

The Economic Activities, Trade and Tourism Committee, and the Agriculture Committee of the Italian Chamber of Deputies sitting in joint session,

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),

Mindful of the opinion expressed on 18 September by the European Union Policies Committee;

Bearing in mind the results of the hearings held by the joint Committees and the amendments proposed by the rapporteur of the Directive before the Agriculture and Rural Development Policy Committee of the European Parliament, Paolo De Castro;

Considering that the legal basis of the instrument is stated in the articles of the Treaty on the Functioning of the European Union (TFEU) defining the scope and the purposes of the Common Agricultural Policy (CAP), and in particular article 39, that includes ensuring “*a fair standard of living for the agricultural community*” as falling within its scope, and article 40 TFEU which provides that “*the common organisation shall exclude any discrimination between producers*”;

Considering that the reference to the legal basis clearly shows that the instrument is based on the understanding that agricultural producers are particularly vulnerable to unfair trading practices, in that they often do not have an equivalent bargaining power to that of the buyers of their products; noting that this provision is also stated in the European Commission’s report illustrating the instrument, in that agricultural producers have few alternatives at their disposal to ensure that their products reach consumers;

Welcoming the substance of the proposal for a Directive;

Noting that article 1, defining the scope of the instrument, refers only to the food supply chain and hence excludes non-food agricultural products and the services relating to such products, which, however, should be given the same protection;

Considering, moreover, that the proposal for a Directive only protects suppliers falling into the category of small and medium enterprises, on the understanding that smaller operators are generally more vulnerable to unfair trading practices because of their weaker bargaining power in comparison with the large food supply chain operators;

Deeming, nevertheless, that suppliers should not be given protection on the basis of their relative sizes, but protection should be given to every operator in the agricultural and food supply chain;

Bearing in mind that, in order to prevent circumvention practices, the new rules should apply to all operators who buy and sell products on the internal market, even when they are located outside the European Union;

Considering the need for a definition of ‘perishable food products’, by reference to the definitions provided by Italian domestic law, and particularly in Ministerial Decree no. 199 of 2012, which is based on the overall life of the product as established by the producer;

Noting, moreover, that the provisions of article 3(1)(a) – namely, that buyers must pay suppliers within 30 calendar days following receipt of the supplier’s invoice – fail to take account of the administrative need for buyers to be able to refer to one single date, namely the last day of the month, and that the terms of payment must depend upon whether the payment is for perishable or non-perishable goods;

Considering that the list of trading practices which are prohibited under all circumstances should also include selling at a loss, blind auctions, and descending-price double auctions;

Considering, in this connection – also for the purpose of effectively combating the exploitation of agricultural workers – that the selling price of products must necessarily take into account the remuneration which the producers need in order to produce them, and that prices which fail to take account of this variable must be deemed to be unfair trading practices;

Observing also that the cancellation of orders of perishable goods without a minimum notice could lead to creating surpluses and food waste when the products are left unsold;

Considering, moreover, that article 3(2) which allows the parties to introduce trading practices into the agreement which would otherwise be prohibited, could fail to provide adequate protection to suppliers in a state of economic dependency, and that therefore it is necessary to prohibit such practices if used because of a supplier’s “economic dependency” on the buyer, and that therefore the instrument must contain a definition of such dependency;

Endorsing the need expressed before the joint Committees by the rapporteur of the proposal, De Castro, before the Agriculture and Rural Development Committee of the European Parliament, to introduce a definition of “*unfair trading practice*” and noting that this definition would also enable the Member States to identify and impose penalties for unfair trading practices not expressly listed in article 3 of the proposal for a Directive, thus offering greater protection to agri-food chain suppliers against any kind of disadvantageous contractual terms and conditions imposed by buyers with greater bargaining power;

Mindful of the need to insert into the Directive the requirement that all agricultural and food supply contracts must be concluded in writing and that this must be done prior to delivery;

Deeming it appropriate to complement the provisions of article 4 by establishing that the public authorities responsible for enforcing compliance with the prohibitions provided by article 3 (the “enforcement authorities”) at the national level may be the already existing authorities or other new authorities;

Considering the need to incorporate provisions regulating the ways in which the enforcement authorities may take more stringent action, by requiring them to act on receiving any complaints, setting deadlines for examining them, and then investigating them;

Deeming it necessary to extend the powers vested by article 5 in the producers’ organisations or associations of producers’ organisations to file complaints on behalf of one or more members who claim to have fallen victim to a prohibited trading practice also to the suppliers’ organisations and their representative organisations;

Considering it appropriate to include into the Directive the possibility for Member States to propose forms of dispute mediation or alternative dispute resolution arrangements between the parties;

