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DRAFT REPORT

on the European Retail Action Plan for the benefit of all actors
(2013/2093(INI))

Committee on the Internal Market and Consumer Protection

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United in diversity

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the European Retail Action Plan for the benefit of all actors

(2013/2093(INI))

The European Parliament,

- having regard to the Commission Communication of 31 January 2013 entitled ‘Setting up a European Retail Action Plan’ (COM(2013)0036),
- having regard to the Commission Green Paper of 31 January 2013 on ‘Unfair trading practices in the business-to-business food and non-food supply chain in Europe’ (COM(2013)0037),
- having regard to the Commission Report of 5 July 2010 entitled ‘Retail market monitoring report – Towards more efficient and fairer retail services in the internal market for 2020’ (COM(2010)0355),
- having regard to its resolution of 5 July 2011 on a more efficient and fairer retail market¹,
- having regard to the Commission Communication of 22 May 2012 entitled ‘A European Consumer Agenda – Boosting confidence and growth’ (COM(2012)0225),
- having regard to its resolution of 11 June 2013 on a new agenda for European Consumer Policy²,
- having regard to the Commission Staff Working Document of May 2012 entitled ‘Consumer Conditions Scoreboard – Consumers at home in the single market: Monitoring the integration of the retail single market and consumer conditions in the Member States’ (SEC(2012)0165),
- having regard to the Commission Communication of 27 November 2012 entitled ‘Protecting businesses against misleading marketing practices and ensuring effective enforcement – Review of Directive 2006/114/EC concerning misleading and comparative advertising’ (COM(2012)0702),
- having regard to its resolution of [...] October 2013 on protecting businesses against misleading marketing practices and ensuring effective enforcement - Review of Directive 2006/114/EC concerning misleading and comparative advertising³,
- having regard to the work of the High Level Forum for a Better-Functioning Food Supply Chain and of the Expert Platform on B2B Contractual Practices,
- having regard to the Commission Consultation Document of 4 July 2013 entitled

¹ OJ C 33 E, 5.2.2013, p. 9.

² Texts adopted, P7_TA(2013)0239.

³ Texts adopted,

‘Consultation of Social Partners under Article 154 TFEU on enhancing EU cooperation in the prevention and deterrence of undeclared work’ (C(2013)4145),

- having regard to the Commission Communication of 28 October 2009 entitled ‘A better functioning food supply chain in Europe’ (COM(2009)0591),
- having regard to and its resolution of 7 September 2010 on fair revenues for farmers: a better functioning food supply chain in Europe¹,
- having regard to the Commission Communication of 11 January 2012 entitled ‘A coherent framework for building trust in the digital single market for e-commerce and online services’ (COM(2011)0942),
- having regard to its resolutions of 11 December 2012² and 4 July 2013³ on completing the digital single market,
- having regard to the European Economic and Social Committee’s opinion of 10 July 2013 on the Commission Communication on ‘Setting up a European retail action plan’⁴,
- having regard to the European Economic and Social Committee’s opinion of 11 July 2013 on the Commission Green Paper on ‘Unfair trading practices in the business-to-business food and non-food supply chain in Europe’⁵,
- having regard to Directive 2011/38/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights⁶,
- having regard to Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs⁷, and Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers⁸,
- having regard to Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising⁹,
- having regard to Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions¹⁰,
- having regard to Directive 2007/64/EC of the European Parliament and of the Council of

¹ OJ C 308 E, 20.10.2011, p. 22.

² Texts adopted, P7_TA(2012)0468.

³ Texts adopted, P7_TA(2013)0327.

⁴ OJ C 0, 0.0.0000, p. 0/Not yet published in the Official Journal.

⁵ OJ C 0, 0.0.0000, p. 0/Not yet published in the Official Journal.

⁶ OJ L 304, 22.11.2011, p. 64.

⁷ OJ L 109, 6.5.2000, p. 29.

⁸ OJ L 304, 22.11.2011, p. 18.

⁹ OJ L 376, 27.12.2006, p. 36.

¹⁰ OJ L 48, 23.2.2011, p. 1.

