Unfair trading practices in the food supply chain

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PURPOSE: to tackle unfair trading practices (UTPs) in the business-to-business food supply chain.

BACKGROUND: cross-border trade between EU Member States now accounts for about 20% of total food and beverage production in the EU.

UTPs may have **harmful effects, especially on SMEs** in the food supply chain. UTPs can broadly be 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.

Although it is difficult to assess its full extent and frequency, the **problem of UTPs has been acknowledged by all stakeholders** in the food supply chain. For example, in an EU-wide survey among suppliers in the food chain, 96% of the respondents said that they had already been subject to at least one form of UTPs. 83% of the respondents asserting that they were subject to UTPs said that UTPs increased their costs and 77% stated that UTPs reduced their revenues.

The possible repercussions of UTPs at EU level have not only **raised concerns in the European Commission but also in the European Parliament**. In January 2012, the Parliament adopted a resolution which highlighted the European dimension of the imbalances in the food supply chain which can lead to unfair practices. This resolution identified a list of specific UTPs and called for them to be subject to specific regulation, supervision and sanctions. In order to better understand the issue, the Commission published a Green Paper on UTPs in January 2013.

The CAP reform, notably through the new single Common Market Organisation, includes elements which aim at reducing the bargaining power gap between farmers and other parties in the food supply chain. A number of Member States have addressed UTPs at national level using **many different approaches.** Therefore, there remains a **wide divergence in the way UTP issues** in food supply chains are addressed in the EU.

The Commission considers that the potential benefits of reducing UTPs could be substantial, especially for SMEs and microenterprises as these are more likely to be subject to UTPs and their effects than large companies are.

CONTENT: the Commission communication aims at contributing to fair and sustainable commercial relationships and a level playing field for market participants in the food supply chain through helping to **reduce the harmful effects and possible cross-border obstacles caused by UTPs**, especially for SMEs.

This Communication does not foresee regulatory action at EU level and does not prescribe a single solution to address the issue of UTPs. It suggests a combination of **voluntary and regulatory frameworks**, identifying UTPs and principles to address them, taking into account different national circumstances and approaches.

The **strategy** laid down by the Commission follows a two-pillared approach:

1) The adoption of the Supply Chain Initiative: the Supply Chain Initiative was developed in the context of the Commission's High Level Forum for a Better Functioning Food Supply Chain which is composed of national authorities and key stakeholder representatives at EU level from the supply and retail sides of the food sector.

In November 2011, all market representatives involved in the Forum's working party on UTPs jointly agreed on a set of principles of good practice in vertical relationships in the food supply chain. These principles include: (i) predictability of changes in contract terms; (ii) responsibility for own entrepreneurial risk; (iii) justifiability of requests and charges. In a second step, a voluntary framework for implementing the principles of good practice (the Supply Chain Initiative) was launched in September 2013.

The Commission encourages all undertakings and relevant organisations in the food supply chain to **sign up to a voluntary initiative addressing UTPs, in particular the Supply Chain Initiative**. The governance group of the Supply Chain Initiative should continue its efforts to drive and **facilitate the creation of national platforms** in each EU Member State.

The Commission will continue to support the exchange of best practices between Member States, e.g. by organising workshops with experts from national administrations.

2) To guarantee respect at national level: if the weaker party in a commercial relationship is economically dependent on its stronger trading party, it may refrain from asking redress for a UTP through court litigation or voluntary resolution mechanisms.

This is why the Commission invites Member States to: (i) assess the effectiveness and credibility of their available mechanisms for the enforcement of rules against UTPs; (ii) consider whether further procedural or organisational measures may be appropriate, drawing on best practice in other Member States.

Particular attention should be given to the capacity to preserve the confidentiality of individual companies submitting complaints and the possibility to conduct investigations.

The Commission will monitor and assess the progress made by evaluating (i) the actual impact of the Supply Chain Initiative and its national platforms and (ii) the enforcement mechanisms set up by Member States to increase all parties' trust and confidence in the proper functioning of a sustainable food supply chain.

The Commission will present a report to the Council and the European Parliament at the end of 2015. In light of this report, the Commission will decide whether further action should be taken at EU level to address these issues.