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Delegations will find attached document SWD(2018) 91 final.

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COMMISSION STAFF WORKING DOCUMENT

STAKEHOLDER CONSULTATION - SYNOPSIS REPORT

Accompanying the document

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL

on unfair trading practices in business-to-business relationships in the food supply chain

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Contents

1. Stakeholder consultation process	2
2. Summary of stakeholder consultation results	2
2.1. Inception impact assessment	2
2.2. Open public consultation	3
2.3. Targeted questionnaire to undertakings.....	6
2.4. Targeted questionnaire to consumer organisations	6
2.5. Questionnaire to Member State public authorities	7
2.6. Joint Research Centre academic workshop on UTPs in the food supply chain.....	7
2.7. Ad hoc meetings with food supply chain stakeholders.....	7
2.8. Civil Society Dialogue groups.....	7

1. Stakeholder consultation process

The stakeholder consultation process was set out in a consultation strategy¹ and carried out between 17 July and 6 December 2017.

Stakeholders were invited to offer comments and evidence on problem definition, policy objectives, the need for EU action, policy options, on the likely impact of the policy options, and on implementation issues, including monitoring and enforcement. The stakeholder consultation meets the requirements in the better regulation guidelines.

2. Summary of stakeholder consultation results

2.1. Inception impact assessment

The inception impact assessment received significant attention, with 66 contributions submitted by various stakeholders². 33% of these were farmers or farming organisations, 17% Member State authorities, 15% non-governmental organisations (NGOs), 11% processors and their organisations, 8% retailers and their organisations, and 17% other respondents (academia, trade unions, traders, and anonymous). It should be noted that the inception impact assessment feedback process is not structured in the sense of a questionnaire. Instead the text of the contributions was sifted for relevant information in a systematic way *ex post*.

91% of respondents agreed that UTPs exist in the food supply chain (5% did not reply, and 5% did not state a clear position). 76% of respondents stated that UTPs caused a significant problem, and 14% that they did not³. 5% of respondents stated that UTPs existed but with an overall positive effect on the food supply chain in terms of efficiency.

71% of respondents believed there was a need for the EU to act (from 64% of 'other' to 90% of NGOs; farmers 82%, Member States 73%, processors 71%), except for retailers (100% of retailers believed the EU should not act).

Only 5% of respondents commented on the inclusion or exclusion of food products in the scope of the initiative, being broadly in favour of inclusion. 41% commented on the extent to which food supply chain operators should be included, with 82% in favour of covering the full supply chain (the outlier being the processing sector, where only 57% of respondents were in favour of covering the full supply chain).

20% of respondents mentioned the fear factor, generally considering this effect to exist and to be significant. 62% believed the possibility of making anonymous complaints should exist, 38% believed it should not). 92% believed sanctions against those practicing UTPs should exist, 8% believed they should not). 17% of respondents mentioned cooperation between Member State authorities, with most being supportive of cooperation.

¹ European Commission, [Consultation Strategy](#) – Initiative to improve the food supply chain, 2017

² Individual contributions are listed in the [inception impact assessment](#) webpage.

³ In the remaining of the inception impact assessment subsection the percentages for 'no response' or 'unclear position' are omitted.

2.2. Open public consultation⁴

Overview of respondents

The open public consultation (OPC) results were consistent with those of the IIA. The OPC ran for three months, between 25 August and 17 November, and attracted a total of 1,432 responses (56% by individuals - 803 responses - and 44% by organisations - 628 responses). 71% of individuals stated they were involved in farming (570 responses), and 29% that they were not (233 responses). Organisations' contributions were mainly by private companies (38% of organisations' responses), business and professional associations (31%), and NGOs (20%). In terms of sector of activity, the organisation responses were from agricultural producers (53% of organisations' responses); the agro-food sector (22%); the trade sector (7%); civil society organisations (7%); the retail sector (4%); research organisations (1%); and 'other' (6%).

The 'private company' group can be further broken down by company size, (number of employees). Small and medium enterprises (SMEs) were 81% of private company responses). Large enterprises (those with more than 250 employees) were 19% of all private company contributions.

In terms of Member State of origin the highest participation came from Germany (29% of total), Austria (14%), France and Spain (7%). The lowest from Croatia, Luxembourg, and Cyprus (1 contribution each).

Respondents' views

a) Problem definition⁵

90% of respondents agreed or partially agreed that there were practices in the food supply chain that could be considered to be UTPs. These results were broadly similar for all stakeholder groups, with the exception of the retail sector (12% agreed or partially agreed UTPs existed in the food supply chain, and 88% disagreed or partially disagreed – most of these partially disagreed, at 72%).

The respondents were then asked whether a list of practices could be considered to be UTPs, with respondents agreeing or partially agreeing at between 80% (payment periods longer than 30 days for agro-food products in general) and 93% (unilateral and retroactive changes to contracts) that the practices were UTPs. When asked about how frequently UTPs occurred in the food supply chain 87% stated they occurred regularly or very regularly. All respondents agreed that they occurred regularly or very regularly except for the retail sector, which stated these never or rarely occurred (84). 88% of individuals stated UTPs occurred regularly or very regularly.

