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The Rt Hon Lord Boswell
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L. Tin,

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

7809/18 ADD 1, SWD(2018) 91 FINAL: 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, SWD(2018) 92 FINAL: 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, SWD(2018) 93 FINAL: 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 6 March. I have answered your specific points in turn below.

I would also like to take the opportunity to provide an update on the political progress of the Directive. The Directive was put to a plenary vote in the European Parliamentary session on 12 March – where it was agreed with an overwhelming majority (589 votes in favour, 72 against, nine abstentions).

It is expected to be included as a non-discussion point on the agenda for the Special Committee for Agriculture meeting on 25 March, and to be voted on in a General Affairs Council meeting on 9 April. As I have previously explained, unanimous support is expected.



On the existing timetable for the United Kingdom's departure from the European Union, we would not expect for UK ministerial representation at the April General Affairs Council meeting.

Final signature by the Presidency and the Parliament is expected to take place in Strasbourg on 17 April.

We appreciate that the UK will not be required to implement the Directive if a Brexit transition period ends on 31 December 2020, and as such it would not be proportionate for you to conduct your own impact assessment of the Directive at this stage. However, please clarify what impact assessment and implementation planning you would undertake in the event a Withdrawal Agreement with the EU is reached and the transition period is subsequently extended, thus requiring the UK to implement the Directive.

If a final Withdrawal Agreement is reached which includes a timeline whereby the UK will need to transpose this Directive, we would undertake a proportionate cost-benefit analysis on proposed implementation, including a Regulatory Impact Assessment, as per the Better Regulations guidelines. It is assumed that the consequences of this Directive may exceed the 'impact on business' threshold which would mandate independent scrutiny of any analyses conducted, and if this proved to be the case then this would also be arranged.

In relation to the impact of the Directive on UK companies post-Brexit, we note that you believe there to be "questions regarding the operational feasibility" of enforcement agencies in EU-27 countries investigating and issuing fines to third country businesses. Please explain your reservations, and whether anything is being done to resolve them as the Directive is finalised.

As we currently understand it, businesses in third countries will be expected to comply with the Directive when buying from EU suppliers, but the UK Government is not held to any legal enforcement obligations.

This means if any UK retailers were in breach of the Directive, it would fall to enforcement authorities in the nation of the affected party to investigate and, if necessary, issue fines. Our reservations relate to how an enforcement body in an EU Member State intends to carry out such duties in practice.

We have voiced concerns about the limited information available regarding expectations to be placed on third countries, but it is possible that no concrete answers will be available until the process of Member State transposition has begun and these issues are considered in greater detail.

Thank you for explaining the differences between UK legislation in this area and the conditions in the Directive that will affect the twelve UK retailers regulated by the Groceries Supply Code of Practice (GSCOP), including the deadline for payment and differences regarding what activities are considered to be 'unfair trading practices'. Do you intend to modify the GSCOP so that it is aligned to this Directive? If not, how do you intend to clarify to those twelve retailers which obligations apply in which circumstances if they are trading with EU businesses post-Brexit?

The GSCOP was issued by the Competition and Markets Authority (CMA) and the powers to amend it lie with the CMA. There are no current plans to modify the GSCOP to align it

with the provisions of the EU Directive. The GSCOP was established following a specific market investigation into the UK groceries supply chain. Resultantly, the provisions contained within it are well suited to the characteristics of our domestic situation. We would not want to see the GSCOP amended without the same level of analysis which informed its creation.

It is of course a possibility that, when the UK leaves the EU, a trading practice could exist involving a buyer in the UK and a supplier in the EU which would constitute a breach of the GSCOP and of the Directive. The approach to such a situation would in all likelihood depend on the supply agreement between the buyer and supplier. If it is non-compliance of GSCOP, EU suppliers will continue to approach the GCA. In relation to the Directive, they will have their national enforcement authority.

The Directive allows Member States considerable discretion as to how it is enforced, and provides for the creation of national enforcement authorities in each Member State. Therefore, when further information is available as to the enforcement approach of those authorities, it will be possible to provide clearer answers to the 12 retailers regarding the interaction between the GSCOP and the Directive.

It will be important to avoid duplication over the two regimes, so that suppliers have one clear route for raising complaints, or contradictory requirements which would make compliance with both regimes impossible.

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.

With best wishes,



~~DAVID RUTLEY MP~~

