



## Directive on Unfair Trading Practices in business-to-business relationships in the food supply chain

### NGO PROPOSALS

#### TO INCREASE THE EFFECTIVENESS OF THE COMMISSION'S PROPOSAL

**We welcome the Commission's proposal.** Unfair Trading Practices (UTPs) are the result of power imbalances in the food supply chain. They must be tackled because they load risks and costs onto food suppliers, meaning unsustainable, uncompetitive supply chains and ultimately harm for EU consumers. **UTPs contribute to income insecurity, food waste, lower food standards and modern slavery. This Directive represents a valuable opportunity to tackle UTPs across the Union and ensure that food supply chains work for everyone.**

**We particularly welcome the fact that the Directive applies to suppliers irrespective of their location inside or outside the EU.** As highlighted in the Commission's impact assessment, this is essential to ensure fair treatment of both EU and non-EU suppliers, **avoiding competitive distortion and trade diversion.** Moreover, preventing abusive purchasing from non-EU suppliers is important to ensure the EU meets its treaty obligation of **Policy Coherence for Development** and its commitments under the **Sustainable Development Goals.**

**There is still significant scope to improve the Commission's proposal.** Our main recommendations in this respect are outlined below. They aim at ensuring the Directive effectively **promotes fairness in supply chains, supports the weakest actors inside and outside the EU, reduces food waste,** and contributes to **creating an enabling environment for small businesses while ensuring consumers have access to safe, sustainable and exploitation-free food.**

#### 1. Scope

A **comprehensive coverage of operators in the food supply chain** is required to effectively combat UTPs and their direct or indirect impacts on vulnerable actors. The Directive should apply to all sales of food products or at least to a larger set of actors **both on the buyer side and the supplier side.** This is essential to ensure fair trading practices. Where additional risks and costs are passed onto suppliers, they will typically end up being borne by the weakest part of the supply chain. Business may also shift to escape the rules banning UTPs.

## **2. Prohibition of Unfair Trading Practices**

The Directive should **include a general prohibition of UTPs**. This approach already exists in a majority of Member States (*see EC impact assessment p.38 + annex*). It is essential to provide a common standard of protection against UTPs across the EU and to prevent buyers circumventing the Directive through the use of new or alternative UTPs.

Improvements are needed to the definitions of the UTPs banned by article 3 and **additional UTPs should be specifically prohibited** because they are frequent and harmful, threatening the livelihoods of food suppliers (e.g. “loss leaders”: selling products such as bananas or milk at below cost price to attract consumers) or driving food waste (e.g. abusive use of cosmetic specifications or “minimum life on receipt” specifications).

## **3. Complaints**

Many food producers or their organisations will be reluctant to complain for fear of being identified and punished by their buyers. **To overcome this fear factor** in the food supply chain, in addition to preserving the confidentiality of complainants, to providing for own initiative investigations, **it is essential that the right to submit a complaint is extended to civil society actors with a knowledge of trading practices in supply chains**. Vulnerable actors in supply chains, including those in non-EU countries, may not feel confident submitting complaints and may not have the support of a strong union or producer organisation. Therefore, civil society organisations must be able to complain on the behalf of these groups. **This will ensure more effective enforcement and have a preventative effect on the use of UTPs by powerful actors in the food supply chain.**

## **4. Enforcement & cooperation to tackle cross-border UTPs**

Many large food businesses operate in several different countries, and food supply chains often cross borders one or more times before reaching the end consumer. The Directive should establish a **network of the national enforcement authorities that will ensure that they are able to effectively tackle cross-border UTPs** by ensuring a common approach to interpreting and enforcing the terms of the Directive. It is also important to **introduce common criteria that will ensure sanctions are effective, proportionate and dissuasive**. This common approach would **ensure fair treatment, avoid highly divergent regimes across the EU and prevent ‘forum shopping’**, the practice by which a multinational buyer can place its buying function in the member state with the most permissive regulatory regime.

4.1. The impact assessment of the Commission shows that the variations between Member States on the sanctions applied are “remarkable” (impact assessment p. 172). It is therefore very important to **include criteria and a methodology that will ensure that fines are effective, proportionate and dissuasive**.

Based on the Commission’s impact assessment, at least the following elements should be taken into account to determine the fines:

- the turnover of the infringer,
- the benefits accrued from the UTP by the infringer,
- the number and status of the victims of the UTPs,
- the repetition of offenses by a buyer.

A delegation of power should be given to the Commission to develop a common methodology based on these criteria.

- 4.2. **A European UTP-network** modelled after the European Competition network must be created to **promote cooperation between enforcement authorities and ensure proper investigation and enforcement in cases of cross-border UTPs.**

Coordination between national enforcement authorities must go beyond the annual conference and website currently proposed. EU-level coordination is required to promote information sharing, cooperation and a common approach to investigations and enforcement, and to allocate cases of cross-border unfair trading practices to the competent enforcement authority. The network of competent authorities should also dedicate particular attention to ensuring access to enforcement authorities of Member States by small suppliers, in particular those based outside the EU.

## **5. Reporting and review**

Reporting obligations of Member States and of the European Commission should be strengthened. A proper **review clause** should be included **mandating the Commission to table a legislative proposal amending the Directive if appropriate following an evaluation of the effectiveness of the Directive** in promoting fairness in supply chains and **protecting vulnerable actors** inside and outside the EU from UTPs. Other important policy objectives of the Directive should also be evaluated such as its contribution to **reducing of food waste, increasing food safety and promoting sustainable practices in the food supply chain.**

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