

**Opinion of the European Economic and Social Committee on ‘Towards a Fair Food Supply Chain’****(Exploratory opinion)**

(2021/C 517/05)

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Referral	Letter from the Slovenian Presidency of the Council, 19.3.2021
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Section responsible	Section for Agriculture, Rural Development and the Environment
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Outcome of vote (for/against/abstentions)	211/1/6

**1. Conclusions and recommendations**

1.1. The EESC welcomes the EU Directive on unfair trading practices (UTPs) in the agricultural and food supply chain as a step forward in addressing imbalances of power along the chain. UTPs are a complex phenomenon with wide societal implications, and regulation plays a key role in this context. The Committee urges Member States to transpose and implement the Directive and address UTPs as a matter of urgency.

1.2. The European food supply chain proved to be remarkably resilient during the COVID-19 outbreak. Consumers had access at all times to almost all food items. Despite being exposed to the risks of infection, workers across the food supply chain did a tremendous job.

1.3. However, early observations show that there are also notable behavioural changes in production, distribution and consumption. The EESC advocates supporting the transformation of Europe's food systems so that they are more environmentally, economically and socially sustainable, resilient, fair and inclusive and, above all, provide European consumers with healthy, sustainably produced safe food. The EESC notes that cooperation (rather than competition) among food chain operators is essential to foster a more resilient and sustainable food system in order to ensure a fair share for the operators and prevent denigration.

1.4. The EESC stresses its recommendation that weaker operators, especially farmers, be paid a fair and just price that allows suppliers to receive an income that is adequate for investment, innovation and sustainable production<sup>(1)</sup>. A mechanism should be set up to follow up on the monitoring of the distribution of the gross value-added in the food supply chain. According to Commission figures the share of gross value-added in the food supply chain going to the primary producer fell from 31 % in 1995 to 23,4 % in 2015 (latest figures available).

1.5. The EESC also stresses its recommendation to tackle UTPs that are not considered within the minimum requirements of the Directive<sup>(2)</sup> and welcomes the efforts undertaken by several Member States to address issues such as buying below production cost, double race auctions, or protecting all actors in the supply chain regardless of their size or their position in the food chain. The EESC welcomes that the Commission decided to regulate UTPs in the food supply chain. However, the EESC regrets that the Commission did not foster a harmonised approach to avoid fragmentation in the single market. The EESC considers that future additional measures should be compatible with the single market and subject

<sup>(1)</sup> EESC opinion on *Improving the food supply chain* (OJ C 440, 6.12.2018, p. 165).

<sup>(2)</sup> EESC opinion on *Promoting a fairer agro-food supply chain* (OJ C 34, 2.2.2017, p. 130) and EESC opinion on *Improving the food supply chain* (OJ C 440, 6.12.2018, p. 165).

to a proper impact assessment. Nevertheless, the EESC welcomes that the Member States are transposing and implementing the Directive, ensuring more fairness in the food supply chain, and calls for a more harmonised approach in the future.

1.6. The EESC calls on Member States to put in place laws that protect all business actors. Size is not necessarily a proxy of market power and, consequently, all business operators, large and small, should be protected against UTPs.

1.7. The EESC also encourages Member States to establish mechanisms allowing them to monitor, evaluate and enforce the implementation of the transposition laws and create forums for dialogue in cooperation with stakeholders.

1.8. Currently, the imbalances of economic and bargaining power in European (but also global) food systems put pressure on the profitability of the agricultural sector and the wages, the decreasing investment potential of small and medium-sized food enterprises and the abandonment of local family retail. Therefore, evidence-based corrective mechanisms are needed to ensure a balanced development of actors in the European food supply chain and to support a fair share in the economic benefits of food production and distribution inside and outside the EU, thus fostering sustainable food systems. The Commission has not drawn conclusions from the impact assessments on the Farm to Fork strategy.

