



Initiative to Improve the Food Supply Chain

CONSULTATION STRATEGY

1. BACKGROUND TO THE INITIATIVE

As determined in the Commission Work Programme for 2017, the Commission is considering whether EU-level action is needed to address anti-competitive practices caused by the weaker position of farmers and SMEs in the food supply chain vis-à-vis other levels of the chain with respect to agri-food products and the bargaining position of operators in the chain¹. This assessment is to take into account the work conducted by both the Agricultural Markets Task Force² (AMTF) and the High Level Forum for a Better Functioning Food Supply Chain³ (HLF). In line with the Commission's Regulatory Fitness and Performance (REFIT) Programme the work will result in an impact assessment (IA) to be submitted to the Regulatory Scrutiny Board (RSB) for an opinion, and may result in a legal proposal. In parallel, and also included in the Commission Work Programme for 2017, there is an ongoing review on the modernisation and simplification of the Common Agricultural Policy. Furthermore, a comprehensive evidence-based policy evaluation ('Fitness Check') of Regulation (EC) No 178/2002 on General Food Law⁴ is also currently being carried out covering the entire food chain⁵.

There is widespread recognition that due to the weaker bargaining position of different actors in the food supply chain, these can be subject to unfair trading practices (UTPs) in the EU (as is the case in other jurisdictions). UTPs can 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 its counterparty. Some view them as symptoms of market imperfections which are liable to weaken the overall efficiency of the supply chain. More than 20 EU Member States have

¹ Commission Work Programme 2017, Delivering a Europe that protects, empowers and defends, COM(2016) 710 final. https://ec.europa.eu/info/sites/info/files/cwp_2017_en.pdf

² https://ec.europa.eu/agriculture/agri-markets-task-force_en

³ https://ec.europa.eu/growth/sectors/food/competitiveness/supply-chain-forum_en

⁴ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

⁵ https://ec.europa.eu/food/safety/general_food_law/fitness_check_en.

introduced legislation that specifically targets UTPs. Similar legislation exists in regard to consumer protection, where it is perceived that consumers are typically at a disadvantage, and can benefit from protection from UTPs from the significant imbalances in power in relation to businesses.

In addition, asymmetries of information in the food supply chain that are linked to the stronger position of some actors may be unlevelling the playing field and decreasing trust along the different levels of the chain. The AMTF report⁶ identified some issues around market transparency that, if addressed, may improve the functioning of the food supply chain.

As regards producer cooperation, EU agricultural legislation encourages farmers to cooperate, thereby providing a counterweight to their often concentrated downstream (and upstream) partners. The Treaty on the Functioning of the European Union (TFEU) recognises the specific status of the agricultural sector with regard to the application of competition rules to cooperation among farmers. In this context, there may be a case to extend a provision in the CMO regulation which applies in the sugar sector and which allows value sharing agreements negotiated by groups of agricultural producers as it can help making them more sustainable on markets and less likely to be victims of UTPs.

The European legislator expressed the need to consider EU action with the objective of tackling UTPs by actors in other levels of the supply chain that occur to the detriment of farmers and other actors in the chain (particularly SMEs) subject to UTPs. In June 2016 the European Parliament called on the European Commission to assess options for action to address UTPs, including regulatory action, in a resolution that garnered 600 votes in favour⁷.

In December 2016, the Council of Ministers called on the Commission to undertake an IA with a view to proposing an EU legislative framework or other non-legislative measures in the area of UTPs⁸. The Council also invited the Commission to create legal clarity for a better understanding and use of agriculture-specific derogations from competition law by producer organisations, including cooperatives. Last but not least, the Council called on the Commission to address, in a reasonable timeframe and in a coordinated way, the issue of lack of transparency and information asymmetry at all levels of the food supply chain.

