



Unfair trading practices in B2B relationships in the food supply chain

Commission proposal for a Directive

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Food Task Force

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Food Task Force in DG Competition

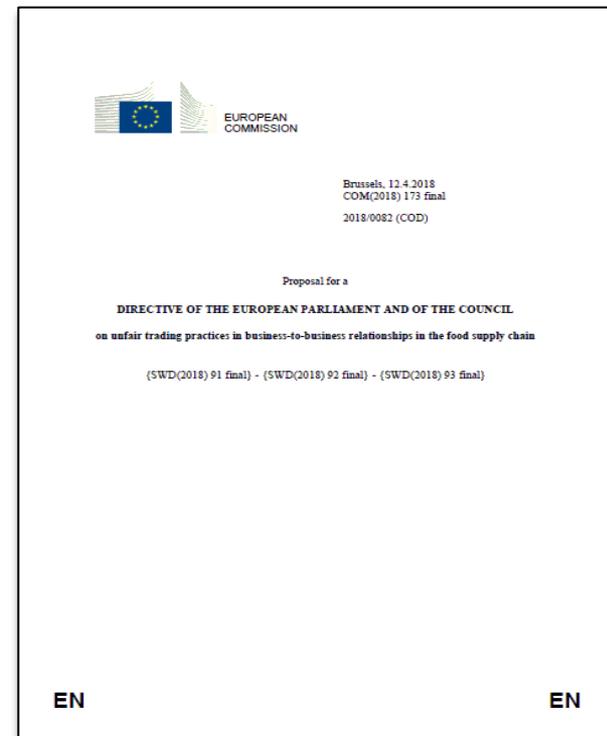
- Created in 2012
- Assessing competition issues at all stages of the food supply chain (from farm to fork): investigations and EU regulatory initiatives

Level in the chain	Cases in 2014-2018
Agricultural production	Collective protectionist agreements
Manufacturers	Parallel trade restrictions
Retail	Retail collusion

Commission proposal for a Directive on unfair trading practices in B2B relationships in the food supply chain

- Adopted on 12 April 2018*
- Currently with co-legislators in ordinary legislative procedure
- Part of a long history

* [COM\(2018\) 173 final](#) - [SWD\(2018\) 91 final](#) - [SWD\(2018\) 93 final](#)



Recent political context



- **EP** resolution (600 pro votes): calls upon COM to propose legislation (June 2016)



- **EESC**: recommends network of enforcement authorities (September 2016)



- **Council Conclusions**: invite COM to submit impact assessment (December 2016)

AMTF

- **Agricultural Markets Task Force**: recommends legislation (report of November 2016)

Situation in the Member States

- Not all MS have specific UTP legislation:
 - 4 MS no B2B UTP legislation
 - 4 MS limited scope legislation
 - 20 MS specific legislation on UTPs
- Among 20 MS with B2B UTP legislation still divergences:
 - Scope in terms of products and operators
 - List of UTPs – general or specific
 - Type of redress (administrative/judicial) – effectiveness/fear factor

Main characteristics of the proposal

- Directive with **agricultural legal basis – Art. 43 TFEU**
- Scope: **food products** (Annex I to TFEU)
- Protection applies between **SME suppliers** and **non-SME buyers** for the sale of food products
- **EU minimum harmonisation (Article 8):**
 - Short list of prohibited unfair trading practices (UTPs)
 - Minimum enforcement powers for national authorities
 - Coordination between enforcement authorities
 - **Member States may go beyond EU rules**
 - If compatible with internal market rules
- Directive is **complementary**



Product scope - Article 2

- **Agricultural products** listed in **Annex I to the TFEU** intended **for the use as food**
 - **Primary** agricultural products (e.g. fresh vegetables, live animals, fish)
 - **Processed** agricultural products (e.g. ham, cheese, yoghurt without fruit)
- + Products **processed from these products** for the use as food (e.g. yoghurt with fruit)

Emphasis on economic approach through input from DG Competition and its Chief Economist

- Focus on inefficient practices and protect win-win situations for farmers through distinction between:
 - Well-identified, precise "black list" of ex post practices that are blatantly problematic
 - Allow ex-ante practices that create benefits/efficiencies for farmers
- Not regulate trading practices between large suppliers and large buyers:
 - (i) Lower power imbalance if any, (ii) already large margins for large suppliers, (iii) no benefit for farmers, and (iv) consumers will pay more

Operators' scope: SME suppliers vs non-SME buyers – Article 1

What is an SME*?

Company category	Staff head-count	Turnover	or Balance sheet total
Medium-sized	< 250	≤ € 50 m	≤ € 43 m
Small	< 50	≤ € 10 m	≤ € 10 m
Micro	< 10	≤ € 2 m	≤ € 2 m



SME supplier = somebody who sells, e.g.

- Farmer
- Intermediary who supplies, e.g. processor, distributor
- Including groups: POs and associations of POs

Regardless of place of establishment (incl. foreign supplier)



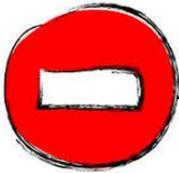
Non-SME buyer = someone who buys by way of trade (including manufacturing and retail groups) established in EU



* Recommendation 2003/361

List of UTPs – Article 3

Always
prohibited
(black list)



1. Payments later than 30 days for perishable food products
2. Short-notice cancellations of perishable food products
3. Unilateral and retroactive contract changes
4. Wasted product risk transferred to supplier
5. Unsold product risk transferred to supplier
6. Payments for stocking, displaying and listing
7. Contributions to buyer's promotion campaign
8. Contributions to buyer's marketing campaign

Only prohibited
if not covered
by parties'
agreement
(grey list)

Prohibited UTPs – Transparency and mandatory nature

- **Article 3(3) : Transparency/safeguard via information obligation**
 - For listing fees, promotion and marketing contribution, the buyer is obliged to give an **estimate of the payment**, if the supplier asks for that and
 - For listing fees and marketing of food products by the buyer also a **cost estimate**, if the supplier asks for that
- **Article 3(4) : Mandatory character of the UTP list**
 - The provisions in Article 3 override the choice of the applicable law – mandatory provisions



National enforcement authorities in EU

- Designate one enforcement authority per MS
- Enforcement authority where buyer is established normally able to investigate the case
- Provide mutual assistance in cross-border investigations (Article 7)
- Cooperation between national enforcers (\approx ECN)
 - Annual meeting: discuss enforcement and best practices
 - Exchange of information



Enforcement authority's minimum set of powers

- Initiate own investigations or act upon complaint
- Ensure confidentiality of complainant while respecting rights of defence of the buyer
- Request information
- Bring an infringement to an end
- Impose fines based on nature, duration and gravity of infringement (no min. or max. fine foreseen)
- Publish decisions and annual report

Main discussion points in the legislative process

- Scope in terms of operators:
 - Maintain COM proposal: SME supplier (mainly small farmers) vs non-SME buyer
 - Expand the scope to cover all suppliers or up to a certain ceiling?
- List of UTPs:
 - Stick to 4 + 4 UTPs proposed by COM
 - Accept some of the 40+ additional UTPs proposed by EP?



Thank you!