1.9. The EESC highlights the importance of all stakeholders having the right tools and information to benefit from the Directive. The EESC consequently calls on the European Commission, the Member States and the European External Action Service (EEAS) to ensure that stakeholders know their rights and the procedures to implement them, including when it comes to transnational trade, both within the EU and from third countries.

1.10. The EESC reiterates that promoting fairer trading practices should be part of a comprehensive EU food and trade policy, encompassing the whole supply chain and ensuring the implementation of the UN Sustainable Development Goals (SDGs).

## 2. Introduction

2.1. Unfair trading practices (UTPs) are defined as 'business-to-business practices that deviate from good commercial conduct and are contrary to good faith and fair dealing and are unilaterally imposed by one trading partner on another' <sup>(3)</sup>. The food supply chain is particularly vulnerable to UTPs, due to strong imbalances of power between operators. UTPs can occur at all stages of the supply chain, and UTPs originating at one level of the chain may have effects on other parts of the chain, depending on the market power of the actors involved <sup>(4)</sup>.

2.2. As described in detail in the EESC opinions on *A fairer agro-food supply chain* adopted in 2016 <sup>(5)</sup> and *Improving the food supply chain* in 2018 <sup>(6)</sup>, concentration of bargaining power has led to the abuse of positions of dominance, causing weaker operators to become increasingly vulnerable to UTPs. This transfers economic risk from the market up the supply chain and has a particularly negative impact on consumers and some operators, e.g. farmers, workers and SMEs. According to Commission figures the share of gross value-added in the food supply chain going to the primary producer fell from 31 % in 1995 to 23,4 % in 2015 (latest figures available). According to the Commission, the problem of UTPs has been acknowledged by all stakeholders in the food supply chain, and it has been reported that the majority of operators have experienced UTPs <sup>(7)</sup>.

2.3. The Directive (EU) 2019/633 of the European Parliament and of the Council <sup>(8)</sup> on UTPs in the agricultural and food supply chain was adopted in April 2019. The Directive is short, concise and based on a few key principles. Member States were required to transpose the Directive into national law by 1 May 2021 and apply it six months later. This is part of a wider governance agenda, which aims to achieve a more efficient and fairer food supply chain, and also includes producer

<sup>(3)</sup> EC, 2014.

<sup>(4)</sup> Agri-Market Task Force, 2016.

<sup>(5)</sup> EESC opinion on Promoting a fairer agro-food supply chain (OJ C 34, 2.2.2017, p. 130).

<sup>(6)</sup> EESC opinion on *Improving the food supply chain* (OJ C 440, 6.12.2018, p. 165).

<sup>(7)</sup> EC Communication, 2014.

<sup>(8)</sup> Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (OJ L 111, 25.4.2019, p. 59).

cooperation and measures to enhance market transparency. The Farm to Fork strategy <sup>(9)</sup> is also designed to contribute to improving farmers' position in the food supply chain.

2.4. The Slovenian Presidency of the EU has requested that the EESC draw up an exploratory opinion on the effective achievement of the Directive's objectives in practice, on Member States' best practices in regulating the food supply chain, as well as on the steps needed to ensure that this process does not come to a halt.

### 3. EESC position on UTPs

3.1. In its 2018 opinion <sup>(10)</sup>, the EESC welcomed the Commission (EC) proposal to reduce the occurrence of UTPs as a necessary first step to protecting weaker operators, in particular farmers, workers and certain operators, and to improving governance in the food supply chain. A regulatory approach and a legislative framework with effective and robust enforcement mechanisms is the way UTPs can be effectively addressed at EU level. This was also reiterated in the 2020 EESC opinion on the Farm to Fork Strategy <sup>(11)</sup>.

3.2. The EESC regretted, however, that the EC only introduced a minimum common standard of protection across the EU by prohibiting just a specific number of UTPs. A ban on all abusive practices is necessary.

