



2018/0082(COD)

18.6.2018

*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council
on unfair trading practices in business-to-business relationships in the food
supply chain
(COM(2018)0173 – C8-0139/2018 – 2018/0082(COD))

Committee on Agriculture and Rural Development

Rapporteur: Paolo De Castro

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	41

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain (COM(2018)0173 – C8-0139/2018 – 2018/0082(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0173),
 - having regard to Article 294(2) and Article 43(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0139/2018),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the German Bundesrat, the Romanian Senate and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Agriculture and Rural Development and the opinions of the Committee on Internal Market and Consumer Protection and the Committee on the Environment, Public Health and Food Safety (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C of , p. .

Amendment 1

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) In 2010, the Commission-led High Level Forum for a Better Functioning Food Supply Chain endorsed a set of principles of good practice in vertical relations in the food supply chain agreed by organisations representing a majority of the operators in the food supply chain. Those principles became the basis for the Supply Chain Initiative launched in 2013.

Or. en

Amendment 2

Proposal for a directive Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) In 2011, the OECD adopted the updated Guidelines for Multinational Enterprises on Responsible Business Conduct, which represent the most comprehensive set of recommendations promoted by governments in existence, and cover all major areas of business ethics.

Or. en

Amendment 3

Proposal for a directive Recital 3

Text proposed by the Commission

Amendment

(3) Different operators are active in the

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food supply chain at the stages of production, processing, marketing, distribution *and* retail of food products. The chain is by far the most important channel for bringing food products from “farm to fork”. Those operators trade food products, that is to say primary agricultural products, including fishery and aquaculture products, as listed in Annex I to the Treaty *for use as food*, and other food products not listed in that Annex but processed from agricultural products for use as food.

agricultural and food supply chain at the stages of production, processing, *importing, exporting*, marketing, distribution, retail *and sale to final consumers* of food products. The chain is by far the most important channel for bringing food products from “farm to fork”. Those operators trade *agricultural and* food products, that is to say primary agricultural products, including fishery and aquaculture products, as listed in Annex I to the Treaty, and other food products not listed in that Annex but processed from agricultural products for use as food.

Or. en

Justification

For the first part of the amendment: see justification under Amendment 4 below.

Amendment 4

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) While business risk is inherent in all economic activity, agricultural production is particularly fraught with uncertainty due to its reliance on biological processes, since agricultural products are to a greater or lesser extent perishable and seasonable, and its exposure to weather conditions. In an agricultural policy environment that is distinctly more market-oriented than in the past, protection against unfair trading practices has become more important for operators active in the food supply chain and in particular for agricultural producers and their organisations.

Amendment

(4) While business risk is inherent in all economic activity, agricultural production is particularly fraught with uncertainty due to its reliance on biological processes, since agricultural products are to a greater or lesser extent perishable and seasonable, and its exposure to weather conditions. In an agricultural policy environment that is distinctly more market-oriented than in the past, protection against unfair trading practices has become more important for operators active in the *agricultural and* food supply chain and in particular for agricultural producers and their organisations.

Or. en

Justification

The amendment aims at protecting any farmer, extending the scope to all the products included in Annex I to the Treaty, as UTPs can also affect those producers that sell unprocessed agricultural products not intended for human consumption (e.g. cut flowers, feed and others).

Amendment 5

Proposal for a directive Recital 5

Text proposed by the Commission

(5) The number and size of operators vary across the different stages of the food supply chain. Differences in bargaining power relate to the different levels of concentration of operators and can enable the unfair exercise of bargaining power by using unfair trading practices. Unfair trading practices are ***in particular*** harmful for small and medium-sized operators in the food supply chain. Agricultural producers, who supply primary agricultural products, are ***largely*** small and medium-sized.

Amendment

(5) The number and size of operators vary across the different stages of the ***agricultural and*** food supply chain. Differences in bargaining power relate to the different levels of concentration of operators and can enable the unfair exercise of bargaining power by using unfair trading practices. Unfair trading practices are ***even more*** harmful for small and medium-sized operators in the ***agricultural and*** food supply chain. Agricultural producers, who supply primary agricultural products, are ***often*** small and medium-sized.

Or. en

Amendment 6

Proposal for a directive Recital 6

Text proposed by the Commission

(6) A majority of all Member States, but not all of them, have specific national rules that protect suppliers against unfair trading practices occurring in business-to-business relationships in the food supply chain. Where reliance on contract law or self-regulatory initiatives is possible, fear of retaliation against a complainant limits the practical value of these forms of

Amendment

(6) A majority of all Member States, but not all of them, have specific national rules that protect suppliers against unfair trading practices occurring in business-to-business relationships in the ***agricultural and*** food supply chain. Where reliance on contract law or self-regulatory initiatives is possible, fear of retaliation against a complainant limits the practical value of

redress. Certain Member States, which have specific rules on unfair trading practices in place, therefore entrust administrative authorities with their enforcement. However, Member States' unfair trading practices rules - to the extent they exist - are characterised by significant divergence.

these forms of redress. Certain Member States, which have specific rules on unfair trading practices in place, therefore entrust administrative authorities with their enforcement. However, Member States' unfair trading practices rules - to the extent they exist - are characterised by significant divergence.

Or. en

Amendment 7

Proposal for a directive Recital 7

Text proposed by the Commission

(7) A minimum Union standard of protection against certain manifestly unfair trading practices should be introduced to reduce the occurrence of such practices and to contribute to ensuring a fair standard of living for agricultural producers. It should benefit all agricultural producers or any natural or legal person that supplies food products, including producer organisations and associations of producer organisations, ***provided that all those persons meet the definition of micro, small and medium-sized enterprises set out in the Annex to Commission Recommendation 2003/361/EC¹²***. Those ***micro, small or medium*** suppliers are particularly vulnerable to unfair trading practices and least able to weather them without negative effects on their economic viability. As the financial pressure ***on small and medium-sized enterprises*** caused by unfair trading practices often passes through the chain and reaches agricultural producers, rules on unfair trading practices should also protect ***small and medium-sized*** intermediary suppliers at the stages downstream of primary production. Protection of intermediary suppliers should also avoid unintended consequences (notably in terms

Amendment

(7) A minimum Union standard of protection against certain manifestly unfair trading practices should be introduced to reduce the occurrence of such practices and to contribute to ensuring a fair standard of living for agricultural producers. It should benefit all agricultural producers or any natural or legal person that supplies ***agricultural and*** food products, including producer organisations and associations of producer organisations. Those suppliers are particularly vulnerable to unfair trading practices and least able to weather them without negative effects on their economic viability. As the financial pressure caused by unfair trading practices often passes through the chain and reaches agricultural producers, rules on unfair trading practices should also protect intermediary suppliers at the stages downstream of primary production. Protection of intermediary suppliers should also avoid unintended consequences (notably in terms of unduly raising prices) of trade diversion away from agricultural producers and their associations, who produce processed products, to non-protected suppliers.

of unduly raising prices) of trade diversion away from agricultural producers and their associations, who produce processed products, to non-protected suppliers.

