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EU proposes to regulate unfair practices in the food supply chain

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Report Highlights:

On April 12, 2018, the European Commission published a proposal for a Directive on unfair trading practices in the food supply chain. If the proposal were to be adopted, it would forbid certain commercial practices such as late payments for perishable food products or last minute order cancellations. The proposal only concerns sales by small and medium sized enterprises (SMEs) to non-SMEs buyers. Non-EU businesses are included in the scope of this proposal. Stakeholders can provide feedback on the draft Directive before June 7, 2018.

General Information:

A recurring topic in most debates around farming in the EU is the question of fairness and power imbalance in Europe's food supply chain between food producers, suppliers and distributors. In many Member States, producers claim that retail consolidation is creating unfair trading practices (UTPs) and that they are operating in a competitive oligopoly. Increasingly, farmers have sympathetic ears from European consumers. According to an October 2015 [Eurobarometer survey](#), European citizens support strengthening the farmer's role in the food chain as one of the main priorities of the new EU Common Agricultural Policy (CAP). Farmers are seeking price transparency from processors and retailers and calling for better contractual relationships with large retail chains. Meanwhile distributors and retailers argue that European legislation would reduce competition, with the consumer ending up paying even more for their food. As discussed below, the Commission appears to have aligned with farmers' organizations and food manufacturers addressing some of their requests with a new legislative proposal.

Commission Proposal:

After more than a year and a half of discussions between the different services of the Commission, Phil Hogan, Commissioner for Agriculture and Rural Development (DG AGRI), presented a proposal for a [Directive on unfair trading practices in business-to-business relationships in the food supply chain](#) on April 12, 2018. Notably, the European Commission's DG AGRI was able to launch this proposal despite some reluctance from the Commission's Directorate General on Competition (DG COMP) and Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) for creating specific competition rules for the food sector. According to Commissioner Hogan, DG COMP and DG GROW aired concerns this Directive would erode progress by the EU to make the CAP more market-oriented.

The proposal foresees the establishment of a minimum list of prohibited unfair trading practices between buyers and suppliers. This leaves room for Member States to propose further measures as they see fit. This also permits Member States that already have legislation to be able to keep the provisions that are in place.

The proposed Directive defines the unfair trading practices that would be prohibited:

- late payments for perishable food products;
- last minute order cancellations;
- unilateral or retroactive changes to contracts, and
- methods forcing the supplier to pay for wasted products.

This protection would only apply to small and medium sized suppliers (SMEs) [1] in the food supply chain with regards to their sales to buyers that are not SMEs. Of note, third country suppliers would also be able to invoke this Directive if they sell to EU buyers.

Food products covered include perishable agricultural products as defined in [Annex I](#) of the Treaty on the Functioning of the European Union and products processed from those agricultural products.

The proposal also requires Member States to designate a public authority to enforce the Directive and establishes an annual reporting requirement. The full text of the proposal is available [here](#).

Initial reactions to the Commission's proposals are largely positive [by farming groups](#) and agricultural non-governmental organizations such as OxFam and Fair Trade Advocacy Office (FTAO). FoodDrinkEurope and the European Brands Association also [welcomed](#) this move from the Commission, but would have liked this initiative to go beyond SME suppliers. Whereas retail organizations have expressed skepticism that there is an EU-wide structural problem for their sector and that this legislation would improve situation of farmers, as detailed in [the press release of EuroCommerce](#), the umbrella organization representing the retail and wholesale sector.

Background:

The issue of fairness in the food chain is not a new issue in the EU. Some EU Member States have already taken actions to address UTPs. In the United Kingdom for example, the government appointed a [Groceries Code Adjudicator](#) in 2013— akin to a food supply chain ombudsman, to oversee the relationship between supermarkets and their suppliers. In Spain, the government adopted a [Code of Good Business Practices in Food Contracting](#) in 2013. Spain crafted its system using a mixed model, whereby a public system that regulates commercial relationships coexists with a self-regulating private system that establishes a framework for better commercial relationships.

In late 2015, the European Commission set up an expert group of 12 members called the "[Agricultural Markets Task Force](#)" (AMTF) to elaborate recommendations for policy and legislative initiatives with a view to improve the position of farmers in the food supply chain. In its [final report](#) of November 2016, the Task Force recommended that several key rules should be part of any legislative proposals from the Commission, such as prohibiting unilateral and retroactive changes to contracts for volume standards and prices; requiring contributions for promotional or marketing costs; and last minute cancellations for perishable products.

In June 2016, the European Parliament, through [Resolution 2015/2065](#) on unfair trading practices in the food supply, called on the European Commission to take action in support of producers and to bring standardization and transparency to the sector. In December 2016, the Agriculture and Fisheries Council adopted [Council Conclusions](#) also called on the Commission to act swiftly to strengthen farmers' position in the food supply chain.

Next steps:

The European Parliament and the Council of the European Union, as co-legislators, will now examine the Commission's proposal. They can propose amendments separately, but will have to find a common position in order for the Directive to be adopted. The Commission initiated a feedback period, open to all stakeholders, that will close on June 7, 2018. The Commission will then present a summary of the feedback received to the Parliament and Council.

^[1] [Commission Recommendation 2003/361/EC](#) defines the category of micro, small and medium-sized

enterprises (SMEs) as made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.