3.3. On enforcement, the EESC welcomed the EC proposal to create a harmonised EU framework of enforcement authorities.

3.4. In addition to tackling UTPs, the EESC recommended that the EC should encourage and support business models that play a role in making the supply chain sustainable, rebalancing it and improving efficiency, in order to strengthen the position of weaker operators.

### 4. Transposition and implementation of the UTP Directive — state of play

4.1. Member States are currently in the process of transposing and implementing the Directive <sup>(12)</sup>. Most farmers' associations, trade unions and food processors consider that the planned measures are not sufficient to protect them. Nevertheless, they supported the proposed measures to implement the UTP Directive and even called for higher ambitions, while in some cases retailers have expressed diverging views.

4.2. By November 2021, the EC will present an interim report on the transposition of the Directive and, in 2025, an evaluation on the effectiveness of the Directive. This evaluation will be based on Member States' annual reports and results from the EC surveys targeting stakeholders on the state of UTPs in the food supply chain <sup>(13)</sup>. The EESC suggests that the Commission also consults buyers and collect their experience with the directive. The cooperation mechanism as set up by the Directive should provide a suitable forum for the enforcement authorities and the Commission to discuss the effectiveness of the Directive, based on the annual reports by Member States. During these regular meetings, best practices, but also lacunae can be identified and approaches of Member States can be compared.

4.3. The EESC welcomes that the Commission decided to regulate unfair trading practices in the food supply chain. However, the EESC regrets that the Commission did not foster a harmonised approach, which causes fragmentation in the single market. Nevertheless, the EESC welcomes that the Member States are transposing and implementing the Directive, ensuring more fairness in the food supply chain, and calls for a more harmonised approach in the future.

### 5. Good practices in the transposition/implementation process

5.1. The EESC welcomes the ambitious national transposition laws (hereinafter referred to as 'good practices') that prohibit some UTPs that are allowed under certain conditions in the Directive. For example, the ban on returning unsold products to the supplier without paying for them or passing the buyer's storage cost on to the supplier, which has been enacted by the German transposition law <sup>(14)</sup>.

<sup>(9)</sup> F2F Strategy.

<sup>(10)</sup> EESC opinion on *Improving the food supply chain* (OJ C 440, 6.12.2018, p. 165).

<sup>(11)</sup> EESC opinion on 'Farm to Fork': a sustainable food strategy (OJ C 429, 11.12.2020, p. 268).

<sup>(12)</sup> National transposition by MS.

<sup>(13)</sup> EC website.

<sup>(14)</sup> Pending approval in the second chamber, thus not yet communicated officially to the EC. Scheduled for 28.5.2021.

5.2. The EESC welcomes the introduction of articles in the transposition laws which forbid buying below the production cost, including all operators. This is the case in Spanish law <sup>(15)</sup>, which, besides forbidding all operators buying under the production cost, forbids the destruction of value along the food supply chain. Likewise, the Italian legislator has been mandated to address this issue in the transposition law <sup>(16)</sup>. In Germany, the German Federal Parliament will carry out an audit of the possible ban of purchasing below the production cost within the evaluation that will take place two years after the entry into force.

5.3. This is part of a wider package of initiatives promoted by the European Commission, including for example price market observatories <sup>(17)</sup>, which is essential to support transparency and fairness in the sector. In addition, the importance of reciprocity in international trade also needs to be mentioned <sup>(18)</sup>.

5.4. The EESC welcomes the laws establishing an ombudsperson for monitoring their implementation. In Spain, an independent agency (AICA) has been set up to monitor the implementation of the law, while an ombudsperson is mandated to encourage voluntary codes of conduct. In Germany, those affected by UTPs will be able to turn to present their anonymous complaints to an independent ombudsperson, including reporting unfair practices that are not listed in the legislation. The ombudsperson will also be able to initiate investigations and forward violations to the Federal Office of Agriculture and Food (BLE), as well as monitoring production costs and price developments <sup>(19)</sup>.

