



Brussels, 12.4.2018
COM(2018) 173 final

2018/0082 (COD)

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

{SWD(2018) 91 final} - {SWD(2018) 92 final} - {SWD(2018) 93 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

Farmers, processors, traders, wholesalers, retailers and consumers are all actors in the food supply chain. Smaller operators in the food supply chain are more prone to face unfair trading practices (UTPs) due to their, in general, weak bargaining power in comparison to the large operators in the chain. Agricultural producers are particularly vulnerable to UTPs as they often lack bargaining power that would match that of their downstream partners that buy their products. This is because alternatives for getting their products to consumers are limited.

There is a wide-spread consensus that UTPs occur throughout the food supply chain. Three Commission communications since 2009 have focused on the food supply chain including UTPs.

In June 2016, a European Parliament resolution¹ called on the Commission to submit a proposal for a Union legal framework concerning unfair trading practices. In December 2016, the Council invited the Commission to undertake, in a timely manner, an impact assessment with a view to proposing a Union legal framework or non-legislative measures to address unfair trading practices.² In September 2016, the European Economic and Social Committee published a report calling on the Commission and the Member States to take swift action to prevent UTPs by establishing an EU harmonised network of enforcement authorities, so as to create a level playing field within the single market.³

In its report from 2016 the Commission identified a number of areas for further improvement concerning both Member States' UTP legislation and voluntary industry initiatives. The Commission committed to re-assessing the need for EU action to address UTPs in light of subsequent developments before the end of its mandate. The expectations about improvements were not fully met as is discussed in greater detail in the impact assessment (section 3.3).

When occurring, UTPs can put operators' profits and margins under pressure, which can result in a misallocation of resources and even drive otherwise viable and competitive players out of business. For example, retroactive unilateral reductions of the contracted quantity for perishable goods equates to income foregone for an operator who may not easily find an alternative outlet for these goods. Late payments for perishable products after they are delivered and sold by the buyer constitute extra financial cost for the supplier. Possible obligations for suppliers to take back products not sold by the buyer after the suppliers and buyer may constitute an undue transfer of risk to suppliers that has repercussions on their security of planning and investment. Being forced to contribute to generic in-store promotional activities of distributors without drawing a commensurate benefit may unduly reduce a supplier's margin.

In an agricultural policy environment that has become distinctly more market oriented, the good governance of the food supply chain has become more important for operators, in particular for agricultural producers. The proposal should ensure that these operators are able to compete on fair terms, thereby contributing to the overall efficiency of the chain. Unfair business conduct by operators wielding bargaining power that is not prohibited, or the

¹ European Parliament resolution of 7 June 2016 on unfair trading practices in the food supply chain (2015/2065(INI)).

² [Council Conclusions](#) of 12 December 2016, Strengthening farmers' position in the food supply chain and tackling unfair trading practices.

³ [COM\(2016\) 32 final](#), 30 September 2016.

existence of redress possibilities that lack effectiveness, are liable to undermine the economic viability of operators in the chain. Such weak governance is also likely to erode trust in the overall fairness and functioning of the food supply chain.

The food supply chain is a continuum of vertically inter-related markets. It is characterised by significant differences in relative bargaining power between smaller and medium-sized enterprises and larger ones. The concentration levels at the stages downstream of primary production are high in all Member States. In some cases UTPs affect weaker producers, such as agricultural producers, even if they are not directly exposed to them, if UTP-induced costs are passed back along the food supply chain to the weakest link which is often the farmer. The negative effect of a UTP that occurs downstream, for instance between a retailer and a processor, thus can cascade backward in the chain to ultimately reach farmers.

Specific UTP rules in 20 Member States bear witness to the significant concern about UTPs at the national level. However, the heterogeneity in the treatment of UTPs in Member States is significant. In certain Member States, there is no, or ineffective specific protection against UTPs.

General (contract) law may prohibit certain practices and those who have faced UTPs have the option to seek redress before a court of civil law. But general contract law, to the extent that it covers the practice at issue, may de facto be difficult to enforce: a weaker party to a commercial transaction is often unwilling to lodge a complaint for fear of compromising an existing commercial relationship with the stronger party (“fear factor”).

The divergence of Member States’ regulatory approaches to UTPs results furthermore in dissimilar conditions of competition for operators. Under the current piecemeal approach, the extent of protection from UTPs that operators are granted depends on the Member State. Divergence of rules is liable to lead to differences in the conditions of competition.

There is also very little coordination among Member States’ enforcement authorities, due to the absence of formal coordination structures at EU level. Such coordination could improve the enforcement practices in Member States.

The voluntary Supply Chain Initiative (SCI)⁴ is a private industry initiative that seeks to govern UTPs. Similar national initiatives exist in Member States alongside national mandatory measures. Since its inception, the SCI has played an important role in Member States in raising awareness about UTPs and fostering fairness of business conduct. It has been evolving and most recently nominated an independent Chair. It provides a forum for early and non-litigious dispute resolution. The SCI is, however, unlikely to develop into a comprehensive governance framework that would make public governance measures including enforcement superfluous. Participation in the SCI is voluntary and the SCI so far does not cover all operators in the food supply chain. For instance, while retailers are members of the SCI retailer buying alliances do not participate in the SCI, nor do the organisations representing agricultural producers. The latter did not join the SCI since, in their view, it does not ensure sufficient confidentiality for complaining parties and does not provide for independent investigations or sanctions.⁵ However, organisations representing agricultural producers participate in national supply chain initiatives.

Certain limitations to a voluntary code may also be structural. The SCI has no capability of imposing sanctions, nor are decisions published (no deterrent effect). One-on-one disputes are

⁴ <http://www.supplychaininitiative.eu/>. The SCI formally was created in 2013 but its “Principles of Good Practice”, a sort of code of conduct, date from 2011.

⁵ European Commission, [Report](#) from the Commission to the European Parliament and the Council, on unfair business-to-business trading practices in the food supply chain, January 2016, p. 8.

not dealt with in a manner that would ensure the confidentiality of complaints, not even in the early stages of the procedure. Furthermore, there is no ability to carry out own initiative investigations. The concerns about effective enforcement account for the continued low level of participation of agricultural producers in the SCI. Moreover, a voluntary initiative cannot address, in and of itself, the fragmentation of UTP rules in Member States.

Accordingly, the present proposal for a Directive aims at reducing the occurrence of UTPs in the food supply chain by introducing a minimum common standard of protection across the EU that consists of a short list of specific prohibited UTPs. The protection covers small and medium-sized suppliers in the food supply chain insofar as they sell food products to buyers who are not small and medium-sized. This scope aims at contributing to a fair standard of living for the agricultural community, an objective of the common agricultural policy under Article 39 TFEU.

Provisions targeting minimum enforcement requirements applying to national competent authorities add to the deterrent character of the proposed regime. Last but not least, a coordination mechanism between enforcement authorities facilitated by the Commission will enable the exchange of data concerning the number and type of infringements investigations carried out and will also provide a forum for the exchange of best practices, with a view to improving the effectiveness of enforcement.

The proposed measures are complementary to measures existing in Member States and the code of conduct of the SCI (minimum harmonisation approach).

- **Consistency with existing policy provisions in the policy area**

There are, as of yet, no EU horizontal rules on UTPs between businesses. Fairness in market activities in the business-to-business context is the specific objective of Directive 2006/114/EC, which deals with misleading practices and the requirements of comparative advertising. However, the provisions set forth in that Directive do not address business-to-business trading practices as identified in this proposal.

- **Consistency with other Union policies**

Competition law has a scope that is different from rules on UTPs. UTPs are unilateral practices that do not in most cases imply an infringement of competition rules because such an infringement requires the existence of a dominant position in a given market, as well as the identification of an abuse of that position that affects the market overall. Comparatively, rules on UTPs address any situation of unequal bargaining power (in most cases without a dominant position in the market) and prohibit undertakings from imposing on their trading partners, or obtaining or attempting to obtain from them, terms and conditions that are deemed unjustified, disproportionate or without consideration (without necessarily an effect on the market overall). Accordingly, UTP rules will be compatible with and complementary to the EU's competition rules.

