Basic information

2015/2065(INI) INI - Own-initiative procedure	Procedure completed
Unfair trading practices in the food supply chain **Subject** 2.60.01 Trade restrictions, concerted practices, dominant positions 3.10.03 Marketing and trade of agricultural products and livestock 4.60.06 Consumers' economic and legal interests	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
IMCO Internal Market and Consumer Protection	CZESAK Edward (ECR)	24/09/2014
	Shadow rapporteur CORAZZA BILDT Anna Maria (PPE) SEHNALOVÁ Olga (S&D) ROCHEFORT Robert (ALDE) DE JONG Dennis (GUE/NGL) ŠOLTES Igor (Verts/ALE) ZULLO Marco (EFDD)	

Committee for opinion	Rapporteur for opinion	Appointed
ENVI Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
AGRI Agriculture and Rural Development (Associated committee)	MCGUINNESS Mairead (PPE)	17/03/2015
JURI Legal Affairs	The committee decided not to give an opinion.	

European Commission

Commission DG	Commissioner
Internal Market, Industry, Entrepreneurship and SMEs	BIEŃKOWSKA Elżbieta

Key events

Date	Event	Reference	Summary
15/07/2014	Non-legislative basic document published	COM(2014)0472	Summary
29/04/2015	Committee referral announced in Parliament		
29/04/2015	Referral to associated committees announced in Parliament		
21/04/2016	Vote in committee		
04/05/2016	Committee report tabled for plenary	A8-0173/2016	Summary
06/06/2016	Debate in Parliament		
07/06/2016	Decision by Parliament	T8-0250/2016	Summary
07/06/2016	Results of vote in Parliament		
07/06/2016	End of procedure in Parliament		

Technical information

Procedure reference	2015/2065(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 55
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	IMCO/8/02015

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE560.916	06/07/2015	
Amendments tabled in committee		PE567.733	18/09/2015	
Amendments tabled in committee		PE571.610	09/11/2015	
Committee opinion	AGRI	PE564.944	02/03/2016	
Amendments tabled in committee		PE578.464	02/03/2016	
Committee report tabled for plenary, single reading		A8-0173/2016	04/05/2016	Summary
Text adopted by Parliament, single reading		T8-0250/2016	07/06/2016	Summary

European Commission

Document type	Reference	Date	Summary

Commission document (COM)	COM(2014)0472	15/07/2014	Summary
Commission document (COM)	COM(2016)0032	29/01/2016	Summary
Commission response to text adopted in plenary	SP(2016)612	18/11/2016	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	DE_BUNDESRAT	COM(2014)0472	21/10/2014	
Contribution	IT_SENATE	COM(2014)0472	16/01/2015	

Unfair trading practices in the food supply chain

2015/2065(INI) - 07/06/2016 - Text adopted by Parliament, single reading

The European Parliament adopted by 600 votes to 48, with 24 abstentions, a resolution on unfair trading practices in the food supply chain in response to the Commission's report of 29 January 2016 on unfair business-to-business trading practices in the food supply chain.

Members recalled that unfair trading practices (UTPs) are a serious problem, occurring in many sectors of the economy. However, the **problem is particularly evident in the food supply chain**, having adverse effects on the weakest link in the chain. The problem is attested to by all entities in the food supply chain and by many national competition authorities.

UTPs principally consist of: payment delays; restricted access to the market; unilateral or retroactive changes to contract terms; refusal to conclude a written contract or exerting pressure to cut prices.

Whilst welcoming the Commission report of 29 January 2016, Members noted that its conclusions **do not pave the way for an EU-level framework to tackle unfair trading practices at EU level**.

Eliminate unfair trading practices: Parliament recognised that UTPs result primarily from income and power imbalances in the food supply chain and must be urgently addressed in order to ameliorate the situation for farmers in the food sector. These practices have serious negative consequences for farmers, such as lower profits, higher-than-estimated costs, food overproduction and wastage, and financial planning difficulties and ultimately reduce consumer choice.