13 November 2007 on payment services in the internal market¹,

- having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Employment and Social Affairs (A7-0000/2013),
- A. whereas the importance of the retail market can hardly be over-estimated, since it represents 11% of EU GDP and delivers more than 15% of all jobs in Europe, including both skilled and unskilled labour, and contributes to the social fabric of society;
- B. whereas in a society increasingly marked by virtual contacts through the internet, shops are still the place where people meet other people and in particular high streets and town centres can provide a setting for shared experiences, and be a focal point of local identity, community pride and a common heritage and shared values;
- C. whereas the current economic crisis is taking a heavy toll on retail, affecting in particular smaller, independent shops;
- D. whereas unfair trading practices (UTPs) continue to exist and negatively affect, in particular, farmers and small producing companies;
1. Welcomes the setting-up by the Commission of a European Retail Action Plan;
 2. States that the Action Plan should have paid more attention to the effects of the current economic crisis on retail and, in particular, on smaller, independent shops;
 3. Welcomes the Commission's intention to create a permanent Group on Retail Competitiveness, but emphasises the importance of balanced representation, including of both big and small retailers, co-operatives and consumer, environmental and social interests;
 4. Urges Member States not to take measures in the context of austerity policies that undermine consumer confidence and directly harm the interests of the retail sector, such as increasing VAT or raising charges for shops;
 5. Calls on the Commission and Member States to give the highest political prominence to the retail sector as a pillar of the Single Market, including the Digital Single Market, and to lift practical obstacles making it difficult for retailers to fully benefit from the internal market;
 6. Welcomes the Commission's intention to develop instruments to facilitate consumer access to transparent and reliable information on the prices, quality and sustainability of goods and services; encourages the Commission to set up an easily accessible database containing all EU and national labelling requirements; at the same time warns against the multiplication of labels and labelling requirements and calls for simplification, preferably bringing together various aspects of social and environmental sustainability in one label,

¹ OJ L 319, 5.12.2007, p. 1.

while reducing differences in national mandatory labelling requirements;

7. Asks the Commission to supplement its Action Plan with a set of actions aimed at supporting the independent retailer, such as: the encouragement of the ‘adopt-a-shop’ principle by which bigger retailers act as ‘mentors’ to smaller shops in their immediate vicinity; the promotion of groups of independent retailers, including co-operatives, which benefit from mutual assistance and certain economies of scale, whilst retaining their full independence; respect for the right of local and regional authorities to stimulate in certain shopping areas (e.g. the ‘high streets’) a climate favourable to small, independent shops by lowering energy rates and rents via public-private partnerships, by introducing business rate discounts on local charges for small businesses and independent retailers and by promoting co-operation between the various shops in that area;
8. Warns against the tendency of some local and regional authorities to continue to develop large-scale projects, such as shopping malls and plazas outside the city centres, given that, especially in view of the economic crisis, the saturation point has already been reached; notes that rents in such shopping centres are normally too high for smaller, independent shops and calls on the Commission, in co-operation with the Member States, to draw up a survey of their economic, social and environmental effects;
9. Recognises the right of local authorities not to allow the establishment of new shopping centres and hypermarkets, wherever this will have negative social or environmental consequences, and encourages Member States to introduce specific rules to guarantee a diversity of shops, which is essential if shopping areas, in particular in town and city centres, are to remain attractive;
10. Emphasises the important role of public-private partnerships in ensuring clean, safe and accessible shopping areas in town and city centres, inter alia, by addressing the negative effects of vacant buildings in shopping areas, e.g. by making these places available to start-up businesses at a lower rent than usual;
11. Notes that with the increasing importance of e-commerce, shops are facing new challenges making multichannel retail strategies ever more important; expresses in this regard its concern, in view of the social role of retail, that e-commerce might overtake entire retail sectors, such as currently seems to be the case in the audiovisual and book sectors; encourages retailers to develop new business models for expanding the shopping experience in the brick-and-mortar shop, inter alia, by increasing service levels, both before and after-sale, and by linking the presentation on the internet to the staff responsible for the sales in the brick-and-mortar shop;
12. Highlights the retail sector’s responsibility concerning sustainability; welcomes the fact that retailers and suppliers have been at the forefront of green responsibility, particularly regarding waste, energy consumption, transport and CO₂ reduction; considers that further efforts are necessary in this area;
13. Recalls the importance of the proper implementation of existing social and labour legislation; regrets the existence of a high degree of undeclared work, which involves a high level of tax evasion and prevents the establishment of a level playing field between traders in the internal market;

