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The Rt Hon Lord Boswell
Chairman
Select Committee on the European Union
House of Lords
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14 November 2018

L. Thi,

EM 7809/18, COM(2018) 173 FINAL: 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 (AND ADD 1-3)

Thank you for your letter of 31 October. I have responded to your points in turn below.

You stated that formal adoption of the Council approach was expected at the AgriFish meeting on 15 and 16 October, which, in the absence of a scrutiny release or waiver, would have constituted an override of the Parliamentary scrutiny reserve. However, it is our understanding that such an adoption did not occur. Please confirm whether this is the case.

I can confirm that is the case, and that no override of Parliamentary scrutiny has occurred. There was no formal adoption of a position; the Special Committee on Agriculture simply agreed on an informal mandate to begin trilogue negotiations using the latest Presidency draft.

Please inform us if, at any point in the negotiations, you believe the proposal of a broader scope has gained decisive support.

I will keep you updated regarding the progress of negotiations on this issue. Feedback from the first trilogue negotiation suggests the Parliament is still eager to see an extension to the range of operators covered.

We note your assessment that the Commission's Impact Assessment for this Proposal did not include sufficient analysis of existing national schemes. We also note your assessment that, based on a similarity with the conclusions drawn from the UK's 2016 Groceries Code Adjudicator (GCA) call for evidence, the information which underpins the basis for action on unfair trading practices appears to be sound. We therefore encourage you to incorporate your own analysis of existing national schemes, including the GCA, into your own negotiating position.

The UK has maintained from the beginning of the negotiating process that action taken at a domestic level can be extremely effective. We have provided written evidence on numerous occasions to the Presidency highlighting the features of the GCA which have made it successful, and we will continue to do so.

You noted that the Presidency remains eager to make timely progress. Please keep us informed of any developments regarding the timeline of the proposal, particularly those which could affect whether the UK will be required to implement the Directive. We note that the relevant parameters may have changed in this regard given recent discussion of the possibility of extending the Brexit transition period.

The first round of trilogue negotiations was held on 25 October, followed by a second discussion held on 7 November. There is a Special Committee on Agriculture meeting on 12 November, where Member States will be asked for opinions on the revised text arising from trilogues.

Please note, the earliest a final political decision can be made is at the AgriFish Council on 17 and 18 December, hence this is the earliest a mandate will be sought for this.

I am copying this letter to Sir William Cash MP, Chairman of the European Scrutiny Committee. I am also copying this letter to the Clerks of the Commons and Lords Committees, Lynn Gardner and Chris Johnson respectively; Les Saunders, Department for Exiting the European Union; and Tess Hanneman, Defra Scrutiny Co-ordinator.

John Smith

DA

DAVID RUTLEY MP