

POSITION OF FARMERS IN THE FOOD SUPPLY CHAIN: NEXT STEPS

Introduction

Along the recent protests of farmers, the claims for a fairer remuneration by the market (prices) and fairer treatment by the other actors of the food supply chain feature consistently high in farmers' requests and is reflected in calls from civil society and stakeholders.

The agri-food supply chain is characterised by different degrees of concentration. Within the agricultural inputs and food industry sectors, including retailing and food services, a small number of large companies are predominant on the market, even if food industry counts over 95% micro or small enterprises¹. By contrast, with 9.1 million of farms, the agricultural sector remains highly fragmented (with average farm size of 17.4 hectare in the EU). Even the largest farms find themselves often in a vulnerable position in the agri-food supply chain due to limited bargaining power² vis-à-vis highly concentrated and stronger actors that are often considered as "gatekeepers to consumer markets"³. A second reason for the vulnerable position of farmers is and the nature of the agricultural activity and products, characterised by long production cycles due to biological processes, the perishability and seasonality of products, the uncertainties due to climatic conditions or biological processes and an inelastic demand.

The European Union has adopted a number of measures aiming at correcting this situation and ensuring a robust and equitable agri-food supply chain, enabling farmers to leverage the benefits of market opportunities. Reinforcing the position of farmers in the food supply chain is one of the objectives of the Strategic Plans under the Common Agricultural Policy. Among these measures are a number of exclusions from competition rules, strengthened provisions supporting farmer cooperation, contractualisation and increased market transparency laid down in the Common Market Organisation Regulation (CMO)⁴, which entered into force on 20 December 2013⁵. It has also enacted a prohibition of certain grossly abusive behaviours by buyers with the Directive on Unfair Trading Practices (UTP Directive)⁶, which entered into force on 1 May 2019 and required Member States to transpose it into national laws before 1 May 2021. Such regulatory measures need time and stability to take effect, and already now Member States and farmers have a number of instruments at their disposal. Through a growing uptake of the available policy tools by operators and their implementation and enforcement by Member States, the degree of trust and cooperation in the chain is increasing, resulting in the reduction of transaction costs and win-win situations for farmers, other actors of the chain and consumers.

The Commission regularly raises awareness on the importance for private actors and public authorities to fully seize the potential offered by these instruments, for example through the UTP Enforcement Network, the CMO horizontal Committee and Group of experts, the Civil

¹ The small and medium sized enterprises represent 39 % of food industry's turnover (approximately €1112 billion) in the European Union.. source: Eurostat (2019)

² European Commission, Initiative to improve the food supply chain (unfair trading practices), [Staff Working Document](#).

³ European Commission, Competition in the food supply chain, [Staff Working Document](#), p. 28.

⁴ Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, ELI: <http://data.europa.eu/eli/reg/2013/1308/2021-12-07>.

⁵ Last amended by Regulation (EU) 2021/2117 that entered into force on 7 December 2021.

⁶ Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, OJ L 111, 25.4.2019, p. 59–72.

Dialogue Groups and the CAP Network via a dedicated forum on best practices in the food supply chain.

While business risks are inherent in all economic activities, agriculture is particularly prone to uncertainties. The last four years have been marked by a succession of crises (Covid-19 pandemic, Russia's war of aggression against Ukraine, increased occurrence and intensity of natural disasters, like droughts, floods, and fires), resulting in an unprecedented peak of energy-related agricultural inputs costs and a prolonged period of high inflation, affecting all farmers' costs and food prices. In parallel, farmers continue to undertake efforts to make their production more environmentally sustainable, in order to comply with new standards and/or expecting to be rewarded for their efforts. Despite the general inelasticity of food demand, many consumers, dealing with an increased cost of living, have directed their consumption patterns towards less expensive food products. This has further destabilised the distribution of value added along the chain and has significantly increased the perceived degree of uncertainty in which EU farmers operate, fuelling protests and mistrust together with other reasons for discontent, showing the need to put forward additional measures.

