

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

2018/0082(COD) - 25/04/2019 - Final act

PURPOSE: to combat unfair trade practices in the food supply chain.

LEGISLATIVE ACT: 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.

CONTENT: the Directive establishes a minimum list of prohibited unfair trading practices in relations between buyers and suppliers in the agricultural and food supply chain and lays down minimum rules concerning the enforcement of those prohibitions and arrangements for coordination between enforcement authorities.

Its objective is to prevent the weaker bargaining position of small and medium-sized farmers from being exploited by large operators and also to avoid the costs of such practices from being passed on to primary producers.

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).

Prohibition of unfair trading practices

The Directive prohibits the most obvious unfair trading practices, namely:

- late payments for perishable products (payments made more than 30 days after delivery);
- cancellations of last minute orders (notified within less than 30 days) concerning perishable products;
- unilateral or retroactive changes to supply agreements;
- 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 misuse by the buyer of confidential information;
- 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 relating to the sale of the supplier's products despite the absence of negligence or fault on the part of the supplier.

Member States shall ensure that at least all the following trading practices are prohibited, unless they have been previously agreed in clear and unambiguous terms in the supply agreement or in a subsequent agreement between the supplier and the buyer:

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- the buyer returns unsold agricultural and food products to the supplier without paying for those unsold products or without paying for the disposal of those products, or both;
- the supplier is charged payment as a condition for stocking, displaying or listing its agricultural and food products, or of making such products available on the market;
- the buyer charges the supplier for staff for fitting-out premises used for the sale of the supplier's products.

Each Member State shall designate one or more authorities to enforce the prohibitions at national level ('enforcement authority'), and shall inform the Commission of that designation.

Complaints and confidentiality

Suppliers may address complaints either to the enforcement authority of the Member State in which the supplier is established or to the enforcement authority of the Member State in which the buyer that is suspected to have engaged in a prohibited trading practice is established. The enforcement authority to which the complaint is addressed shall be competent to enforce the prohibitions.

Member States shall ensure that, where the complainant so requests, the enforcement authority shall take the necessary measures for the appropriate protection of the identity of the complainant or the members or suppliers and for the appropriate protection of any other information in respect of which the complainant considers that the disclosure of such information would be harmful to the interests of the complainant or of those members or suppliers. The complainant shall identify any information for which it requests confidentiality.

Powers of the competent authorities

Member States' enforcement authorities should have the necessary powers and expertise to (i) carry out investigations, (ii) collect factual information, (iii) carry out unannounced on-site inspections, (iv) order the cessation of a prohibited practice, where appropriate, and (iv) impose fines and other equally effective sanctions and take provisional measures against the author of the infringement.

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

Lastly, Member States shall ensure that enforcement authorities cooperate effectively with each other and with the Commission and assist each other in investigations with a cross-border dimension.

ENTRY INTO FORCE: 30.4.2019.

TRANSPOSITION: 1.5.2021.

APPLICATION: from 1.11.2021.