¹² OJ L 124, 20.5.2003, p. 36.

¹² OJ L 124, 20.5.2003, p. 36.

Or. en

Justification

The amendment aims at protecting not only farmers, but also their organizations (often larger than a SME) and avoid possible trade diversions away from SMEs, while clarifying that UTPs also occur when a buyer imposes ancillary services related to the products sold by the supplier.

Amendment 8

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) As the place of establishment of a buyer is not always the same place where the agricultural and food products are delivered and marketed, the relevant rules should apply to all buyers, independently of their place of establishment, when the products they buy are intended for the Union agricultural and food supply chain.

Or. en

Justification

The amendment aims at including within the scope of the Directive those operators that, though established outside the EU, buy and sell products in the EU market, and avoiding that a buyer can escape the provisions by simply moving its place of establishment outside the EU.

Amendment 9

Proposal for a directive Recital 8

Text proposed by the Commission

(8) Suppliers established outside the Union should be able to rely on the Union minimum standard when they sell food products to buyers established in the Union to avoid unintended distorting effects resulting from the protection of suppliers in the Union.

Amendment

(8) Suppliers established outside the Union should be able to rely on the Union minimum standard when they sell ***agricultural and*** food products to buyers established in the Union to avoid unintended distorting effects resulting from the protection of suppliers in the Union.

Or. en

Amendment 10

**Proposal for a directive
Recital 9**

Text proposed by the Commission

(9) The relevant rules should apply to business conduct by larger, that is to say non-small and medium-sized, operators in the food supply chain as they are the ones who normally possess stronger relative bargaining power when trading with small and medium-sized suppliers.

Amendment

(9) The relevant rules should apply to business conduct by larger, that is to say non-small and medium-sized, operators in the ***agricultural and*** food supply chain as they are the ones who normally possess stronger relative bargaining power when trading with small and medium-sized suppliers.

Or. en

Amendment 11

**Proposal for a directive
Recital 10**

Text proposed by the Commission

(10) As a majority of Member States already have national rules on unfair trading practices, albeit diverging, it is appropriate to use the tool of a Directive to introduce a minimum protection standard under Union law. This should enable Member States to integrate the relevant

Amendment

(10) As a majority of Member States already have national rules on unfair trading practices, albeit diverging, it is appropriate to use the tool of a Directive to introduce a minimum protection standard under Union law. This should enable Member States to integrate the relevant

rules into their national legal order in such a way as to bring about a cohesive regime. Member States should not be precluded from adopting and applying on their territory stricter national laws protecting **small and medium-sized** suppliers and buyers against unfair trading practices occurring in business-to-business relationships in the food supply chain, subject to the limits of Union law applicable to the functioning of the internal market.

rules into their national legal order in such a way as to bring about a cohesive regime. Member States should not be precluded from adopting and applying on their territory stricter national laws protecting suppliers and buyers against unfair trading practices occurring in business-to-business relationships in the **agricultural and** food supply chain, subject to the limits of Union law applicable to the functioning of the internal market.

Or. en

Justification

Same justification as under AM 7.

Amendment 12

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) As unfair trading practices may occur at any stage of the sale of **a** food product, i.e. before, during or after a sales transaction, Member States should ensure that the provisions of this Directive should apply to such practices whenever they occur.

Amendment

(11) As unfair trading practices may occur at any stage of the sale of **an agricultural or** food product, i.e. before, during or after a sales transaction, **or in connection with the provision of services by the buyer to the supplier**, Member States should ensure that the provisions of this Directive should apply to such practices whenever they occur.

Or. en

Amendment 13

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) When deciding whether an

Amendment

(12) When deciding whether an

individual trading practice is considered unfair it is important to reduce the risk of limiting the use of fair and efficiency-creating agreements agreed between parties. As a result, it is appropriate to distinguish practices that are foreseen in clear and unambiguous terms in supply agreements between parties from practices that occur after the transaction has started without being agreed in advance in clear and unambiguous terms, so that only unilateral **and retrospective** changes to those relevant terms of the supply agreement are prohibited. However, certain trading practices are considered as unfair by their very nature and should not be subject to the parties' contractual freedom to deviate from them.

individual trading practice is considered unfair it is important to reduce the risk of limiting the use of fair and efficiency-creating agreements agreed between parties. As a result, it is appropriate to distinguish practices that **do not result from an unbalanced power relationship and** are foreseen in clear and unambiguous terms in supply agreements between parties, from practices that occur after the transaction has started without being agreed in advance in clear and unambiguous terms, so that only unilateral changes to those relevant terms of the supply agreement are prohibited. However, certain trading practices are considered as unfair by their very nature and should not be subject to the parties' contractual freedom to deviate from them.

Or. en

Amendment 14

Proposal for a directive Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The use of written contracts in the agricultural and food supply chain may help to reinforce the responsibility of operators and avoid certain unfair commercial practices, as well as to increase the awareness of the need to better take into account the signals of the market, to improve price transmission and to adapt supply to demand. In order to incentivise the use of such contracts suppliers, or their associations, should have the right to request a written contract.

Or. en

Justification

In line with the Regulation on a Single CMO, the possibility should be given to all suppliers (not only farmers) to ask for written contracts, enabling also Member States to encourage an increased contractualization between different actors in the agricultural and food supply chain.

Amendment 15

Proposal for a directive Recital 13

Text proposed by the Commission

(13) In order to ensure an effective enforcement of the prohibitions laid down in this Directive, Member States should designate an authority that is entrusted with their enforcement. The authority should be able to act either on its own initiative or by way of complaints by parties affected by unfair trading practices in the food supply chain. Where a complainant requests that his identity remain confidential because of fear of retaliation, the enforcement authorities of the Member States should honour such a request.

