



26.9.2018

OPINION

of the Committee on Development

for the Committee on Agriculture and Rural Development

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))

Rapporteur for opinion: Linda McAvan

PA_Legam

SHORT JUSTIFICATION

The Committee on Development welcomes the Commission's proposed Directive on unfair trading practices in business-to-business relationships in the food supply chain. Unfair Trading Practices (UTPs) in Europe's food supply chain contribute to income insecurity, food waste, lower food standards and modern slavery, both in the EU and beyond its borders. This Directive represents a valuable opportunity to tackle UTPs across the Union and ensure that food supply chains work for everyone.

The Committee on Development particularly welcomes the fact that the Directive applies to suppliers irrespective of their location inside or outside the EU. Suppliers to the EU food chain based in non-EU countries may have limited access to information, legal knowledge and funds, making them particularly vulnerable to UTPs. Overcoming this imbalance is key to truly establishing a level playing field which will benefit both EU and non-EU producers, ensuring a level playing field, preventing undercutting and providing a fair return for farmers worldwide.

The European Union has committed itself in its treaties to contribute to sustainable development and to the Sustainable Development Goals (SDGs). Any acceptance of UTPs being applied to non-EU producers by European buyers would contradict the Union's commitment to Policy Coherence for Development (PCD) and undermine the EU's policy objectives in its partner countries.

The inclusion of non-EU farmers is fully supported by arguments in the Commission's impact assessment, which reads in its section 6.3.3 "*their non-coverage could result in competitive distortions and trade diversion; buyers would have incentives to source from foreign suppliers who would not be protected by UTP rules*". It is therefore also in the interest of EU suppliers for the Directive to apply uniformly to all suppliers. In this impact assessment, the Commission also warns that "*disregarding the international dimension of supply chains may lead to leave relevant practices out of reach of enforcement authorities*". The Commission's impact assessment also adds that "*discrimination considerations also militate in favour of covering 3rd country suppliers*". Against this context, the proposed amendments below aim at ensuring clear rules apply to both EU and non-EU farmers.

AMENDMENTS

The Committee on Development calls on the Committee on Agriculture and Rural Development, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive Recital 3

Text proposed by the Commission

(3) Different operators are active in the 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.

Amendment

(3) Different operators are active in the **agricultural and** food supply chain at the stages of production, processing, **importing, exporting,** marketing, distribution, retail **and sale to final consumers of agri-food** products. The chain is by far the most important channel for bringing **agri-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 for use as food, and other food products not listed in that Annex but processed from agricultural products for use as food.

Amendment 2

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 in particular harmful for small and medium-sized operators in the food supply chain, **both inside and outside of the Union**. Agricultural producers, who supply primary agricultural products, are **often** small and medium-sized **actors in the agricultural and food supply chain**.

Justification

Small-scale food producers and workers in developing countries suffer directly or indirectly from unfair trading practices imposed by the most powerful actors in the food supply chain.

Amendment 3

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/EC***¹². 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 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.*

Amendment

(7) A minimum Union standard of protection against unfair trading practices should be introduced to reduce the occurrence of such practices, to contribute to ensuring a fair standard of living for agricultural producers ***inside and outside the Union, to prevent unsafe and unsustainable practices, precarious working conditions, and to reduce food safety risks and food waste along the food supply chain***. 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, ***without raising their administrative burden***. 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 enterprises 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 ***inside and outside the Union*** 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.

Justification

Unfair trading practices are a driver of food waste, unsafe and unsustainable practices, precarious working conditions and a threat to the income of small-scale food producers and workers all along the food supply chain both in the European Union and around the world. Further, as protection is to be extended further downstream, it can be extended to suppliers in general.

Amendment 4

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) ***To ensure the EU meets its Treaty obligation of Policy Coherence for Development and its commitments under the Sustainable Development Goals,*** suppliers established outside the Union should be able to rely on the Union minimum standard when they sell ***agricultural and*** food products to buyers ***marketing and placing those products on the EU market*** to avoid unintended distorting effects resulting from the protection of suppliers in the Union.

