



Parlamentul României
Senat

Bucharest, April 22, 2013
Courtesy translation

OPINION

**of the Romanian Senate on the European consultation document - GREEN PAPER
on unfair commercial practices in the supply chain between food and non-food
businesses in Europe – COM (2013) 37 final**

The Plenum of the Romanian Senate, pursuant to art. 67, art. 148. (2) and. (3) of the Romanian Constitution, and the Protocol (No 1) annexed to the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, ratified by Law no. 13/2008, has examined the common view of the Committee on European Affairs and the Committee on Economic, Industry and Services, adopted this POINT OF VIEW:

The Green Paper on unfair practices in the supply chain between food and non-food businesses in Europe – COM (2013) 37 final is targeting the supply chain B2B (business-to-business) on food and non-food products, defined as the chain of transactions that occur between undertakings and public authorities to distribution of goods primarily for general public or personal or household consumption. The Green Paper on unfair commercial practices in the supply chain between food and non-food businesses in Europe - COM (2013) 37 final, is targeting the supply chain B2B (business-to-business) and non-food products, defined as the chain of transactions that occur between undertakings or between undertakings and public authorities to distribution of goods primarily for general public or personal or household consumption.

The document contains a preliminary assessment and aims to get more information and views on the possible problems caused by the unfair trade practices in relationships along the supply chain B2B (business-to-business) and non-food products, to ensure the effective existing national rules to combat these unfair trade practices and the unfair trade practices impact on the single market.

The objective of the Green Paper is to launch a consultation with stakeholders on this analysis, in order to gather information and, where appropriate, identify any measures that should be undertaken in the future to address this problem.

The members of the Committee for European Affairs and of the Committee on Economic, Industry and Services, after examining this Green Paper, taking also into account the views of the Ministry of Foreign Affairs of Romania Association and Commercial Grids Competition Council, have answered 17 of 25 questions, as follows:

2.1. The concept of unfair trade practices

1) Do you agree with the above definition of the PCN?

Yes. According to the document submitted to, unfair commercial practices are practices that clearly deviate from the conduct trade and contrary to good faith and fairness necessary to conduct a commercial act.

2) The concept of PCN is recognized in your Member State? If yes, please explain how

The concept of unfair trade practices is recognized in Romania by Law no. 321/2009 on the marketing of foods provides highlights issues that are included in the document forwarded and that can be inserted into the category PCN, Law prohibits traders:

- to require and charge the payment service provider that are not directly related to the operation of sale;
- to request and collect from payment of service provider to extend the distribution network of the trader, the trader spatial sales or transactions and events to promote the work and image of the trader;
- to require the supplier to other retailers not to sell the same products at a lower acquisition cost exceeding one who purchased the items.

The Romanian legislation, according to art.1 of the Law no.11/29.01.1991 on combating the unfair competition oblige the retailers to discharge their duties in good faith, according to the fair practices, with the interest of consumers and with the fair competition requirements. But the Law no.11/1991 on combating the unfair competition, in its current form, covers only the issues of enterprise-employee relationship, concerning also the problem of the disclosure of trade secrets or misleading statements in connection with the business activity

3) In your opinion, the concept of PCN should be limited to contractual negotiations or the steps should include pre and / or post-contract?

PCN concept and steps should include pre and / or post-contractual.

4) At what stage of the supply chain in the retail B2B may appear PCN?

They can occur at any stage of the supply chain B2B (business-to-business) and non-food products and are usually one of the effects of asymmetry of bargaining power between the parties to the transaction.

5) What do you think about the concept of "fear factor"? Do you agree with the above assessment on this issue? Please explain.

Yes, we agree with the assessment made by the Commission. Weaker party fears cease trade if they complain. Unfortunately due to the "fear factor" decreases the likelihood that such complaints occur and is therefore one of the most important aspects to be considered when assessing the suitability of an enforcement mechanism.

2.3. The potential effects of unfair trade practices

6) In your experience, how much and how often arise PCN food? In what stage of trade experience these practices and how they manifest themselves?

It was found, after investigation on the food retail sector, the PCN can occur in all segments of the supply chain. Regarding the suppliers of the shop chains, there was at that time that a

segment of 30-35% of them felt the effects of lower bargaining power in relation to these retailers, while the other considers generic, but also that average bargaining power.

Most providers surveyed rated the quality of commercial relations with major retailers as at least acceptable (83%). Thus, due to the increased bargaining power in relation to some of their suppliers, some chains are accused did not return the value of slotting fees in the event of delisting, contractual clauses that require annual change, often in some upside rewards from suppliers that refuse to modify contract terms at the request of providers have inflexible attitudes, delay paying bills, delists unreasonably, blocking deliveries without refund entry fees or paid listing or discounts that require retroactive.

7) Are there PCN and retail sectors of food products? If so, please provide examples.

There may PCN and retail sectors respectively in any sector where asymmetry occurs some bargaining power between the parties.

9) PCN affects consumers (eg, influencing prices, product or innovation)? Please provide specific examples and, where possible, to quantify this impact.