Amendment

(13) In order to ensure an effective enforcement of the prohibitions laid down in this Directive, Member States should designate an authority that is entrusted with their enforcement. The authority should be able to act either on its own initiative or by way of complaints by parties affected by unfair trading practices in the **agricultural and** food supply chain. Where a complainant requests that his identity remain confidential because of fear of retaliation, the enforcement authorities of the Member States should honour such a request.

Or. en

Amendment 16

Proposal for a directive Recital 14

Text proposed by the Commission

(14) Complaints by producer organisations or associations of such organisations can serve to protect the identity of individual members of the organisation who are small and medium-sized suppliers and consider themselves exposed to unfair trading practices. Enforcement authorities of the Member States should therefore be able to accept

Amendment

(14) Complaints by producer **or supplier** organisations or associations of such organisations can serve to protect the identity of individual members of the organisation who are small and medium-sized suppliers and consider themselves exposed to unfair trading practices. Enforcement authorities of the Member States should therefore be able to accept

and act upon complaints by such entities while protecting the procedural rights of the defendant.

and act upon complaints by such entities while protecting the procedural rights of the defendant.

Or. en

Justification

The amendment aims at extending to representative associations the right to lodge a complaint on behalf of one or more of their members, as most of the individual suppliers do not have the means to proceed autonomously.

Amendment 17

Proposal for a directive Recital 15

Text proposed by the Commission

(15) The enforcement authorities of the Member States should have the necessary powers that enable them to effectively gather any factual information by way of information requests. They should ***have the power to order the termination of*** a prohibited practice, where applicable. The existence of a deterrent, such as the power to impose fines and the publication of investigation results, can encourage behavioural change and pre-litigation solutions between the parties and should therefore be part of the powers of the enforcement authorities. The Commission and the enforcement authorities of the Member States should cooperate closely so as to ensure a common approach with respect to the application of the rules set out in this Directive. In particular, the enforcement authorities should provide each other mutual assistance, for example by sharing information and assisting in investigations which have a cross-border dimension.

Amendment

(15) The enforcement authorities of the Member States should have the necessary powers that enable them to effectively gather any factual information by way of information requests. They should ***ensure the fair and proper functioning of the agricultural and food supply chain and promptly terminate*** a prohibited practice, where applicable. The existence of a deterrent, such as the power to impose fines ***or other sanctions*** and the publication of investigation results, can encourage behavioural change and pre-litigation solutions between the parties and should therefore be part of the powers of the enforcement authorities. The Commission and the enforcement authorities of the Member States should cooperate closely so as to ensure a common approach with respect to the application of the rules set out in this Directive. In particular, the enforcement authorities should provide each other mutual assistance, for example by sharing ***all relevant*** information and assisting in investigations which have a cross-border dimension.

Amendment 18

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) As a means to improve the functioning of the agricultural and food supply chain, Member States should be able to promote the use of mediation or of an alternative dispute resolution mechanism, while the Commission should facilitate dialogue and the exchange of best practices among all relevant stakeholders at Union level.

Or. en

Amendment 19

Proposal for a directive Recital 17

Text proposed by the Commission

Amendment

(17) The rules laid down in this Directive should not impair the possibility for the Member States to maintain existing rules that are ***further-reaching*** or to adopt such rules in the future, subject to the limits of Union law applicable to the functioning of the internal market. The rules would apply alongside voluntary governance measures.

(17) The rules laid down in this Directive should not impair the possibility for the Member States to maintain existing rules that are ***stricter with regard to the unfair trading practices identified in this Directive or to additional ones***, or to adopt such rules in the future, subject to the limits of Union law applicable to the functioning of the internal market. The rules would apply alongside voluntary governance measures.

Or. en

Amendment 20

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) In the interest of an effective implementation of the policy in respect of unfair trading practices in business-to-business relationships in the food supply chain, the Commission should review the application of this Directive and submit a report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The review should also pay particular attention to whether protection of small and medium-sized buyers of food products in the supply chain – ***in addition to the protection of small and medium sized suppliers*** – in the future would be justified,

Amendment

(19) In the interest of an effective implementation of the policy in respect of unfair trading practices in business-to-business relationships in the ***agricultural and*** food supply chain, the Commission should review the application of this Directive and submit a report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The review should also pay particular attention to whether protection of small and medium-sized buyers of ***agricultural and*** food products in the supply chain in the future would be justified,

Or. en

Amendment 21

Proposal for a directive

Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive establishes a minimum list of prohibited unfair trading practices between buyers and suppliers in the food supply chain and lays down minimum rules concerning their enforcement and arrangements for the coordination between enforcement authorities.

Amendment

1. This Directive establishes a minimum list of prohibited unfair trading practices between buyers and suppliers in the ***agricultural and*** food supply chain and lays down minimum rules concerning their enforcement and arrangements for the coordination between enforcement authorities.

Or. en

Justification

The amendment aims at protecting any farmer, extending the scope to all the products included in Annex I to the Treaty, as UTPs can also affect those producers that sell unprocessed agricultural products not intended for human consumption (e.g. cut flowers, feed and others).

Amendment 22

Proposal for a directive Article 1 – paragraph 2

Text proposed by the Commission

2. This Directive applies to certain unfair trading practices which occur in relation to the sales of food products by a supplier ***that is a small and medium-sized enterprise*** to a buyer that is not a small and medium-sized enterprise.

Amendment

2. This Directive applies to certain unfair trading practices which occur in relation to the sales of ***agricultural and food products, as well as to the services related to those products***, by a supplier to a buyer that is not a small and medium-sized enterprise.

Or. en

Justification

The amendment aims at protecting not only farmers, but also their organizations (often larger than a SME) and avoid possible trade diversions away from SMEs, while clarifying that UTPs also occur when a buyer imposes ancillary services related to the products sold by the supplier.

Amendment 23

Proposal for a directive Article 2 – paragraph 1 – point -a (new)

Text proposed by the Commission

Amendment

(-a) “unfair trading practice” means any practice that:

- grossly deviates from good commercial conduct, is contrary to good faith and fair dealing and is unilaterally imposed by one trading partner on another;***
- imposes or attempts to impose an unjustified and disproportionate transfer***

*of a buyer's economic risk to the supplier;
or*

*- imposes or attempts to impose a
significant imbalance of rights and
obligations on the supplier in the
commercial relationship before, during or
after the contract;*

Or. en

Justification

The amendment provides an overarching definition of UTPs, which is based on principles largely recognised and accepted in the EU, to be used by Member States in identifying prohibited practices going beyond those established by the Directive.