Justification

The diminishing share of revenues reaching small-scale food producers and workers in developing countries and the working conditions they face as a consequence of unfair trading practices undermine the Union's development policy and its objectives under the 2030 Agenda for Sustainable Development.

Amendment 5

Proposal for a directive

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) ***The imbalance of power in the supply chain and unfair trading practices***

of supermarkets come at a high price, this generates and amplifies significant negative social and environmental impacts in most agriculture producing and poor countries, including the denial of basic human rights, gender discrimination, a failure to earn living wages, and long working hours.

Amendment 6

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

Amendment

(14) Complaints by producer organisations or associations of such organisations, ***as well as by organisations working with producers or with a proven expertise on trading practices in food supply chains, including non-governmental and civil society organisations or any other interested party***, 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.

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 7

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 by a supplier to a buyer, ***including transactions between producer organisations or cooperatives and their members***.

Justification

Extending the scope to all buyers is essential to prevent UTPs being passed on along the supply chain without any access to complaint mechanisms for affected producers and suppliers (“domino effect”). Including the relations between cooperatives and their members is necessary especially in the dairy sector, where cooperatives often have acquired substantial bargaining power vis-à-vis their members.

Amendment 8

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 their place of establishment***, who buys ***agricultural or*** food products by way of trade ***to place them on the EU market***. The term “buyer” may include a group of such natural and legal persons;

Amendment 9

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

Text proposed by the Commission

Amendment

(aa) “unfair trading practices” means practices that - grossly deviate from good and fair commercial conduct, are contrary to good faith and fair dealing and are unilaterally imposed by buyer to

supplier, or - impose or attempt to impose an unjustified and disproportionate transfer of a buyer's economic risk to the supplier; or a significant imbalance of rights and obligations on the supplier in the commercial relationship before, during or after the contract;

Amendment 10

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ba) a “supply agreement” is a written agreement between a supplier and a buyer that clearly and transparently covers the relevant elements of the commercial agreement, including the names of the parties, their rights and obligations, price, duration, terms of delivery, terms of payment, as well as the cause, the execution of the contract and the effect of terminating the contract.

Justification

This definition serves to develop and monitor the other elements proposed in the directive. To ensure transparency, it is necessary to have a written contract that allows to monitor and resolve abusive practices that are regulated and forbidden in the directive itself.

Amendment 11

Proposal for a directive

Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

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

Amendment 12

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 food products at such short notice that a supplier cannot reasonably be expected to find an alternative to commercialise or use these products ***at the same value***;

Amendment 13

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ba) a buyer uses reverse electronic auctions, or two-stage auctions, to drive down prices; these are not regulated and are such as to fail to ensure the transparency of negotiations, pricing and bidders in the purchasing of agricultural and agri-food products of EU-certified quality and origin as well as non-certified products;

Justification

L'asta elettronica inversa, o al doppio ribasso, utilizzato inizialmente dai grandi gruppi del discount, oggi è una pratica comune di gran parte delle catene distributive. Ai fornitori, le centrali d'acquisto della GDO chiedono tramite e-mail di avanzare un'offerta per la vendita di uno stock di prodotto. Raccolte le proposte, lanciano una seconda asta, nuovamente al ribasso, partendo dal prezzo inferiore spuntato nella prima. In pochi minuti, su un portale web, il fornitore è chiamato a competere selvaggiamente con altri per aggiudicarsi la commessa. Chi si aggiudica la fornitura, spesso si è spinto talmente al limite da doversi rivalere nei confronti dei produttori da cui acquista la merce. A loro volta, questi ultimi si possono trovare in difficoltà nel garantire i diritti fondamentali ai lavoratori agricoli. In tal modo, il meccanismo delle aste al doppio ribasso contribuisce a rendere più difficile l'eradicazione dello sfruttamento e del caporalato, dei lavoratori in nero e dei migranti irregolari, all'interno e all'esterno dell'Unione.

