



EUROPEAN COMMISSION

*Brussels, 22.08.2018
C(2018) 5654 final*

Dear President,

The Commission would like to thank the Riksdag for its Reasoned Opinion on 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}.

The Commission has taken good note of the Riksdag's concerns as regards the proposal's compliance with the subsidiarity principle.

As the Riksdag rightly notes, the Commission in 2016 found that there was at that time no need for a specific harmonised regulatory approach at Union level. However the Commission also announced in January 2016 that before the end of its mandate it would re-assess the potential added value of European Union action to address unfair trading practices in the light of new developments, or a lack thereof. The Impact Assessment accompanying the current proposal describes in detail the reasons that led to the current assessment in comparison to the assessment made in 2016.

The 2016 assessment was based on the expectation that the observed positive developments would have continued. Nevertheless, the expectation did not materialise during the reassessment. First, the lack of exchange of information and best practices registered in 2016 was only marginally addressed in the two following years. Second, in 2018 only four Member States had their approach to unfair trading practices reviewed. Third, Member States that in 2016 lacked a sanction mechanism that could act as a real deterrent did not address the issue in the subsequent period. Fourth, in the period between 2016 and 2018 no new effective regime for unfair trading practices was established. In conclusion, while the voluntary Supply Chain Initiative was expected to raise awareness, ensure impartiality of its governance structure, enabling alleged victims of unfair trading practices to complain confidentially, granting investigatory and sanctioning powers to independent bodies, these expectations were not satisfied. As a consequence, European Union legislation dealing with unfair trading practices turned out to be necessary.

*Mr Urban Ahlin
Speaker of the Riksdag
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As stated in the explanatory memorandum and in the Impact Assessment, the Commission finds that there is a need for European Union measures to target the problem of under-protection against unfair trading practices by providing for a common Union-wide minimum standard. The added value of Union action consists in being able to provide for a mandatory minimum protection standard against unfair trading practices throughout the Union, including enforcement of a standard which the voluntary initiatives and national measures have not or only to a limited extent been able to bring about.

Moreover, the Commission has chosen to follow a minimum harmonisation approach giving Member States the possibility to go further as regards the level of protection in a number of prohibited unfair trading practices, products or operators, provided that these national measures comply with the Union acquis on the internal market.

With regard to the Riksdag's observation on the freedom of contract, the Commission agrees on the pivotal importance of the freedom of contract and firmly stands for the protection of this principle. Nevertheless, the Commission deems that under certain circumstances minor restrictions to this freedom may be justified so as to prevent manifest unfair practices from occurring. This rationale also applies in relation to consumer protection laws.

As regards the Riksdag's comments on cross-border problems, the Commission would like to recall that the objective of the proposal is to address the issue of under-protection of smaller operators in the food supply chain against unfair trading practices. The Impact Assessment provides that the patchwork of rules on unfair trading practices or the absence of such rules is liable to impair the objective of ensuring a fair standard of living of the agricultural community. As also stated in the Impact Assessment, the absence of common rules entails uncertainty for operators engaging in cross-border trade in the European Union.

The Commission would finally like to thank the Riksdag for the detailed work that it has undertaken, which constitutes an important contribution to the debate that is now underway.

The Commission hopes that these clarifications address the issues raised by the Riksdag and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Pierre MOSCOVICI
Member of the Commission*