2.3.2016

OPINION

of the Committee on Agriculture and Rural Development

for the Committee on the Internal Market and Consumer Protection

on unfair trading practices in the food supply chain
(2015/2065(INI))

Rapporteur (*): Mairead McGuinness

(*) Associated committee – Rule 54 of the Rules of Procedure
PA_NonLeg
SUGGESTIONS

The Committee on Agriculture and Rural Development calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Considers it essential to ensure that European competition law takes into account the specific features of agriculture and serves the welfare of producers as well as consumers, who play an important role in the supply chain; believes that European competition law must create the conditions for a more efficient market that enables consumers to benefit from a wide range of quality products at competitive prices, while ensuring that primary producers have an incentive to invest and innovate without being forced out of the market by unfair trading practices (UTPs);

2. Calls on the Commission to apply European competition law rigorously in cases where UTPs can be penalised; takes the view, however, that existing statutory provisions and rules are not applicable in most cases involving UTPs; considers, moreover, that antitrust law alone is inadequate for resolving UTPs, as the technical requirements for a ‘dominant position’ are rarely met, even though retailers may, in practice, hold a dominant position in a specific market situation;

3. Notes that UTPs in the food supply chain come in a number of forms, including:
   - unilateral and retroactive changes to contracts,
   - flat charges that companies levy on suppliers as a requirement for inclusion in a supplier list (‘pay to stay’),
   - payments made up to 120 days late, well over the 60-day limit (‘pay you later’),
   - arbitrary discounts that large firms give themselves for paying early or on time,
   - retrospective discounting on outstanding money owed to a supplier,
   - retailers forcing suppliers to use certain third-party packaging producers who pay supermarkets a fee for the business they receive;

4. Recognises that UTPs result primarily from income and power imbalances in the food supply chain and must be urgently addressed in order to ameliorate the situation for farmers in the food sector; notes that selling below the cost of production and the serious misuse of basic agricultural foods such as dairy, fruit and vegetables as ‘loss leaders’ by large-scale retailers threaten the long-term sustainability of European production of such items; recognises that there is a particularly pronounced market concentration in the food trade in a number of Member States; welcomes efforts, such as the Tierwohl Initiative in Germany, aimed at helping farmers to compete on the basis of their products’ merits;

5. Points out that UTPs have serious negative consequences for farmers, such as lower profits, higher-than-estimated costs, food overproduction and wastage, and financial planning difficulties; stresses that these practices also have damaging effects on the functioning of the single market and may stifle investment and lead to less product innovation and reduced product quality and variety; emphasises that such negative consequences ultimately reduce consumer choice;

6. Notes that since 2009 Parliament has adopted five resolutions on problems in the EU retail
chain, including three specifically on imbalances and abuses within the food supply chain; further notes that during the same period the Commission has produced three communications and a Green Paper and has commissioned two final reports on similar subjects; declares, therefore, that yet more analysis on the state of the food supply chain will merely delay the pressing need for action to help farmers fight unfair trading practices;

7. Believes that a common understanding of UTPs would be beneficial, and therefore urges the Commission to draw up an open list of UTPs that are prohibited at EU level; stresses the absence of EU rules to combat UTPs between operators in the food chain;

8. Urges all parties in the food supply chain to consider standard contracts and also new-generation contracts whereby risks and benefits are shared;

9. Notes that while private own-brand labelled products can bring increased value, choice and ‘fair trade’ products to consumers, they can give retailers an unfair and anti-competitive position whereby they become both customer and competitor; insists that the issue of private own-brands requires particular attention from the Commission and competition authorities, and highlights the need to address the potential long-term consequences for the food supply chain and the position of farmers within it;

10. Recognises that the reform of the common agricultural policy (CAP) and the new single common market organisation have introduced a number of measures aimed at addressing the bargaining power gap among farmers, the retail trade, the wholesale trade and SMEs in the food supply chain by supporting, in particular, the establishment and expansion of producer organisations (POs); stresses the importance of this supply-side cooperation;

11. Notes that Regulation (EU) No 1308/2013, which provides for the establishment of POs, is backed by financial incentives under the second pillar of the CAP; points out that the legal framework extends the scope for collective bargaining (in some sectors) and delivery contracts (in all sectors) to POs, associations of POs (APOs) and inter-branch organisations, and also introduces temporary exemptions from certain competition rules in periods of severe market imbalance, subject to safeguards;

12. Urges the Commission to strongly promote this approach in order to increase the bargaining power of the primary producer and to encourage producers to join POs and APOs; underlines, in particular, the vulnerability of small and family farmers, who have the potential to create and support employment in isolated, remote and mountain regions;

13. Takes the view that strengthening and establishing producer organisations must go hand in hand with strengthening farmers’ bargaining power in the food chain, in particular by giving them the right to have their contracts collectively bargained;

14. Calls for increased transparency and provision of information within the supply chain and for the strengthening of bodies and market information tools such as the European Food Price Monitoring Tool and the Milk Market Observatory, with a view to supplying farmers and POs with accurate and timely market data;

15. Is of the opinion that prices throughout the food supply chain should better reflect the value added by primary producers; calls, accordingly, for the retail price formation
16. Points out that farmers in a number of Member States have secured a strong position in the food supply chain by establishing cooperatives which ensure that value added at the processing stage is channelled back to farmers, and considers it crucial that these cooperatives are not burdened with extra costs as a result of compulsory and costly red tape;

17. Urges producers and processors to work together to invest in innovation and increase the added value of their products;

18. Is convinced that consumer awareness about agricultural products is fundamental to addressing the problems resulting from imbalances in the food supply chain, including UTPs; calls on all stakeholders involved in food supply chain management to step up transparency in the overall food supply chain and to increase consumer information through more appropriate product labelling and certification schemes, in order to enable consumers to make fully informed choices about available products and act accordingly;

