

Unfair trading practices in business-to-business relationships in the food supply chain

2018/0082(COD) - 12/03/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 589 votes to 72 with 9 abstentions a legislative resolution on the proposal for a directive of the European Parliament and of the Council on unfair commercial practices in business-to-business relations in the food supply chain.

The position of the European Parliament adopted at first reading under the ordinary legislative procedure has amended the Commission proposal as follows:

Protecting producers from unfair trade practices

Within the agricultural and food supply chain, significant imbalances between the bargaining power of suppliers of agricultural and food products and that of buyers of these products are frequent.

In order to combat practices that depart from good commercial conduct, are contrary to good faith and loyalty, and are unilaterally imposed by one trading partner on another, the proposed new directive establishes a minimum list of prohibited unfair commercial practices in the relations between buyers and suppliers in the agricultural and food supply chain.

Thus, Member States should ensure that at least all subsequent unfair commercial practices are prohibited:

- payment for perishable products made more than 30 days after delivery or, where the products are regularly delivered, 30 days after the expiry of an agreed delivery period, or 30 days after the date on which the amount to be paid is established;
- payment for other agricultural and food products made more than 60 days after delivery or, where the products are regularly delivered, 60 days after the expiry of an agreed delivery period, or 60 days after the date on which the amount to be paid is established;
- cancellations of orders for perishable products notified within less than 30 days;
- unilateral modification by the buyer of contractual terms and conditions that have been approved, such as deregistering products covered by a supply agreement;
- the buyer's request to the supplier to pay for the deterioration or loss of agricultural and food products at the buyer's premises or after the transfer of ownership to the buyer;
- the buyer's refusal to confirm in writing the terms of a supply agreement between the buyer and the supplier on which the supplier has requested written confirmation;
- the threat of the buyer to take commercial retaliation actions against the supplier if the supplier exercises its contractual or legal rights;
- a claim for compensation from the supplier for the cost incurred in investigating customer complaints in connection with the sale of the supplier's products despite the absence of negligence or fault on the part of the supplier.

Other commercial practices would also be prohibited unless they have been clearly agreed in advance in the supply agreement:

- the return by the buyer of unsold products to the supplier without paying for such unsold products or without paying for the disposal of such products;
- the obligation for the supplier to make a payment for his products to be stored, displayed or referenced or made available on the market;
- the request to the supplier to bear all or part of the costs associated with any discounts on products sold by the buyer as part of promotional actions;
- the request to the supplier to pay for the advertising made by the buyer for the products;
- the buyer charges the supplier for the personnel responsible for arranging the premises used for the sale of the supplier's products.

The new rules would protect small and medium-sized suppliers with an annual turnover not exceeding EUR 350 million. These suppliers would be divided into five sub-categories (for turnover of less than two million, 10 million, 50 million, 150 million and 350 million EUR).

Complaints

Suppliers would be able to complain either to the enforcement authority of the Member State in which they are established or to the enforcement authority of the Member State in which the buyer who is suspected of having engaged in a prohibited commercial practice is established. The enforcement authority to which the complaint is addressed would be competent to enforce the prohibitions. The enforcement authority receiving the complaint should inform the complainant within a reasonable time after receiving it of how it intends to deal with the complaint.

Member States could promote the voluntary use of effective and independent alternative dispute resolution mechanisms.