As such, and in line with the European Commission's Regulatory Fitness and Performance (REFIT) programme, the Commission will assess and summarise all of the relevant available evidence and establish the need for EU action, including through a legislative initiative, by means of an IA. In terms of timing, and in accordance with the due process requirements for an IA, the outcome is to be presented in the first half of 2018. The present consultation strategy defines the approach to take for engagement with stakeholders.

⁶ https://ec.europa.eu/agriculture/sites/agriculture/files/agri-markets-task-force/improving-markets-outcomes_en.pdf

⁷ European Parliament resolution on unfair trading practices in the food supply chain (2015/2065(INI)), <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2016-0250>

⁸ Council conclusions of 12 December 2016, Strengthening farmers' position in the food supply chain and tackling unfair trading practices, <http://www.consilium.europa.eu/en/press/press-releases/2016/12/12-conclusions-food-supply-chain/>

2. PREVIOUS CONSULTATIONS

Problems hampering the efficient functioning of supply chains, as well as which measures can be taken to address these, have been the subject of discussion at EU level for a number of years (see [Annex](#) for a list of relevant EU-level documents since 2009). This work provides a basis for the consultation and the analysis that will feed into the IA. Various stakeholders have participated in these discussions, and the Commission has, over time, collected and analysed their contributions.

List of previous stakeholder engagement:

- The **AMTF report** was informed by an open internet-based consultation. This covered UTPs, market transparency, and producer cooperation. The AMTF also engaged in targeted consultation by inviting experts to its meetings. The Task Force reported that all stakeholders acknowledged the existence of UTPs in the food supply chain, and that, while useful to a degree, voluntary initiatives had not been able to address the ‘fear factor’ on the part of operators considering to make a complaint. Stakeholders stated that increased market transparency can aid the determination of contract terms and contribute to the development of futures markets. Market data should be accurate, accessible, and published in a timely fashion. Finally, stakeholders highlighted benefits of value sharing mechanisms, in terms of contract security and efficient price-signal transmission from sales to the final consumer directly to producers.
- The **High Level Forum for a Better Functioning Food Supply Chain**, *de facto* ongoing since being set up by the Commission in 2010, has recognised the problem of UTPs. The High Level Forum has had extensive exchanges of views on UTPs and market transparency, with the involvement of many of the key stakeholders⁹, and helped facilitate the establishment of the Supply Chain Initiative¹⁰.
- Food supply chain issues were addressed in the **2017 public consultation on modernisation and simplification of the CAP**. In particular, the Commission asked whether improving farmers’ position in the food supply chain, including addressing UTPs, was a proposition stakeholders would agree with, with 96% of respondents answering in the affirmative. The consultation also asked whether there is a need for improving transparency in agricultural markets, with 88% of respondents agreeing or partially agreeing.
- The 2014 European **Commission communication on unfair trading practices in the business-to-business food supply chain** was in part based on a survey of legal experts on UTPs in the different Member States¹¹, with a focus on the description of national legislation and national private initiatives regarding UTPs. The communication was supportive of the Supply Chain Initiative, calling for participants to increase stakeholder engagement in particular SMEs. It also called on Member States to assess the effectiveness of their national legislation in addressing UTPs, including in regard to enforcement mechanisms.

⁹ Commission Decision of 30 July 2010 establishing the High Level Forum for a Better Functioning Food Supply Chain; and Commission Decision of 1 June 2015 establishing the High Level Forum for a better functioning food supply chain (2015/C 179/03).

