

Proposal for a Directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain (COM(2018) 173 final).

The Committee on EU Policies of Italy's Chamber of Deputies,

Having examined, pursuant to the Chamber of Deputies Rule 127(1), the Proposal for a Directive of the European Parliament and of the Council on unfair trading practices in business-to-business relationships in the food supply chain (COM(2018) 173 final),

Whereas:

The food supply chain delivering food products and beverages for public consumption is a continuum of vertically inter-related markets on which a variety of different players operate: farmers, processors, traders, wholesalers, retailers and consumers. In short, the food supply chain comprises two component parts: production (agriculture and the food industry and the processing of agricultural raw materials), and distribution and trade (the wholesale and retail trade and the restaurant sector);

Most of the enterprises operating in the food supply chain are small- and medium-sized, with a much higher concentration of SMEs in food processing and retail trade than in the agriculture sector;

According to the European Commission, there has been a shift in bargaining power in recent years, mainly in favour of the retail trade and certain transnational corporations, to the detriment of suppliers, particularly primary producers. Farmers, processors, traders, wholesalers, retailers and consumers are all actors in the food supply chain. Smaller operators in the food supply chain are more prone to facing unfair trading practices due to their generally weak bargaining power in comparison with the large operators in the chain. The European Commission is of the view that unfair trading practices can put operators' profits and margins under pressure, which can result in a misallocation of resources and even drive otherwise viable and competitive players out of business;

There is no legislation at the level of the European Union to combat unfair business-to-business trading practices in the food supply chain, while the situation in the Member States varies very widely;

The European Commission deems that the differences of approach in force in the Member States can create different competitive conditions for the operators, and that the coordination between the Member States' enforcement authorities is very weak;

This proposal for a directive sets out a list of prohibited unfair trading practices and a list of acceptable practices provided that they have been clearly and unambiguously agreed upon when concluding the supply agreements;

The proposal also requires Member States to designate a public enforcement authority to ensure compliance with the prohibition on unfair trading practices at the national level, empowered to conduct enquiries both upon request and acting at its own initiative, to impose penalties and publish their decisions and the names of offenders;

The proposal complements the voluntary Supply Chain Initiative (SCI) in the private sector, aimed at raising awareness of unfair trading practices and promoting a fair business conduct;

According to the European Commission, this proposal is compliant with the principle of subsidiarity because regulation at the European level would guarantee a minimum common framework, improve protection against unfair trading practices and reduce repercussions along the food supply chain. It would also help to ensure fair living standards for the agricultural community (Article 39 TFEU), and enable best practices to be coordinated and exchanged between the Member States;

The proposal, according to the European Commission, is also compliant with the principle of proportionality because the scope of protection against the most detrimental unfair trading practices is limited to SMEs and to areas in which individual Member States alone cannot achieve the same objectives. Moreover, the costs incurred would be minimal and the Member States would be able to continue to apply their own regimes and enact national legislation covering a broader scope than the measures being proposed;

Mindful of the joint hearing – held by the Committees on Economic Activities, on Agriculture and on EU Policies - of the Rapporteur of the EP Committee on Agriculture and Rural Development, Paolo De Castro;

Noting the need for this opinion, together with the final document of the Committee responsible by subject-matter to be forwarded promptly to the European Commission, as part of the political dialogue, and to the European Parliament and the Council,

expresses

A POSITIVE OPINION,

with the following qualifications:

The Committees responsible by subject-matter should examine the advisability of pointing out the following in the relevant European fora:

- a) The scope of application of this proposal should be extended to include all agricultural products and not only food products, and all suppliers and not limit them only to the small- and medium-sized enterprises as defined in Recommendation 2003/361/EC, so as to include also those operators which, while located outside the European Union, procure and sell products on the internal market, also for the purpose of deterring circumvention practices;
- b) A general definition of unfair trading practice should be introduced, based on principles widely recognised and accepted by the European Union and by different national legal systems;
- c) The right vested in producers' organisations or associations of producers' organisations to file a legal complaint on behalf of one or more members who consider that they have been the victims of a prohibited unfair trading practice, should also be extended to organisations of the suppliers and their representative organisations;

- d)* Member States should be given the possibility to institute mediation procedures between the parties in order to facilitate dispute settlement without having to file a legal complaint;
- e)* Member States should be given the possibility of increasing the powers of the public oversight authorities responsible for enforcing the prohibition of unfair trading practices in each country.