Regulatory divergence and under-protection of kinds similar to UTPs have given rise to EU initiatives in the area of business-to-consumer protection. Some Member States have extended such rules to national business-to-business situations. The conceptual approach under the EU's business-to-consumer rules indeed shares relevant characteristics with Member States' existing UTP rules governing business-to-business transactions, namely the focus on relatively weaker parties to a commercial transaction.

The Late Payment Directive (2011/7/EU) foresees that in commercial transactions between businesses ("undertakings") the payment term established in the contract should not exceed 30 calendar days, which can be extended to 60, unless otherwise expressly agreed in the contract and provided it is not grossly unfair to the creditor. Therefore the absence of a binding

maximum payment term in business-to-business transactions is often exploited to impose payment terms much longer than what the creditor is comfortable with, or which is not justified by the practices of the trade or the nature of the contract. The proposal therefore aims at setting a maximum payment term of 30 calendar days in commercial transactions in relation to the purchase and sale of food products between businesses. This term is binding and shall not be exceeded under any circumstance. While this proposal constitutes a *lex specialis* concerning payment terms for the contracts within the scope of this Directive, the Late Payment Directive nevertheless remains applicable whenever late payment occurs, for the remaining provisions, in particular the parts concerning payments and rates of interests, compensations, unfair contractual terms and practices, expedited procedures to obtain orders of payments, payments schedules, retention of title.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

A key objective of the CAP is to ensure a fair standard of living for the agricultural community (Article 39 TFEU). The EU's constitutional emphasis on producer welfare is unique to the agricultural sector hinting at the comprehensive responsibility of the CAP for European agriculture. The Treaty lists four other objectives for the CAP, i.e. increasing agricultural productivity, stabilising markets, assuring availability of supplies and ensuring reasonable prices for consumers.

Article 39 of the Treaty on the Functioning of the European Union (TFEU) specifies that the common agricultural policy (CAP) shall ensure a fair standard of living for the agricultural community as well as increase agricultural productivity, stabilise markets, assure availability of supplies and ensure reasonable prices for consumers. Article 40 TFEU stipulates that the common market organisation shall exclude discrimination between producers. Article 43 TFEU specifies that the common market organisation shall ensure conditions for trade within the Union similar to those existing in a national market.

The patchwork of UTPs rules in Member States or the absence thereof is liable to impair the objective of ensuring a fair standard of living for the agricultural community. UTPs jeopardise the profitability of agricultural producers and lead to downward pressure on their market income. Their governance falls therefore within the CAP's principled remit.

The absence of a common UTP framework stands in contrast to other areas which the CAP governs, and which have direct relevance for operators, such as competition rules, state aid rules and marketing standards. In these areas, the common market organisation (Regulation (EU) No 1308/2013) lays down common rules relevant to the market conditions operators face in the EU so as to contribute to economic and social cohesion, as well as to a level playing field in the single market.

According to Article 38(2) and (3) TFEU the CAP primarily covers the agricultural products listed in Annex 1 to the TFEU. However, the European Court of Justice has explicitly confirmed that food products not listed in Annex I TFEU (Annex I products are deemed "agricultural products" under the Treaty) can be covered by acts adopted under Article 43 TFEU if this contributes to the achievement of one or more of the CAP objectives and agricultural products are principally covered.⁶

Moreover, an approach which protects agricultural producers and their associations (cooperatives and other producer organisations) also must take into account indirect negative

⁶ Judgment of the European Court of Justice, [C-343/07](#), 2 July 2009, paragraphs 50-51.

effects they may suffer through UTPs occurring downstream in the food supply chain, i.e. by operators who are not farmers but whose weak bargaining position in the downstream chain makes them vulnerable to UTPs. Protection against UTPs applying to downstream suppliers prevents unintended consequences for farmers due to trade being diverted to their investor-owned competitors – for example at the processing stage – which would not enjoy protection (e.g. less legal risk for buyers to be confronted with UTP accusations).

In light of this, Article 43 TFEU, which entrusts the Union legislator with the legal powers to establish a common organisation of agricultural markets in the EU, can in principle serve as the legal basis for measures covering UTPs occurring in the food supply chain in relation to the trade of food products which originate with agricultural producers.

- **Subsidiarity (for non-exclusive competence)**

No common EU rules exist that would provide for a minimum European standard of protection by approximating or harmonising Member States' diverging UTP measures. Short of EU measures, Member States lack coordinating mechanisms to bring about such approximation, nor do they have obvious incentives to self-align. A minimum standard of protection against UTPs in Member States does not yet exist, despite the Commission's recommendations in its communications.

Certain Member States have no specific rules at all that would protect against UTPs. Others do not address important aspects of effective UTP enforcement. This leads to under-protection of vulnerable operators, in particular agricultural producers. Moreover, in spite of its positive effects in the area of private governance of UTPs, the voluntary codes including the SCI – to the extent it applies in Member States – are not able to effectively replace public governance measures.

There is thus a necessity for EU measures that target the problem of under-protection against UTPs by providing for a common EU-wide minimum standard. After years of discussion, analysis and recommendations, which have improved the situation on the ground only to a certain extent, EU legislation is a means that can ensure such a minimum standard of protection throughout the EU, including with regard to coordination and enforcement.

The effectiveness of EU rules consists in a minimum standard that is common in Member States and that would introduce protection in those Member States which currently lack rules protecting against UTPs. The approach chosen is proportionate in relation to the problem encountered and in relation to the measures existing in Member States. It does not lay down a comprehensive EU framework governing UTPs in Member States. Rather, in line with a minimum harmonisation approach, it tackles a short list of manifestly unfair trading practices but leaves Member States room to keep or provide for more far-reaching measures. More far-reaching national UTP rules and voluntary codes like the SCI would not be replaced but rather complemented. An EU minimum standard is therefore expected to lead to synergies rather than the cancelling out of the advantages of these regimes. Secondly, the proposed Directive lays down effective enforcement powers that have proven effective in tackling the fear factor, as well as enhancing the deterrent effect and improving redress possibilities in Member States. Again, the approach followed is that of a minimum harmonisation and relies on Member States enforcement authorities rather than any centralised enforcement authority. Third, the proposed Directive includes the setting up of a coordination network of enforcement authorities facilitated by the Commission which will enable the exchange of best enforcement practices and a platform on which to discuss and improve the application of the UTP rules. Experience from the enforcement of UTPs by the UK Grocery Code Adjudicator shows that an effective protection regime can reduce the occurrence of UTPs and improve effective redress against them.

Measures at the EU level, complementary to Member States regimes and the SCI, consist in common UTP rules that would aim at improving the governance of the food supply chain and pursue the objective of ensuring fair living standards of the agricultural community (Article 39 TFEU). The approach adopted takes the form of partial (minimum) harmonisation and takes the positive effects of market driven contractual arrangements between parties into account. As UTPs occur along the food supply chain and have repercussions that are likely to be passed through to agricultural producers, it makes sense to address them in a comprehensive manner and target them along the chain.

- **Proportionality**

The option packages discussed in the impact assessment differ according to their ambition. As regards their suitability to effectively address the issue, all are in principle suitable to contribute to achieving the stated objectives, which are to reduce the occurrence of UTPs and address the situation of under-protection. Having said this, recommendations by the EU can only do so much in relation to the objectives pursued. Recommendations in 2014 and 2016 by the Commission to Member States and the SCI have not been given full effect, partly because certain outcomes may depend on a common mandatory approach. Accordingly, the approach chosen in the present Directive is more effective in ensuring the goal of a common minimum level of protection in Member States and can, as has been shown by the example of certain Member States, address some of the identified problems relating to UTPs, including the enforcement shortcomings. By the same token, it would seem that less intrusive means are not likely to achieve the objective in an equally effective manner.