<http://ec.europa.eu/growth/sectors/food/competitiveness/supply-chain-forum/>

¹⁰ <http://www.supplychaininitiative.eu/>

¹¹ http://ec.europa.eu/growth/single-market/services/retail_en

- The 2013 European Commission **Green Paper on UTPs in the business-to-business food and non-food supply chain** in Europe was followed by a public consultation, resulting in comprehensive feedback by stakeholders.¹² Conclusions from the consultation¹³ include that although UTPs can occur in any supply chain, they are particularly problematic in the food supply chain. The main types of UTPs identified by stakeholders included unilateral retroactive changes of contract terms; excessive and unpredictable transfer of risk by the trading partner; abusive use of confidential information; and unfairly ending a commercial relationship. The consultation also highlighted differences in opinion about the frequency of UTPs and how to address these, in particular between retailers and suppliers.
- The ongoing **Fitness Check on General Food Law** and the findings of the two external studies carried out in that context, including an SME survey through the European Enterprise Network, targeting individual SMEs in the food supply chain¹⁴. The need to address the issue of UTPs' impact on food waste has been raised by members of **the EU Platform on Food Losses and Food Waste**.

3. MAPPING OF THE STAKEHOLDERS

The consultation is targeted at a broad range of food supply chain stakeholders across the EU that have an active interest in the functioning of the food supply chain and might be impacted by EU action on UTPs and market transparency. These include: farmers, processors, distributors, wholesalers, retailers, consumers, other stakeholders involved in food supply chain activities (e.g. NGOs, food banks, other charities, third country producers and importers), and their respective representative associations, as well as public authorities in Member States. A distinction will be made between SMEs and other businesses, where relevant.

Farmers and their organisations: high interest, high influence

Businesses downstream from farming: high interest, high influence

Member States' public authorities: high interest, high influence

Consumers: moderate interest, high influence

Other stakeholders: low to moderate interest; low to moderate influence

Other stakeholders may be interested in contributing to the consultation, namely NGOs and civil society organisations (focusing, for example, on food redistribution activities, or the environmental and social impact of UTPs, on EU and international rural economic development, or on trade unions), third country producers and importers, law firms, researchers in academia

¹² http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_type=252&lang=en&item_id=8250

¹³ Summary of responses to the European Commission Green Paper "Unfair Trading Practices in the Business-to-Business Food and Non-Food Supply Chain in Europe"

<http://ec.europa.eu/DocsRoom/documents/9984/attachments/1/translations/en/renditions/native>

¹⁴ The preliminary findings of the SME survey are to be found at:

https://ec.europa.eu/food/sites/food/files/safety/docs/gfl_fitc_20150622_fcce_analysis-comments-sme-panel_en.pdf.

and outside of it, independent experts, local and regional administrations, and individual citizens.

4. CONSULTATION OBJECTIVES, METHODS AND TOOLS

Different forms of collecting new information are foreseen, including a public consultation, stakeholder meetings, and expert workshops. With the objective of better regulation in mind, the consultation will call on respondents to comment on the elements that will be analysed in the impact assessment, namely: the definition and relevance of the problems; the EU dimension of the issues and questions of subsidiarity; the policy options being considered; and the likely economic, social and environmental impact of those policy options. An initial definition of these elements is set out in the inception impact assessment.

The following consultations are foreseen:

- a. An **inception impact assessment** will be published online, setting out current thinking on the issue of UTPs, subsidiarity issues, and initial options under consideration. Contributions from all interested parties are possible, as responses to the inception impact assessment.

Target group: all stakeholders.

Timing: July 2017

- b. An **public online consultation**, open to all, to collect comments on UTPs (concerning the occurrence of UTPs and the possibility and expedience of possible counter-measures taken at the EU level), market transparency issues (usefulness of different measures and EU added-value, for example on the introduction of new EU-level obligations for all operators along the supply chain to report on prices), and value sharing (usefulness beyond the sugar sector) from a broad range of stakeholders;

Target group: all stakeholders.

Timing: open from early September 2017 for twelve weeks.

- c. A **scientific workshop**, held jointly by the JRC and DG AGRI, on UTPs in the food supply chain (in July 2017). The seminar will consider methodological aspects of the analysis of UTPs in the supply chain, the socio-economic impacts of UTPs, regulation of UTPs and enforcement costs, and challenges for the future in the analysis of UTPs.

Target group: researchers in academia and outside of it.

Timing: held on the 17th and 18th July 2017 (completed).