5.5. Size is not necessarily a proxy of market power and, consequently, all business operators, large and small, should be protected against UTPs. The EESC calls on Member States to put in place laws that protect all business actors. Where this level of ambition is not reached, it recognises the merit of the countries whose laws cover larger actors at least in key sectors. In Germany, for example, the EUR 350 million threshold is maintained for agricultural, fishery and food production companies, but for meat, fruit, vegetables and horticultural products, the threshold will be set at a turnover of EUR 4 billion, resulting in more actors being protected by the law <sup>(20)</sup>. The Belgian preliminary law eliminates the 'step approach' offering all business actors below the EUR 350 million threshold protection against UTPs regardless of their size relative to the buyer. Spain offers special protection for primary producers but all operators, regardless of their size and/or market position, are protected by law.

5.6. Double race auctions <sup>(21)</sup> have been linked to severe negative impacts for farmers <sup>(22)</sup>, who are de facto forced to participate in this practice due to the imbalance of power between buyers and sellers. Banning double race auctions would contribute to avoiding cases in which suppliers are taken to sell under the cost of production. While the process to transpose the Directive in Italy is not finalised yet, the EESC is following with interest the ongoing discussion on the possibility to ban double race actions in the country, where the legislator has been mandated to address this issue in the transposition law.

5.7. The EESC also considers as a good practice the obligation to have written contracts for all operations, and to include them in a database for greater transparency and control. The Spanish law includes such an obligation with very good impact on trade relations. The contract should include concepts such as quality, duration, price, price indicator, renegotiation, renewal and termination with notice.

5.8. The EESC welcomes the clause of the German law setting a first evaluation two years after entry into force of the law, and the fact that, besides reviewing compliance with existing prohibitions, the German Federal Parliament may also expand the list of prohibited UTPs <sup>(23)</sup>; it also notes the Belgian preliminary law, which provides for the possibility of adding UTPs to the list at any time through a royal decree after consultation with stakeholders.

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<sup>(15)</sup> Ley 12/2013, de 2 de agosto, de medidas para mejorar el funcionamiento de la cadena alimentaria. This law will be amended by a Bill which is currently being negotiated, referred to in Spanish as *Proyecto de Ley por el que se modifica la Ley 12/2013 de medidas para mejorar el funcionamiento de la cadena alimentaria*.

<sup>(16)</sup> Gazzetta Ufficiale della Repubblica Italiana, 23.4.2021.

<sup>(17)</sup> European Commission market observatories. See also the example of the French Food Sector Price and Margin Surveillance Programme.

<sup>(18)</sup> EESC opinion on Compatibility of EU trade policy with the European Green Deal (OJ C 429, 11.12.2020, p. 66).

<sup>(19)</sup> BLE website.

<sup>(20)</sup> This clause only applies until May 2025, after which the threshold will go down to EUR 350 million.

<sup>(21)</sup> Double-race auctions are mechanisms used by buyers to place suppliers against each other in short-notice online auctions, in which they are incentivised to offer their produce at the lowest possible price.

<sup>(22)</sup> Oxfam case study.

<sup>(23)</sup> The evaluation would also include the results of an examination of a possible ban on the purchase of food and agricultural products below their production costs.

## 6. Identified gaps

6.1. The EESC insists that all the UTPs mentioned by the Directive can have a harmful impact on the weakest actors of the chain, including the so-called 'grey practices'. Weaker suppliers might feel compelled to sign an agreement with a more powerful buyer that contains terms of contract that are not in their interest. While the possibility of a 'blanket ban' forbidding all the UTPs has been discussed in several Member States, it has proven difficult to reach this level of ambition without EU intervention. Similarly, in its 2018 opinion, the EESC called for a comprehensive ban on UTPs and for the possibility for Member States to extend the list of UTPs initially prohibited. It remains to be seen what mechanisms of revision the transposition laws will introduce.

