



ASSEMBLY OF EUROPEAN REGIONS PRODUCING FRUITS, VEGETABLES AND ORNAMENTAL PLANTS

ASSEMBLÉE DES RÉGIONS EUROPÉENNES FRUITIÈRES, LEGUMIÈRES ET HORTICOLES

ASSEMBLEA DELLE REGIONI EUROPEE FRUTTICOLE ORTICOLE E FLORICOLE

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AREFLH Position Paper on the European Commission's Proposal for a directive on unfair trading practices in business-to-business relationships in the food supply chain

The **Assembly of European Regions producing Fruits, Vegetables and Ornamental Plants'** (AREFLH) main missions are:

- to represent its 21 member regions and 25 AOPs, from 7 European countries;
- to defend the economic and social interests of the fruit, vegetable and horticultural sectors in Europe;
- to foster exchanges of best practices, partnerships and joint projects between regions and professional organisations;
- to actively seek new solutions for the main issues affecting the future of the fruit and vegetables production in Europe.

This paper has been developed to put forward AREFLH's recommendations in regards to the legislative proposal made by the European Commission in the area of unfair trading practices¹.

1- Background Information

Impact of Unfair Trade Practices (UTPs) on Europe's Fruit and Vegetable sector

The **fruit and vegetable sector** is of **strategic importance for EU agriculture** and for its 500 million European citizens. It currently accounts for 21% of the total value of agricultural production in the EU and is worth more than EUR 50 billion. The sector also contributes, both directly and indirectly, to several EU objectives in different areas: economic growth, food safety/security, public health, environmental conservation as well as job creation, with the sector accounting for close to 35% of agricultural employment.

Despite its significance in Europe's agricultural landscape, the **F&V sector constantly faces persisting economic and social challenges**. Amongst these challenges, the sector has also shown to be highly impacted by its **structurally weak bargaining position vis-à-vis large-scale retail** and processing trade. This asymmetry in bargaining power, considerably reinforced by the perishable nature of fresh F&V, puts producers under the risk of unfair trading practices when facing larger and more powerful actors who require contractual arrangements to their advantage, either through better prices, late payments or through improved terms and conditions.

The majority of F&V in Europe are grown by **small farmers**, which often **struggle to meet the standards required by retailers** in terms of volume, quality and delivery schedules. In order to meet their needs, producers should be able to face strict product safety and quality standards, offer a wide variety of products with high added value and make the necessary investments in equipment and logistics to ensure the timely production and delivery of the product.

Producer organisations (POs) and their associations (APOs) have played a key role in **improving farmer's position** vis-à-vis large-scale retail through their role as **aggregators of production**, which allows the planning and

¹ https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-173_en

enhancement of the supply, thus enabling producers to regain strategic leverage (such as differentiation and recognisability of products) and enter the market in a more competitive position. The collective action deriving from these structures **allows farmers to acquire an economic strength in the market** that would not be likely if acting individually. Similarly, the establishment of collective contracts has revealed itself to be an important coordination tool in the supply chain, allowing actors to agree to a common system of rules.

POs and APOs therefore constitute an **effective counterbalance to large-scale retail** by taking up a strategic role in restoring balance to the producer-processor/distributor relationships and acting as a successful contractual power and efficient redistributor of added value.

Nevertheless, despite the important role of POs and APOs in compensating imbalances along the food chain, **producers still find themselves in a position of weakness** when facing distributors. The abovementioned factors highly **impact the sector's income and sustainability** and require a renewed approach in order to be successfully addressed. Under these premises, AREFLH highly welcomes the European Commission's initiative to consult stakeholders to identify ways to improve its legislative proposal and is pleased to share its opinion and recommendations.

2- Comments on the Commission's Proposal

AREFLH welcomes the Commission's initiative, which aims to establish a uniform approach for the **introduction of a minimum standard of protection relating to unfair commercial practices** in the internal market. The prohibition of a series of unfair practices listed in Article 3 represents, in this regard, a clear step in the right direction, as the latter are clearly at odds with the principles of good faith and fair dealing between two parties. However, AREFLH would like to make the following comments on some of the proposal's provisions that, in our opinion, need to be carefully reassessed:

1. Extending the directive's provisions to all producer organisations, irrespective of their size: Although the measure introduces a minimum level of protection from certain practices which are considered to be manifestly unfair in order to reduce their frequency and help to ensure a level playing field as well as a fair standard of living for farmers, **the directive excludes all those who are not covered by the definition of small and medium-sized enterprises (SME)**, as article 1 of the proposal specifies that the scope of the directive is "only" covering UTPs between a supplier that is an SME to a buyer that is not an SME.

Bearing in mind that the EU defines an SME as a company with a turnover below 50 Million €, and which does not have more than 250 employees², the **legislative proposal considers, in practice, only SMEs as particularly vulnerable to unfair commercial practices by so-called 'buyers'** and as the only ones to potentially suffer the consequences of an unbalanced relationship with the operators in the supply chain with a higher bargaining power.

Such **provision would therefore negatively impact large cooperatives or producer organisations which do not fall within the SME criteria, thus not allowing the latter to be protected from unfair trading practices**. For example, a large producer organisation with a turnover of over 50 Million € or with over 250 employees would not benefit from the provisions made available by the legislative proposal. However important, the dimension of such POs/APOs or cooperatives does **is utterly incomparable to that of the so-called "buyers" (mainly composed of large-scale retail companies) and certainly do not have the same bargaining power as the latter**. Also, this eventuality would be in strong contrast with the Commission's long-lasting efforts to concentrate the supply through the application of the CMO by indirectly penalizing POs that do not fall within the SME definition.

For this reason, and with the aim of guaranteeing a fair standard of living for all farmers, including those belonging to large cooperatives or producer organisations, **AREFLH considers that the validity of the directive and thus the protection it provides shall be extended to all producer organisations, irrespective of their size**.

2. Ensuring the directive applies to suppliers/buyers from third countries: The proposed wording does not include entities established outside the EU. Given the process of internationalisation of businesses, in particular in the agricultural sector, **AREFLH highly recommends to include transactions involving suppliers/buyers with headquarters in third countries to avoid giving an incentive to buy from SMEs outside the EU as well as to ensure protection for EU businesses selling to foreign buyers**.

² http://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en