Amendment 14

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 food products, **or the terms of payment**;

Amendment 15

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 food products that occurs **once the product has passed into** the buyer's **ownership** and that is not caused by the negligence or fault of the supplier.

Amendment 16

Proposal for a directive

Article 3 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) a buyer sells an agri-food product below the cost at which it was purchased, to stimulate sales of other products (“loss leader”);

Amendment 17

Proposal for a directive

Article 3 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(db) a buyer claims, in an inconsistent manner, that products do not meet cosmetic specifications, in order to cancel or reduce the terms of the supply agreement;

Amendment 18

Proposal for a directive

Article 3 – paragraph 1 – point d c (new)

Text proposed by the Commission

Amendment

(dc) a buyer uses overly strict ‘minimum life on receipt criteria’ in order to reject a previously agreed order, or to reject an order that, for reasons unrelated to the supplier, has not been processed quickly enough;

Amendment 19

Proposal for a directive

Article 3 – paragraph 1 – point d d (new)

Text proposed by the Commission

Amendment

(dd) a buyer requires suppliers to bear the financial costs of inaccurate forecasting provided by the buyer in order for the supplier to plan their production to meet forecasted orders.

Amendment 20

Proposal for a directive

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. A supplier shall address a complaint to the enforcement authority of the Member State in which the buyer

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.

suspected to have engaged in a prohibited trading practice is established, ***without bearing the relevant administrative and procedural costs.***

Amendment 21

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

Text proposed by the Commission

Amendment

1a. A supplier established outside the EU shall address a complaint to the enforcement authority of any Member State. Upon receipt of the complaint, the enforcement authority shall forward it to the enforcement authority (if different) of the Member State in which the buyer suspected to have engaged in a prohibited trading practice is established.

Justification

The directive also applies to suppliers outside the EU, and so this amendment provides them with their mechanism to lodge a complaint. This is essential to avoid discrimination between EU- and non-EU suppliers and to avoid distortion of competition and trade diversion. This is important in contributing to the treaty obligation of Policy Coherence for Development and EU commitments under the Sustainable Development Goals.

Amendment 22

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

Text proposed by the Commission

Amendment

1b. Where the buyer is established outside of the Union, the supplier shall address a complaint to the enforcement authority of the Member State in which it is established. For cases where the supplier is established outside of the Union, the supplier can address a complaint to any designated enforcement authority.

Amendment 23

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. Producer organisations or associations of producer organisations ***inside and outside the Union*** whose member(s) or member(s) of their members consider(s) that they are affected by a prohibited trading practice, ***as well as organisations working with producers or with a proven expertise on trading practices in food supply chains, including non-governmental organisations and civil society organisations or other organisations acting on behalf of producers or any other interested party,*** shall have the right to submit a complaint.

Justification

To overcome the fear factor and ensure effective access of vulnerable actors, it is essential to extend the right to submit a complaint to organisations that work to promote fairness in supply chains and support vulnerable actors such as small-scale food producers and women. This is particularly the case in countries with a low level of governance and a high level of inequality.

Amendment 24

Proposal for a directive Article 5 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Commission shall draw up a multilingual guide, which shall be available on its website, explaining how to draft a complaint and what type of information must be provided to the respective enforcement authorities across the Union to decide whether a formal

investigation can be opened.

Justification

SMEs often do not have the expertise and know-how to defend their rights. This is particularly true for SMEs in the developing world. Hence, the Commission's advice and support is indispensable for SMEs to protect and enforce their rights.

Amendment 25

**Proposal for a directive
Article 6 a (new)**

Text proposed by the Commission

Amendment

Article 6a

The Commission is empowered to adopt delegated acts setting out criteria and a methodology to be taken into account by enforcement authorities when imposing pecuniary fines, having regard to at least the following elements: the turnover of the infringer, the benefits accrued by the infringer from the unfair trading practice, the number and status of the victims of the infringement, the repeated use of unfair trading practices by a buyer.