The respondents were asked to identify which 3 practices they considered to be UTPs and to have the most serious impact. Of the top 8 practices identified, six are listed in the Supply Chain Initiative's (SCI) Principles of Good Practice and seven as UTPs in the Agricultural Markets Task Force (AMTF) report ('payment periods longer than 30 days' appearing twice, for perishable and agro-food products in general).

⁴ Where figures do not add up to 100% this is due to the omission of those stating 'no opinion'. There was dependency between some questions (only some respondents will have seen some questions, as these were only relevant depending on an answer previously given). This is relevant in particular for the retail sector, which meant for several questions the retail response rate is very low (3 or 4 responses over 25 retail organisations). Replies were not compulsory, and some respondents chose not to reply to some questions.

⁵ Percentages based on number of respondents answering each question.

	Frequency	SCI's Principles of Good Practice	AMTF-listed UTPs
Unilateral and retroactive changes to contracts (concerning volumes, quality standards, prices)	771	*	*
Last minute order cancellations concerning perishable products	316	*	*
Payment periods longer than 30 days for perishable products	275		*
Payment periods longer than 30 days for agro-food products in general	273		*
Imposing contributions to promotional or marketing costs	248	*	*
Unilateral termination of a commercial relationship without objectively justified reasons	227	*	
Requests for upfront payments to secure or retain contracts ("hello money")	185	*	*
Imposing claims for wasted or unsold products	182	*	*
Imposing private standards relating to food safety, hygiene, food labelling and/or marketing standards, including strict verification procedures	179		
Imposing an upfront access fee for selling a product ("listing fees")	152	*	
Programmed overproduction leading to food waste	146		
Withholding by one party of essential information to both parties	114	*	
Passing onto other parties of confidential information received from partner	98	*	
Additional payment to have products displayed favourably on shelves ("shelf-space pricing")	90		
Imposing on a contract party the purchase of an unrelated product ("tying")	78		
Inconsistent application of marketing standards leading to food waste	60		
Imposing to suppliers costs related to product shrinkage or theft	40	*	
Imposing a minimum remaining shelf life of goods at the time of purchase	11		
Other	83		

The questionnaire requested respondents to identify the actors in the food supply chain on which UTPs might have appreciable negative effects. 94% of respondents agreed or partially agreed that such appreciably negative effects occurred for farmers. 83% of respondents for processors; 66% for SMEs; 60% for consumers; 55% for third country operators producing for the EU market; 39% for traders; and 35% for retailers. Respondents were also asked whether they agreed that UTPs could have negative indirect effects on these groups, with broadly similar results.

b) Need to act

When asked whether action should be taken to address UTPs in the food supply chain 95% of respondents agreed or partially agreed. If they thought action should be taken, respondents were then asked to specify who should take such action.

- 87% believed action should be taken by the European Union (in combination with Member States, 58% ; or the EU acting alone, 29%);
- 8% that MSs should act alone; and
- 4% that action should be taken through voluntary initiatives (54% of these were retail organisations).

Of the 87% of respondents that believed that the EU should take action, 51% thought legislation was the appropriate means, 46% a mix of legislation and non-legislation, and 2% preferred non-legislative action. 97% of these respondents believed EU action would result in better enforcement of rules; 95% believed EU action would provide more legal certainty for businesses; 94% that it would level the playing field in the internal market; 84% that it would benefit EU cross-border transactions; 84% believed it would reduce food waste; 80% that it would lead to a higher degree of innovation; and 75% that it would widen the choice offered to consumers. 67% preferred both a harmonised definition and a list of specific UTPs; 21% a list of specific UTPs; 11% general principles; and 1% none of these.

Finally respondents were asked for their views on whether the voluntary Supply Chain Initiative was sufficient to address UTPs. 75% disagreed or partially disagreed, and 22% agreed or partially agreed. All organisation types primarily disagreed or partially disagreed, except for retail organisations(88% agreed or partially agreed Supply Chain Initiative was sufficient. Agro-food and trade organisations had relatively high rates for 'agreed or partially agree', even if this was not overall the preferred option (43% and 40%, respectively). 81% of individuals involved in farming and 69% of other individuals disagreed or partially disagreed.

c) Enforcement

92% of respondents agreed or partially agreed that there should be minimum standards applying to the enforcement of UTP rules in the EU. Support for minimum enforcement standards ranged from 20% of retail organisations to 100% for civil society organisations (96% of agriculture organisations; 87% of agro-food organisations agreed or partially agreed).

Respondents were then asked which elements they considered to form an important part of an effective public enforcement of UTP rules. 94% stated transparency of investigations and results; 93% the possibility of fines in the case of violations to the rules; 92% the possibility to file collective complaints; 89% the ability to receive and to treat confidential complaints; 89% the designation of a competent authority; 73% the ability to conduct own initiative investigations; and 36% other aspects. The various organisation types and individual respondents mostly agreed or partially agreed with these elements, with the exception of retail (disagreed or partially disagreed with each of the elements between 72% to 80%).

