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NOTE

From: General Secretariat of the Council
To: Special Committee on Agriculture / Council
Subject: Unfair trading practices in the food supply chain
- *Preparation of the Council debate*

With a view to the Ministerial debate on "*Unfair trading practices in the food supply chain*" at the Agriculture and Fisheries Council of 12-13 December 2021, delegations will find attached a Presidency discussion paper on the same subject.

Presidency discussion paper on "Unfair trading practices in the food supply chain"

Improving and strengthening the position of farmers in the food supply chain is an important objective of the Common Agriculture Policy, since it addresses the significant imbalance in bargaining powers in the food supply chain where farmers are particularly exposed.

Building upon significant legislative actions already taken to address this issue, by adopting the Unfair Trading Practices Directive¹ (UTP Directive) in 2019 and within the CAP, the Farm to Fork Strategy outlines further actions in this respect. It envisages clarifying the competition rules for collective initiatives that promote sustainability in supply chains and help farmers to capture a fair share of the added value of sustainable production.

Since then important improvements have been introduced in the context of the latest CAP reform and decisions taken at Member State level within the transposition of the UTP directive into national law.

The **new CAP** will strengthen the position of farmers in the supply chain and boost the competitiveness of the agri-food sector by improved bargaining power. New rules will reinforce producer cooperation, encouraging farmers to work together and enabling them to create countervailing power in the market. For example, farmers (and their associations) and actors who are downstream of the first buyers will be able to agree on value-sharing clauses that enable farmers to participate in price developments in the more downstream stages of the food chain. In case of a delivery of agricultural products covered by a written contract or offer pursuant to Articles 148 and 168 of Regulation (EU) No 1308/2013 the price payable for the delivery can be calculated by combining various factors set out in the contract bringing more clarity to the producers.

¹ Directive (EU) 2019/633 of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.

EU Member States were required to transpose the **UTP Directive** into national law by 1 May 2021 and apply it six months later. Just recently, the Commission published an interim report on this transposition, which gives an insight on decisions taken at national level.

The UTP Directive introduced minimum standards of protection against unfair trading practices in the food value chain aimed at protecting farmers, farmers organisations and other weaker suppliers of agricultural and food products against stronger buyers. It provides for a minimum level of harmonisation by establishing a list of prohibited UTPs between buyers and suppliers in the agricultural and food supply chain. It also lays down minimum rules on the scope of its application, and the main definitions, as well as provisions on the enforcement of those prohibitions and the coordination between enforcement authorities of the different MS. MS may adopt or maintain national rules that go beyond the UTPs listed in the Directive, provided that such national rules are compatible with the rules on the functioning of the internal market.

Most of the EU countries have already transposed this Directive and the decisions taken at national level will have a significant impact on combating unfair trading practices. In its findings the Commission assessed that a large majority of these MS went beyond the minimum protection level established by the Directive, but followed the sectoral approach. Differences between MS exist also in the application of the turnover categories. Most MS have extended the Directive's list of UTPs. Concerning the enforcement authorities, MS preferred administrative authorities to judicial enforcement. Financial sanctions and injunctive relief prevail as enforcement measures.

Way forward:

The Directive addresses many issues related to preventing unfair trading practices in the food supply chain and the legislative act in this field is a step in the right direction. The differences in the transposition merit a discussion on the reasons for decisions taken by Member States and whether the current approach of setting minimum standards would be sufficient in the long term, also with a view to preserving the single market. The coming years will show if the implementation of the new CAP provisions and the UTP Directive is sufficiently effective.

In the field of market transparency, we could take further steps and improve business conditions along the supply chain. Suppliers already have the possibility, under the UTP Directive, to request and obtain written contracts, which cover Annex I TFEU products as well as any other product that is intended for use as food and processed using Annex I TFEU products. The question is if in this area we need further steps and which.

Clear information on the situation on the markets and on the distribution of added value among stakeholders in the food supply chain is needed. At the EU level, substantial work has been done on improving **price reporting** and currently the focus is on the implementation, where Member states have a crucial role in data collection. Such increased transparency is relevant also in light of the possible consequences of high energy and input costs for agricultural products and transmission of the price increase through the food chain to the final consumer.

The effectiveness of the UTP Directive will depend on **cooperation between enforcement authorities** in member states and the European Commission. The practice of mutual cooperation between enforcement authorities will be established in the coming months. This cooperation and sharing of the information about best practices will be primarily important for a successful resolution of disputes at EU level. Cooperation could be crucial in cases when member states maintain or introduce stricter rules aimed at combating unfair trading practices compared to those laid down by the UTP Directive.

The issue of unfair business practices is worth further discussing in a broader context and institutional settings. A valuable contribution to this is the Opinion of the Economic and Social Committee entitled *Towards a Fair Food Supply Chain*² that provides a wider view on this issue. The opinion, which was prepared at the request of the Slovenian presidency, highlights additional problems and presents certain proposals for consideration.

² <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/towards-fair-food-supply-chain>

Against the background set out above, Ministers are invited to share their views on the following questions:

1) What are your experiences with the transposition or possible application of the UTP Directive? Do you already observe changes in the behaviour of the different actors within the agri-food supply chain? Where do you see challenges in the enforcement of the national UTP law transposing the UTP Directive?

2) Do you consider the existing EU legal provisions on improving the position of farmers and weaker suppliers in the food supply value chain under the UTP directive and in the CAP sufficient? If not, which further steps are needed while maintaining the basic market orientation of the reformed CAP?
