Unfair trading practices in the food supply chain

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PURPOSE: to present a report on unfair business-to-business trading practices in the food supply chain.

BACKGROUND: in July 2014, the Commission adopted a Communication on tackling unfair trading practices (UTPs) in the business-to-business food supply chain. UTPs are practices that deviate grossly from good commercial conduct, are contrary to good faith and fair dealing and are unilaterally imposed by one trading partner on another.

The Communication explained why the market structure of the food supply chain makes it particularly vulnerable to UTPs and described the damage that UTPs can do to operators with low bargaining power. To address the problem of UTPs, the Communication encouraged **operators in the European food supply chain to participate in voluntary schemes** aimed at promoting best practices and reducing UTPs, and emphasised the importance of effective and independent enforcement at national level.

In 2015, the discussion intensified, not least because of the difficulties faced by European farmers caused by falling prices for certain agricultural commodities, in particular dairy products and pigmeat. Demand for a number of products weakened significantly, and this was aggravated by the Russian import ban on agricultural products. At the same time, world production increased, leading to a general oversupply. While UTPs are not the cause of the recent price declines, the low prices have made farmers more vulnerable to potential unfair behaviour by their trading partners.

In response to the challenges faced by farmers, the Ministers of Agriculture of seven countries issued a joint statement asking the Commission to take its analysis on UTPs further and propose EU legislation to address UTPs.

The Commission responded to the farming crisis with a **package of wide-ranging measures**. Many of these target the dairy sector, which is particularly affected by the drop in prices. This report will not cover the UTP-specific measures already adopted for particular sectors. This report concentrates on the existing frameworks for tackling UTPs.

CONTENT: the report has two main elements:

(1) an assessment of the existing regulatory and enforcement frameworks in the Member States;

(2) an assessment of the impact of the voluntary EU-wide Supply Chain Initiative (SCI) and the national SCI platforms that have been set up.

Main conclusions: this report concludes that measures to combat UTPs have developed significantly in recent years.

Regulatory frameworks: many Member States, especially those where the issue is more prominent, have recently introduced **legislative and enforcement measures** that broadly meet the criteria for effective frameworks against UTPs. In total, more than 20 Member States have introduced legislation or are planning to do so in the near future. The fact that the large majority of Member States have introduced regulatory measures and public enforcement systems is a very important development. Some Member States have gone further than others, but almost all the legislative enforcement systems introduced go beyond the normal judicial redress through courts, thereby addressing the ‘fear factor’ of the potential victims of UTPs.

Therefore, given the positive developments in parts of the food chain and since different approaches could address UTPs effectively, th**e Commission does not see the added value of a specific harmonised regulatory approach at EU level at this stage**. However the Commission recognises that, since in many Member States legislation was introduced only very recently, results must be closely monitored, and reassessed, if necessary.

Belgium and the Netherlands do not have a regulatory framework, but have opted for a national voluntary platform. The few remaining Member States without UTP legislation could benefit from following their example and considering at least a national voluntary platform.

Voluntary initiatives: as regards the EU-wide Supply Chain Initiative (SCI), the report noted that the SCI has already accomplished some achievements but there is still room for improvement. In order to increase the initiative's credibility and effectiveness in tackling UTPs, the Commission proposes a discussion with the relevant stakeholders on how to improve the SCI under the High Level Forum for a Better Functioning Food Supply Chain.

Several national platforms have been established under the EU-wide initiative which is another positive signal. This report has found that voluntary initiatives seem to work better in some countries than in others. Belgium's initiative is an example of where a voluntary platform seems to be an efficient approach to tackling UTPs, meaning a regulatory system does not seem to be required. In other countries, for example the United Kingdom, voluntary initiatives were less successful, confirming the need for regulatory measures and effective independent enforcement.

Next steps: the Commission will continue to monitor closely the situation regarding both the voluntary and regulatory frameworks. The Commission’s High Level Forum for a Better Functioning Food Supply Chain will continue the dialogue with operators, Member States and other stakeholders on ensuring the promotion of good practices, the emergence of national platforms and, in particular, the enhancement of the SC. The objective is to improve awareness of the SCI, especially among SMEs, ensure the impartiality of the SCI's governance structure, allow alleged victims of UTPs to complain confidentially and grant investigatory and sanctioning powers to independent bodies.