The approach taken is circumspect in different ways and is therefore proportionate to the objective pursued. Partial harmonisation is proposed, not full harmonisation. Member States will continue to be able to have rules on UTPs above and beyond the minimum standard of protection this Directive intends to introduce (subject to applicable EU law). What is more, the Directive suggests an approach that is based on decentralised enforcement by Member States. The Directive is complementary to existing rules, including those established by voluntary initiatives such as the SCI. Accordingly, the Directive does not aim to define all practices that could be UTPs but establishes a short list of prohibited UTPs. The scope of protection is limited to SME suppliers in the food supply chain thereby not interfering with the commercial relationships of large players who are less likely to be affected by UTPs or who can be expected to counter-vail undue pressure to “suffer” UTPs, and who would not be subject to the fear factor discussed in the impact assessment report in the same way as SME operators.

Sections 3.2 and 3.3 of the impact assessment address proportionality. The characteristics of the preferred option, which make the proposal proportional within the above meaning, are discussed in sections 5 and 6 and eventually in section 8, which presents the preferred option.

- **Choice of the instrument**

The instrument chosen is a Directive, as a soft law approach risks being ineffective in ensuring the desired minimum level-playing field. The endorsement of a Directive as the relevant instrument for UTP measures is also mindful of subsidiarity: a Directive enables Member States to integrate the minimum protection into their national legal orders in a way that is compatible with their choices of laws, regulations and administrative provisions.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

As there is no EU legislative framework to address UTPs yet, it is not possible at this stage to present an evidence-based evaluation on how EU measures perform. However, some Member States have performed ex ante or ex post evaluations with respect to the effectiveness and efficiency of their UTP policies.

- **Stakeholder consultations**

The consultation process included consultations on the inception impact assessment, an open public consultation, targeted food supply chain stakeholder consultations (undertakings in the food supply chain and consumer organisations), a consultation of Member States, an academic workshop on UTPs in the food supply chain (organised by the Joint Research Centre), ad hoc meetings with food supply chain stakeholders, and engagements with CAP Civil Society Dialogue groups. The consultation process was primarily aimed at the collection of evidence to inform the impact assessment report.

Stakeholders were invited to offer comments and evidence on problem definition, policy objectives, the need for EU action, policy options, on the likely impact of the policy options, and on implementation issues, including monitoring and enforcement.

Stakeholders largely stated that frequent and damaging UTPs are occurring in the food supply chain, and they support legal action at the EU level (with the exception of the retail sector), including minimum enforcement standards. (Large) retailers disagree that UTPs occur widely and are opposed to EU measures. Consumer organisations had limited participation in the consultation process but expressed an interest to be involved at the legislative stage.

90% of respondents to the open public consultation agreed or partially agreed that there were practices in the food supply chain that could be considered to be UTPs. These results were broadly similar for all stakeholder groups (producers, processors, traders, researchers, etc.), with the exception of the retail sector (12% agreed or partially agreed that UTPs exist in the food supply). The most damaging practices that were identified in the consultation broadly aligned with those identified by the SCI in its Principles of Good Practice. Overall, 87% of respondents believed action should be taken by the European Union (in combination with Member States, 58%; or the EU acting alone, 29%). In terms of the effectiveness of enforcement, the most important features named by respondents were: transparency of investigations and results (94%), possibility of fines in the case of violations to the rules (93%), possibility to file collective complaints (92%), ability to receive and treat confidential complaints (89%), designation of a competent authority (89%), and ability to conduct own initiative investigations (73%).

Stakeholders' input was incorporated in the impact assessment analysis throughout the text and taken into account in the proposal for the Directive. While most stakeholders called for extensive regulation of several types of UTPs in the food supply chain, the Commission's proposal comes forward with a restricted approach to cover only a few types of particularly damaging UTPs. The Commission largely agrees with the majority of stakeholders on the importance of robust enforcement capability of Member State authorities and coordination of enforcement at EU level.

- **Collection and use of expertise**

In addition to the stakeholder consultations described above, the analysis for the impact assessment relied on a wide range of scientific, legal and applied knowledge. For the defini-

tion of the baseline, information was collected from Member States and processed and analysed by external legal experts; additional information pertaining to the possible impacts of the options was also collected from Member States, as well as from publicly available information. More generally, the evidence base of the impact assessment includes data and information obtained through the above-mentioned consultations, through an academic workshop and a technical report, through independent literature reviews, and through exchanges with Member States and third countries with experience in regulating UTPs. For instance, in its report “The supply of groceries in the UK market investigation” from 2008, the UK’s Competition Commission found that certain UTPs may have a negative effect on competition and consumer welfare. In a study for DG GROW in 2016, Areté discussed the limits of the SCI in addressing UTPs. And in a report about UTPs in 2013, SEO confirmed the role the fear of retaliation plays in UTP cases.

In addition, the in-house expertise of both the researchers at the JRC, in particular its Unit on Economics of Agriculture, and the economic and legal experts within DG AGRI were used in the impact assessment.

Academic workshop on UTPs in the food supply chain

Together with DG AGRI, the Joint Research Centre (JRC) organised a workshop on “Unfair trading practices in the food supply chain” in July 2017. More than a dozen participants at this workshop came from universities across the EU as well as from the US.

Based on the outcomes of the workshop, and with the support of the workshop’s academic rapporteurs, the JRC produced a technical report that confirmed the existence of UTPs in the food supply chain and referenced the extensive regulatory and analytical work on this topic.

Study on national UTP rules in Member States

Using a questionnaire-based approach, the Commission elicited feedback from Member States on their experiences with UTP rules and on the data and information they could share in this context. In particular, Member States were asked to (i) update information on the existence, implementation, and enforcement of national UTP legislation that had been collected in an earlier study in 2015, (ii) share information from impact assessments they may have carried out for decision-making on national UTP rules, and (iii) provide data and information on the administrative costs to public administrations from the introduction of national UTP rules.

The replies from Member States were used as input for an overview of the “Specific regulations on unfair trading practices in Member States in the business-to-business retail supply chain” (Cafaggi, F. and P. Iamiceli, Annex F to the impact assessment). In addition, DG AGRI used Member States’ estimates of their administrative costs related to the introduction and enforcement of their national UTP rules when drafting the impact assessment and designing the different options.

Analysis of the impact of UTP regulation

The Chief Economist of DG COMP provided an analysis of the possible impact of the regulation of trading practices in the food supply chain, including the identification of the possible benefits and drawbacks (for operators and consumers) of regulating different types of practices.

• **Impact assessment**

DG AGRI presented the impact assessment to the Regulatory Scrutiny Board on 21 February 2018. The RSB issued a negative opinion on 23 February 2018. The Board requested further work to be done and asked for the resubmission of the impact assessment report. The Board identified several shortcomings that needed to be addressed in a revised version. A revised

version of the impact assessment report was submitted to the Regulatory Scrutiny Board on 5 March 2018 and the Board issued a second opinion, received on 12 March 2018, of positive with reservations. An overview of the Board's recommendations and the changes made is provided in Annex 1 of the impact assessment.

The different policy options are presented and discussed in section 5 of the impact assessment. These options are then evaluated and combined into several plausible differentiated option packages (section 6.4). A preferred option package is presented in Section 8. The methodology used and the assessment of the effectiveness and efficiency of the packages and of their underlying elements is described in Annex E.

As to the option elements, the following considerations are important. A detailed harmonisation of UTP rules in the EU food supply chain does on the basis of the evidence available, not seem warranted. A partial harmonisation approach with substantive UTP rules can accommodate Member States' stricter UTP rules while at the same time introducing a common minimum standard of protection in the EU that supports the objective of reducing the occurrence of UTPs.

A general clause prohibiting UTPs would provide a common standard of protection against UTPs in Member States. While it would be interpreted by authorities in Member States on a case-by-case basis it would entail expectations about a uniform application. A general clause could thus come to de facto imply a degree of harmonisation that could give rise to tension in relation to Member States' existing regimes which often rely in their own right on general national prohibitions. Prohibitions of specific UTPs - the approach taken in this proposal for a Directive - do not have this broad de facto harmonising effect. Concretely formulated prohibitions targeting specific UTPs will also reduce legal uncertainty for commercial transactions that may derive from a more general prohibition. Due to their specificity the rules aim to be predictable for operators and to be workable for authorities entrusted with their enforcement.