6.2. The Directive grants suppliers, suppliers' organisations and non-profit organisations operating on behalf of suppliers the right to file complaints. However, the EESC is concerned that there might be events in which an illegal UTP is taking place, an affected party (e.g. a worker) obtains relevant information, but the enforcement authorities are not able to tackle it because there is not a formal complaint by an affected operator or its organisation. As affected operators might be reluctant to file complaints, even when their rights are not being respected, the EESC calls on the EC to closely monitor and evaluate the extent to which changes might be needed to better protect the most vulnerable parties who depend on operators, such as workers, farmers and fisherpersons. The UTP Directive does not presuppose a written contract. However, it presupposes a sales relationship. Thus, the EESC stresses its suggestion to expand protection for cases in which a UTP takes place but there is no (written) contract. The EESC already called for the introduction of the right to bring class actions<sup>(24)</sup>.

6.3. The Directive's 'step approach' implies that, in certain situations, an operator who is weak in terms of market power but large in turnover is not protected by the law. This introduces uncertainty for suppliers who are not aware of the annual turnover of their business partners. The EESC invites the EC and EU Member States to monitor and address the negative consequences of this 'step approach' and consider protecting all business actors regardless of their size.

6.4. Stable, balanced and long-term business relations between food chain operators can help farmers to participate more in the added value of the products while farmers are taking a smaller and further shrinking percentage of the final price due time. Regionality and quality aspects can keep value added in the region versus imports of raw material from third countries with mostly lower production standards than in the EU. Better labelling of origin would bring more transparency into food supply chains.

## 7. Vulnerabilities in the agro-food supply chain exposed by COVID-19

7.1. Overall, the European food supply chain proved to be remarkably resilient during the COVID-19 crisis. Consumers had access at all times to almost all food items. Despite being exposed to the risks of infection, workers across the food supply chain did a tremendous job. However, COVID-19 affects the entire global agri-food system. It exerts a symmetric but asynchronous shock on global and national food systems, which affects: 1) supply and demand channels at different times; 2) all elements of the food system, from primary production to food processing, retail and food service (HORECA), international trade and logistics systems, and intermediate and final demand; 3) factor markets (labour and capital) and intermediate goods of production. The transmission channels of these effects include numerous macroeconomic factors (e.g. exchange rates, energy prices, access to financial markets) and, above all, the contraction of aggregate economic activity and an increase in unemployment.

7.2. Restrictions on the free movement of workers (the Commission issued guidelines on persons with essential functions, e.g. seasonal workers) from one Member State to another have affected many areas of food production and processing (e.g. fruit and vegetable harvesting and meat and dairy processing) which rely on the labour of seasonal workers from other Member States or third countries. In addition, migrant workers often live and work in poor conditions and are at higher risk of infection, as demonstrated by outbreaks in slaughterhouses and meat packing plants worldwide. This creates both a serious public health problem and a break in the food supply chain.

7.3. Furthermore, by disrupting food transport due to containment measures and logistical disruptions, this pandemic has also led to protectionism that affects food imports and exports. At the same time, many have stressed the importance of regionally produced food in the EU and the traditional benefits of short supply chains and local production and commerce. Short supply chains and local production and commerce have proved even more attractive during the crisis as people look

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<sup>(24)</sup> EESC opinion on *Promoting a fairer agro-food supply chain* (OJ C 34, 2.2.2017, p. 130).

for new and more direct ways to buy their food and producers find new outlets for their products. However, one of the most important aspects is the realisation of the need to continue fair and sustainable trade at regional and international levels. Trade restrictions can jeopardise stability, which would particularly affect low-income populations.

