



EUROPEAN COMMISSION

Brussels, 12.04.2018  
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**REGULATORY SCRUTINY BOARD OPINION**

**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**

{COM(2018) 173 final}  
{SWD(2018) 91 final}  
{SWD(2018) 92 final}  
{SWD(2018) 93 final}



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
Ares(2018)

## **Opinion**

**Title: Impact Assessment / Unfair Trade Practices in the food supply chain**

**Overall 2<sup>nd</sup> opinion: POSITIVE WITH RESERVATIONS**

### **(A) Context**

Unfair Trading Practices (UTPs) are Business-to-Business practices that deviate from good commercial conduct and are contrary to good faith and fair dealing. They are usually imposed unilaterally by one trading partner on another. The food supply chain (FSC) is particularly vulnerable to unfair trading practices due to large differences in bargaining power. To address this problem, the Commission encouraged operators in the European food supply chain to participate in voluntary schemes to promote best practices and reduce UTPs. A 2016 Commission report concluded that there was no need to act at EU level. It recommended further monitoring of the situation.

The European Parliament, the Council, the European Economic and Social Committee, and the Agricultural Markets Task Force have subsequently called on the Commission to act on UTPs in the food-supply chain. This impact assessment analyses the current situation and reviews options for tackling UTPs.

### **(B) Main considerations**

**The Board acknowledges the revisions to the scope of the initiative following its previous opinion.**

**However, the impact assessment report still contains significant shortcomings that need to be addressed. As a result, the Board expresses reservations and gives a positive opinion only on the understanding that the report shall be adjusted in order to integrate the Board's recommendations on the following key aspects:**

- (1) The report does not sufficiently clarify what has changed since the 2016 report to justify the current initiative.**
- (2) The report does not explain how the preferred option will be made operational.**
- (3) The report does not show that the preferred option will add value to national schemes. It does not sufficiently quantify the enforcement cost of national competent authorities.**

**(C) Further considerations and recommendations for improvement**

(1) The report should justify why the 2016 Commission’s conclusions are no longer valid. The report should explain why the European Parliament, the Council and others have requested further actions. The revised report should present additional evidence to support the need for action at EU level.

(2) The scope of the impact assessment is now more proportionate, covering only those parts of the food supply chain where asymmetries in bargaining power could result in unfair trading practices. The report should explain how the preferred option would be made operational. This includes how the proxy for SME size will be implemented to better protect weaker operators in the FSC. It also includes the concrete definition of unfairness criteria to be used for the six practices which the legislation will cover.

(3) The report does not provide specific information on the effectiveness of particular national schemes. It is therefore unclear what the initiative will add. Without an analysis of the effectiveness of national schemes, the report may overestimate the benefits of the proposed measures. Enforcement may only change national practice in those Member States where no UTP regulations or voluntary schemes exist.

(4) The report should comment on costs of implementation, especially for setting up and operating the network of competent authorities.

The Board takes note of the quantification of the various costs and benefits associated to the preferred option of this initiative, as assessed in the report considered by the Board and summarised in the attached quantification tables. The table on benefits should be adjusted to reflect the estimates and qualitative assessment provided in the main report.

**(D) RSB scrutiny process**

**The lead DG shall ensure that the report is adjusted in accordance with the recommendations of the Board prior to launching the interservice consultation.**

**The attached quantification tables may need to be further adjusted to reflect any changes in the choice or the design of the preferred option in the final version of the report**

Full title	Proposal for e Regulation of the European parliament and of the Council concerning unfair trading practices in business-to-business relationships in the food supply chain.
Reference number	PLAN/2017/764
Date of RSB opinion	12/03/2018

**ANNEX: Quantification tables extracted from the draft impact assessment report submitted to the Board on 5/03/2018**

(N.B. The following tables present information on the costs and benefits of the initiative in question. These tables have been extracted from the draft impact assessment report submitted to the Regulatory Scrutiny Board on which the Board has given the opinion presented above. It is possible, therefore, that the content of the tables presented below are different from those in the final version of the impact assessment report published by the Commission as the draft report may have been revised in line with the Board's recommendations.)

<b>I. Overview of benefits - Preferred option*</b>		
<b>Description</b>	<b>Amount</b>	<b>Comments</b>
<b>Direct benefits</b>		
	Not quantified	
<b>Indirect benefits</b>		
	Not quantified	

\* It was not possible to quantify the benefits from legislation on UTPs. See section 6.

<b>II. Overview of costs - Preferred option</b>							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Compliance costs	Direct costs	--	--	negligible to €1.14 million*	€0 to €193 thousand** per year per non-SME operator	--	--
	Indirect costs	--	--	--	--	--	--
Enforcement costs	Direct costs	--	--	--	--	negligible to €228 thousand/€3 million*** per administration	negligible to €708 thousand/€2.9 million*** per administration per year
	Indirect costs	--	--	--	--	--	--
Other costs	Direct costs	--	--	--	--	--	--
	Indirect costs	negligible (either positive or negative)	negligible (either positive or negative)	--	--	--	--

Exchange rate: EUR 1.14 / GBP 1.

\* Where operators have fully implemented the voluntary SCI principles of good practice, or where national legislation is in line with the preferred option, costs are expected to be negligible; upper bound costs are drawn from UK estimates for one-off costs.

\*\* Based on experience of large UK retailers; higher end costs would apply only where legislation does not already exist or where the voluntary SCI principles have not been implemented, otherwise expected to be smaller or negligible (baseline costs).

