

The background of the slide is a photograph of a lush green rural landscape. In the foreground, there is a field of tall, green grass. In the middle ground, there are rolling green hills. In the background, there is a dense line of green trees under a blue sky with some white clouds. The overall scene is peaceful and natural.

The Commission's proposal for a Directive on unfair trading practices

CDG Fruit and vegetables
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Annette Kliemann
Directorate General for Agriculture and Rural
Development

State of play of legislative process

- *Imminent adoption*
- Political agreement on 19 December 2018 between the European Parliament, the Council and the European Commission
- Agreement reached 8 months after the Commission proposal of 12 April 2018



The backstory I



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)

AMTF

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

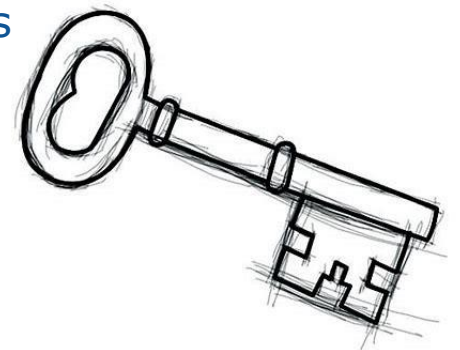


The backstory II

29 January 2016	Report from the European Commission to the European Parliament and the Council on unfair business-to-business trading practices in the food supply chain
2 March 2016	Opinion of the Committee on Agriculture and Rural Development on unfair trading practices in the food supply chain
1 June 2015	Commission Decision establishing the High Level Forum for a better functioning food supply chain
15 July 2014	European Commission Communication on tackling unfair trading practices
12 November 2013	Opinion of the European Economic and Social Committee on the 'Green Paper on unfair trading practices in the business to business food and non-food supply chain in Europe'
31 January 2013	European Commission Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe
19 January 2012	European Parliament Resolution on imbalances in the food supply chain
5 July 2010	European Commission report , Retail market monitoring report, Towards more efficient and fairer retail services in the internal market for 2020
28 October 2009	European Commission Communication on a better functioning food supply chain and Staff Working Document , Competition in the food supply chain

Compromise – the key elements

- Legal basis: Article 43 TFEU
- The Directive:
 - protects weaker suppliers against stronger buyers against UTPs occurring in the food supply chain
 - links to ag and food products
 - follows minimum harmonisation approach
 - protects against 16 specific unfair trading practices
 - provides for minimum enforcement power
 - foresees coordination between MS authorities



Who is Who – Article 2

Who is a supplier ?

Agricultural producer or any natural or legal person, including producer organisations, organisations of suppliers and associations of such organisations who sells ***agricultural and food products***.

Examples:

- **Farmer** (e.g. of FV, of cattle), also against his cooperative if the coop buys agri-food products from him
- **Farmer who does 1st processing** (e.g ham/cheese)
- **Processor** (food industry, prepared meals, yoghurts)
- **Distributor, e.g wholesaler**
- **Producer organisation**, regardless of whether it is recognised or not, including COOPERATIVES

Who is a buyer?

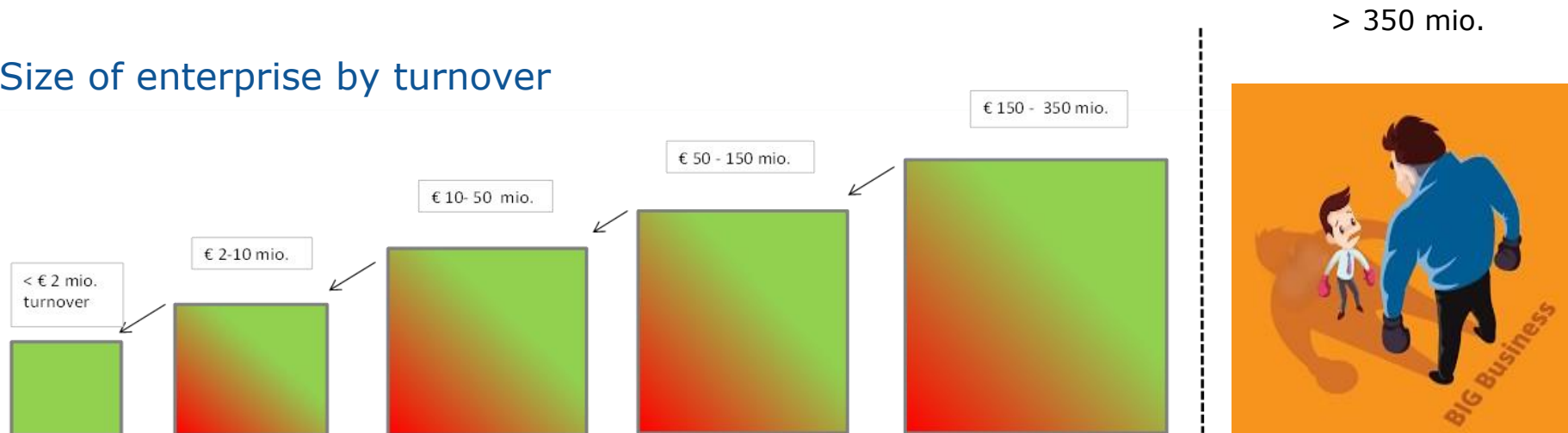
Any natural or legal person or any public authority who buys **agricultural and food products**.