Amendment 24

Proposal for a directive

Article 2 – paragraph 1 – point a

Text proposed by the Commission

(a) “buyer” means any natural or legal person ***established in the Union*** who buys food products by way of trade. The term "buyer" may include a group of such natural and legal persons;

Amendment

(a) “buyer” means any natural or legal person, ***irrespective of that person's place of establishment***, who buys ***agricultural and*** food products by way of trade, ***for processing, distribution or retail, and/or provides services related to those products, in the Union***. The term "buyer" may include a group of such natural and legal persons;

Or. en

Justification

The amendment aims at including within the scope of the Directive those operators that, though established outside the EU, buy and sell products in the EU market, and avoiding that a buyer can escape the provisions by simply moving its place of establishment outside the EU.

Amendment 25

Proposal for a directive

Article 2 – paragraph 1 – point b

Text proposed by the Commission

(b) “supplier” means any agricultural producer or any natural or legal person, irrespective of their place of establishment, who sells food products. The term “supplier” may include a group of such agricultural producers or such natural and legal persons, including producer organisations and associations of producer organisations;

Amendment

(b) “supplier” means any agricultural producer or any natural or legal person, irrespective of their place of establishment, who sells ***agricultural and*** food products. The term “supplier” may include a group of such agricultural producers or such natural and legal persons, including producer organisations and associations of producer organisations;

Or. en

Amendment 26

Proposal for a directive

Article 2 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) “economic dependence” means a power relationship between a supplier and a buyer with different strength of bargaining power, in which the supplier depends on the buyer because of the importance of the deliveries to the buyer in terms of quantity, the buyer's reputation, its market share or the absence of sufficient alternative sales possibilities;

Or. en

Justification

The amendment aims at including the principle of economic dependence, intended as an unbalanced power relationship between a supplier and a buyer.

Amendment 27

Proposal for a directive

Article 2 – paragraph 1 – point d

Text proposed by the Commission

(d) “food products” means products listed in Annex I to the Treaty ***intended for use as food*** as well as products not listed in that Annex, but processed from those products for use as food;

Amendment

(d) “***agricultural and*** food products” means products listed in Annex I to the Treaty as well as products not listed in that Annex, but processed from those products for use as food;

Or. en

Justification

See justification under Amendment 21.

Amendment 28

**Proposal for a directive
Article 2 – paragraph 1 – point e**

Text proposed by the Commission

(e) “perishable food products” means food products that will become unfit for ***human*** consumption unless they are stored, treated, packaged or otherwise conserved to prevent them from becoming unfit.

Amendment

(e) “perishable ***agricultural and*** food products” means ***agricultural and*** food products that will become unfit for ***proper use or*** consumption unless they are stored, treated, packaged or otherwise conserved to prevent them from becoming unfit.

Or. en

Amendment 29

**Proposal for a directive
Article 3 – paragraph 1 – introductory part**

Text proposed by the Commission

1. Member States shall ensure that the following trading practices are prohibited:

Amendment

1. Member States shall ensure that ***at least*** the following trading practices are prohibited:

Or. en

Amendment 30

Proposal for a directive

Article 3 – paragraph 1 – point a – introductory part

Text proposed by the Commission

(a) a buyer pays a supplier **for perishable food products** later than 30 calendar days **after the** receipt of the supplier's invoice or later than 30 calendar days after the date of delivery of the perishable food products, whichever is the later. **This prohibition** shall be without prejudice:

Amendment

(a) a buyer pays a supplier later than:

- 30 calendar days **starting from the last day of the month of** receipt of the supplier's invoice **for perishable agricultural and food products**, or later than 30 calendar days after the date of delivery of the perishable **agricultural and food products, whichever is the later; or**

- 60 calendar days **starting from the last day of the month of receipt of the supplier's invoice for agricultural and food products, or later than 60 calendar days after the date of delivery of the agricultural and food products, whichever is the later.**

Member States shall ensure that, in sales transactions and for services provided where the buyer is a public authority, those practices are equally prohibited.

These prohibitions shall be without prejudice:

Or. en

Justification

The amendment aims at taking into account the different accounting regimes present in the EU, and introduces a payment term for non-perishable products at 60 days, as also provided for in Directive 2011/7/EU on late payments.

Amendment 31

Proposal for a directive

Article 3 – paragraph 1 – point a – indent 2 a (new)

Text proposed by the Commission

Amendment

- ***to the rules on payment terms laid down in the statute of a producer organisation or of an association of producer organisations of which an agricultural producer is a member, if that statute contains rules enabling members to scrutinise democratically their organisation and its decisions;***

Or. en

Justification

The amendment aims at recognising the particular nature of contributions from farmers to their producer organisations and cooperatives.

Amendment 32

Proposal for a directive

Article 3 – paragraph 1 – point a – indent 2 b (new)

Text proposed by the Commission

Amendment

- ***to sales transactions and services provided, which are based on agreements, decisions and concerted practices of inter-branch organisations recognised under Article 157 of Regulation (EU) No 1308/2013, where those agreements, decisions and concerted practices concern agricultural and food products falling under a quality scheme established in accordance with Regulation (EC) No 110/2008 of the European Parliament and of the Council^{1a}, Regulation (EU) No 1151/2012 of the European Parliament and of the Council^{1b}, Regulation (EU) No 1308/2013 and Regulation (EU) No 251/2014 of the European Parliament and of the Council^{1c};***

^{1a} Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).

^{1b} Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

^{1c} Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (OJ L 84, 20.3.2014, p. 14).

Or. en

Justification

The amendment aims at recognising the particular nature of agreements within inter-branch organisations provided for under the Regulation on a Single CMO, where those agreements concern EU quality products.

Amendment 33

Proposal for a directive

Article 3 – paragraph 1 – point b

Text proposed by the Commission

(b) a buyer cancels orders of perishable food products *at such short notice that a supplier cannot reasonably be expected to find an alternative to commercialise or use these* products;

Amendment

(b) a buyer cancels orders of perishable *agricultural and* food products *with* notice *of less than 60 days from the agreed date for delivery of the* products;

Or. en

Justification

The amendment aims at better defining the notion of “short notice” (when a buyer cancels orders of perishable food products) with a fixed time-limit of 60 days.