Limits to the Supply Chain Initiative (SCI): Parliament noted that the setting up of SCI national platforms of organisations and businesses in the food supply chain to encourage dialogue between the parties, promote the introduction and exchange of fair trading practices and seek to put an end to UTPs, but wonders whether they are really effective. It pointed out, however, that some national platforms have not delivered on these objectives.

Parliament questions the **unwavering support expressed in the Commission's report for the SCI**, given its limitations. It reiterated farmers' reluctance to participate on account of : (i) the lack of trust, (ii) the restrictions on anonymous complaints, (iii) the lack of statutory power, (iv) the inability to apply meaningful sanctions, (v) the absence of adequate mechanisms to combat well-documented UTPs, and (vi) concerns about imbalances in the nature of enforcement mechanisms that have not been taken adequately into account.

Setting up effective and robust enforcement mechanisms: Parliament stated that the Supply Chain Initiative (SCI) and other national and EU voluntary systems (codes of good practice, voluntary dispute settlement mechanisms) should be developed further and promoted as an addition to effective and robust enforcement mechanisms at Member State level, ensuring that **complaints** can be lodged anonymously and establishing **dissuasive penalties**, together with EU-level coordination.

It proposed that improving the functioning of the SCI via, inter alia, **independent governance, confidentiality and anonymity**, and effective enforcement and deterrence, could, as a first step, increase farmer interest, support, and, thereby, participation.

EU Framework proposals: Members strongly believe strongly that the **definition of UTPs** outlined by the Commission and relevant stakeholders should be taken into account, along with an open list of UTPs, when submitting a proposal for an EU-level framework.

Anonymity and confidentiality should be incorporated into any future legislative initiative, or initiatives, in this area.

The Commission should submit a proposal, or proposals, for an EU-level framework laying down general principles and taking proper account of national circumstances and best practices to tackle UTPs in the entire food supply chain in order to ensure a level playing-field across Member States.

In general, Parliament is of the opinion that **framework legislation at EU level** is necessary in order to tackle UTPs and to ensure that European farmers and consumers have the opportunity to benefit from fair selling and buying conditions. This European framework legislation **must not lower the level of protection** in countries that have adopted national legislation to combat business-to-business UTPs.

Moreover, Directive 2011/7/EU on combating late payments in commercial transactions should be fully and consistently enforced in order that creditors be paid within 60 days by businesses, or otherwise face interest payments and payment of reasonable recovery costs of the creditor.

Public agencies and dedicated bodies: Member States should establish or recognise public agencies or dedicated bodies like an **adjudicator**, at national level with responsibility for enforcing action to combat unfair practices in the food supply chain.

Public agencies of this kind can facilitate enforcement, e.g. by being empowered to open and conduct **investigations** on their own initiative and on the basis of informal information or complaints dealt with on a confidential basis (thus overcoming the 'fear factor'), and can act as a **mediator** between the parties involved.

Members called on the Commission, the Member States and other relevant stakeholders to **facilitate the incorporation of farmers' organisations** (including POs and APOs) within the scope of national enforcement bodies governing the food supply chain, primarily by securing the anonymity of complaints and an effective sanctions regime.

Taking into account the specific features of each market: Parliament considered that any proposed regulatory efforts in this area should ensure that there is relatively broad discretion to tailor the measures to be taken to the specific features of each market, in order to avoid adopting a 'one-size-fits-all' approach.

Raising consumer awareness: the resolution called on all stakeholders involved in food supply chain management to step up transparency in the overall food supply chain and to **increase consumer information** through more appropriate **product labelling and certification schemes**, in order to enable consumers to make fully-informed choices about available products, and to act accordingly.

Lastly, Parliament called for **increased transparency and provision of information within the supply chain** and for the strengthening of bodies and market information tools such as the European Food Price Monitoring Tool and the Milk Market Observatory, with a view to supplying farmers and POs with accurate and timely market data.

Unfair trading practices in the food supply chain

2015/2065(INI) - 29/01/2016 - Document attached to the procedure

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.