It is necessary to distinguish between practices that are foreseen in clear and unambiguous terms in the supply agreement between the parties before the transaction has started, and practices that occur after the transaction has started without being agreed in advance in clear and unambiguous terms. The first category of practices is likely to generate efficiencies whereas the second category is unlikely to generate efficiencies for the parties. The definition of certain UTPs in this proposal therefore accommodates contractual arrangements between parties unless they cannot reasonably be seen as creating efficiencies, for instance if they give vague and unspecified powers to the stronger party to unilaterally decide on such practices at a point in time after the transaction has started (unpredictability) or because some practices are by their nature unfair.

The proposed UTP rules focus on products listed in Annex I TFEU and being for food use as well as processed agricultural products traded along the food supply chain, thus covering all traded food products. Purchases of such products by non-SME buyers in the chain will have to respect the EU's UTP rules. This comprehensive scope is consistent with the SCI's approach and with UTP measures in Member States. Only covering agricultural products as listed in Annex I would risk creating distortions in the supply chain that could ultimately affect negatively the trade in agricultural products and agricultural producers.

A targeted protection of small and medium suppliers in the food supply chain is justified because they are often the ones who cannot defend themselves against UTPs due to their lack of bargaining power. There also is a risk of negative unintended consequences concerning measures affecting the contractual relationships between larger operators. Therefore, even though in the impact assessment UTPs are defined in terms of absolute fairness

considerations, a targeted protection is more proportionate at this stage. By the same token, the rules are to apply to non-small and medium-sized buyers in the food supply chain, those being the ones who may be able to use their bargaining power against smaller operators in a way that enables the use of UTPs.

Certain procedural powers for authorities that are competent to monitor UTP rules – and the existence of such an authority in the first place – have proven important for the perception of operators that effective enforcement exists and is apt to address the root causes for those who have been faced with UTPs not to seek redress (fear factor). Member States are therefore required to designate a competent authority for UTP enforcement that is given certain minimum enforcement powers inspired by best practices in Member States' existing regimes.

A coordination mechanism between competent authorities should accompany the EU rules and ensure their coordinated application, and it should facilitate an exchange of best practices. Importantly, it should also collect data through Member State reporting that can inform a future review of the measures. The Commission would facilitate the network by hosting annual meetings based on annual application reports submitted by Member States' competent authorities.

As regards the impacts of UTP rules, a precise quantitative estimate of the benefits that will accrue to operators is difficult to give. However, each of the targeted UTPs has a clear negative impact on their bottom line through the undue transfer of risk and generation of uncertainty, i.e. through costs that in competitive markets would not be part of their entrepreneurial agency. Respondents in the numerous surveys that were cited in this impact assessment almost all converge in their concern about the occurrence of UTPs and their harm, as well as in their expectations of positive effects from public (EU) UTP rules and their effective enforcement. For instance in the UK the Grocery Code Adjudicator reports that it has proven effective in reducing the occurrence UTPs.

Estimates about the harm which UTPs cause are given in sections 2.5 and 6.2.1 of the impact assessment. According to a 2013 survey of agricultural producers and agricultural cooperatives based on a wide definition of UTPs, the estimated damage from UTPs amounted to over EUR 10 billion per year. Manufacturers of food products participating in a survey in 2011 based on a wide definition of UTPs reported that their UTP-related costs amounted to 0.5% of their turnover, which would be equivalent to EUR 4.4 billion if extrapolated to the overall food industry turnover in that year.

The expected benefits of reducing the occurrence of UTPs could be considered costs for those stronger operators that have been applying them and that must no longer apply them due to UTP rules. However, due to societal considerations concerning fairness such benefits, which are a result of subjecting suppliers to UTPs, are not considered justified in the first place. It follows that the benefits resulting from the prohibition of UTPs outweigh this specific form of "harm".

The main costs for operators that are subjected to UTP rules will be compliance costs. In this context, compliance costs are generally costs that relate strictly to training and adherence to the rules. The proposed UTP rules do not require operators to carry out certain activities, they only prohibit certain behaviour that is deemed unfair. Moreover, at least the signatories of the SCI already incurred compliance costs to respect the SCI's voluntary code. One large retailer, for example, has spent EUR 200,000 on one-off training measures of staff in relation to the SCI code of conduct.

A partial harmonisation of UTP rules at EU level is expected to have limited effects on consumers. In the open public consultation, operators do in general not claim that UTPs (e.g.

by the SCI) lead to advantages for consumers, for example through lower consumer prices that become possible through margins that were extracted from upstream suppliers through UTPs. It is sometimes argued that consumer prices are negatively affected by below-cost-sales prohibitions, but these are not covered by the impact assessment. The consumer organisations which have reacted to the consultation encourage public UTP rules because they expect a longer-term negative effect of UTPs on consumer prices.

Member States will have to transpose the UTP rules into national law. The choice of a Directive leaves Member States a discretionary margin how to implement this transposition. Member States are not precluded from adopting and applying on their territory stricter national laws protecting small and medium sized buyers, as well as the suppliers specifically mentioned in this Directive. UTPs have been subject to a variety of heterogeneous legislative measures in Member States over the years. Accordingly, the majority of Member States already provide for a governance framework for UTPs. The impact of EU UTP rules on Member State legislation will depend on the (scope of the) existing national rules. In cases where there is no framework at all, the Member State would have to implement the new measures, including designating an enforcement authority. Having said this and as shown by some Member States, the mandate of an existing authority (e.g. a national competition authority) can be expanded. Therefore, such implementation costs can be absorbed to some extent by current structures in Member States and therefore these costs would be limited. By way of illustration, the running costs of the UK Grocery Code Adjudicator stood at GBP 1,786,000 in the 2015/2016 financial year, and at GBP 622,000 in the 2016/2017 financial year. Most of the difference is due to a large-scale investigation into one retailer in 2015/2016.

Finally, UTP rules are not expected to have a significant direct impact on the environment, although operators that are not subject to UTPs may be left with more economic margin to invest in producing in environmentally sustainable and climate-friendly ways and to prevent food waste, or they may feel less pressured to compensate for the lost margin by cutting corners when it comes to environmental and food safety legislation.

- **Regulatory fitness and simplification**

SMEs are expected to benefit from the proposal. While SMEs may also face compliance costs, this was not an issue raised in the answers to the consultation. Moreover, voluntary rules like those of the SCI already apply regardless of size.

- **Fundamental rights**

Implementation plans and monitoring, evaluation and reporting arrangements The EU is committed to high standards of fundamental rights. A fair and effective system of protection against UTPs will contribute to stakeholders' ability to conduct a business (see Article 16 Charter of Fundamental Rights of the European Union (CFR)). Union legislation must respect the rights enshrined in the Charter (Articles 51, 52 CFR). Enforcement powers therefore have to be shaped in a manner compatible with the rights of defence (Article 48 CFR), e.g. by providing an effective remedy against the decision of an enforcement authority that is imposing penalties. In particular for the confidential treatment of complaints, a balance must be struck in relation to the rights of defence.

4. BUDGETARY IMPLICATIONS

The proposal would have a limited impact on the EU budget. It would entail one annual coordination meeting of Member States' enforcement authorities in Brussels and the creation and management of a basic website for the information exchange by the Commission.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

There are no relevant statistics available at EU level in the Eurostat database that could serve as primary sources of data for the monitoring and evaluation of this Directive. Statistics on producer, processor and consumer prices collected either through Eurostat or directly in the framework of the Common Organisation of the Markets, will be used by the Commission as a basis for econometric work in support of the monitoring and evaluation of the Directive.

Monitoring and evaluation will therefore rely on data collected in the framework of the present Directive, mainly by means of annual reports of the national competent authorities. Such reports will detail the activity of authorities on the application and enforcement of the rules under this Directive, e.g. in terms of the number of complaints received (confidentially or not), the number of investigations launched (under own initiative or upon request) or the share of cases resulting in findings of an infringement. The annual reports will also cover concrete practices and experiences, with a view to facilitating the adoption of best practices. This will be further complemented by surveys of undertakings in the EU (from agricultural producers to retailers) examining perceptions, as already carried out by some Member States and voluntary initiatives. Both experiences and perceptions are important factors influencing the behaviour of businesses in the Single Market. Finally, the Commission will also directly carry out or commission economic studies aiming at measuring the impact of the different practices concerned by national rules and voluntary initiatives at the micro- and macroeconomic level.

