agricultural inputs costs and a prolonged period of high inflation, affecting

¹ The small and medium sized enterprises represent 39 % of food industry's turnover (approximately €1112 billion) in the European Union.. source: Eurostat (2019)

² European Commission, Initiative to improve the food supply chain (unfair trading practices), [Staff Working Document](#).

³ European Commission, Competition in the food supply chain, [Staff Working Document](#), p. 28.

⁴ Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, ELI: <http://data.europa.eu/eli/reg/2013/1308/2021-12-07>.

⁵ Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, OJ L 111, 25.4.2019, p. 59–72.

all farmers' costs and food prices. In parallel, farmers continue to undertake efforts to make their production more environmentally sustainable and expect to be rewarded for their efforts. Despite the general inelasticity of food demand, many consumers, dealing with an increased cost of living, have directed their consumption patterns towards less expensive food products. This has further destabilised the distribution of value added along the chain and has significantly increased the perceived degree of uncertainty in which EU farmers operate, fuelling protests and mistrust together with other reasons for discontent, showing the need to put forward additional measures.

The Commission announced its intention to prepare a range of short, medium and longer-term actions to improve the position of farmers in the food chain and to protect them against unfair trading practices. During the AGRI FISH Council meeting on 26 February 2024, Member States showed their willingness to tackle issues related to the food chain. The Chairman of the European Parliament's committee for agriculture and rural development also identified in a recent letter the areas where action could be taken.

Some measures will benefit from the ongoing discussions within the Strategic Dialogue on the Future of Agriculture. In the meantime, some immediate and short-term measures could be taken:

A. Immediate measures

Over the very short term, the Commission proposes several non-legislative measures to reinforce the overall capacity of stakeholders and public authorities to understand and analyse the economic and legal challenges faced by farmers and other actors in the agri-food supply chain, as follows:

1. Creation and launch of an **observatory of production costs, margins and trading practices** in the agri-food supply chain involving the Commission, the Member States and the stakeholders (farmers, food industry, traders, retail and services, consumers, input providers) while considering the heterogeneity of the supply chain in the Member States.

The observatory will bring together its members to exchange information and discuss based on available evidence and facts, with a view to establish a **common diagnosis** of the situation and bring increased **transparency** on costs and margins in the supply chain, as well as on trading practices, while respecting confidentiality and competition rules. These exchanges could be organised periodically (minimum twice per year, more frequently if needed) to take stock of the situation in the agri-food supply chain. This stock taking would be based on quantitative and qualitative data on costs, margins and practices. The summary records of these exchanges will be made available to the general public together with key figures.

2. **Report on the implementation of the Unfair Trading Practices Directive in April 2024.** This report will supplement the Interim report on UTP Directive's implementation that was issued in October 2021 covering 16 Member States only. The new report will provide a full picture on the implementation of the UTP Directive in all Member States, including a selection of transposition choices made by Member States for measures going beyond the minimum EU harmonisation level. The report will also contain analysis on the strengths and weaknesses of enforcement of the Directive, in particular with regard to needs arising from cross-border

enforcement actions within the internal market. While providing an accurate picture of the state of play of the implementation of this relatively new piece of EU legislation, the report will feed the on-going evaluation of the Directive.

B. Short-term measures

The Commission is exploring targeted changes to the CMO and other CAP-related basic acts, that can contribute to reducing the transaction costs and correcting imbalances in the value chain, while preserving the fundamental principle of market orientation.

4. The provisions of the CMO could be reinforced in the three following areas:

- i) Strengthening EU-level provisions on **contracts involving farmers** and their organisations with other actors in the chain:

Contracts are the vehicles whereby farmers and other actors agree on the parameters of their transactions. They include for instance the price, quantity and quality, duration of the contract, payment periods and procedures, arrangements for delivering the products and rules applicable in the event of force majeure. Some Member States made obligatory that such contracts are made in writing for a minimum duration and publish indicators that can be used in the price formula. Contracts are the core element of the agri-food supply chain, and can contribute to reinforce the responsibility of operators, increase their awareness of the need to better take into account the signals of the market, improve price transmission and the adaptability of supply to demand, as well as help to minimise unfair trading practices.

The CMO framework for contracts could be improved in several ways, without increasing administrative burden (a) by generalising the compulsory character of written contracts, while allowing for the necessary flexibility, (b) by better incorporating changes of market and cost conditions in contracts with a view to favour symmetry and timeliness of price transmission, (c) by providing with additional possibilities to improve the transparency of contractual arrangements (for example by means of contract registries accessible to authorities or independent mediators) and, (d) by enhanced mediation mechanisms between parties.