Unfair trading practices in the food supply chain

2015/2065(INI) - 04/05/2016 - Committee report tabled for plenary, single reading

The Committee on the Internal Market and Consumer Protection adopted the own-initiative report by Edward CZESAK (ECR, PL) on unfair trading practices in the food supply chain in response to the Commission's report of 29 January 2016 on unfair business-to-business trading practices in the food supply chain.

The Committee on Agriculture and Rural Development, exercising the prerogative of an associated committee in line with Article 54 of the Rules of Procedure of the European Parliament, was also consulted to give an opinion on the report.

Members recalled that unfair trading practices (UTPs) are a serious problem, occurring in many sectors of the economy. However, the **problem is particularly evident in the food supply chain**, having adverse effects on the weakest link in the chain. The problem is attested to by all entities in the food supply chain and by many national competition authorities.

UTPs principally consist of: payment delays; restricted access to the market; unilateral or retroactive changes to contract terms; refusal to conclude a written contract or exerting pressure to cut prices.

Whilst welcoming the Commission report of 29 January 2016, Members notes that its conclusions **do not pave the way for an EU-level framework to tackle unfair trading practices at EU level**.

Eliminate unfair trading practices: Members recognised that UTPs result primarily from income and power imbalances in the food supply chain and must be **urgently addressed** in order to ameliorate the situation for farmers in the food sector. These practices have serious negative consequences for farmers, such as lower profits, higher-than-estimated costs, food overproduction and wastage, and financial planning difficulties and ultimately reduce consumer choice.

Members stated that the Supply Chain Initiative (SCI) and other national and EU voluntary systems (codes of good practice, voluntary dispute settlement mechanisms) should be developed further and promoted as an addition to **effective and robust enforcement mechanisms at Member State level**, ensuring that complaints can be lodged anonymously and establishing **dissuasive penalties**, together with EU-level coordination.

Members proposed that improving the functioning of the SCI via, inter alia, **independent governance**, **confidentiality and anonymity**, and effective enforcement and deterrence, could, as a first step, increase farmer interest, support, and, thereby, participation.

Definition of unfair trading practices: Members believe strongly that the definition of UTPs outlined by the Commission and relevant stakeholders should be taken into account, along with an open list of UTPs, when submitting a **proposal for an EU-level framework**.

Anonymity and confidentiality should be incorporated into any future legislative initiative, or initiatives, in this area.

The Commission should submit a **proposal, or proposals, for an EU-level framework laying down general principles** and taking proper account of national circumstances and best practices to tackle UTPs in the entire food supply chain in order to ensure a level playing-field across Member States. Moreover, Directive 2011/7/EU should be fully and consistently enforced.

Public agencies and dedicated bodies: Member States should establish or recognise public agencies or dedicated bodies like an **adjudicator**, at national level with responsibility for enforcing action to combat unfair practices in the food supply chain.

Public agencies of this kind can facilitate enforcement, e.g. by being empowered to open and conduct **investigations** on their own initiative and on the basis of informal information or complaints dealt with on a confidential basis (thus overcoming the 'fear factor'), and can act as a **mediator** between the parties involved.

Members called on the Commission, the Member States and other relevant stakeholders to **facilitate the incorporation of farmers' organisations** (including POs and APOs) within the scope of national enforcement bodies governing the food supply chain, primarily by securing the anonymity of complaints and an effective sanctions regime.

Taking into account the specific features of each market: Members considered that any proposed regulatory efforts in this area should ensure that there is relatively broad discretion to tailor the measures to be taken to the specific features of each market, in order to avoid adopting a 'one-size-fits-all' approach.

Raising consumer awareness: the report called on all stakeholders involved in food supply chain management to step up transparency in the overall food supply chain and to **increase consumer information** through more appropriate **product labelling and certification schemes**, in order to enable consumers to make fully-informed choices about available products, and to act accordingly.

Lastly, the report called for **increased transparency and provision of information within the supply chain** and for the strengthening of bodies and market information tools such as the European Food Price Monitoring Tool and the Milk Market Observatory, with a view to supplying farmers and POs with accurate and timely market data.

Unfair trading practices in the food supply chain

2015/2065(INI) - 15/07/2014 - Non-legislative basic document

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.