The Belgian Presidency of the Council initiated a discussion on the "Need for both rapid and structural answers to the current crisis situation in the agricultural sector" that the Commission has started to address during the AGRI FISH Council meeting on 26 February 2024, with the presentation of a non-paper on simplification. Debates at this meeting have shown that Member States are keen to also tackle issues related to the food chain. The Chairman of the European Parliament's committee for agriculture and rural development also identified in a recent letter the areas where action could be taken, concerning the review of the UTP Directive, the establishment of a mechanism for fair price transmission throughout the supply chain and the promotion of collective actions and collaboration between operators across the supply chain to improve the farmers' situation while reconsidering competition rules.

Ahead of the March AGRI FISH Council meeting, the Commission announced the preparation, of a range of short, medium and longer-term actions to improve the position of farmers in the food chain and to protect them against unfair trading practices. These measures could include:

A. Immediate measures

Over the very short term, the Commission proposes a number of non-legislative fact-finding measures to reinforce the overall capacity of stakeholders and public authorities to understand and analyse the economic and legal challenges faced by farmers and other actors in the agri-food supply chain, as follows:

1. Creation and launch of an **observatory of production costs, margins and trading practices** in the agri-food supply chain involving the Commission, and representatives of the Member States and stakeholders (farmers, food industry, retail and services, consumers, input providers) while considering the heterogeneity of the supply chain in the Member States as well as the already available data. This new observatory would build upon and create synergies with the existing national and sectoral EU market observatories.

The observatory will bring together the Commission, Member States and private actors along the supply chain to exchange information and discuss based on available evidence and facts, with a view to build trust between the stakeholders, establish a common diagnosis of the situation and bring increased **transparency** on costs and margins in the supply chain, as well as on trading practices, while respecting confidentiality and competition rules.

These exchanges could be organised periodically (minimum twice per year, more frequently if needed) to take stock of the situation in the agri-food supply chain. This stock taking would be based on quantitative and qualitative data on costs, margins and practices. The summary records of these exchanges will be made available to the general public.

2. Adoption of a **report on the implementation of the UTP Directive in April 2024**. This report will supplement the Interim report on UTP Directive's implementation that was issued in October 2021 covering 16 Member States only. The new report will provide a full picture on the implementation of the UTP Directive in all Member States, showing the complete transpositions and the choices made by Member States when it comes to measures going beyond the minimum EU harmonisation level. The report will also contain some elements of reflection on the strengths and weaknesses of enforcement of the Directive in the Member States, in particular with regard to needs arising from cross-border enforcement and the need for common tools for effective and efficient enforcement actions within the internal market. While providing an accurate picture of the state of play of the implementation of this relatively new piece of EU legislation, the report will feed the on-going evaluation of the Directive.

B. Short-term measures

The Commission is exploring targeted changes to the CMO and other CAP-related basic acts, if necessary, that can contribute to reducing the transaction costs and correcting imbalances in the chain, while preserving the fundamental principle of market orientation.

4. The provisions of the CMO could be reinforced, in the three following areas:
 - i) Strengthening EU-level provisions on **contracts involving farmers** and their organisations with other actors in the chain:

Contracts are the vehicles whereby farmers and other actors agree on the parameters of their transactions. They include for instance the price, quantity and quality, duration of the contract, payment periods and procedures, arrangements for delivering the products and rules applicable in the event of force majeure. Some Member States made obligatory that such contracts are made in writing for a minimum duration and publish indicators that can be used in the price formula. Contracts are the core element of the agri-food supply chain, and can contribute to reinforce the responsibility of operators, increase their awareness of the need to better take into account the signals of the market, improve price transmission and the adaptability of supply to demand, as well as help to avoid certain unfair trading practices.

The CMO framework for contracts could be improved in several ways, (a) by reinforcing the compulsory character of written contracts, while allowing for flexibility, e.g., for SME-buyers or for small volume or low-price purchases, (b) by better incorporating changes of market and cost conditions in contracts with a view to favour symmetry and timeliness of price transmission mechanisms, as well as their transparency, (c) by providing with additional possibilities to improve the transparency of contractual arrangements (for example by means of contract registries) and, (d) by mediation mechanisms for cases where parties to contracts fail to find an agreement.