- ii) Further strengthening of economic **Producer Organisations (POs) and their associations (APOs)** and reduction of administrative burden for their recognition and constitution:

The CAP supports cooperation among farmers and cooperation between farmers and other actors of the chain. Cooperation aims at allowing farmers to compensate collectively for their weaker bargaining power. POs, in particular those that integrate part of the economic activities of their members, are a key feature of the CAP that support individual farmers in this rebalancing of power. Through the CMO, POs, APOs and other entities supporting cooperation such as Interbranch Organisations (IBOs) could be reinforced, without putting at risk the mechanisms of sound competition. This could possibly be done through (a) enhancing the bargaining power of POs and

APOs in collective negotiations with buyers, (b) boosting the support that POs and APOs can receive through sectoral interventions under the CAP Strategic Plans Regulation (EU) 2021/2115 (SPR), (c) providing for the possibility to grant EU financial support to POs and IBOs involved in exceptional measures, (d) simplifying the recognition process of these POs and IBOs.

iii) Setting up an inducive framework for **fair-trade voluntary schemes and agreements aimed at improving the remuneration of farmers:**

Farmers and their organisations, together with other actors in the agri-food supply chain, are already developing schemes and best practices whereby they offer products to consumers with a guarantee that farmers involved are treated in a fairer way than in other standard trading relations, in terms of pricing or other contract terms. These voluntary initiatives and agreements are answering to concerns of farmers that are also often shared by consumers. Similarly, short food supply chains are forms of organisation of the food supply chain whereby farmers and consumers are directly or closely in contact. Both types of arrangements are recognised to be important contributors to the social dimension of sustainable food system.

These voluntary initiatives could benefit from new provisions in the CMO that: (a) would define minimum characteristics for voluntary schemes to be claimed “fair” or equivalent words; (b) would similarly define minimum characteristics for schemes claiming to be short food supply chains; (c) would include the possibility to develop such schemes within POs and IBOs, and (d). would define conditions for the extension of sustainability agreements to include objective social sustainability criteria.

These targeted amendments aim to strike a balance between the advantages for farmers to be protected from sudden excessive price of (price shocks) which they would not be able to absorb over the short term without putting at risk their long term viability, while not placing an unjustified financial burden on food industry and retail, maintaining the function of price signals to determine production and investment decisions of all private actors at all stages of the chain, avoiding any unnecessary administrative burden for operators, and not impeding or weakening the functioning of the internal market.

5. The Commission will propose new rules on **cross-border enforcement of UTPs**. This measure involves development of a legal proposal for a new Council and EP Regulation, as a complement to the UTP Directive. The experience of the UTP enforcement authorities has shown that cross-border enforcement can be difficult, when the buyer behaving unfairly is not located in the same Member States as the supplier affected. In such cases, enforcement authorities may face difficulties when investigating or prosecuting the buyers established in another Member State. The powers of the national enforcement authorities could therefore be strengthened, and their cooperation enhanced to facilitate effective and efficient cross-border enforcement, exchanges of information, and collection of penalties. At the same time, strengthened cross-border cooperation would contribute to avoiding that. The proposal would also include provisions for coordinated actions against large multinational food and retail companies acting as buyers or providers

of certain retail-related services in the vent they would be exploiting potential "enforcement gaps" to impose prohibited UTPs in cross-border transactions.

C. Medium-long term measures

On the longer-term, the Commission will proceed with the steps foreseen in the normal policy cycle relative to the legislation, in particular regarding the UTP Directive:

6. The first **Evaluation** of the **UTP Directive** has been launched in May 2023. Its main findings will feed into a **report to the European Parliament and Council** as well as to the European Economic and Social Committee and the Committee of the Regions in 2025, **accompanied or followed, if appropriate, by legislative proposals**. A targeted consultation of the relevant stakeholders and stakeholder workshops are planned for Q3/2024. In addition, a workshop with the UTP enforcement authorities is planned for Q2/2024.

D. Additional measures

7. The Commission will keep promoting a **better implementation and enforcement at EU level of existing rules on agricultural products**.

Based on the Official Controls Regulation, Member States perform comprehensive **official controls on plants, animals, food and feed, be them imported or produced in the Union**.

The Commission coordinates a network of Member State border control points, maintains IT systems for Member States to exchange information on identified health risks or non-compliances, finances training programmes and a network of reference laboratories to support Member States in carrying out their controls according to the state of the art in science and technology. The Commission also carries out audits in Member States to verify the robustness of those official control systems, and in Third Countries to ensure that their systems allow food imports to meet our safety standards.

The Commission intends to explore enhancing the overall system for audits, in particular if additional resources were available for its dedicated auditors to move towards one "health and agricultural audit service" to address concerns around enforcement of rules both within and outside the EU.

8. **Public procurement** of food provides the opportunity to create a market for more sustainable products (for example, the inclusion of an organic food supply in the catering for public canteens). The use of public procurement as a strategic tool to improve sustainability might trigger the transformation of food systems, as it impacts upon the different components of food systems and affects the entire food chain. The public procurement of food has the potential to promote food system resilience and adaptive change, promoting agricultural production practices that ensure environmental sustainability and promote biodiversity.

On the basis of an analysis of Member State's practices on sustainable food public procurement and their impact, the Commission will consider whether specific

actions are needed, including setting clear sustainability criteria for procurement of food.