14. Expresses its concern about the erosion of the rights of franchisees versus the franchising company and calls for transparent and fair contracts; in particular, draws the attention of the Commission and Member States to problems faced by franchisees who want to sell their business or change their business formula, whilst remaining active in the same sector; requests the Commission to examine the effects of long-term competition clauses, purchase options and the prohibition of multi-franchising and to reconsider in this respect the current exemption from competition rules for contracting parties having a market share of less than 30%;
15. Supports the work of the High Level Forum for a Better Functioning Food Supply Chain and its Experts Platform on B2B contractual practices; considers that the Parliament should urgently resolve pending issues relating to its participation in the Forum's work; stresses that UTPs also occur in the non-food supply chain and asks the Commission and the business federations to explore the possibilities for creating a new, open-ended forum focusing on retail as a whole;
16. Welcomes the principles of good practice and the list of examples of unfair and fair practices in vertical trading relationships in the food supply chain, as well as the framework for the implementation and enforcement of these principles; emphasises that, if these are to have a practical effect, it is important that all actors in the food supply chain participate, including farmers' organisations as well as the manufacturing and wholesale distribution industries; requests the Commission to review the effects of the voluntary initiative within two years of its entry into force, and to propose additional actions should this be necessary;
17. Considers that it is often difficult for weaker market parties to complain about UTPs and emphasises the important role of associations of enterprises which should be able to submit such complaints on their behalf, while ensuring confidentiality, to an ombudsman or adjudicator who should have the power to take ex officio action in the case of information about certain worrying trends;
18. Calls on the Commission to propose EU legislation aimed at prohibiting below-cost selling in the food sector and to provide a definition of 'economic dependency' which should make both Member States and the business community more vigilant in respect of UTPs;
19. Calls on the Commission to ensure the right of small suppliers to set up groups of producers without being penalised by national competition authorities who have assessed the importance of these groups based on national production alone;
20. Calls on the Commission to combat territorial supply constraints imposed by brand manufacturers as part of action on UTPs;
21. Instructs its President to forward this resolution to the Council, the Commission, and to the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

The importance of the retail sector for society

Retail is of major economic importance, accounting for 11% of the EU's GDP and 15% of EU employment. In the EU, much emphasis has been put on retail as one of the main pillars of the Single Market. For the larger retailers, the economies of scale possible within a well-functioning internal market can make the difference. It is therefore regrettable that many retailers who want to be active in several or all Member States still face unnecessary obstacles, such as different packaging and labelling requirements, as well as differences in administrative practices.

The Digital Single Market can offer additional opportunities for retailers, although at this moment consumers still largely prefer suppliers based in their own country, even for online purchases. This may have to do with the fact that consumers are simply not as familiar with retailers based in other Member States, but also with uncertainty about their rights.

Just as important as the economic value of retail, is its social value. Especially with the ever-increasing importance of internet for everyday life and the computerisation of our societies in general, the number of opportunities for social contacts in real life is rapidly diminishing. People tend to spend ever more of their time in front of their PCs, tablets or mobile phones and there is a risk that our societies are becoming increasingly virtual. Brick-and-mortar shops are still places where people interact in real life. It is important that they stay put, preferably embedded in a wider societal environment, offering additional services, such as libraries, and cultural and public buildings.

Many people complain that shopping centres are quickly becoming less attractive, because they all contain the same shops that are part of a national or international chain. This may gradually undermine the desire of consumers to visit such centres at all, especially if they can buy the same products just as easily online. In order to remain attractive, not only should the shopping experience itself be permanently re-thought and improved, but also the diversity of shops should be stimulated. The independent retailer can make the difference, as independent shops may stimulate the consumer's curiosity. Shopping centres with a diverse, locally embedded offer of shops can stimulate community life and even local identity, which many people are seeking more and more, despite, or perhaps because of, globalisation.