- ii) Further reinforcement of economic **Producer Organisations (POs) and their associations (APOs)** and reduction of administrative burden for their recognition and constitution:

The CAP supports cooperation among farmers and cooperation between farmers and other actors of the chain. Cooperation aims at allowing farmers to compensate collectively for their weaker bargaining power. Through the CMO, the capacity of POs and other entities supporting cooperation could be reinforced, without putting at risk the mechanisms of sound competition. This could be done through (a) enhancing the bargaining power of POs and expanding the role of Associations of recognised economic POs in collective negotiations, (b) providing for the possibility to financially support recognised POs and Interbranch Organisations (IBOs) involved in crisis management, (c) simplifying the recognition process of these POs and IBOs, (d) boosting the support that POs and APOs can receive through sectoral interventions under the CAP Strategic Plans Regulation (EU) 2021/2115 (SPR).

- iii) Setting up an inducive framework for **fair-trade voluntary schemes and agreements aimed at improving the remuneration of farmers:**

Farmers and their organisations, together with other actors in the agri-food supply chain, are already developing schemes and best practices whereby they offer products to consumers with a guarantee that a fair remuneration or a higher price is allocated to the farmers involved. Such schemes take different forms, including the creation of commercial brands, for example owned by a consumers' cooperative company like "C'est qui le patron", by a producers and consumers cooperative like "Fairebel", an association (like "Bio-equitable") or even by a private company (like "Fairefrance"), to communicate to consumers on the remuneration obtained by farmers. These voluntary initiatives and agreements are answering concerns of farmers that are also often shared by consumers. They contribute to the socio-economic sustainability of the food system.

These voluntary initiatives will benefit from new provisions in the CMO that: (a) would allow to define minimum characteristics for such voluntary schemes to be claimed being fair at the EU level, a similar approach could be examined for short food supply chains; (b) would include the possibility to develop such schemes within POs and IBOs, and (c) would grant the relevant exclusions from EU competition rules provided this is needed to achieve their objectives and to guarantee their success and uptake by actors in the chain.

These targeted amendments aim to strike a balance between the advantages for farmers to be protected from sudden excessive price of (price shocks) which they would not be able to absorb over the short term without putting at risk their long term viability, while not placing an unjustified financial burden on food industry and retail, maintaining the function of price signals to determine production and investment decisions of all private actors at all stages of the chain and avoiding any unnecessary administrative burden for operators and administrations.

C. Medium-long term measures

On the longer-term, the Commission will proceed with the steps foreseen in the normal policy cycle relative to the legislation, in particular regarding the UTP Directive:

5. The first **Evaluation** of the **UTP Directive** has been launched in May 2023. Its main findings will feed into a **report to the European Parliament and Council** as well as to the European Economic and Social Committee and the Committee of the Regions in 2025, **accompanied or followed, if appropriate, by legislative proposals**. A targeted consultation of the relevant stakeholders and stakeholder workshops are planned for Q3/2024. In addition, a workshop with the UTP enforcement authorities is planned for Q2/2024.
6. Among the issues, the Commission will propose new rules on **cross-border enforcement of UTPs**. This measure involves development of a legal proposal for a new Council and EP Regulation, as a complement to the UTP Directive. The experience of the UTP enforcement authorities and their exchanges within the Network created by the UTP Directive has shown that cross-border enforcement can be difficult, when the buyer behaving unfairly is not located in the same Member States as the supplier affected. This is not a marginal situation as, on average, around 20% of the agricultural and food products consumed in a Member State is coming from another Member State. This percentage is even higher for certain products like fruit and vegetables. In such cases, enforcement authorities may find difficulties when investigating or prosecuting the buyers established in another Member State. The powers of the national enforcement authorities could therefore be strengthened, and their cooperation enhanced to facilitate effective and efficient cross-border enforcement, exchanges of information, and collection of penalties. At the same time, strengthened cross-border cooperation would contribute to avoiding that large multinational food and retail companies acting as buyers or providers of certain retail-related services take advantage of their capacity to operate in different Member States. The proposal would also include provisions for coordinated actions against such multinational buyers and providers of certain retail-related services that could be exploiting potential "enforcement gaps" to impose prohibited UTPs in cross-border transactions.