Amendment 26

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

Text proposed by the Commission

Amendment

3a. *The Commission shall ensure that DG AGRI has a functional mailbox available on its website to support small and medium-sized enterprises (SMEs) both inside and outside of the Union to protect and enforce their rights against unfair trading practices^{1a}, by providing information about the procedures. All relevant information shall be provided in all EU languages.*

1a

<http://ec.europa.eu/trade/policy/accessing-markets/trade-defence/actions-against-imports-into-the-eu/>

Amendment 27

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

Text proposed by the Commission

Amendment

3b. The Commission and the enforcement authorities of the Member States shall apply the terms of this Directive in close cooperation. Further modalities for cooperation within the network, including arrangements for information, consultation and allocation of cases of cross-border unfair trading practices, shall be laid down and revised by the Commission, in close cooperation with the Member States.

Justification

EU-level coordination is crucial to ensure that unfair trading practices involving actors from several Member States and actors based outside the EU are treated equally, and that enforcement authorities are able to share information, allocate cases of cross-border unfair trading practices and coordinate their approach. Additionally, a network provides a point of contact for non-EU suppliers unsure of which national enforcement authority to complain to.

Amendment 28

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

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 State concerned in the previous year.

contain, in particular, all relevant data on the application and enforcement of the rules under this Directive in the Member State concerned in the previous year, ***with a particular attention to cross-border unfair trading practices and their direct and indirect impacts on suppliers, including suppliers based outside the Union. Member States shall also report on the impact of the implementation of the current Directive on reducing food waste, increasing food safety and promoting sustainable practices in the food supply chain.***

Amendment 29

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. 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. ***The report shall pay particular attention to the effectiveness of the Directive in protecting the most vulnerable actors against unfair trading practices throughout the food supply chain, both inside and outside the Union. It shall also evaluate the contribution of the Directive to reducing food waste, increasing food quality and promoting sustainable practices in the food supply chain. The report shall consider the need to review the Directive, in particular to include new forms of UTPs, and to make use of data on input costs and price transmission through the agricultural food supply chain, to establish criteria for determining fair prices within a supply agreement. On the basis of this report, the Commission may present appropriate***

legislative proposals.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Unfair trading practices in business-to-business relationships in the food supply chain
References	COM(2018)0173 – C8-0139/2018 – 2018/0082(COD)
Committee responsible Date announced in plenary	AGRI 2.5.2018
Opinion by Date announced in plenary	DEVE 13.9.2018
Rapporteur Date appointed	Linda McAvan 11.7.2018
Discussed in committee	29.8.2018
Date adopted	24.9.2018
Result of final vote	+: 11 -: 1 0: 5
Members present for the final vote	Ignazio Corrao, Doru-Claudian Frunzulică, Charles Goerens, Enrique Guerrero Salom, Maria Heubuch, Arne Lietz, Norbert Neuser, Vincent Peillon, Eleni Theocharous, Mirja Vehkaperä, Željana Zovko
Substitutes present for the final vote	Cécile Kshetu Kyenge, Florent Marcellési, Paul Rübige, Adam Szejnfeld
Substitutes under Rule 200(2) present for the final vote	Asim Ademov, Andrea Bocskor

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

11	+
ALDE	Charles Goerens, Mirja Vehkaperä
EFDD	Ignazio Corrao
S&D	Doru-Claudian Frunzuliță, Enrique Guerrero Salom, Cécile Kshetu Kyenge, Arne Lietz, Norbert Neuser, Vincent Peillon
VERTS/ALE	Maria Heubuch, Florent Marcellesi

1	-
ECR	Eleni Theoharous

5	0
PPE	Asim Ademov, Andrea Bocskor, Paul Rübig, Adam Szejnfeld, Željana Zovko

Key to symbols:

+ : in favour

- : against

0 : abstention