



POLICY BRIEFING

UNLOCKING THE POTENTIAL OF THE EU FOOD SUPPLY CHAIN.

A BALANCED, COMMON APPROACH TACKLING UTPs

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1. INTRODUCTION

2016 has been quite productive in terms of debates around the Food Supply Chain at the European level. The issue has been triggered by the Agricultural Markets Task Force (AMTF) instigated by Commissioner Hogan, which examined the position of the farmer in the supply chain, and proposed a number of recommendations on different issues, amongst them trading practices in agricultural markets and contractualisation.

The Report has been deeply debated in the Agri Council, whose Conclusions of December 2016 on “Strengthening Farmers’ Position in the Food Supply Chain and Tackling Unfair Trading Practices” made clear that imbalances in the bargaining positions often lead to unfair trading practices (UTPs), as well as to the need for a level-playing field for all actors in the chain.

The AMTF was not the only initiative around the issue of how to improve the functioning of the European food chain. The European Parliament has also been very active, and its last positioning was adopted in June 2016 with the adoption of a new Resolution on “Unfair Trading Practices in the Food Supply

Chain”, in which it openly pledges for a framework legislation at EU level in order to tackle UTPs .

Along the same line, the European Economic and Social Committee supported the European Parliament’s Resolution in its Opinion adopted at the plenary in October 2016 (“A Fairer Agro-Food Supply Chain”) and highlighted the need for a framework legislation at the European level as well as to take swift action to prevent UTP’s .

In this context, the Commission is expected to come back with an initiative in the next months and give an answer both to operators and institutions on how to rebalance the relationship between the different links of the food chain and unlock its whole potential under clear, and common rules.

This paper is the contribution of Farm Europe to this debate, whose objective is fully shared if we want to improve in the long run the structure of this value added chain which is number one in the European economy.

2. WHY DO WE NEED A NEW FRAMEWORK? WHAT HAVE WE REACHED?

Discussions about the need to rebalance the food chain relationship are not new at the European level. All the institutions have participated in several attempts urged by different stakeholders, but in the end no concrete action has been taken.

On the contrary, in 2013, seven European Associations motivated by the former Commissioner Verheugen launched the Supply Chain Initiative (SCI) as a voluntary, private-led action in order to increase fairness in commercial relations along the food supply chain.

Since then, some advances have been achieved in promoting cultural changes and improving business ethics, but a set of important shortcomings have also been highlighted in the analysis of its effective application. Weakness in governance, limitations in transparency, no enforcement measures or penalties, a lack of effective deterrents against UTP and not allowing individuals to make anonymous complaints by potential victims, no own-initiative investigations by an independent body and under-representation of SMEs and farmers are the most important ones.¹

¹ EP Resolution of 7 June 2016 on unfair trading practices in the food supply chain.

On the other hand, a fresh look to what is happening at the national level can give us a better idea of the framework in which the European debate is taking place.

It is very clear that the primary concerns on the issue were born at the MS level, and all of them have been - in one way or another - actively looking for remedies. If we summarize what is going on in the different Member States, several distinctions can be made:

- There are some MS with specific measures for the food chain (i.e. Spain, UK, Italy...), and others refer directly to horizontal legislation (Germany, France,..).
- Four main types of models coexist: regulated in detail (UK, Spain, Italy..), self-regulated (Belgium), mixed model (Spain, UK) , horizontal regulation and countries with no specific UTP's regulation (Denmark, Sweden, Luxembourg,..).
- When there is a regulatory framework and control authorities, they can be either the Ministry of Finance (France), Competition Authorities (Germany), Food Safety and Economy (Portugal) or Agriculture (Spain).²

Nevertheless, considering facts and circumstances, we can reach the conclusion that despite the efforts made, self-regulation or voluntary approaches are not enough to solve the present imbalances in the food chain, and what is most worrying, disparities between national systems in place do not help to keep a level-playing field and ensure the proper functioning of the Internal market, while at the same time the fragmented nature of the markets expose supply chain operators to different conditions, regulatory uncertainty and inefficiencies.

3. A SET OF CONCRETE PROPOSALS.

If Europe wants a strong and balanced food chain, able to share all the value added generated across it under fair conditions, able to reinforce the position of producers as the most vulnerable link, and generate wealth up to the consumer, the Commission has to put forward a common framework with a minimum set of issues .

² more detailed information in the study commissioned by the Spanish Agency for Food Information and Control (AICA) ,” Informe sobre la aplicacion de la regulacion de practicas comerciales en los paises UE” 2016. www.aica.gob.es

These core issues should be the following:

a) A set of guiding principles for the commercial relationships in the food chain.

There are three kind of relations in the food chain: 1) producer – industry, 2) producer – retail , 3) industry – retail.

For all cases, the relation shall be governed by the principles of balance and fair reciprocity between parties, freedom to enter into agreements, goodwill, mutual interest, equitable sharing of risks and responsibilities, cooperation, transparency and respect of free market competition.

b) Identification of the unfair practices to be relegated from commercial practice. There is a vast literature about UTPs , and in general terms they can be described as all kind of practices imposed to the supplier that do not respect fairness in the contractual relation, passing on inefficiencies or risks without any compensation.

Under this broad description we should include:

- Unilateral or retroactive changes to the agreed terms (concerning volumes, quality standards, prices),
- Unforeseen commercial payments,
- Charges of fictitious services,
- Transfer of charges in promotions to the supplier with no negotiation and participation of the buyer,
- Imposing unconditional return of unsold merchandise,
- Non-compliance with payment delays as established in Directive 2011/7/EU,
- Sudden and unjustified cancellation of a contract,
- Non-transparent, discriminatory electronic auctions.
- - No request for upfront payments to secure or retain contracts .

c) Written contracts. Modern commercial relations imply taking into account a set of complex issues – quality, quantity, price, discounts, logistics and transportation, terms of delivery,...- that cannot be left to uncertainty. Moreover, clear conditions mean secure and stable relationships, as well as less legal controversies. We propose as a general rule the need for written contracts along the chain, with a

minimum set of criteria, conditions that should be compulsory when requested by the supplier. In the case of agri producers, Producers' Organizations and Interbranch Organizations could play a relevant role in this issue and negotiate on their behalf.

d) Effective enforcement of rules. Experience shows us the shortcomings and limits of voluntary, non-binding models of enforcement. The most effective way is the supervision and control by an independent authority, granted with public powers, in order to ensure the effective application of the proposed set of rules.

e) Fear factor avoidance. Enforcement should be possible either through independent authorities' own initiative, or by operators and their organizations. It is crucial in this sense to establish an effective complaints lodge system that secures anonymity.

f) Sanctions and name-and-shame . Non-compliance with the proposed set of rules should be subject to sanctions, with dissuasive character, and include "Name and shame" provisions.

All these proposals should be part of a coherent, common European framework that needs to be covered under a legal umbrella.

Of course Member States should be able to have the maximum of flexibility to effectively apply this general framework, because in the end, what is important is the final outcome. On the other hand, changes of attitude and habits do not come from one day to another, so time and awareness are also part of the process.

Finally, this entire model should be complemented at the national level by the effective participation of stakeholders through codes of conduct / voluntary agreements, as a way to better implement a comprehensive system. In this sense, the work that has been already done at EU and national level must be useful to draw a baseline, as the set of principles agreed under the Supply Chain Initiative might be a first base of discussion.