According to the indicators identified in the impact assessment, the Commission will evaluate the effectiveness, efficiency, relevance, coherence and EU added value of this policy, as well as possibly other relevant evaluation criteria such as utility, equity and acceptability or coordination (with Member State rules and voluntary self-regulation initiatives). These indicators can serve as the basis for the evaluation that should be presented no sooner than three years after the application of the Directive, to ensure that a sufficient data-set is available.

An implementation plan is not required for this Directive, which has a limited scope, does not propose full harmonisation, and does not entail particular technical, compliance or timing challenges. In addition, several support actions are provided for by the Directive itself, which lays down a cooperation mechanism between enforcement authorities and the setting-up of a website for this purpose.

- **Explanatory documents (for Directives)**

For the reasons given above in the section on implementation plans, the Commission will not request explanatory documents concerning the transposition from Member States.

- **Detailed explanation of the specific provisions of the proposal**

The proposed Directive consists of 14 Articles.

Article 1 defines the subject matter of the Directive, which follows a partial (minimum) harmonisation approach to introduce a minimum standard of protection relating to UTPs across Member States. The protection applies only to SME suppliers in the food supply chain as regards their sales to buyers which are not SMEs.

Article 2 provides definitions of terms recurrently used in the provisions of the Directive: “buyer”, “supplier”, “small and medium sized enterprise”, “food products”, and

”perishability”. These definitions contribute to defining the scope of the application of the Directive.

In terms of products covered, the Directive covers 'food products', that is to say agricultural products as listed Annex I TFEU for the use as food, including fishery and aquaculture and processed agricultural products for food use – i.e. processed food products which are not already covered in Annex I TFEU.

The relation between suppliers and buyers in combination with the product coverage results in a scope of the measures that applies along the food supply chain and that covers UTPs that can cascade backwards to eventually put farmers under pressure, whether directly or indirectly. The protection covers small and medium-sized agricultural producers (including their producer organisations such as cooperatives) and other SME suppliers in the chain, while the UTP rules constrain the behaviour of buyers which are not SMEs.

The proposal takes into account that UTPs are not necessarily always laid down in a written contract and might, in principle, occur at any stage of the commercial transaction between the buyer and the supplier of the food supply chain, including ex post after a contract has been concluded.

As the food supply chain consists of inter-linked vertical supply relationships, and UTPs that occur at subsequent chain levels may have a negative impact on agricultural producers and in general on the efficiency of the food supply chain, the proposal does not limit the notion of “supplier” to agricultural producers and their organisations, but covers any supplier, i.e. including manufacturers and distributors, along the food supply chain as long as they are small and medium sized undertakings.

The manufacturing sector, in particular, has a fair share of SMEs. The coverage of the proposal takes into account that small and medium sized intermediaries which might not be able to resist UTPs used by non-SME buyers, may pass on costs resulting from these practices to their own suppliers, namely agricultural producers. In addition, foreign suppliers established outside the Union can invoke the prohibition if they sell to buyers established in the Union.

Article 3 lists prohibited UTPs. While paragraph 2 makes this subject to the contractual freedom of parties, in other words it makes the UTP qualification subject to the parties’ discretion to decide otherwise by virtue of an agreement, the UTPs listed in paragraph 1 are not subject to parties’ contractual discretion due to their “as such” unfair nature.

The group of practices in paragraph 1 covers the prohibition for buyers to pay their suppliers after 30 days, when the supply concerns perishable products. This provision will constitute a *lex specialis* for the food sector only for the provisions concerning the payment terms of the Late Payments Directive that is applicable to all sectors of the economy. This group also covers short notice order cancellation for perishable products and unilateral and retroactive changes in the terms of a supply agreement: these practices are expressions of disproportionate allocation of risk in favour of the buyer, are manifestly unfair, and should be prohibited.

Other practices that are unfair when applied without agreement may be acceptable and even lead to mutually beneficial efficiency if covered by an agreement between the parties. Therefore these practices should be treated differently by UTP rules, in order to allow efficiency-enhancing practices resulting ultimately in appropriate supplies and prices.

The terms of such an agreement have to be clear and not ambiguous. A vague agreement that would authorise one party to later determine the conditions concerning these practices would

be unpredictable and cannot therefore be seen as redeeming such later determination or practice and prevent the practice concerned from being qualified as a UTP.

This second group of UTPs includes the return of unsold or wasted products. Payments for stocking, displaying or listing food products of the supplier may yield efficiencies in favour of both contract partners and thus lead to win-win situations. This also applies to promotion and marketing activities. The buyer must provide the supplier with a payment estimate if so requested. In the case of marketing and stocking, displaying or listing activities the buyer must - on request - also provide the supplier with a cost estimate.

They are acceptable if agreed by the parties and if objective and reasonable cost estimates are at the basis of the payment for stocking and listing products. Suppliers' contributions to the promotion of products or the buyers' marketing can also be efficient if agreed by the parties.

Article 4 requires Member States to designate a competent enforcement authority for the prohibited UTPs. Existing enforcement authorities, for example, in the area of competition law (national competition authorities) could be chosen as the competent authority to realise economies of scope.

Article 5 deals with complaints and stipulates that the enforcement authority shall be able to deal with confidential complaints and to protect, where requested, the identity of the complainant. Also producer organisations and associations of producer organisations should be able to file a complaint with the enforcement authority, not only in their own right as a contract partner, but representing their members' (or their members' members) interest if these members are SMEs.

Under **Article 6**, enforcement authorities are vested with the necessary powers to start an investigation on their own initiative or based on a complaint, to gather information, terminate an infringement and to impose fines and publish the decisions taken to achieve a deterrent effect.

Coordination and cooperation between enforcement authorities is foreseen in **Article 7**. This covers annual meetings facilitated by the Commission and annual reports that the enforcement authorities will submit. To the extent possible, Member States' enforcement authorities should provide each other mutual assistance in their investigations.

Article 8 of the proposal clarifies that Member States may provide for additional rules designed to combat UTPs going above and beyond this minimum Union standard as long as those rules respect the rules pertaining to the internal market.

In **Article 9** the reporting obligations of Member States are laid down. The provision foresees the possibility for the Commission to adopt an implementing act in this area of reporting that may specify useful modalities.

Article 10 provides for the committee procedure that will assist the Commission in this respect.

Article 11 provides for an evaluation to be carried out by the Commission no sooner than three years after the application of this Directive as well as an interim report on the transposition of the Directive.

Provisions concerning the transposition of the Directive are contained in **Article 12**. The provisions are standard procedure for Directives.

Article 13 is about the entry into force of the Directive. Finally, **Article 14** stipulates that the Directive is addressed to Member States.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁷,

Having regard to the opinion of the Committee of the Regions⁸,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Three Commission communications since 2009⁹ have focused on the working of the food supply chain, including the occurrence of unfair trading practices. Unfair trading practices are in that context defined as practices that grossly deviate from good commercial conduct, are contrary to good faith and fair dealing and are unilaterally imposed by one trading partner on another. The Commission suggested desirable features for national and voluntary governance frameworks of unfair trading practices in the food supply chain. Not all of those features have become part of the legal framework and voluntary governance regimes in Member States, leaving the occurrence of such practices still in the focus of the political debate in the Union.
- (2) In June 2016, a European Parliament resolution¹⁰ invited the Commission to submit a proposal for a Union legal framework concerning unfair trading practices. In December 2016, the Council invited the Commission to undertake, in a timely manner, an impact assessment with a view to proposing a Union legal framework or non-legislative measures to address unfair trading practices¹¹. An impact assessment has

⁷ OJ C , , p. .

⁸ OJ C , , p. .

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A better functioning of the food supply chain, COM(2009) 591.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Tackling unfair trading practices in the business-to-business food supply chain, COM(2014)472 final.