Amendment 34

Proposal for a directive

Article 3 – paragraph 1 – point c

Text proposed by the Commission

(c) a buyer unilaterally ***and retroactively*** changes the terms of the supply agreement concerning the frequency, timing or volume of the supply or delivery, the quality standards or the prices of the food products;

Amendment

(c) a buyer unilaterally changes the terms of the supply agreement concerning the frequency, timing or volume of the supply or delivery, the quality standards or the prices of the ***agricultural and*** food products, ***and/or of the services related to those products***;

Or. en

Amendment 35

Proposal for a directive

Article 3 – paragraph 1 – point d

Text proposed by the Commission

(d) a supplier pays for the wastage of food products that occurs on the buyer's premises and that is not caused by the negligence or fault of the supplier.

Amendment

(d) a supplier pays for the wastage of ***agricultural and*** food products that occurs on the buyer's premises and that is not caused by the negligence or fault of the supplier.

Or. en

Amendment 36

Proposal for a directive

Article 3 – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that the

Amendment

2. Member States shall ensure that the

following trading practices are prohibited, if they are not agreed in clear and unambiguous terms at the conclusion of the supply agreement:

following trading practices are prohibited, if they are not agreed in clear and unambiguous terms at the conclusion of the supply agreement ***or if they are the result of the economic dependence of the supplier on the buyer, which enabled the buyer to impose those terms:***

Or. en

Justification

The amendment aims at clarifying that the practices listed in Art. 3(2) should also be prohibited in the case the agreement between the two parties results from the economic dependence of the supplier.

Amendment 37

Proposal for a directive Article 3 – paragraph 2 – point a

Text proposed by the Commission

(a) a buyer returns unsold food products to a supplier;

Amendment

(a) a buyer returns unsold ***agricultural and*** food products to a supplier;

Or. en

Amendment 38

Proposal for a directive Article 3 – paragraph 2 – point b

Text proposed by the Commission

(b) a buyer charges a supplier payment as a condition for the stocking, displaying or listing food products of the supplier;

Amendment

(b) a buyer charges a supplier payment as a condition for the stocking, displaying or listing ***agricultural and*** food products of the supplier;

Or. en

Amendment 39

Proposal for a directive

Article 3 – paragraph 2 – point c

Text proposed by the Commission

(c) a supplier pays for the promotion of food products sold by the buyer. Prior to a promotion and if that promotion is initiated by the buyer, the buyer shall specify the period of the promotion and the expected quantity of the food products to be ordered;

Amendment

(c) a supplier pays for the promotion of ***agricultural and*** food products sold by the buyer. Prior to a promotion and if that promotion is initiated by the buyer, the buyer shall specify the period of the promotion and the expected quantity of the ***agricultural and*** food products to be ordered;

Or. en

Amendment 40

Proposal for a directive

Article 3 – paragraph 2 – point d

Text proposed by the Commission

(d) a supplier pays for the marketing of food products by the buyer.

Amendment

(d) a supplier pays for the marketing of ***agricultural and*** food products by the buyer.

Or. en

Amendment 41

Proposal for a directive

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may prohibit any additional unfair trading practice, as defined in point (-a) of Article 2, beyond those referred to in paragraphs 1 and 2 of this Article.

Or. en

Justification

The amendment clarifies the possibility for Member States to have a more ambitious approach with regard to the number of UTPs they intend to prohibit.

Amendment 42

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

3. If a payment is requested by the buyer for the situations described in points (b), (c) and (d) of paragraph 2, the buyer shall, ***if requested by the supplier***, provide the supplier with an estimate of the payments per unit or overall, whichever is appropriate, and insofar as the situations described in points (b) and (d) of paragraph 2 are concerned also an estimate of the costs and the basis for such estimate.

Amendment

3. If a payment is requested by the buyer for the situations described in points (b), (c) and (d) of paragraph 2, the buyer shall provide the supplier with an estimate of the payments per unit or overall, whichever is appropriate, and insofar as the situations described in points (b) and (d) of paragraph 2 are concerned also an estimate of the costs and the basis for such estimate. ***Those estimates shall be provided in written form by the buyer and agreed by the supplier before the provision of the service concerned.***

Or. en

Justification

The amendment aims at providing suppliers with an increased certainty and transparency regarding the services they pay for.

Amendment 43

Proposal for a directive Article 3 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that the prohibitions laid down in paragraphs 1 and 2 constitute overriding mandatory provisions which are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the supply agreement between the

Amendment

4. Member States shall ensure that the prohibitions laid down in paragraphs 1 and 2 constitute overriding mandatory provisions which are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the supply agreement between the

parties.

parties. *Member States may adopt rules going beyond the prohibitions laid down for each unfair trading practice referred to in paragraphs 1 and 2.*

Or. en

Justification

The amendment clarifies the possibility for Member States to have a more ambitious approach with regard to prohibitions listed in Art. 3.

Amendment 44

Proposal for a directive Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Contractual relations

1. A supplier may require that any delivery of its agricultural and food products to a buyer be the subject of a written contract between the parties and/or the subject of a written offer for a contract from the first purchaser.

2. Any contract or offer for a contract referred to in paragraph 1 shall:

(a) be made in advance of the delivery;

(b) be made in writing; and

(c) include, in particular, the following elements:

(i) the price payable for the delivery, which shall:

— be static and be set out in the contract, and/or

— be calculated by combining various factors set out in the contract, which may include market indicators reflecting changes in market conditions, the quantities delivered and the quality or composition of the agricultural products

delivered,

(ii) the quantity and quality of the products concerned which may or must be delivered and the timing of such deliveries,

(iii) the duration of the contract, which may include either a definite duration or an indefinite duration with termination clauses,

(iv) details regarding payment periods and procedures,

(v) arrangements for collecting or delivering the agricultural products, and

(vi) rules applicable in the event of force majeure.

3. Paragraphs 1 and 2 shall be without prejudice to Articles 148 and 168 of Regulation (EU) No 1308/2013.

4. Member States may identify, share and promote best practices concerning long-term contractualisation, aimed at strengthening the bargaining position of producers within the agricultural and food supply chain.

Or. en

Justification

The amendment, in line with the Regulation on the Single CMO, gives the possibility to all suppliers (not only farmers) to ask for written contracts, enabling also Member States to encourage an increased contractualization between different actors in the agricultural and food supply chain.