- d. Consultations with **groups representing stakeholders** in the supply chain, namely in the High Level Forum and the Civil Dialogue Group on the Common Agricultural Policy (which includes food supply chain actors and civil society representatives), as well as the Advisory Group on the Food Chain and Animal and Plant Health and the EU Platform on Food Losses and Food Waste.

These will take the form of presentations by the Commission on UTPs, market transparency and value sharing, followed by a debate with stakeholders

Target group: farmers and their organisations; businesses downstream from farming; Member States' public authorities; consumers; NGOs and civil society organisations.

Timing: to be determined.

- e. **Member State authorities** - including national fair trading, competition authorities and competent authorities responsible for compliance with food law requirements - will be consulted on their national policies, legislation, experience and views on UTPs, market transparency, value sharing, and the usefulness of EU action (for instance via targeted questionnaires).

Target group: Member States' public authorities.

Timing: –September 2017.

- f. **Ad hoc meetings** with interested parties may be arranged, depending on interest.

Target group: all stakeholders.

Timing: as requested by stakeholders.

5. OPERATIONAL ARRANGEMENTS

The consultation documentation will be published in this webpage: https://ec.europa.eu/info/consultations/food-supply-chain_en

The open public consultation will be translated in all EU languages and will also be accessible from the Public Consultation portal: https://ec.europa.eu/info/consultations_en

The public online consultation will be publicised by a webpage announcement, and, where possible, by directly informing stakeholders.

Once the consultation process has been concluded the information collected will be summarised and conclusions drawn in a report that will be made available in all EU languages on the consultation webpage.

ANNEX

Relevant EU documents related to unfair trading practices

- 16 May 2017, European Parliament, resolution on initiative on resource efficiency: reducing food waste, improving food safety (2016/2223(INI))
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0207+0+DOC+PDF+V0//EN>
- 12 December 2016, Council Conclusions, Strengthening farmers' position in the food supply chain and tackling unfair trading practices
<http://www.consilium.europa.eu/en/press/press-releases/2016/12/12-conclusions-food-supply-chain/>
- 30 September 2016, Report of the European Economic and Social Committee of 30 September 2016 on unfair business-to-business trading practices in the food supply chain
<http://www.eesc.europa.eu/m?i=portal.en.nat-opinions.39048>
- December 2016, European Court of Auditors, Special report no 34/2016: Combating Food Waste: an opportunity for the EU to improve the resource-efficiency of the food supply chain
<http://www.eca.europa.eu/en/Pages/DocItem.aspx?did=40302>
- 7 June 2016, European Parliament resolution on unfair trading practices in the food supply chain (2015/2065(INI))
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2016-0250>
- 29 January 2016, Report from the European Commission to the European Parliament and the Council on unfair business-to-business trading practices in the food supply chain
http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8648&
- 2 March 2016, Opinion of the Committee on Agriculture and Rural Development on unfair trading practices in the food supply chain, (2015/2065(INI)),
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-564.944%2b03%2bDOC%2bPDF%2bV0%2f%2fEN>
- 15 July 2014, European Commission Communication on tackling unfair trading practises
<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2014:0472:FIN>

- 12 November 2013, Opinion of the European Economic and Social Committee on the 'Green Paper on unfair trading practices in the business to business food and non-food supply chain in Europe', COM(2013) 37 final

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013AE1697&from=EN>

- 31 January 2013, European Commission Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe, COM(2013) 37

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0037&from=EN>

- 19 January 2012, European Parliament Resolution on imbalances in the food supply chain
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0012+0+DOC+XML+V0//EN>

- 28 October 2009, European Commission Communication on a better functioning food supply chain

http://ec.europa.eu/economy_finance/publications/publication16061_en.pdf

- Evaluation of the General Food law: SME panel results

https://ec.europa.eu/food/sites/food/files/safety/docs/gfl_fitc_20150622_fcec_analysis-comments-sme-panel_en.pdf