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EU Adopts New Directive on Unfair Trading Practices

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Report Highlights:

On March 12, 2019, the European Parliament formally adopted the new EU Directive on Unfair Trading Practices in the Food Supply Chain. The motivation for this legislation is to rebalance power among farmers, food processors, and retailers. The Directive forbids certain commercial practices such as late payments for perishable food products or last minute order cancellations. Third countries' businesses are included in the scope of the Directive. U.S. companies exporting food and agricultural products to the EU are eligible to benefit from the Directive's safeguards; U.S. companies will also have to comply with the same rules as European companies, e.g., the Directive forbids unilateral contract changes for perishable goods.

General Information:

The question of unfair trading practices in the food supply chain has been a recurring one in the European Union (EU) for more than a decade. Both the European Parliament and the Council of the European Union have called for an EU-wide piece of legislation to ensure fairness between food producers, suppliers, processors and distributors.

On March 12, 2019, the European Parliament formally adopted the new [EU Directive on Unfair Trading Practices in the Food Supply Chain](#). With this Directive, the European Union provides a minimum level of protection against unfair trading practices that will be uniform across Member States. However, Member States, while transposing the Directive into national law, are allowed to be stricter than the Directive and go beyond EU requirements.

The Directive prohibits 16 specific unfair trading practices: 10 “black practices” are prohibited whatever the circumstances and 6 “grey practices” are allowed if the supplier and the buyer agree on them beforehand in a clear and unambiguous manner. Unfair trading practices to be banned include:

- late payments for perishable food products;
- last minute order cancellations;
- unilateral or retroactive changes to contracts;
- forcing the supplier to pay for wasted products;
- refusing written contracts;
- misuse of confidential information; and
- threats of retaliation against suppliers.

Scope of the Directive:

The Directive’s scope covers suppliers that sell agricultural products [1] as well as products, which are processed from these products for the use of food. The Directive does not apply to the end consumer; it only regulates business-to-business exchanges. Suppliers protected under the Directive can be farmers and cooperatives but also manufacturers and distributors.

The Directive offers protection along the agri-food supply chain depending on the relative size of the operator. After much negotiation between the three institutions, decision-makers agreed on a “step approach” based on revenue figures, [2] as a proxy that reflects the different bargaining powers of suppliers and buyers. Therefore, the Directive will apply safeguards for small and medium sized enterprises with a revenue below EUR 350 million. The text divides suppliers into five sub-categories with revenues below EUR 2 million, EUR 10 million, EUR 50 million, EUR 150 million, and EUR 350 million. A supplier with an annual revenue of EUR 25 million, for example, is only protected against buyers with a revenue higher than EUR 50 million.

Third countries’ businesses are included in the scope of the Directive and U.S. companies exporting food and agricultural products to the EU will benefit from the same safeguards and will have to comply

with the same rules as European companies. Post encourages U.S. exporters to check with their importers if they fall within the scope of the Directive. Exporters should always conduct their own due diligence before entering into business ventures or other commercial arrangements.

Next Steps:

The Council of the European Union will adopt the text in the coming weeks. The Directive will then be published in the Official Journal of the EU. Following this publication, Member States will have 24 months to transpose it into national law and then 6 months to apply the new rules.

More Information:

- [GAIN Report E18025 “EU Proposes to Regulate Unfair Practices in the Food Supply Chain”](#)
- [European Commission’s brochure on the Directive](#)
- [European Parliament’s Press Release](#)

^[1] Agricultural products as listed in Annex I of the [Treaty on the Functioning of the European Union](#)

^[2] The revenue is established according to the criteria laid down in [Commission Recommendation 2003/361/EC](#) on SMEs