Amendment 45

Proposal for a directive Article 4 – paragraph 1

Text proposed by the Commission

Each Member State shall designate *a* public authority to enforce the prohibitions laid down in Article 3 at national level

Amendment

Each Member State shall designate *an existing or new* public authority to enforce the prohibitions laid down in Article 3 at

("enforcement authority").

national level ("enforcement authority").

Or. en

Justification

The amendment aims at leaving Member States with a sufficient degree of choice (within the concept of subsidiarity) in setting up a new authority or extending the powers of existing authorities for the purposes of the Directive.

Amendment 46

Proposal for a directive

Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Competent authority

- 1. The enforcement authority of the Member State in which a buyer suspected to have engaged in a prohibited trading practice is established, shall be competent to investigate unfair trading practices committed by the buyer.***
- 2. If a supplier delivers its products to a recipient related to the buyer but established in a Member State which does not correspond to the place of establishment of the buyer suspected to have engaged in a prohibited trading practice, the enforcement authority of that Member State shall be competent to investigate unfair trading practices committed by the buyer. The recipient of the products shall be considered as jointly liable for any infringements committed.***
- 3. Where the buyer is established outside the Union, the enforcement authority of the Member State where the supplier is established shall be competent to investigate unfair trading practices committed against the supplier.***

Or. en

Justification

The amendment aims at defining the competences of the national enforcement authorities in order to avoid that operators buying and selling products in the EU market can escape the provisions of the Directive by simply moving their place of establishment outside the EU.

Amendment 47

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

1. *A supplier shall address a complaint* to the enforcement authority of the Member State in which the buyer suspected to have engaged in a prohibited trading practice is established.

Amendment

1. *Complaints shall be addressed* to the enforcement authority of the Member State in which the buyer suspected to have engaged in a prohibited trading practice is established. *Where the buyer is established outside the Union, the complaint shall be addressed to the enforcement authority of the Member State in which the supplier is located.*

Or. en

Amendment 48

Proposal for a directive Article 5 – paragraph 1 a (new)

Text proposed by the Commission

1a. A supplier may submit a complaint to the enforcement authority of the Member State in which the supplier is established. The enforcement authority of that Member State shall forward the complaint to the enforcement authority of the Member State in which the buyer suspected to have engaged in a prohibited trading practice is established.

Or. en

Justification

The amendment aims at providing complainants (especially with a view to smaller suppliers) with the possibility to lodge a complaint to foreign authorities through their own national authorities.

Amendment 49

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

2. **Producer** organisations or associations of **producer** organisations whose member(s) or member(s) of their members consider(s) that they are affected by a prohibited trading practice shall have the right to submit a complaint.

Amendment

2. Organisations **of producers or of suppliers** or associations of organisations **of producers or of suppliers** whose member(s) or member(s) of their members consider(s) that they are affected by a prohibited trading practice shall have the right to submit a complaint **and to be party to the proceedings**.

Or. en

Justification

The amendment aims at extending to representative associations the right to lodge a complaint on behalf of one or more of their members, as most of the individual suppliers do not have the means to proceed autonomously.

Amendment 50

Proposal for a directive Article 5 – paragraph 4

Text proposed by the Commission

4. **Where the enforcement authority considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant about the reasons.**

Amendment

deleted

Or. en

Justification

This paragraph is now covered by new Article 6a (see AM 53).

Amendment 51

Proposal for a directive

Article 6 – paragraph 1 – point c

Text proposed by the Commission

(c) to take a decision ***establishing an infringement of the prohibitions laid down in Article 3 and require the buyer to terminate*** the prohibited trading ***practice***. The authority may abstain from taking any such decision, if such decision would risk revealing the identity of a complainant or disclosing any other information in respect of which the complainant considers disclosure harmful to his interests, provided that the complainant has identified that information in accordance with Article 5(3);

Amendment

(c) to take a decision ***granting the supplier interim relief from*** the prohibited trading ***practices***. The authority may abstain from taking any such decision, if such decision would risk revealing the identity of a complainant or disclosing any other information in respect of which the complainant considers disclosure harmful to his interests, provided that the complainant has identified that information in accordance with Article 5(3);

Or. en

Justification

The amendment aims at introducing the possibility of an interim relief, in order to put an end to flagrant abuses creating serious harms to the supplier, without having to wait for the termination of the proceedings.

Amendment 52

Proposal for a directive

Article 6 – paragraph 1 – point d

Text proposed by the Commission

(d) to impose a pecuniary fine on the author of the infringement. The fine shall be effective, proportionate and dissuasive taking into account the nature, duration and gravity of the infringement;

Amendment

(d) to impose a pecuniary fine ***or other sanctions*** on the author of the infringement, ***in accordance with national law*** The fine ***and the other sanctions*** shall be effective, proportionate ***to the harm caused*** and dissuasive taking into account the nature, duration and gravity of the

infringement;

Or. en

Justification

The amendment aims at ensuring that sanctions are proportionate in the context of the different national sanction systems. In addition, it aims at extending the possible deterrents as there might be reasons for stricter penalties or more efficient forms of sanction.

Amendment 53

Proposal for a directive Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Obligations of the enforcement authority

- 1. Enforcement authorities shall control and ensure the proper and fair functioning of the agricultural and food supply chain in the Union.***
- 2. Within 60 days from the receipt of a complaint, the enforcement authority shall inform the complainant about its decision to act or not to act on the complaint.***
- 3. Where the enforcement authority considers that there are insufficient grounds for acting on a complaint, it shall adopt a formal decision rejecting the complaint and inform the complainant about that decision. The decision shall be subject to judicial review.***
- 4. Where the enforcement authority considers that there are sufficient grounds for acting on a complaint, it shall initiate and conduct an investigation, which shall be concluded within six months from the initiation of the investigation. In duly justified cases, the period of six months may be extended by an additional period of six months.***

5. Where, as a result of the investigation, an infringement of the prohibitions laid down in Article 3 is established, the enforcement authority shall require the buyer to terminate the prohibited trading practice. The authority may abstain from taking any such decision, if such decision would risk revealing the identity of a complainant or disclosing any other information in respect of which the complainant considers disclosure harmful to his interests, provided that the complainant has identified that information in accordance with Article 5(3).

