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Sir William Cash MP
Chairman
European Scrutiny Committee
14 Tothill Street
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8th January 2019

L. Bill

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

Thank you for your report of 12 December 2018.

My previous correspondence stated that a vote on the proposal of the European Commission was anticipated at the AgriFish Council on 17-18 December. However, the fifth trilogue discussion, held on 12 December, failed to produce a compromise text and, resultantly, the Directive was not on the agenda for the December AgriFish Council.

A sixth trilogue discussion was, however, arranged for 19 December and the Parliament and Council reached agreement on a compromise text. A date for the final Council vote is yet to be confirmed. It is possible this will take place at the SCA meeting on 21 January or AgriFish Council on 28 January.

I have detailed the final position of the Directive text as per the outstanding issues from my last letter below.

Scope of the Directive

On the question of scope, the final threshold for the 'mid-range' business category (which sets the boundary for the Directive's application) has been agreed at €350 million annual turnover. The dynamic 'step' approach, described in my previous letter, has been adopted. The various sub-categories are exclusively determined by annual turnover; divided into business with respective turnovers of less than €2 million, between €2-10 million, €10-50 million, €50-150 million and €150-350 million.

We consider this approach to be a sensible one and the upper limit to be acceptable. We are aware that other like-minded Member States also consider this outcome to be a positive compromise.

Territorial extension of the Directive

The original Directive applied only to buyers established in the EU and covered any supply arrangement with a seller established inside or outside of the EU. The final Directive has been amended to also apply to relationships where a buyer is established outside of the EU (i.e. third country buyers), and trades with a seller established inside the EU. Our concerns about the practicality of enforcing this remain. Exactly what is expected of enforcement authorities in third countries is still unclear, and the Commission will need to provide further clarification about how they expect third country enforcement to operate. The timeline for this information being provided is uncertain, but we will need to wait until further detail is available before we can undertake any detailed planning.

This extension does create long-term implications for the UK. Our 12 largest retailers are already regulated by the Groceries Supply Code of Practice in their dealings with EU based suppliers, so the applicability of this Directive to buyers beyond the borders of the EU introduces an additional (and different) set of laws.

Transposition period

With respect to the transposition period, the compromise text has retained the deadlines of 24 months for transposition and publication of laws and 30 months for those laws to take legal effect. If the current timetable for the general Brexit Implementation Period remains as planned, this will mean the UK will not be required to implement this Directive.

Implementing the Directive

As mentioned above, given the proposed dates for transposition and the Brexit Implementation Period, it is unlikely that the UK will need to implement this Directive. However, even as a third country there may still be some requirement for the UK to undertake enforcement activities.

I note your concerns about planning for how the UK would enforce any requirements. The new statutory codes of practice, which we propose to introduce under powers in the Agriculture Bill, will also require an enforcement regime and body. Decisions on whether this is an existing body (such as the Rural Payments Agency) or a new body will be influenced by the scale and nature of the statutory codes to be introduced, which will be subject to consultation. It is likely that the same body would also undertake enforcement of any requirements resulting from the Directive on Unfair Trading Practices. I can assure you that we will conduct a full assessment of the requirements and costs of enforcement should any result from the Directive; this includes consideration of the most appropriate enforcement body.

I am writing in similar terms to Lord Boswell, Chairman of the European Union 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 Coordinator.

Yours sincerely,



DAVID RUTLEY MP