Report from the Commission to the European Parliament and the Council on unfair business-to-business trading practices in the food supply chain, COM(2016)032 final.

¹⁰ European Parliament resolution of 7 June 2016 on unfair trading practices in the food supply chain (2015/2065(INI)).

¹¹ [Council Conclusions](#) of 12 December 2016, Strengthening farmers' position in the food supply chain and tackling unfair trading practices.

been prepared by the Commission which was preceded by an open public consultation as well as targeted consultations.

- (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.
- (4) While business risk is inherent in all economic activity, agricultural production is particularly fraught with uncertainty due to its reliance on biological processes, since agricultural products are to a greater or lesser extent perishable and seasonable, and its exposure to weather conditions. In an agricultural policy environment that is distinctly more market-oriented than in the past, protection against unfair trading practices has become more important for operators active in the food supply chain and in particular for agricultural producers and their organisations.
- (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.
- (6) A majority of all Member States, but not all of them, have specific national rules that protect suppliers against unfair trading practices occurring in business-to-business relationships in the food supply chain. Where reliance on contract law or self-regulatory initiatives is possible, fear of retaliation against a complainant limits the practical value of these forms of redress. Certain Member States, which have specific rules on unfair trading practices in place, therefore entrust administrative authorities with their enforcement. However, Member States’ unfair trading practices rules - to the extent they exist - are characterised by significant divergence.
- (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/EC¹². 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.

- (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.
- (9) The relevant rules should apply to business conduct by larger, that is to say non-small and medium-sized, operators in the food supply chain as they are the ones who normally possess stronger relative bargaining power when trading with small and medium-sized suppliers.
- (10) As a majority of Member States already have national rules on unfair trading practices, albeit diverging, it is appropriate to use the tool of a Directive to introduce a minimum protection standard under Union law. This should enable Member States to integrate the relevant rules into their national legal order in such a way as to bring about a cohesive regime. Member States should not be precluded from adopting and applying on their territory stricter national laws protecting small and medium-sized suppliers and buyers against unfair trading practices occurring in business-to-business relationships in the food supply chain, subject to the limits of Union law applicable to the functioning of the internal market.
- (11) As unfair trading practices may occur at any stage of the sale of a food product, i.e. before, during or after a sales transaction, Member States should ensure that the provisions of this Directive should apply to such practices whenever they occur.
- (12) When deciding whether an individual trading practice is considered unfair it is important to reduce the risk of limiting the use of fair and efficiency-creating agreements agreed between parties. As a result, it is appropriate to distinguish practices that are foreseen in clear and unambiguous terms in supply agreements between parties from practices that occur after the transaction has started without being agreed in advance in clear and unambiguous terms, so that only unilateral and retrospective changes to those relevant terms of the supply agreement are prohibited. However, certain trading practices are considered as unfair by their very nature and should not be subject to the parties' contractual freedom to deviate from them.
- (13) In order to ensure an effective enforcement of the prohibitions laid down in this Directive, Member States should designate an authority that is entrusted with their enforcement. The authority should be able to act either on its own initiative or by way of complaints by parties affected by unfair trading practices in the food supply chain. Where a complainant requests that his identity remain confidential because of fear of retaliation, the enforcement authorities of the Member States should honour such a request.
- (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.
- (15) The enforcement authorities of the Member States should have the necessary powers that enable them to effectively gather any factual information by way of information requests. They should have the power to order the termination of a prohibited practice, where applicable. The existence of a deterrent, such as the power to impose fines and the publication of investigation results, can encourage behavioural change and pre-litigation solutions between the parties and should therefore be part of the powers of

the enforcement authorities. The Commission and the enforcement authorities of the Member States should cooperate closely so as to ensure a common approach with respect to the application of the rules set out in this Directive. In particular, the enforcement authorities should provide each other mutual assistance, for example by sharing information and assisting in investigations which have a cross-border dimension.

- (16) To facilitate effective enforcement, the Commission should help organise meetings between the enforcement authorities of the Member States where best practices can be exchanged and relevant information can be shared. The Commission should establish and manage a website to facilitate those exchanges.
- (17) The rules laid down in this Directive should not impair the possibility for the Member States to maintain existing rules that are further-reaching or to adopt such rules in the future, subject to the limits of Union law applicable to the functioning of the internal market. The rules would apply alongside voluntary governance measures.
- (18) The Commission should have an overview of the implementation of this Directive in the Member States. In addition, the Commission should be able to assess the effectiveness of this Directive. To this end, the enforcement authorities of the Member States should submit annual reports to the Commission. In order to ensure uniform conditions for the implementation of the reporting obligation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹³. The Committee for the Common Organisation of the Agricultural Markets should assist the Commission in this procedure.
- (19) In the interest of an effective implementation of the policy in respect of unfair trading practices in business-to-business relationships in the food supply chain, the Commission should review the application of this Directive and submit a report to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. The review should also pay particular attention to whether protection of small and medium-sized buyers of food products in the supply chain – in addition to the protection of small and medium sized suppliers – in the future would be justified,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. This Directive establishes a minimum list of prohibited unfair trading practices between buyers and suppliers in the food supply chain and lays down minimum rules concerning their enforcement and arrangements for the coordination between enforcement authorities.
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.

¹³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

3. This Directive shall apply to supply agreements concluded after the date of applicability of the provisions transposing this Directive referred to in the second subparagraph of Article 12(1).

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (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;
- (b) “supplier” means any agricultural producer or any natural or legal person, irrespective of their place of establishment, who sells food products. The term “supplier” may include a group of such agricultural producers or such natural and legal persons, including producer organisations and associations of producer organisations;
- (c) “small and medium-sized enterprise” means an enterprise within the meaning of the definition of micro, small and medium-sized enterprises set out in the Annex to Commission Recommendation 2003/361/EC¹⁴;
- (d) “food products” means products listed in Annex I to the Treaty intended for use as food as well as products not listed in that Annex, but processed from those products for use as food;
- (e) “perishable food products” means food products that will become unfit for human consumption unless they are stored, treated, packaged or otherwise conserved to prevent them from becoming unfit.

Article 3

Prohibition of unfair trading practices

1. Member States shall ensure that the following trading practices are prohibited:
- (a) a buyer pays a supplier for perishable food products later than 30 calendar days after the receipt of the supplier’s invoice or later than 30 calendar days after the date of delivery of the perishable food products, whichever is the later. This prohibition shall be without prejudice:
 - to the consequences of late payments and remedies as laid down in Directive 2011/7/EU;
 - to the option of a buyer and a supplier to agree on a value sharing clause within the meaning of Article 172 a) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council¹⁵.

¹⁴ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5/2003, p. 36).

¹⁵ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council

- (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;
 - (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;
 - (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.
2. Member States shall ensure that the following trading practices are prohibited, if they are not agreed in clear and unambiguous terms at the conclusion of the supply agreement:
- (a) a buyer returns unsold food products to a supplier;
 - (b) a buyer charges a supplier payment as a condition for the stocking, displaying or listing food products of the supplier;
 - (c) a supplier pays for the promotion of food products sold by the buyer. Prior to a promotion and if that promotion is initiated by the buyer, the buyer shall specify the period of the promotion and the expected quantity of the food products to be ordered;
 - (d) a supplier pays for the marketing of food products by the buyer.
3. If a payment is requested by the buyer for the situations described in points (b), (c) and (d) of paragraph 2, the buyer shall, if requested by the supplier, provide the supplier with an estimate of the payments per unit or overall, whichever is appropriate, and insofar as the situations described in points (b) and (d) of paragraph 2 are concerned also an estimate of the costs and the basis for such estimate.
4. Member States shall ensure that the prohibitions laid down in paragraphs 1 and 2 constitute overriding mandatory provisions which are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the supply agreement between the parties.

Article 4

Designated enforcement authority

Each Member State shall designate a public authority to enforce the prohibitions laid down in Article 3 at national level ("enforcement authority").

Article 5

Complaints and confidentiality

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.

Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

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.
3. The enforcement authority shall ensure, if so requested by the complainant, the confidentiality of the identity of the complainant and any other information, in respect of which the complainant considers disclosure harmful to his interests. The complainant shall identify such information in a possible request for confidentiality.
4. Where the enforcement authority considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant about the reasons.

Article 6

Powers of the enforcement authority

Member States shall ensure that the enforcement authority is properly equipped and shall confer on it the following powers:

- (a) to initiate and conduct investigations on its own initiative or based on a complaint;
- (b) to require buyers and suppliers to provide all necessary information in order to carry out investigations on the prohibited trading practices;
- (c) to take a decision establishing an infringement of the prohibitions laid down in Article 3 and require the buyer to terminate the prohibited trading practice. The authority may abstain from taking any such decision, if such decision would risk revealing the identity of a complainant or disclosing any other information in respect of which the complainant considers disclosure harmful to his interests, provided that the complainant has identified that information in accordance with Article 5(3);
- (d) to impose a pecuniary fine on the author of the infringement. The fine shall be effective, proportionate and dissuasive taking into account the nature, duration and gravity of the infringement;
- (e) to publish its decisions relating to points (c) and (d);
- (f) to inform buyers and suppliers about its activities, by way of annual reports, which shall *inter alia* describe the number of complaints received and the investigations initiated and closed by it. For each investigation, the report shall contain a summary description of the matter and the outcome of the investigation.

Article 7

Cooperation between enforcement authorities

1. Member States shall ensure that enforcement authorities cooperate effectively with each other and provide each other mutual assistance in investigations that have a cross-border dimension.
2. The enforcement authorities shall meet once per year to discuss the application of this Directive on the basis of the annual reports referred to in Article 9(1) and best practices in the area it covers. The Commission shall facilitate those meetings.

3. The Commission shall establish and manage a website that provides for the possibility of information exchange between the enforcement authorities and the Commission, in particular in relation to the annual meetings.

Article 8

National rules

Member States may provide for rules designed to combat unfair trading practices going beyond those set out in Articles 3, 5, 6 and 7, provided that such national rules are compatible with the rules on the functioning of the internal market.

Article 9

Reporting by Member States

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.
2. The Commission may adopt implementing acts laying down:
 - (a) rules on the information necessary for the application of paragraph 1;
 - (b) arrangements for the management of the information to be sent and rules on content and form;
 - (c) arrangements for transmitting, or making information and documents available, to the Member States, international organisations, the competent authorities in third countries, or the public, subject to the protection of personal data and the legitimate interest of agricultural producers and undertakings in the protection of their business secrets.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 10(2).

Article 10

Committee procedure

1. The Commission shall be assisted by the Committee for the Common Organisation of the Agricultural Markets established by Article 229 of Regulation (EU) No 1308/2013. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 11

Evaluation

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.
2. Member States shall provide the Commission with the information necessary for the preparation of that report.
3. Six months after the date of transposition of this Directive, the Commission shall present an intermediary report on the state of its transposition and implementation to the European Parliament and to the Council as well as to the European Economic and Social Committee and the Committee of the Regions.

Article 12

Transposition

1. Member States shall adopt and publish, by six months after the entry into force of the Directive at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 12 months after entry into force of this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 13

Entry into force

This Directive shall enter into force on the fifth day following that of its publication in the *Official Journal of the European Union*.

Article 14

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management mode(s) planned

2. MANAGEMENT MEASURES

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
 - 3.2.1. *Summary of estimated impact on expenditure*
 - 3.2.2. *Estimated impact on operational appropriations*
 - 3.2.3. *Estimated impact on appropriations of an administrative nature*
 - 3.2.4. *Compatibility with the current multiannual financial framework*
 - 3.2.5. *Third-party contributions*
- 3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning unfair trading practices (UTPs) in business-to-business relationships in the food supply chain.

1.2. Policy area(s) concerned

Agricultural Policy

Competition Policy

1.3. Nature of the proposal/initiative

The proposal/initiative relates to **a new action**

The proposal/initiative relates to **a new action following a pilot project/preparatory action**¹⁶

The proposal/initiative relates to **the extension of an existing action**

The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

The proposal aims at limiting unfair trading practices that result from unequal bargaining power in the food supply chain how, in order to contribute to the 4th Juncker priority for “a deeper and fairer internal market with a strengthened industrial base” which is translated into the general objective of “viable food production” of the Common Agricultural Policy.

1.4.2. *Specific objective(s)*

Specific objective No

Maintain market stability

Enhance agricultural producers' income

Improve agricultural competitiveness

¹⁶ As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1.4.3. *Expected result(s) and impact*

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

1. Reduce occurrence of UTPs
2. Contribute to level playing field
3. Enable effective redress

Impact: a better position of the agricultural producers in the food chain having a positive effect on the income of agricultural producers.

1.4.4. *Indicators of results and impact*

Specify the indicators for monitoring implementation of the proposal/initiative.

Ad 1. Declared occurrences of each UTP concerned by undertakings (share of firms declaring and frequency declared, perceived costs of UTP's)

Ad 1. Compliance costs for firms

Ad 1. Potential effects of trade diversion to the detriment of protected parties

Ad 2. Alignment of application of UTP rules (e.g. number of changes to national rules with a view to approximate practices)

Ad 2. Number of best practices recommendations adopted

Ad 2. Declared administrative costs for Member States

Ad 2. Relative production and consumer price changes

Ad 3. Number of complaints received (anonymously or not)

Ad 3. Number of mediation meetings, if applicable

Ad 3. Number of investigations launched (own initiative or upon request)

Ad 3. Share of cases resulting in findings of an infringement

1.5. **Grounds for the proposal/initiative**

1.5.1. *Requirement(s) to be met in the short or long term*

This proposal aims at limiting UTPs in the food supply chain by ensuring a minimum level of protection across the EU through a framework that outlaws the most egregious UTPs and provides possibilities for redress. By removing an impediment to efficiency, the proposal would also improve the functioning of the food supply chain in general.

1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

Reasons for action at European level (ex-ante)

Article 39 of the Treaty on the Functioning of the European Union (TFEU) specifies that the common agricultural policy shall ensure a fair standard of living for the agricultural community. Article 40 TFEU stipulates that the common market

organisation shall exclude discrimination between agricultural producers. Article 43 TFEU specifies that the common market organisation shall ensure conditions for trade within the Union similar to those existing in a national market.

Most Member States put in place UTP rules, but took diverging approaches towards the problem and related measures are not harmonised; MS lack coordination mechanisms, nor do they have incentives to self-align. To achieve only a minimum level of protection against UTPs throughout the EU and ensure a level playing field for all producers, EU measures are needed

Expected generated Union added value (ex-post)

Minimum protection against UTPs in the food supply chain across Member States and hence a better functioning and more efficient food supply chain. Level playing field for agricultural producers’.

1.5.3. Lessons learned from similar experiences in the past

Buyers and suppliers can have unequal bargaining powers that may lead to UTPs that put profits of affected suppliers under pressure and can result in a misallocation of resources, which reduces the efficiency of the food supply chain

Agricultural suppliers are particularly vulnerable because they are often dependent on bigger downstream partners to get their products to consumers and long production lags and the perishability of many of their products limits their room for manoeuvre.

The current proposal is the outcome of a longer discussion. In 2013, the Commission had carried out a public consultation on the topic, and in 2016 the European Parliament, the Council, and the European Economic and Social Committee all called for action on UTPs.

1.5.4. Compatibility and possible synergy with other appropriate instruments

The proposal complements existing EU rules on unfair commercial practices in business-to-consumer relationships; so far, there are no horizontal EU rules on UTPs between businesses. The proposal also complements other areas with relevance for operators that are already subject to common rules, such as competition, state aid, and marketing standards.