2.3. Targeted questionnaire to undertakings

The targeted questionnaire to undertakings was open between 6 November and 10 December and a total of 122 responses were received. 35% of respondents were involved in agriculture, 48% in processing, 10% in retail, 4% in wholesale (remaining answers not classified). In terms of size, 70% of respondents were SMEs. 7% of the respondents classified themselves as buyers, 49% suppliers, 40% as acting as both supplier and buyer. A high share of replies is from Belgium, France, Italy, Spain and the United Kingdom (18 Member States have 3 or less replies).

54% of the enterprises acting as buyers and 89% of suppliers state that late payments occur in business transactions. 14% to 30% of those acting as buyers stated that they have imposed other UTPs in a business transaction. For enterprises acting as suppliers 44% to 82% stated that they have been subject to an UTP as defined above.

30% of the enterprises acting as suppliers have been refused a contract in writing upon request. Suppliers were asked to estimate if they have been a victim to a UTP when buyers were established in other Member State. 24% of the respondents stated that they were "often or in a significant number of cases" in such situations. 19% of suppliers stated that dealing with a foreign buyer had a negative effect on their ability to challenge UTPs.

60% of the suppliers stated that UTP costs are more than 0.5% of the annual turnover of their business operation. Under certain assumptions in terms of weight for each category of answer⁶, the weighted commercial significance of costs related to UTP can be estimated at 1.8% (taking into account the 94 answers of suppliers) to 1.5% (trimming out the extreme answers – no costs, cost over 5%) of their turnover. 44% of buyers considered compliance costs as "high or moderate".

2.4. Targeted questionnaire to consumer organisations

The consultation of consumer organisations resulted in three contributions. This consultation focused on whether and how UTPs in the food supply chain would affect consumers, according to their representative organisations.

Respondents disagreed that the introduction of legislation on UTPs would raise consumer prices and agreed that it would lead to an increase of trust in the food supply chain and benefit investment. Two agreed that the conditions for those employed in the food supply chain would be improved (one no opinion). All respondents agreed that the introduction of EU rules on UTPs would benefit consumers in the long term. Two agreed and one partially disagreed there would be benefits in the short term.

One respondent agreed that the introduction of UTP rules in their own country had increased consumer choice, increased trust, improved conditions for investment for operators, improved conditions for those employed in the food supply chain, and disagreed that it raised consumer prices (the other two respondents had no opinion). Two respondents disagreed and one partially disagreed that self-regulatory initiatives are sufficient. Two respondents disagreed and one agreed that possible negative effects on consumers from UTP legislation outweigh the potential benefits (at EU level).

⁶ Reference points set: 'over 5%' (14 answers) = 5%; '2 to 5%' (18 answers) = 3.5%; '0.5 to 2%' (22 answers) = 1.25%; '>0.5%' (24 answers) = 0.25%; 'nil or insignificant' (16 answers) = 0%.

2.5. Questionnaire to Member State public authorities

Member State authorities were consulted via a set of questionnaires that requested contributions on: actual and/or estimated administrative costs of enforcing new UTP legislation under certain conditions; an update of information previously provided (2015) on the status of UTP rules in their national jurisdictions, including enforcement aspects; and to obtain information on impact assessments and other studies that Member States had available in this area. These data were used to inform a study by external experts and directly in the present impact assessment report (see Annex 1). The questionnaire to Member States was officially open between 2 October 2017 and 3 November 2017, but late submissions were accepted for use in the study by the external experts.

2.6. Joint Research Centre academic workshop on UTPs in the food supply chain

A workshop jointly organised by the Directorate-General for Agriculture and Rural Development and the Joint Research Centre (JRC) was held in Brussels on 17-18 July 2017. The workshop brought together international experts, with a view to discuss the scientific literature on methodology, impacts and regulatory aspects of UTPs. A report compiled by several experts and edited by the JRC is publically available (further details of the outcomes of the workshop in Annex 1)⁷.

2.7. Ad hoc meetings with food supply chain stakeholders

Several bilateral meetings with stakeholders were organised at their request. Meetings were held with Independent Retail Europe, FoodDrinkEurope, EuroCommerce, European Brands Association (AIM), the Danish Chamber of Commerce, the German Retail Federation, the Liaison Centre for the Meat Processing Industry in the European Union (CLITRAVI), the European Livestock and Meat Trading Union (UECBV), Edeka, REWE, Federation du Commerce et de la Distribution, the European Dairy Association, the International Dairy Federation, the United Kingdom's National Federation of Meat and Food Traders, Europatat, and Euro Fresh Foods. The bilateral meetings focused on answering stakeholder questions about the impact assessment process and content, for stakeholders to express support for or opposition to the initiative and raise issues of relevance to their sector.

2.8. Civil Society Dialogue groups

Two presentations with an exchange of views were made at Common Agricultural Policy Civil Dialogue Groups (CDGs), where several stakeholder groups are represented⁸. These took place on 6 November 2017 (Olives CDG) and 22 November 2017 (Horticulture/Fruit and Vegetables CDG).

⁷ Joint Research Centre [report](#), Unfair trading practices in the food supply chain, 2017.

⁸ Common Agricultural Policy [Civil Dialogue Groups](#).