Examples:

- **Producer organisation**, including COOPERATIVES
- **Processor**
- **Distributor**, e.g. wholesaler
- A **retailer** or retail association
- A **municipality**

Protecting the weak against the strong – Article 1

Size of enterprise by turnover

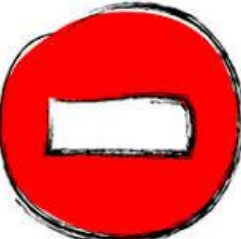


- Turnover calculation according to Commission SME Recommendation
- Foreign suppliers / foreign buyers (territorial competence)

Distinction between black and grey UTPs – Article 3

- As in the Commission's proposal, the distinction between black and grey UTPs has been upheld.
- Article 3 (1) : **Black UTPs**. Prohibited, whatever the circumstances.
- Article 3 (2): **Grey UTPs**. Prohibited, if the parties do not clearly and unambiguously agree beforehand.

Unfair trading practices prohibited – black

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1. Payments later than 30 days for *perishable* agricultural and food products
 2. Payment later than 60 days for other agri-food products
 3. Short-notice cancellations of perishable agri-food products
 4. Unilateral contract changes by the buyer
 5. Money not related to a specific transaction
 6. Risk of loss and deterioration transferred to the supplier
 7. Refusal of a written confirmation of a supply agreement by the buyer, despite request of the supplier
 8. Misuse of trade secrets by the buyer
 9. Commercial retaliation by the buyer
 10. Transferring the costs of examining customer complaints to the supplier

Unfair trading practices prohibited – grey

- 11. Unsold products
- 12. Payment of the supplier for stocking, display and listing
- 13. Payment of the supplier for promotion
- 14. Payment of the supplier for marketing
- 15. Payment of the supplier for advertising
- 16. Payment of the supplier for staff of the buyer, fitting out premises

Powers of the enforcement authority – Article 6



- **MS have to designate an enforcement authority**
 - Can also be an existing authority
 - Can be several, but single contact point for purposes of coordination
- **Vested with powers:**
 - Power to act upon a complaint or act ex officio
 - A complaint can also be filed by organisations of producers/suppliers/representative organisations and organisations with legitimate interest (Article 5)
 - Power to investigate
 - Power to terminate an infringement
 - Power to levy fines **and** impose other penalties
 - Does not prejudice the decision of the EA in each individual case
 - Power to publish decisions



Cooperation - Article 8

- **Cooperation**
 - MS to ensure that the enforcement authorities cooperate effectively with each other and with the Commission
 - And to provide each other mutual assistance in cases with cross-border dimension
- **Regular meetings**, facilitated by the Commission
- **Website by the COM**, internally for EAs and public website with links to designated authorities and information about acts of transposition

National rules - Article 9

- **Member States can go beyond this Directive**
 - They can *e.g.*:
 - cover a large number of unfair trading practices to be prohibited (under national law),
 - they enlarge the scope of the Directive by also offering protection within the same group of operators
 - they can also protect the buyer



Reporting and Evaluation

Article 10 and 11

- **Reporting**

- MS to ensure that the enforcement authorities publish annual report on the investigations carried out



- **Evaluation of the Directive by the COM**

- After four years of application
 - Effectiveness of the measures implemented at national level
 - Effectiveness of the cooperation mechanism
- Commission can ask MS for information

Next steps

- Endorsement by the co-legislators
 - Still during the mandate of the European Parliament
 - After lawyer linguist review
- Publication in the Official Journal
- Entry into force of the Directive
- 24 months after entry into force: Transposition, Article 13
- 30 months after entry into force: Application of rules, Article 13
- 36 months after entry into force: Existing contracts must be brought into compliance, Article 1(3)