1.6. Duration and financial impact

Proposal/initiative of **limited duration**

- Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY

Proposal/initiative of **unlimited duration**

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

1.7. Management mode(s) planned¹⁷

Direct management by the Commission

- by its departments, including by its staff in the Union delegations;
- by the executive agencies

Shared management with the Member States

Indirect management by entrusting budget implementation tasks to:

- third countries or the bodies they have designated;
- international organisations and their agencies (to be specified);
- the EIB and the European Investment Fund;
- bodies referred to in Articles 208 and 209 of the Financial Regulation;
- public law bodies;
- bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
- bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
- persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
- *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

¹⁷ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:
<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Once per year:

Member States shall send by 15 March of each year to the European Commission annual reports by means of an information technology based system. Reports shall contain in particular all relevant data on the application and enforcement of the rules under this Directive.

2.2. Management and control system(s)

2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

The general risks as regards to the rules in the proposal that can be identified relate to the effectiveness of the proposal, and not as regards to the EU expenditure given the relatively insignificant amounts which are involved.

Risks may be linked to shortcomings in the administrative enforcement authority, including handling of complaints and confidentiality, reporting by the Member States and supervision by the Commission.

The annual reports, annual meeting and dedicated website should ensure proper follow up as to the implementation of the Directive in the EU member States.

2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

Expenditure entailed by this proposal shall be implemented by the Commission under direct management, in accordance with the principles set out in article 32 of Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union – the Financial Regulation.

As required by the Financial Regulation, the Director General for Agriculture and Rural Development has put in place the organisational structure and the internal control processes suited to the achievement of the policy and control objectives, in accordance with the internal control standards adopted by the Commission and having regard to the risks associated with the environment in which the policy operates.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

The controls of the legality and regularity of payments following the new directive will be covered by the existing provisions for direct management in the Commission.

Expenditure entailed by this proposal will not lead to an increase in the error rate for the European Agricultural Guarantee Fund, taking into account the insignificant amounts involved and the implementation mode (direct management).

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

The Commission shall take appropriate measures ensuring that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by the performance of effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid as well as, where appropriate, by effective, proportional and deterrent penalties, in accordance with Article 325 of the Treaty on the Functioning of the European Union, with Council Regulation (EC) No 2988/95 on the protection of the European Communities' financial interests, and with title IV of the Financial Regulation applicable to the general budget of the Union.

The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot, over all contractors and subcontractors who have received Union funds. OLAF shall be authorised to carry out on-the spot checks and inspections on economic operators concerned directly or indirectly by such funding in accordance with the procedures laid down in Council Regulation (EC) No 2185/96 of 11 November 1996 with a view to establishing that there has been fraud. Decisions, agreements and contracts resulting from the implementation of the Regulation shall expressly entitle the Commission, including OLAF, and the Court of Auditors to conduct such audits, on-the-spot checks and inspections.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
			from EFTA countries ¹⁹	from candidate countries ²⁰	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	Heading 2: Sustainable growth natural resources Heading 5: Administration	Diff./Non-diff. ¹⁸				
	05 01 02 11 – External personnel and other management expenditure in support of the 'Agricultural and Rural Development' policy area – Other management expenditure 05 08 09 – European Agricultural Guarantee Fund (EAGF) — Operational technical assistance	Non-diff.	NO	NO	NO	NO

¹⁸ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

¹⁹ EFTA: European Free Trade Association.

²⁰ Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	2	Sustainable growth natural resources
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DG AGRI			Year 2020 ²¹	Year 2021	Year 2022	Year 2023	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations										
05 08 09 – European Agricultural Guarantee Fund (EAGF) — Operational technical assistance.	Commitments	(1)	0,05	0,05	0,05	0,05	As long as directive is in place			To be indexed
	Payments	(2)	0,05	0,05	0,05	0,05	As long as directive is in place			To be indexed
Appropriations of an administrative nature financed from the envelope of specific programmes ²²										
		(3)	-	-	-	-				
TOTAL appropriations for DG AGRI	Commitments	=1+3	0,05	0,05	0,05	0,05	As long as directive is in place			To be indexed
	Payments	=2+3	0,05	0,05	0,05	0,05	As long as directive is in place			To be indexed

²¹ Year 2020 is the year in which implementation of the proposal/initiative starts.

²² Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former ‘BA’ lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)	0,05	0,05	0,05	0,05	As long as directive is in place			To be indexed
	Payments	(5)	0,05	0,05	0,05	0,05	As long as directive is in place			To be indexed
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)	-	-	-	-				
TOTAL appropriations under HEADING 2 of the multiannual financial framework	Commitments	=4+ 6	0,05	0,05	0,05	0,05	As long as directive is in place			To be indexed
	Payments	=5+ 6	0,05	0,05	0,05	0,05	As long as directive is in place			to be indexed

Heading of multiannual financial framework	5	‘Administrative expenditure’
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EUR million (to three decimal places)

		Year 2020	Year 2021	Year 2022	Year 2023	Enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
DG: AGRI							
• Human resources		0,215	0,215	0,215	0,215	As long as directive is in place	To be indexed
• Other administrative expenditure (1 meeting per year with experts from enforcement authorities)		0,017	0,017	0,017	0,017	As long as directive is in place	To be indexed
TOTAL DG AGRI	Appropriations	0,232	0,232	0,232	0,232	0,232	To be indexed

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	0,232	0,232	0,232	0,232	0,23	To be indexed
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EUR million (to three decimal places)

		Year 2020 ²³	Year 2021	Year 2022	Year 2023	Enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0,282	0,282	0,282	0,282	As long as directive is in place	To be indexed
	Payments	0,282	0,282	0,282	0,282	As long as directive is in place	To be indexed

²³ Year 2020 is the year in which implementation of the proposal/initiative starts.

3.2.2. Estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ↓			Year 2020		Year 2021		Year 2022		Year 2023		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL		
	OUTPUTS																		
	Type ²⁴	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost	
For all three SPECIFIC OBJECTIVE's ²⁵																			
Construction and maintenance of website	Use of website	0,05	1	0,05	1	0,05	1	0,05	1	0,05	As long as directive exists							To be indexed	
Subtotal for specific objectives			1	0,05	1	0,05	1	0,05	1	0,05	As long as directive exists							To be indexed	
TOTAL COST			1	0,05	1	0,05	1	0,05	1	0,05	As long as directive exists							To be indexed	

²⁴ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

²⁵ As described in point 1.4.2. 'Specific objective(s)...' The website is dedicated to exchange information between MS authorities and the Commission services and as such contributes to improving the farmers position in the food chain across the EU, improving their competitiveness, enhancing their income and maintain market stability.

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year ²⁶ 2020	Year 2021	Year 2022	Year 2023	Enter as many years as necessary to show the duration of the impact (see point 1.6)	TOTAL
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HEADING 5 of the multiannual financial framework							
Human resources	0,215	0,215	0,215	0,215	As long as directive is in place		To be indexed
Other administrative expenditure	0,017	0,017	0,017	0,017	As long as directive is in place		To be indexed
Subtotal HEADING 5 of the multiannual financial framework	0,232	0,232	0,232	0,232		0,232	To be indexed

Outside HEADING 5 ²⁷ of the multiannual financial framework							
Human resources							
Other expenditure of an administrative nature							
Subtotal outside HEADING 5 of the multiannual financial framework							

TOTAL	0,232	0,232	0,232	0,232		0,232	To be indexed
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints

²⁶ Year 2020 is the year in which implementation of the proposal/initiative starts.

²⁷ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

	Year 2020	Year 2021	Year 2022	Year 2023	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary staff)							
05 01 01 01 (Headquarters and Commission's Representation Offices)	1,5	1,5	1,5	1,5	As long as directive is in place		
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
• External staff (in Full Time Equivalent unit: FTE)²⁸							
XX 01 02 01 (AC, END, INT from the 'global envelope')							
XX 01 02 02 (AC, AL, END, INT and JED in the delegations)							
XX 01 04 yy²⁹	- at Headquarters						
	- in Delegations						
XX 01 05 02 (AC, END, INT - Indirect research)							
10 01 05 02 (AC, END, INT - Direct research)							
Other budget lines (specify)							
TOTAL	1,5	1,5	1,5	1,5	As long as directive is in place		

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	3 AD officials part time 50 %
External staff	

3.2.4. Compatibility with the current multiannual financial framework

- The proposal/initiative is compatible the current multiannual financial framework.
- The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

²⁸ AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations.

²⁹ Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.

3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.