19. Calls on the Commission, in close cooperation with the Member States, to promote initiatives whereby consumers can be alerted to the risks of price dumping for primary producers, and expressly supports awareness-raising campaigns to that end in schools and training establishments;

20. Acknowledges that while purely voluntary initiatives are very important and helpful in identifying issues of concern, they are inadequate to eliminate the ‘fear factor’ from the supply chain, as they have major drawbacks such as the broad scope for non-participation, conflicts of interest, dispute settlement mechanisms that fail to reflect supplier ‘fear factor’, the lack of genuine penalties for non-compliance, and scant or non-participation by the competent authorities;

21. Reminds the Commission that in December 2013 Parliament adopted an own-initiative report calling on the Commission to examine the possibility of independent enforcement with a view to addressing the ‘fear factor’ among primary producers; urges the Commission to consider this in its own report;

22. Takes the view that professional organisations could act as a platform for primary producers, allowing them to lodge complaints with a competent authority about alleged UTPs without fear;

23. Calls for procedures within enforcement bodies to enable primary producers to complain confidentially, while also allowing enforcement bodies to conduct investigations at their own initiative; insists that such enforcement bodies should be able to impose an appropriate range of sanctions for violations of UTP regulations;

24. Questions the Commission’s unwavering support for the Supply Chain Initiative (SCI), given its limitations; reiterates farmers’ reluctance to participate on account of a lack of trust, restrictions on anonymous complaints, a lack of statutory power, an inability to apply meaningful sanctions, the absence of mechanisms adequate to combat well-documented UTPs and concerns about imbalances in the nature of enforcement mechanisms, which have not been adequately taken into account; regrets the
Commission’s reluctance to negotiate on the issues of anonymity and sanctions;

25. Calls on the Commission to assess the SCI in terms of effectiveness, taking into account the concerns cited by the farming community; urges the Commission to avoid assessing the voluntary initiative solely on the basis of the number of registered participants;

26. Calls on the relevant stakeholders to facilitate the incorporation of farmers’ organisations (including POs and APOs) within the scope of national enforcement bodies governing the food supply chain, primarily by securing the anonymity of complaints and an effective sanctions regime;

27. Recalls the Commission’s acknowledgement that ‘forum shopping’ poses a threat to the functioning of the single market and is detrimental to the interests of primary producers; believes that a common interpretation of the rules of good practice adopted in 2011 is a vital factor in overcoming this problem, together with the uniform application of those rules and greater cooperation between Member State enforcement authorities;

28. Notes that several Member States have introduced voluntary codes and legislative measures aimed at improving the functioning of the supply chain; notes the existence of the Groceries Code Adjudicator in the UK, the case of Portugal, the Food Supply Chain Commissioner in France, Spanish law and the current initiative involving consultation between parties in Belgium; stresses the importance of cooperation between national authorities and the exchange of best practice at EU level; calls on the Member States to enforce the measures taken in their national legislation;

29. Takes the view that independent national regulators for the food sector could be an effective measure to combat unfair trade practices, as they create greater transparency along the value chain and enable ex-ante checks to be carried out in order to protect against abuses of dominant market position; calls on the Commission, in this connection, also to consider the possibility of establishing a European regulator which could assume a coordinating role;

30. Urges the Commission to assess these national efforts as potential models for adaptation, while taking account of the sector-specific problems encountered and of national market conditions and specificities;

31. Believes that framework legislation at EU level is necessary in order to tackle UTPs and to ensure that European farmers and consumers have the opportunity to benefit from fair selling and buying conditions;

32. Urges the Commission to submit a proposal for EU framework legislation in a timely manner, with a view to ensuring a level playing field within the single market;

33. Argues that such legislation, which would provide primary producers with the necessary legal certainty to address their concerns, together with measures that increase the bargaining power of farmers, is necessary to complement the SCI and protect those stakeholders already fully engaged with it, while ensuring that UTPs are eradicated from the food supply chain;

34. Calls for framework legislation to protect all food suppliers, wherever they are located,
including in third countries;

35. Points out that this European framework legislation must not lower the level of protection in countries that have adopted national legislation to combat business-to-business UTPs.
**RESULT OF FINAL VOTE IN COMMITTEE ASKED FOR OPINION**

<table>
<thead>
<tr>
<th>Date adopted</th>
<th>12.11.2015</th>
</tr>
</thead>
</table>
| Result of final vote | +: 39  
                     --: 0  
                     0: 2 |
| Members present for the final vote | Clara Eugenia Aguilera García, Eric Andrieu, Paul Brannen, Daniel Buda, Nicola Caputo, Michel Dantin, Paolo De Castro, Albert Deß, Diane Dodds, Norbert Erdős, Edouard Ferrand, Luke Ming Flanagan, Beata Gosiewska, Martin Häusling, Anja Hazekamp, Esther Herranz García, Jan Huitema, Jaroslaw Kalinowski, Elisabeth Köstinger, Zbigniew Kuźmiuk, Mairead McGuinness, Giulia Moi, Ulrike Müller, James Nicholson, Maria Noichl, Marijana Petir, Bronis Ropé, Jordi Sebastià, Jasenko Selimovic, Lidia Senra Rodríguez, Czesław Adam Siekierski, Mare Tarabella, Janusz Wojciechowski, Marco Zullo |
| Substitutes present for the final vote | Maria Heubuch, Momchil Nekov, Sofia Ribeiro, Annie Schreijer-Pierik, Alyn Smith, Estefanía Torres Martínez |
| Substitutes under Rule 200(2) present for the final vote | Daniel Dalton, Nils Torvalds |