In addition, the Commission will continue providing funding programs to support the procurement of sustainable and local products, contributing to promotion and awareness campaigns to raise awareness among public authorities, businesses, and consumers about the benefits of purchasing sustainable and local products, as well as facilitating the collaboration and networking among public authorities, businesses, and other stakeholders to share best practices, exchange information, and foster partnerships for the procurement of sustainable and local products.

9. **Carbon farming:** The recently agreed Union Certification Framework will create new business opportunities for farmers and foresters, who adopt more sustainable management practices, and is expected to strengthen their market position. The Commission will work together with an expert group to develop certification methodologies for carbon removals and soil emissions reductions and to swiftly start the certification process.

E. Evidence gathering and awareness raising

- A support study for the evaluation of the Directive on unfair trading practices has been launched in 2024, to support the evaluation of this Directive to be concluded in 2025.
- Annual stakeholder survey on the experience of suppliers with the unfair trading practices: [https://ec.europa.eu/eusurvey/runner/4th UTP survey](https://ec.europa.eu/eusurvey/runner/4th_UTP_survey) (the 4th survey has been launched and is open until mid-March 2024).
- A study on national and regional or private regulatory or voluntary schemes aiming at ensuring a fair remuneration for farmers through rules on the integration of production costs will be launched in Spring/2024 and finalised in 2025. This study will screen public and private schemes aiming at reinforcing the market remuneration of farmers. The information gathered will feed the debate on both the medium- and long-term actions.
- A study on the role of information and communication technologies to improve market transparency is ongoing. The study explores, among other things, options to improve market transparency by using modern technological solutions, such as artificial intelligence, blockchain technology and big data. It will be the base for a CMO report on the subject to Council and Parliament, due by end 2024.
- The Commission's Joint Research Centre will provide ad hoc analyses, for example on European Retail Alliances in 2024, which will contribute to shed light on the impact that the negotiation activities of European Retail Alliances have on upstream SMEs and farmers and thus complement the 2020 JRC Study on this subject
- Every year the CAP network hosts a forum on best practices in the food supply chain. In addition, the CAP network collects good practices from the national networks on regional and national levels.
- A report on the application of the competition rules to the agricultural sector in the Member States will be published by 31 December 2025.

ANNEX A

	Action	Instrument	Timing
A. Immediate measures			
A.1	Observatory of costs, margins and trading practices in the agri-food supply chain	Commission Expert Group	Launch of the call April 2024 Inaugural meeting – June 2024
A.2	Report on the implementation of the UTP Directive	Report to Council, European Parliament and EESC	April 2024
A.3	Evidence-gathering activities	Various studies, workshops, ...	As from March 2024
B. Short-term measures			
B.1	Proposal of targeted amendments to the CMO	Amendment of the Regulation (EU) 1308/2013 of the EP and Council	Proposal for amendment of basic act by Q2/2024
B.2	Proposal for rules on cross-border enforcement of UTPs	Stand-alone new legal act (Regulation (EU) of EP and Council)	Q3-2024
C. Mid-term/long term measures			
C.1	Evaluation of the UTP Directive, accompanied, if necessary, by a legislative proposal	Report, and, if necessary, amendment to Directive 2019/633	2025

Annex B – Detailed indicative timeline

Milestones	Actions
Until 15 March 2024	4th annual stakeholder survey on the experience of suppliers with the unfair trading practices
March 2024	Launch of the support study for the evaluation of the Directive on unfair trading practices
26 March 2024	Presentation of the non-paper at AGRIFISH Council meeting
March/April 2024	Creation of the Observatory of production costs, margins, and trading practices in the agri-food supply chain and launch of the call for expression of interest to join it
Q2 2024	Adoption of the proposal for targeted amendments to the CMO
April 2024	Launch of the study on national and regional or private regulatory or voluntary schemes aiming at ensuring a fair remuneration for farmers through rules on the integration of production costs
April 2024	Adoption of the Report on the implementation of the UTP Directive
June 2024	Meeting of the enforcement authorities to discuss the implementation of the Directive on unfair trading practices
June 2024	UTP Directive - Targeted evaluation workshop with the enforcement authorities
July 2024	Inaugural meeting of the Observatory of costs, margins and trading practices in the agri-food supply chain
Q3-2024	UTP Directive – Stakeholder evaluation workshop
Q3-2024	Proposal for rules on cross-border enforcement of UTPs
October 2024	Meeting of the enforcement authorities to discuss the implementation of the Directive on unfair trading practices
October 2024	2 nd Meeting of the observatory of costs, margins and trading practices in the agri-food supply chain
Q3-2024	Launch of the 5 th annual stakeholder survey on the experience of suppliers with the unfair trading practices
November 2024	4 th meeting of the Forum on best practices in the agri-food supply chain hosted by the CAP Network and supported by the Commission
Q1-2025	Report on digitisation and market transparency
2025	Report summarising the key finding of the evaluation of the UTP directive, and, if necessary, amendment to the UTP Directive