The retail sector in the current economic crisis

In most Member States consumer confidence has reached an extremely low ebb. Citizens are postponing their purchases or are extremely low-cost oriented. In some Member States, VAT rates have been increased, which makes it even more difficult for consumers to buy and for retailers to survive. The general situation in the retail sector in the EU is a matter for concern, although there are also exceptions.

The latest Eurostat figures show a slight improvement in May 2013 compared to April 2013¹. However, in the Eurozone, retail trade is still down compared with the same month of the

¹ Eurostat News Release Euroindicators 104/2013.

previous year. Non-food is hit harder than food, and independent retailers are particularly vulnerable.

The Commission's Retail Action Plan does not directly deal with the consequences for retail of the crisis and the austerity measures implemented by Member States. Thus, neither matters such as access to finance for small businesses nor the prevention of bankruptcy, nor the increasingly pressing issue of vacant shops in the middle of shopping areas are being addressed. On access to finance, separate reports have been adopted by Parliament, which is the only reason why your rapporteur has not included this matter in his report. However, improvement of access to finance is vital, especially for SMEs.

Since bankruptcies concern especially independent retailers, and their share of the market is rapidly decreasing, particular attention must be paid to their needs. If we do not wish to end up with cities and towns that are clones, when it comes to retail, the Commission and Member States must act now. Bigger shops can help smaller ones, as it is also in their interest to keep a diversity of shops in their vicinity, as this attracts more customers. A large retailer has stated that it would be ready to introduce the 'adopt-a-shop' principle. Through such a programme, small businesses could seek advice, for example on administrative or financial questions, without losing their independence. Shops can work together by establishing local associations so that the development of the shopping district becomes their joint undertaking, in close co-operation with local authorities. Rents and energy rates could be reduced in order to revitalise certain shopping areas, and local authorities could vary local charges in order to bring costs down for shops in given areas.

The Commission rightly stresses that spatial policies may not discriminate on economic grounds. There may be grey areas though, whenever local authorities wish to promote the high streets in city and town centres. There is a perceptible tendency for specific types of retail to take over the high streets. In such cases, it should be possible for local authorities to introduce specific rules in order to guarantee a diversity of shops, which is essential for a shopping area to keep its attractiveness.

E-commerce can be a golden opportunity for retailers, but it can also become a threat to those shops that simply ignore the phenomenon. I have heard many retailers complain about customers seeking advice about a product in a brick-and-mortar shop, only to buy that product online from another, cheaper shop. Some have even argued that perhaps they should introduce an entrance fee. This is of course not a feasible solution and would only accelerate the decline of the shops concerned, but it shows the despair of these retailers.

Retailers have to accept e-commerce as a fact of life. It is therefore advisable for many shops to seek multi-channel sales policies, including both online and traditional channels. Service is one of the main comparative advantages of a brick-and-mortar shop. For electronic articles it is often important for the customer to get good advice. The internet is not always customer-friendly. It is unclear which websites to trust. A good way forward would be to link the internet shop to brick-and-mortar shops so that a customer can seek and get advice from a real salesman in the nearest branch via the internet. Another way of promoting the brick-and-mortar shop is by creating an 'experience' in the shop. Something extra has to be provided. Bookshops can invite authors to read out some of their works; music stores can organise live music performances; clothing stores fashion shows, etc. Service and the promotion of

experience are essential for brick-and-mortar shops to survive.

Contracts for franchisees have become increasingly rigorous. It is regrettable that the Commission did not include any recommendations as a response to this development, as it tends to undermine the whole concept of franchising, thus making it less attractive, whereas franchising could help reduce the effects of the economic crisis.

Sustainability

Due to the limited scope of the report, it has been impossible to examine in detail the role of retail in social and environmental policies. However, retail is capital when it comes to sustainability issues. Shops can influence the type of product consumers buy and can thus stimulate fair trade. Shops can promote environmentally-friendly packaging that can help reduce waste. They can also influence consumer patterns relating to food consumption: buy the quantities you need and avoid food waste, buy more organic food, etc.