Most of the unfair commercial practices affecting consumers were identified in the marketing of milk. It was found that Romanian producers of milk are in a weaker position in terms of bargaining power because delivery contracts individually and not hold shares in the downstream industry, represented in this case by the processing industry.

To reduce the mismatch between the bargaining power of farmers and the processors, one solution might be to encourage the production segment associative forms, with respect to competition law, but also the realization of a framework contract clause to avoid disadvantageous to farmers.

10) The PCN have an impact on cross-border trade in the EU? PCN could fragment the single market? If yes, please explain how PCN have an impact on your company's ability to conduct cross-border transactions.

Unfair commercial practices can have a negative impact on cross-border trade and may impede the proper functioning of the single market.

Suppliers may be reluctant to work with retailers abroad for fear of being victims of unfair trade practices. However, regardless of these factors may hinder the development of cross-border relations FNC, mainly because of the difficulty to implement the rules governing them in a transboundary context.

3.2. Protection against unfair commercial practices in the EU

11) Regulatory Frameworks / self-imposed national PCN allow sufficient approach in some Member States? If not, why?

12) Lack of specific national regulatory frames / self-regulation to combat PCN is a problem in countries where they do not exist?

The existing regulatory framework does not include all the practices mentioned in the document submitted by the European Commission.

In Romania, the national competent authority has approved the Code of Practice in the food sector and subsequently submitted its views on the law on food marketing nr.321/2009 that this code has been transposed into national law. It was argued that it is essential that the application of the Code, not to create a platform for exchange of information to facilitate the transfer of sensitive data on the competitive relationship between the signatories.

15) Regulatory PCN, where they exist, have a positive impact? There are potential drawbacks / concerns about the introduction of the NCP regulations, for example by imposing unjustified restrictions of freedom of contract? Please explain.

At approx. one year after the entry into force of Law nr.321/2009, the national authority analyzed the impact of the application of its provisions in the relation manufacturers / distribution and retailers / purchasers and found the following:

- Affecting cash flow at retail - retailers claimed to have encountered problems due to the time fixed payments and short set by law;
- Reducing the value of orders and at the same time increasing the number of orders with lower value, leading to increased logistics costs;
- Inventory impairment and problems with product offerings to consumers - lower orders made payable to suppliers;
- Some of the producers / distributors believed that "retail charges" that were to be eliminated under the Code of Good Practices will be replaced or renamed and as such, the effects will be non-existent market.

The general opinion of the market players with reference to the impact law nr.321/2009 was that you can not see a tangible impact of these regulations, they have not resulted in lower general conditions by suppliers or reducing prices for consumers.

The existing national and European regulations concerning competition and unfair competition are designed to ensure the maintenance of a normal competitive environment, but we must not ignore the principle of freedom of contract relations between undertakings which have been established for the purpose of making profit.

4.2. Enforcement mechanisms at EU level

16) There are significant discrepancies in the legal treatment PCN between Member States? If so, these differences hinder cross-border trade? Please provide specific examples and quantify impacts where possible.

Even if the mentioned problem of unfair commercial practices in the context of several recent initiatives, there is now a specific regulatory framework at EU level to combat unfair commercial practices in B2B supply chain of food and nonfood products.

17) Where there are adverse to what extent a common EU approach on law enforcement should treat this problem?

No negative effects have been identified.

5.8. The common characteristics of PCN

19) The above list contains details of the most important PCN? There are other types of PCN?

In the investigation conducted by the food retail market identified certain behaviors that can be integrated in the PCN concept, these being:

- refoulement consideration of slotting fees in the case of de-listings,
- annual request modification of contract terms, most often, to increase the salaries of certain suppliers,
- refusal to amend clauses,

- delay in paying bills,
- de-listings unreasonable
- blocking deliveries without refund entry fees or paid listing,
- requests for retroactive discounts,
- return to vendor products when they were not selling.

20) Create a list of prohibited PCN could be an effective way to solve this problem? Such a list should be updated regularly? There are other possible solutions?

Yes, it would be useful to a list of prohibited unfair trade, but not a solution to eliminate this problem completely.

23) Should any of the above best practices to be included in an EU framework? This approach would have the disadvantage?

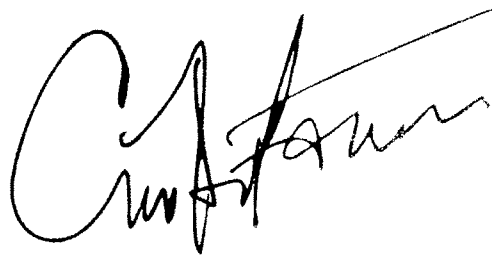
Yes, should be included in a single legislative framework at European level.

Following discussion members have appreciated the need for legal provisions to punish acts of unfair competition, because competition policy is a complete and effective representing the desire to ensure a competitive environment it honestly between economic operators in accordance with the interests of consumers.

The opinion shall be sent to the European institutions.

The SENATE PRESIDENT

George Crin Laurențiu ANTONESCU

A handwritten signature in black ink, appearing to read 'George Crin', with a long horizontal stroke extending to the right.