



Proposal for a Directive on Unfair Trading Practices in B2B relationships in the food supply chain

CDG Beef
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Unfair Trading Practices

What are UTPS?

Practices that **grossly deviate** from good commercial conduct and are contrary to principles of good faith and fair dealing*

*European Commission Communication, Tackling unfair trading practises in the business-to-business food supply chain, 15 July 2014

Political context to the proposal



EP resolution (600 pro votes): calls upon COM to propose legislation (June 2016)



EESC: recommends network of enforcement authorities (September 2016)



Council Conclusions: invite COM to submit impact assessment (December 2016)



Agricultural Markets Task Force: recommends legislation (report of November 2016)

Context

- More market-oriented CAP in which producers are increasingly called upon to manage the markets
- High atomisation on the farm level, lower and volatile incomes of farmers
- Imbalances of bargaining power in food supply chain
- 20 MS have legislation, but risk of under protection, lack of enforcement, no coordination between MS
- Occurrence of unfair trading practices is a fact & harmful for farmers and small suppliers

Commission Proposal of 12 April 2018

SCOPE

- Relation between a supplier and a buyer
- Protection of the **SME supplier** only towards a buyer who is **not** a SME
- Protection includes also intermediaries, manufacturers and distributors, if they are SMEs
- Protection also for foreign suppliers

Commission Proposal of 12 April 2018

Balanced approach

- Chosen instrument is that of a **Directive**
- Short **minimum list** of UTPs only (8 UTPS are prohibited)
- Within that UTP list: **differentiation** of *per se* prohibited UTP and those UTPs which are allowed if agreed by the parties in a supply agreement
- **Minimum enforcement** criteria only



MS can go beyond

Unfair trading practices prohibited

1. Payments later than 30 days for perishable food products
2. Short-notice cancellations of perishable food products
3. Unilateral and retroactive contract changes
4. Wasted product risk transferred to supplier
5. Unsold product risk transferred to supplier
6. Listing/stocking/displaying fee
7. Contributions to buyer's promotion campaign
8. Contributions to buyer's marketing campaign

Enforcement requirements

- Designated authority
 - Confidentiality of complainant
 - Own initiative investigations
 - Investigative powers
 - Fines
 - Publication of decisions
 - Annual reports
- + Coordination of enforcement authorities