Or. en

Justification

The amendment aims at ensuring a proper and fair functioning of the entire supply chain, and providing increased legal certainty by including the obligation for the enforcement authority to start an investigation within 60 days from the date on which the complaint has been lodged, and conclude it within 6 months. In duly justified cases, the 6 months can be extended by another 6 months (thus, the whole investigation has to be concluded within 14 months from the complaint);

Amendment 54

Proposal for a directive Article 6 b (new)

Text proposed by the Commission

Amendment

Article 6b

Mediation or alternative dispute resolution mechanism

1. Without prejudice to the powers and obligations of the enforcement authority laid down in Articles 6 and 6a, Member States may promote the use of mediation or of an alternative dispute resolution mechanism in case of a dispute between a supplier and a buyer due to an unfair trading practice as defined in point (-a) of Article 2.

2. The use of mediation or of an alternative dispute resolution mechanism shall be without prejudice to the right of the supplier to submit a complaint, as set out in Article 5.

Or. en

Justification

The amendments aims at giving Member States the possibility to promote the use of mediation or an alternative dispute resolution mechanism, without interfering with the rights of suppliers and the powers of enforcement authorities.

Amendment 55

**Proposal for a directive
Article 7 – paragraph 1**

Text proposed by the Commission

1. Member States shall ensure that enforcement authorities cooperate effectively with each other and provide each other mutual assistance in investigations that have a cross-border dimension.

Amendment

1. Member States shall ensure that enforcement authorities **share all relevant information**, cooperate effectively with each other and provide each other mutual assistance in investigations that have a cross-border dimension.

Or. en

Justification

The amendment aims at ensuring that Member States always and effectively share all information, including confidential one, in order to have a real cooperation between the national enforcement authorities.

Amendment 56

**Proposal for a directive
Article 7 – paragraph 2**

Text proposed by the Commission

2. The enforcement authorities shall meet once per year to discuss the application of this Directive on the basis of

Amendment

2. The enforcement authorities shall meet **at least** once per year to discuss the application of this Directive on the basis of

the annual reports referred to in Article 9(1) and best practices in the area it covers. The Commission shall facilitate those meetings.

the annual reports referred to in Article 9(1) and best practices in the area it covers. The Commission shall facilitate those meetings.

Or. en

Justification

The amendment aims at promoting a continuous exchange of information and practices among the national enforcement authorities.

Amendment 57

**Proposal for a directive
Article 7 – paragraph 3 a (new)**

Text proposed by the Commission

Amendment

3a. The Commission shall involve all relevant stakeholders in discussions on the application of this Directive, in order to facilitate the exchange of best practices.

Or. en

Justification

The amendment aims at facilitating the dialogue among stakeholders as a means to improve the functioning of the supply chain.

Amendment 58

**Proposal for a directive
Article 9 – paragraph 1**

Text proposed by the Commission

Amendment

1. By 15 March of each year, Member States shall send to the Commission a report on unfair trading practices in business-to-business relationships in the food supply chain. That report shall contain, in particular, all relevant data on the application and enforcement of the rules under this Directive in the Member

1. By 15 March of each year, Member States shall send to the Commission a report on unfair trading practices in business-to-business relationships in the **agricultural and** food supply chain. That report shall contain, in particular, all relevant data on the application and enforcement of the rules under this

State concerned in the previous year.

Directive, *as well as on the efficacy of the measures implemented by the enforcement authority* in the Member State concerned in the previous year.

Or. en

Justification

The amendment aims at ensuring that Member States perform a yearly evaluation of the effectiveness of the implemented measures in order to ban UTPs.

Amendment 59

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

1. *No sooner than* three years after the date of application of this Directive, the Commission shall carry out an evaluation of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions.

Amendment

1. **By** three years after the date of application of this Directive, the Commission shall carry out an evaluation of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions.

Or. en

Amendment 60

Proposal for a directive Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. On the basis of the findings of its report, the Commission may present appropriate legislative proposals.

Or. en

Justification

The amendment aims at creating the conditions for a review of the Directive in order to take into account the new conditions which will characterize the agricultural and food supply chain.

EXPLANATORY STATEMENT

Background of the Commission proposal

In an agricultural policy environment that has become distinctly more market oriented, the good and fair governance of the agricultural and food supply chain has become crucial for all the actors involved, and especially for agricultural producers. The latter are particularly vulnerable to unfair trading practices (UTPs) as they often lack bargaining power that would match that of their partners that buy their products. This is mainly due to the limited alternatives they have for getting their products to final consumers, as well as to the structural weakness of the farming system compared to its downstream partners.

UTPs can put operators' profits and margins under pressure, which can drive otherwise viable and competitive players out of business. For example, unilateral reductions of the contracted quantity for perishable goods equates to income foregone for an operator who may not easily find an alternative outlet for these goods. Late payments for perishable products after they are delivered and sold by the buyer constitute extra financial cost for the supplier. Possible obligations for suppliers to take back products not sold by the buyer may constitute an undue transfer of risk to suppliers. Being forced to contribute to generic in-store promotional activities of distributors, without drawing a fair benefit, may unduly reduce a supplier's margin.

There is a wide-spread consensus that UTPs occur throughout the food supply chain. It is characteristic that no less than three Commission communications since 2009 have focused on the food supply chain including UTPs. Parliament adopted in June 2016 a resolution calling on the Commission to submit a proposal for a Union legal framework concerning UTPs. The Council, in December 2016, invited the Commission to undertake an impact assessment with a view to proposing a Union legal framework or non-legislative measures to address UTPs.

Specific UTP rules already exist in 20 Member States. However, their heterogeneity is significant. In certain Member States, there is no, or ineffective specific protection against UTPs. Another existing instrument is the voluntary Supply Chain Initiative (SCI), which is a private industry initiative that seeks to govern UTPs and provides a forum for early and non-litigious dispute resolution. The SCI is, however, unlikely to develop into a comprehensive governance framework. This is because participation in the SCI is voluntary and the SCI so far does not cover all operators in the food supply chain. For instance, while retailers are members of the SCI, "retailer buying alliances" do not participate in the SCI, nor do the organisations representing agricultural producers; the latter did not join the SCI because, in their view, it does not ensure sufficient confidentiality for complaining parties and does not provide for independent investigations or sanctions.

For those reasons, the present Commission proposal on UTPs corresponds to a strong and longstanding demand from the European farming community and a long felt belief that farmers should be better protected against abusive practices from processors and retailers. It can be argued that the absence, so far, of a common UTP framework stands in contrast to other areas which the CAP governs, and which have direct relevance for operators, such as competition rules, state aid rules and marketing standards. In these areas, the common market

organisation (Regulation (EU) No 1308/2013) lays down common rules relevant to the market conditions operators face in the EU so as to contribute to economic and social cohesion, as well as to a level playing field in the single market.

