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The Rt Hon Lord Boswell
Chairman
Select Committee on the European Union
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6 December 2018

h. m.

PROPOSED DIRECTIVE ON UNFAIR TRADING PRACTICES IN THE FOOD SUPPLY CHAIN - REQUEST FOR CLEARANCE FROM SCRUTINY

EM 7809/18: 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

7809/18 ADD 1: 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

7809/18 ADD 2: COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT INITIATIVE TO IMPROVE THE FOOD SUPPLY CHAIN (UNFAIR TRADING PRACTICES) ACCOMPANYING THE DOCUMENT 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

7809/18 ADD 3: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT INITIATIVE TO IMPROVE THE FOOD SUPPLY CHAIN (UNFAIR TRADING PRACTICES) ACCOMPANYING THE DOCUMENT 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

Thank you for your letter of 28 November.

We are writing up to update you on the outstanding issues in the ongoing and fast moving negotiations on the proposed EU Directive covering Unfair Trading Practices, and request clearance of this proposal from scrutiny.



The Presidency remains committed to an ambitious timetable, and may seek Council approval on a finalised text of the directive at the AgriFish Council on 17 and 18 December. We are requesting clearance from scrutiny to enable the UK to vote in favour of the proposal which is put to Council, providing that it secures the UK's interests in the areas which remain outstanding, and which we set out in what follows.

As mentioned above, negotiations will continue intensely over the coming two weeks, and my officials will provide a further update to your committee on relevant developments in these.

Outstanding issues:

Transposition timeline

The UK has consistently and firmly argued in negotiations for a significantly lengthened timeline for the implementation of this directive, which in the original Commission proposal stood at 6 months for transposition and 12 months for application.

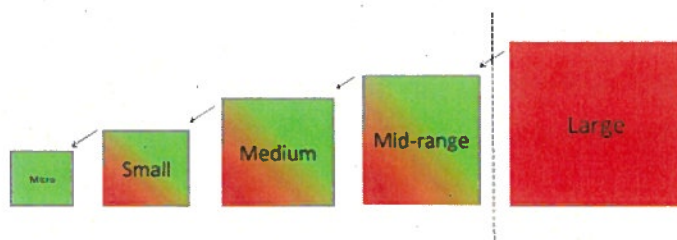
We were able to secure a substantial increase in this period, which we have defended with the support of other member states during negotiations, such that the latest Council text maintains a period of 24 months for adoption and publication of laws, regulations and administrative provisions necessary for compliance with the directive, and 30 months for the application of these laws.

This timeline allows sufficient time for national legislative processes should those be necessary, and also avoids the transposition deadline falling within the Implementation Period as foreseen in the Withdrawal Agreement.

The UK would not vote for a proposal where the timeline for adoption and publication of laws falls below 24 months.

Scope of the proposed directive:

Negotiations in Council on this point have shifted substantially in the face of European Parliament demands to cover the entire supply chain. The Presidency have introduced and gained support for a new 'dynamic' approach to determine the size of operators covered by the proposal (see illustration below). The UK has supported this compromise approach as it delivers protection for smaller suppliers in the chain, while preventing suppliers claiming against buyers of a similar or lower size.



The cost implications of implementing this change for the United Kingdom will not be clear until the parameters of this model have been finalised and agreed. The principal remaining discussion point is the upper limit of the mid-range size category, represented by the dotted line in the diagram below. Suppliers above this threshold would not be able to eligible for protection by this proposal.

The UK would not vote for a proposal should this threshold separating 'mid-range' and 'large' buyers exceed €1 billion.

Discussion also continues on whether the proposal should also offer protection to operators outside the European Union, where they are either supplying or buying from operators inside the EU. The UK has voiced concerns about this, as we have some concerns regarding the burden and efficacy of such an extension of coverage, which are shared by a number of other member states. However, our view is that the burden of compliance for third country coverage as proposed is manageable, and indeed third party suppliers are already able to lodge complaints against those buyers covered by the UK's Groceries Code Adjudicator. We also note that the inclusion of such a provision in this directive would provide protection for suppliers in the UK when it becomes a third country, who could claim against buyers based in EU member states covered by the directive.

Thus while we will continue to argue against the extension of scope to third countries in negotiations, we do not propose that this should prevent the UK voting for this proposal.

Prospective timetable for finalising the Directive

The Presidency may draft a final text following the next trilogue on 6 December, in which case we may expect a vote on this text at AgriFish Council of 17 and 18 December. In light of this upcoming meeting, we would appreciate the Committee's response by 14 December.

We are writing in similar terms to Lord Boswell, Chairman of the European Union Committee. We are 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 Coordinator.

With best wishes,


DAVID RUTLEY MP