7.4. The lockdown has brought the hospitality and part of the food industry (e.g. the hotel and restaurant sector and other 'out of home' industries and food delivery services, wholesalers and retailers located in touristic zones) to their knees, with far-reaching consequences. Apart from the establishments themselves, the disruption of activities also broke the consolidated food supply system on which many farmers and suppliers of agricultural products relied. Suppliers of fresh produce were hit hard, high-quality wine, cheese and prime cuts of meat normally sold in restaurants were replaced by standard products bought in supermarkets and consumed at home (FAO, 2020; OECD, 2020). Some producers responded by moving closer to retail or online markets where they found very good compromises and agreements in so many cases, but many were unable to adapt and lost customers and income. Agro-tourism, which often helps farmers diversify their income sources, was also hit hard by the COVID-19 restrictions.

7.5. The COVID-19 crisis dramatically accelerated the shift to online and this looks set to continue. A recent McKinsey study<sup>(25)</sup> shows that, in 2020, the online channel for groceries in Europe grew by 55 % and the shift is set to continue with 50 % of consumers who used online channels throughout the pandemic intending to continue.

7.6. The emergence of COVID-19 and its rapid global spread is a major shock to the EU and the global economy. Immediate and comprehensive budgetary, liquidity and policy measures have been taken to provide relief to the most affected sectors. The EU has an extensive toolkit of market intervention measures and several of these were activated during the COVID-19 crisis to support farm incomes. However, the response was limited as there were virtually no funds in the EU budget to finance additional emergency measures for agriculture in the last year of the 2014-2020 budget period.

7.7. Finally, the EC has launched a European Green Deal with implications also for agriculture (F2F and Biodiversity Strategies), and the Next Generation EU stimulus package allocated an additional EUR 7,5 billion to EAFRD. The impact assessments on the Farm to Fork strategy are worrying for the EU. Nevertheless, the EESC calls for more balanced policy support in favour of the agri-food sector compared to some other parts of the economy where the economic structure is much more resilient and profitability levels are much higher.

## 8. Next steps

8.1. The room for manoeuvre that the Directive leaves for Member States to draft the laws implementing the Directive has allowed each of them to put in place tailor-made legislation that is well suited to their national context. As mentioned before, some Member States have raised the level of ambition above the minimum harmonisation standards of the Directive and put in place laws that offer additional protection to EU and non-EU suppliers.

8.2. While it is expected that suppliers of a particular Member State will easily have access to the particularities of their national transposition law (including the complaint mechanism and the competent authority), this might not be the case for suppliers exporting to other EU Member States and for non-EU suppliers exporting to the EU. The EESC welcomes the dissemination effort that the EC has undertaken with the publication of the *Brochure on the Directive on UTPs*<sup>(26)</sup>, but points out that this document only contains information related to the minimum harmonisation standards. To offer the right tools for exporters to benefit from the national transposition laws, the EESC invites the EC to ensure that all the most relevant information related to each of the laws is easily available to exporters.

8.3. The EESC stresses that it is in the interest of all stakeholders for the Directive to apply to any business relation in which at least the buyer or the seller is an EU company even when the supplier is a non-EU actor. The EESC invites the EC and the EEAS to take advantage of the dissemination potential of the EU delegations in third countries to provide information to non-EU suppliers. This information must go beyond the general guidelines of the Directive and include practical information on the particularities and enforcement authorities of Member States.

<sup>(25)</sup> <https://www.mckinsey.com/industries/retail/our-insights/disruption-and-uncertainty-the-state-of-european-grocery-retail-2021>

<sup>(26)</sup> EC Brochure.

8.4. The EESC welcomes the consideration of the agri-food supply chain as a strategic ecosystem for the European recovery and calls for further cooperation in the supply chain and dialogue with stakeholders to facilitate the transition towards more sustainable food systems in a way that is as inclusive as possible. In this regard, the EESC notes the importance, diversity and scale of initiatives undertaken along the food supply chain to support the sustainability transition by investing in encouraging sustainable and local production.

Brussels, 22 September 2021.

*The President*  
*of the European Economic and Social Committee*  
Christa SCHWENG

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