\*\*\* Costs for MSs that already have legislation in place are expected to be negligible or lower end; higher bound is based on estimates from a MS where no legislation exists; existing experience in the UK found recurrent enforcement costs to be about €708 thousand per year.



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
Ares(2018)

## **Opinion**

### **Title: Impact Assessment / Unfair Trade Practices in the food supply chain**

(version of 24 January 2018)\*

### **Overall opinion: NEGATIVE**

#### **(A) Context**

Unfair Trading Practices (UTPs) are Business-to-Business practices that deviate from good commercial conduct and are contrary to good faith and fair dealing. They are usually imposed unilaterally by one trading partner on another. The food supply chain (FSC) is particularly vulnerable to unfair trading practices due to large differences in bargaining power. To address this problem, the Commission encouraged operators in the European food supply chain to participate in voluntary schemes to promote best practices and reduce UTPs. A 2016 Commission report concluded that there was no need to act at EU level. It recommended further monitoring of the situation.

The European Parliament, the Council, the European Economic and Social Committee, and the Agricultural Markets Task Force have subsequently called on the Commission to act on UTPs in the food-supply chain. This impact assessment analyses the current situation and reviews options for tackling UTPs.

#### **(B) Main considerations**

**The Board acknowledges efforts to provide supporting analysis to substantiate the need to further address UTPs in the food supply chain, in response to the demand of a large number of stakeholders.**

**However, the Board gives a negative opinion, because the report contains important shortcomings that need to be addressed particularly with respect to the following key aspects:**

- (1) The report does not explain the reasons for changing the course of action following the 2016 Commission Report. The report does not explain how the initiative complements or corrects the shortcomings of actions taken so far at the EU level. It does not state the consensus on the occurrence of unfair trading practices in the food supply chain.**
- (2) In view of the wide scope of the initiative, the use of CAP legal bases is not sufficiently motivated.**

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

- (3) The report does not assess the effectiveness of national legislation on UTPs in the FSC; it does not explain why it is more effective to act at the EU level.**
- (4) The options are not detailed enough and the analysis of impacts does not cover farmers' revenues, innovations in the FSC, competition in various market segments and implications for Member States.**
- (5) The proportionality of the preferred option, in particular with respect to the need to cover the whole supply chain, independently of the asymmetry of bargaining power is not fully tested.**
- (6) The quantification of the various costs and benefits associated to the preferred option of this initiative is missing.**

### **(C) Further considerations and adjustment requirements**

(1) The report should better define the context and the scope of the initiative. The various Communications from the Commission, the European Parliament, the Council and numerous stakeholder consultations (including the Supply Chain Initiative and the Agricultural Markets Task Force) agree that unfair trading practices do occur in the FSC. The report should make clear the achievements of EU action so far and the consensus among actors and not elaborate extensively on the debate about UTPs. The report should rather explain the reasons for the change in the assessment of the Commission (reflected in its January 2016 Report).

The report should provide more thorough analysis of the failure of Member States and the Supply Chain Initiative to comply with the Commission's Recommendation. The report should elaborate on why the mechanisms present in Member States do not provide for an adequate protection of the weakest operators in the EU food supply chain (mostly farmers). The report should further explain what would be necessary to complement the existing voluntary agreements with effective and anonymous complaint handling, independent investigation bodies and effective sanctions.

(2) The report should further substantiate why CAP legal bases are appropriate for regulating commercial relations between all operators of the food supply chain, including those with comparable bargaining power where trading practices are subject to normal commercial relations. It should explain and justify the choice of minimum harmonisation in an area which has limited cross-border implications.

(3) The report should explain more precisely how the envisaged options could address the identified problems, in particular the UTPs the initiative is aiming to forbid. The report should explain how the (preferred) options address the limitations of the SCI's code of conduct and dispute resolution. The report should further elaborate on the expected complementarity of the initiative with the SCI.

(4) The analysis of impacts should cover more extensively the issues of market competition, farmers' incomes, and innovation in the FSC. The report should explain the impacts on Member States' legislation to comply with the new EU legal instrument and the proposed minimum harmonisation approach. The report should draw clear conclusions from the analysis on the scope of the UTP rules that would be covered by the regulation.

(5) The report should thoroughly assess the expected effectiveness of the preferred option at the EU level in comparison to national measures. As the scope of the proposal extends to the whole FSC rather than focusing on situations where the weaker parties to the trade would need better protection against the occurrence of UTPs, the report needs to discuss

the potential unintended consequences of the proposal and the proportionality of the preferred option.

(6) The report does not contain the mandatory table with the quantification of costs and benefits for the preferred option, as stipulated by the Better Regulation Toolbox (Tool #12 – format of the impact assessment).

*Some more technical comments have been transmitted directly to the author DG.*

**(D) RSB scrutiny process**

**The lead DG shall ensure that the report is revised in accordance with the above-mentioned requirements and resubmitted to the Board for its final opinion.**

Full title	<b>Initiative to improve the food supply chain (unfair trading practices)</b>
Reference number	PLAN/2017/764
Date of RSB meeting	21/02/2017

**ANNEX: Quantification tables extracted from the draft impact assessment report submitted to the Board on 24 January 2018**

*(N.B. The following tables present information on the costs and benefits of the initiative in question. These tables have been extracted from the draft impact assessment report submitted to the Regulatory Scrutiny Board on which the Board has given the opinion presented above. It is possible, therefore, that the content of the tables presented below are different from those in the final version of the impact assessment report published by the Commission as the draft report may have been revised in line with the Board's recommendations.)*