Considering, moreover, the advisability of explicitly declaring that the supply of products of the agricultural cooperatives to their members to be used in performing agricultural work must not be subject to the provisions of the Directive regarding the terms of payment (article 3(1)(a)), in view of the mutual interests shared by the entrepreneurs and the cooperative by virtue of membership;

Recalling that under Italian law governing the supply of raw milk (pursuant to article 2(2) of Decree-Law no. 51 of 2015), the choice of the parameter to be used to calculate the correct price by reference to average production prices has been shown to be an effective means of preventing unfair trading practices and might therefore be extended to include all the other agri-food sectors;

While welcoming the decision to entrust the national enforcement authorities with the task of guaranteeing implementation of the provisions of the Directive, it is nevertheless essential to ensure that the Ministry of Agriculture - should be involved in the event of any claims or reports of illegal practices, through its *Ispettorato nazionale della tutela della qualità e repressione frodi dei prodotti agroalimentari (ICQRF)* – National Inspectorate for Quality Assurance and Fraud Repression of Agri-Food Products;

*Commits the government to ensuring that the following matters are raised in the course of the negotiations with the European institutions:*

- a) All agricultural products, and all services related to these products, should be included in the scope of the Proposal for a Directive;
- b) The scope of the Proposal for a Directive should also be extended to all suppliers, and not only to small and medium enterprises, as defined in

Recommendation 2003/361/EC, including also any operators which, while established outside the European Union, buy and sell products on the internal market, also in order to combat circumvention practices;

- c) Article 2(1)(e) must define the notion of perishable products, by drawing on the definition provided by Italian law which refers to the overall life of the product as established by the producer;
- d) In article 3(1)(a), the unfair trading practice stated there should be amended by specifying the fact that it arises when the buyer pays the supplier more than 30 calendar days after the last day of the month on which the supplier's invoice is received for the supply of perishable agricultural and food products, or more than 30 calendar days after the date of delivery of perishable agricultural and food products, if that date is later; or 60 calendar days after the last day of the month on which the supplier's invoice is received for agricultural and food products, for up to 60 calendar days after the date of delivery of agricultural and food products, if that date is later;
- e) In the same article, the list of unfair trading practices which are at all events prohibited within the meaning of paragraph (1) should also include the sale of agricultural and food products at a lower price than indicated on the invoices (plus any taxes due on the products, less any discounts or contributions for the product concerned), selling agricultural products before being planted or before reaching maturity (the so-called blind auctions), sales for which the supply contract is for the lowest price following a double auction where the starting price of the second auction is the lowest price adjudicated at the first auction (descending-price double auctions);
- f) Article 3(2) should state that these listed practices – regardless of the contractual agreement concluded for them – are prohibited in the event that they are the result of the supplier's economic dependency on the buyer, and consequently article 2 must contain a definition of 'economic dependency' as being the imbalanced bargaining powers of a supplier and a buyer, in which the supplier is dependent upon the buyer by virtue of the importance of the services provided in terms of quantity, buyer's reputation, market share or the lack of sufficient opportunities to sell;

- g) In article 2, insert a letter a.0) defining “an unfair trading practice” to be: any practice which is significantly contrary to good commercial practice, being both an infringement of the principles of good faith and fairness and unilaterally imposed by one trading partner on the other; any practice which imposes or is an attempt to impose on a supplier an unjustified and disproportionate share of the buyer’s economic risk; or which imposes or is an attempt to impose a substantially unequal balance of rights and duties on the supplier in the commercial relationship before, during or after the conclusion of the contract, and simultaneously introducing in article 3 an additional subparagraph providing that the Member States can prohibit any further unfair trading practice, as defined in letter a.0), in addition to those provided by article 3 (1) and (2);
- h) After article 3 a provision should be introduced requiring all agricultural and food supply contracts to be concluded in writing and that the contract must be concluded before delivery;
- i) Article 4 must provide that in order to enforce the prohibitions provided by article 3 at the national level, every Member State may appoint an enforcement authority which already exists or which is specifically created for the purpose;
- j) Rules should be laid down regarding proceedings before the enforcement authority by introducing the obligations of the authority to take up any complaints received and indicating the deadlines for concluding such proceedings;
- k) The right of producers’ organisations or associations of producers’ organisations to file complaints and to take part in proceedings on behalf of one or more of their members, who consider that they have been the victims of a prohibited trading practice, should also be extended to the suppliers’ organisations and their representative organisations;
- l) Member States should be given the possibility to use mediation procedures or alternative dispute settlement arrangements in the event of disputes arising between the parties, to facilitate the resolution of disputes without necessarily having to file a legal complaint.