The same holds for social policies. Unfortunately, violations of social and immigration laws do occur in retail. Also, there is a tendency to hire young staff for low wages and replace them as soon as they grow older and more expensive. Especially, when service and ‘experience’ become more important for shops to survive, it is important to invest in the staff. Retail is an excellent sector for offering young people training facilities, but it should also build on an experienced workforce in order to offer the right quality. The enforcement of labour laws should be a priority for Member States. In this regard, close co-operation between the retail sector and law enforcement bodies should be encouraged, so that any such violations are dealt with instantly and effectively.

Unfair Trading Practices (UTPs)

Farmers and small producers often feel that there is no real freedom of contract, as they can only sell their products to a limited number of supermarkets. Things are more complicated in reality though. Not all producers are small-scale companies. For example, sugar production is notoriously controlled by a limited number of companies, whose position is so powerful that in some Member States they can almost be considered as monopolies. Moreover, supermarkets often do not deal directly with producers, but with distributive traders. Such traders can be big multinational companies. The profit margins of such traders are often much bigger than those of the supermarkets. It is important to bear in mind the complexity of the situation in the food supply chain, when considering further steps.

The Green Paper is often seen by the supermarkets as a first step towards EU legislation in this area. Although it may be useful to clarify certain concepts via European legislation or guidelines, such as ‘economic dependency’, your rapporteur is not convinced of the effectiveness of a purely legislative approach. For smaller producers, it will often be difficult to engage in formal lawsuits against supermarkets (or distributive traders). Far too often, they fear retaliatory measures: they may have exposed certain UTPs, but at the cost of losing their business relationship with the supermarket or distributive trader concerned.

Your rapporteur has therefore opted for a cautious approach. While it may be useful to seek agreement at EU-level to prohibit below-cost selling in the food sector, in general it is best not to rely too heavily on legislative solutions.

Voluntary initiatives, which already exist in some Member States and are currently also being developed at EU-level by the High Level Forum for a Better Functioning Food Supply Chain, are to be welcomed. They can provide the basis for the joint assumption of responsibility. However, some producers complain that, without proper enforcement, these voluntary initiatives will be unable to change the situation. To keep the pressure up, it is therefore important to provide for an independent ombudsman or adjudicator who can issue ‘ex officio’ rulings. Supermarkets object to anonymous complaint mechanisms. They argue that they are unable to defend themselves properly from such complaints and can become victim of slander. In order to find a solution that respects the interests both of producers and of supermarkets, your rapporteur prefers a system that makes it possible for business associations to bring certain practices to the attention of an ombudsman or adjudicator, while preserving confidentiality in respect of their sources of information. Combined with the possibility of the ombudsman/adjudicator acting ‘ex officio’, this may offer a fair solution.

Although your rapporteur supports a voluntary mechanism, it can only be effective, if all the parties concerned participate. This means that producers, traders and supermarkets alike have to subscribe to the initiative. At the moment, producers have not yet done so; it remains to be seen how many traders will do so. If it is primarily supermarkets that commit themselves to the initiative, it will not work.

Secondly, the voluntary initiative does not foresee the establishment of an independent ombudsman or adjudicator. Instead, it relies on a governance group composed of representatives of each interest group. Your rapporteur does not reject this approach, but wonders whether it will be as practical as working through an independent ombudsman/adjudicator.

Finally, the voluntary initiative entirely relies on ‘naming and shaming’ as well as on ‘naming and faming’; no other sanctions are foreseen. It is precisely the lack of sanctions that keeps producers from joining the initiative. If the initiative is therefore to become a success, it is time to consider introducing additional sanctions, e.g. fines, and compensation for losses in the case of violations of the principles of good practice.

Legislative footprint

The following organisations have shared their opinion on the subject with your rapporteur:

Albert Heijn	Carrefour	Copa-Cogeca
Detailhandel NL	EDEKA	ESBA
Eurocommerce	Eurocoop	European Booksellers Association
ERRT	IKEA	Jumbo
Svensk Handel	Tesco	Tradecraft
Vakcentrum NL	UGAL	