The present proposal for a Directive aims at reducing the occurrence of UTPs in the food supply chain by introducing a minimum common standard of protection across the EU that consists of a short list of specific prohibited UTPs. The protection covers suppliers in the food supply chain insofar as they sell food products to buyers who are not small and medium-sized. This scope aims at contributing to a fair standard of living for the agricultural community, an objective of the CAP under Article 39 TFEU.

Article 43 TFEU, being the principal CAP legal basis, serves as the Commission proposal's unique legal basis. The measures foreseen in the proposal concern UTPs occurring in the agricultural and food supply chain in relation to the trade of products originating with agricultural producers. It should be noted that, according to Article 38(2) and (3) TFEU, the CAP primarily covers the agricultural products listed in Annex 1 to the TFEU. However, the European Court of Justice has explicitly confirmed that food products not listed in Annex I TFEU (Annex I products are deemed "agricultural products" under the Treaty) can also be covered by acts adopted under Article 43 TFEU if this contributes to the achievement of one or more of the CAP objectives and agricultural products are principally covered.¹

Moreover, an approach which protects agricultural producers and their associations (cooperatives and other producer organisations) must also take into account indirect negative effects they may suffer through UTPs occurring downstream in the food supply chain, i.e. by operators who are not farmers but whose weak bargaining position in the downstream chain makes them vulnerable to UTPs. Protection against UTPs applying to downstream suppliers prevents unintended consequences for farmers due to trade being diverted to their investor-owned competitors – for example at the processing stage – which would not enjoy protection (e.g. less legal risk for buyers to be confronted with UTP accusations).

Furthermore, the Commission points out that the proposed measures are complementary to measures existing in Member States and the code of conduct of the SCI.

Rapporteur's position and amendments proposed

The rapporteur supports the Commission proposal as a long expected legislative instrument to defend agricultural producers' bargaining position in the agricultural and food supply chain; an instrument which can finally complement the measures introduced via Regulation (EU) 2017/2393, the so-called Omnibus Regulation, aiming at reinforcing the negotiating prerogatives of farmers in the EU. It should be reminded that the belief in the necessity of such an instrument was backed up by the conclusions of the Agricultural Markets Task Force issued in November 2016, and it was shared by Parliament in its resolution adopted on 7 June 2016, as well as by the EU Agriculture Ministers who adopted unanimous conclusions in this respect at their Informal Council meeting of 12-13 December 2016 in Bratislava.

The rapporteur underlines that completing the legislative procedure on the UTPs proposal before the end of the present parliamentary term, thus making this new legislation a concrete

¹ Judgment of the European Court of Justice, C-343/07, 2 July 2009, paragraphs 50-51.

“deliverable” for European farmers, is both an important and realistic objective for this Parliament. On the side of the other co-legislator, the Austrian Presidency has clearly indicated its intention to give top priority to the UTPs proposal, as indicated in a letter of 4 June 2018 by the Austrian Minister for Sustainability and Tourism, Elisabeth Köstinger, to the Chair of the AGRI Committee. The letter indicated the UTPs proposal as one of the main priorities for the Austrian Presidency and reminded that both Parliament and the Council had asked repeatedly for legislation to protect farmers who are the weakest link in the supply chain, before concluding that “the time has come to harmonise twenty different national regulations and to set minimum standards for all Member States” so as to “solve the problems of farmers treated unfairly by other, more powerful partners in the supply chain”.

Amendments proposed by the rapporteur

While widely supporting the proposal, the rapporteur proposes nevertheless a number of amendments to improve its efficiency. These are the following:

- Extension of the scope to suppliers in the food supply chain which are not SMEs, in order to include farmers’ organizations and avoid possible trade diversions away from SMEs;
- Extension of the scope to all agricultural products, i.e. not only to food products, in order to include the horticultural sector, feed industry, and other agricultural sectors not falling under food production;
- Extension of the “buyer’s” definition to include those operators that, though established outside the EU, buy and sell products in the EU market. The aim is to avoid that a buyer can escape the provisions of the Directive by simply moving its place of establishment outside the EU;
- Again as regards the definition of the “buyer”, the provision of related services should be included into the scope, together with processing, distribution or retail of agricultural and food products;
- Inclusion of a definition of “unfair trading practice” (in the sense of an overarching principle), along the lines of the definition given by the Council Conclusions of 12 December 2016, which is reflected in recital 1 of the proposed Directive;
- Inclusion of a definition of “economic dependence” as a power relationship between a supplier and a buyer;
- Introduction of a payment term for non-perishable products at 60 days from the receipt of the invoice, as also provided for in Directive 2011/7/EU on late payment;
- Exemption from the provisions on payment terms for all contributions from farmers to their producer organisations and cooperatives, as well as for agreements of inter-branch organisations where those agreements concern quality products;
- Definition of the notion of “short notice” (when a buyer cancels orders of perishable food products) with a fixed time-limit (60 days);
- Improvement of the introductory sentence in paragraph 2 of Article 3 (so-called “grey UTPs”) through including the concept of “economic dependence”;
- Introduction of the possibility for Member States to prohibit any other unfair trading practice (i.e. going beyond the prohibitions of Article 3), based on the definition of “unfair trading practice” added into Article 2;

- Inclusion of mandatory written contracts upon request of a supplier, as laid down - through the “Omnibus Regulation”- in Article 168 of the Single CMO, and of the possibility for Member States to encourage an increased contractualization between different actors in the supply chain;
- Inclusion of the possibility for complainants to lodge a complaint to foreign authorities through their own national authorities;
- Extension to representative associations of the right to lodge a complaint on behalf of one or more of their members;
- Inclusion of the obligation for the enforcement authority to start an investigation within 60 days from the date on which the complaint has been lodged, and to conclude it within 6 months. In duly justified cases, the 6 months can be extended by another 6 months (thus, the whole investigation has to be concluded within 14 months from the complaint);
- Inclusion of the obligation for the enforcement authority, in case an infringement has been established, to require the buyer to terminate the prohibited trading practice;
- Introduction of the possibility for Member States to promote the use of mediation or an alternative dispute resolution mechanism;
- Introduction of the obligation for Member States to include in their annual report to the Commission of an evaluation on the effectiveness of the implemented measures in order to ban UTPs.