D. Evidence gathering and awareness raising

- A support study for the evaluation of the Directive on unfair trading practices has been launched in 2024, to support the evaluation of this Directive to be concluded in 2025.
- Annual stakeholder survey on the experience of suppliers with the unfair trading practices: https://ec.europa.eu/eusurvey/runner/4th_UTP_survey (the 4th survey has been launched and is open until mid-March 2024).
- A study on national and regional or private regulatory or voluntary schemes aiming at ensuring a fair remuneration for farmers through rules on the integration of production costs will be launched in Spring/2024 and finalised in 2025. This study will screen public and private schemes aiming at reinforcing the market remuneration of farmers. The information gathered will feed the debate on both the medium- and long-term actions.
- A study on the role of information and communication technologies to improve market transparency is ongoing. The study explores, among other things, options to improve

market transparency by using modern technological solutions, such as artificial intelligence, blockchain technology and big data. It will be the base for a CMO report on the subject to Council and Parliament, due by end 2024.

- The Commission's Joint Research Centre will provide ad hoc analyses, for example on European Retail Alliances in 2024, which will contribute to shed light on the impact that the negotiation activities of European Retail Alliances have on upstream SMEs and farmers and thus complement the 2020 JRC Study on this subject
- Every year the CAP network hosts a forum on best practices in the food supply chain. In addition, the CAP network collects good practices from the national networks on regional and national levels.
- A report on the application of the competition rules to the agricultural sector in the Member States will be published by 31 December 2025.

ANNEX A

	Action	Instrument	Timing
A. Immediate measures			
A.1	Observatory of costs, margins and trading practices in the agri-food supply chain	Commission Expert Group	Launch of the call April 2024 Inaugural meeting – June 2024
A.2	Report on the implementation of the UTP Directive	Report to Council, European Parliament and EESC	April 2024
A.3	Evidence-gathering activities	Various studies, workshops, ...	As from March 2024
B. Short-term measures			
B.1	Proposal of targeted amendments to the CMO	Amendment of the Regulation (EU) 1308/2013 of the EP and Council	Proposal for amendment of basic act by Q2/2024 (April)
C. Mid-term/long term measures			
C.1	Evaluation of the UTP Directive, accompanied, if necessary, by a legislative proposal	Report, and, if necessary, amendment to Directive 2019/633	2025
C.2	Proposal for rules on cross-border enforcement of UTPs	Stand-alone new legal act (Regulation (EU) of EP and Council)	2025

Annex B – Detailed timeline

Milestones	Actions
Until 15 March 2024	4 th annual stakeholder survey on the <u>experience of suppliers with the unfair trading practices</u>
March 2024	Launch of the support study for the evaluation of the Directive on unfair trading practices
26 March 2024	Presentation of the non-paper at AGRIFISH Council meeting
March/April 2024	Creation of the Observatory of production costs, margins, and trading practices in the agri-food supply chain and launch of the call for expression of interest to join it
April 2024	Adoption of the proposal for targeted amendments to the CMO
April 2024	Launch of the study on national and regional or private regulatory or voluntary schemes aiming at ensuring a fair remuneration for farmers through rules on the integration of production costs
April 2024	Adoption of the Report on the implementation of the UTP Directive
July 2024	Inaugural meeting of the Observatory of costs, margins and trading practices in the agri-food supply chain
June 2024	Meeting of the enforcement authorities to discuss the implementation of the Directive on unfair trading practices
June 2024	UTP Directive - Targeted evaluation workshop with the enforcement authorities
July 2024	UTP Directive – Stakeholder evaluation workshop
October 2024	Meeting of the enforcement authorities to discuss the implementation of the Directive on unfair trading practices
October 2024	2 nd Meeting of the observatory of costs, margins and trading practices in the agri-food supply chain
Q3/2024	Launch of the 5 th annual stakeholder survey on the experience of suppliers with the unfair trading practices
November 2024	4 th meeting of the Forum on best practices in the agri-food supply chain hosted by the CAP Network and supported by the Commission
Q3-4/2024 or 2025	Adoption of the proposal for rules on cross-border enforcement of UTPs (if not merged with proposals following evaluation in 2025)
Q1/2025	Report on digitisation and market transparency
2025	Proposal for rules on cross-border enforcement of UTPs
2025	Report summarising the key finding of the evaluation of the UTP directive, and, if necessary, amendment to the UTP Directive