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Tackling unfair trading practices in the business-to-business food supply chain

Tackling unfair trading practices (UTPs) in the business-to-business food supply chain

1. INTRODUCTION

The food supply chain ensures the delivery of food and drink products to the general public for personal or household consumption. It affects all consumers in the EU on a daily basis and accounts for a significant part of the average household budget.¹ Before a product reaches the consumer, a number of market participants (producers, processors, retailers, etc.) add to its value and have an impact on the final price paid by the consumer. In this respect, the Single Market has brought major benefits to operators in the food supply chain. Suppliers and retailers, both large and small, now have more market opportunities and a bigger customer base. Cross-border trade between EU Member States now accounts for about 20 % of total food and beverage production in the EU and at least 70% of the total exports of agri / food products of EU Member States are destined to other EU Member States.² Therefore, a well-functioning and efficient food supply chain throughout the EU can significantly contribute to the Single Market.

However, over the past few decades, developments such as the increased concentration and vertical integration of market participants across the EU have led to structural changes in the food supply chain. These developments have contributed to a situation of significantly different levels of bargaining power and economic imbalances in individual trade relations between the actors in the chain. While differences in bargaining power are common and legitimate in commercial relationships, the abuse of such differences may sometimes lead to unfair trading practices (UTPs).³

UTPs can broadly be defined as practices that grossly deviate from good commercial conduct, are contrary to good faith and fair dealing and are unilaterally imposed by one trading partner on another.

This Communication does not foresee regulatory action at EU level and does not prescribe a single solution to address the issue of UTPs, but rather encourages stakeholders and Member States to tackle UTPs in an appropriate and proportionate manner, taking into account national circumstances and best practice. It encourages operators in the European food supply chain to participate in voluntary schemes aiming at promoting best practices and reducing UTPs. It also emphasises the importance of effective redress. The Commission is committed to continuing working in close cooperation with the Member States and relevant stakeholders; everyone involved will need to play their part to help eliminate UTPs.

¹ Expenditure on food accounts for around 14% of the average EU household budget (Eurostat HBS data)

² Report of the High Level Forum for a Better Functioning of the Food Supply Chain, December 2012

³ See Commission Communication COM(2009) 591: A better functioning food supply chain in Europe
http://ec.europa.eu/economy_finance/publications/publication16061_en.pdf

2. BACKGROUND

Although it is difficult to assess its full extent and frequency, the problem of UTPs has been acknowledged by all stakeholders in the food supply chain. A number of surveys show that UTPs occur relatively frequently, at least in some parts of the supply chain. For example, in a EU-wide survey among suppliers in the food chain, 96% of the respondents said that they had already been subject to at least one form of UTPs⁴. Surveys have also been undertaken at national level. In a report by the Spanish Competition Authority on the relations between manufacturers and retailers in the food sector, 56% of responding suppliers said that retroactive changes to contract terms occurred frequently or occasionally⁵. A survey by the Italian Competition Authority shows that 57% of producers often or always accept retroactive unilateral changes, because they are afraid of commercial retaliation in case of refusal of the changes⁶.

UTPs may have harmful effects, especially on SMEs in the food supply chain.⁷ They may affect the SME's capacity to survive in the market, undertake new financial investments in products and technology, and develop their cross-border activities in the Single Market. Whilst the overall effect of UTPs on the market is difficult to fully assess in quantitative terms, the negative direct effect on those parties affected by such practices is beyond doubt. In the abovementioned EU-wide survey, 83% of the respondents asserting that they were subject to UTPs said that UTPs increased their costs and 77% stated that UTPs reduced their revenues. Moreover, there could also be indirect effects along the supply chain in terms of SMEs, in particular, refraining from attempting a commercial relationship in the first place due to the risk of UTPs being imposed on them.

The new Common Agricultural Policy (CAP)⁸ and the new Common Fisheries Policy (CFP)⁹ strengthen the position of producers in the supply chain vis-à-vis downstream operators, notably by supporting the creation and development of producer organisations. The new single Common Market Organisation also includes elements which aim at reducing the bargaining power gap between farmers and other parties in the food supply chain in some selected sectors (milk, olive oil, beef and veal, arable crops). The new rules also provide Member States with the possibility to require compulsory written contracts in other agricultural sectors, subject to safeguards that ensure that such provisions do not impair the

⁴ Survey on Unfair Commercial Practices in Europe, March 2011, organised by Dedicated on behalf of CIAA (European association of the food / drink industry) and AIM (European Brands Association)

⁵ Report on the relations between manufacturers and retailers in the food sector, Comisión Nacional de la Competencia, October 2011

⁶ Indagine conoscitiva sul settore della GDO – IC43, August 2013

⁷ See also Commission Communication COM (2011) 78 final: Review of the Small Business Act in Europe, stating that '...SMEs often face unfair contractual terms and practices imposed by various players in the supply chain.'

⁸ Supporting measures for the creation and development of producer organisations exist under the new rural development programme, which can help producers face larger buyers.

⁹ The new Common Market Organisation for fisheries and aquaculture products (Regulation (EU) No 1379/2013) provides support to producers' organisation to improve the placing on the market of their products and their market position through production and marketing plans.

proper functioning of the internal market. The CAP reform, notably through the new single Common Market Organisation, includes elements which aim at reducing the bargaining power gap between farmers and other parties in the food supply chain.

A number of Member States have addressed UTPs at national level using many different approaches, some regulatory, others based on self-regulatory platforms among market participants. Where regulations do exist, they differ in terms of the nature, level and legal form of protection provided against UTPs.

The existence and harmfulness of UTPs in the food supply chain has also been acknowledged by stakeholders in the High Level Forum for a Better Functioning Food Supply Chain, set up by the Commission in 2010.¹⁰ Recognising the need to address the issue at European level, stakeholders set up a self-regulatory framework (the Supply Chain Initiative) which the Commission has welcomed and which after nine months has shown a good uptake among retail, wholesale and manufacturing companies and some SMEs. But certain stakeholders – namely farmers and the meat processing industry – have not have joined this framework at EU level. While farmers are represented in national platforms in a few Member States¹¹, only four farming operations have registered so far in the framework at EU level. Moreover, the framework only binds those companies that decided to adhere to it.

The result is that, today, there remains a wide divergence in the way UTP issues in food supply chains are addressed in the EU.

The potential benefits of reducing UTPs could be substantial, especially for SMEs and micro-enterprises as these are more likely to be subject to UTPs and their effects than large companies are. It should also be noted that UTPs applied within the EU could have direct or indirect effects on producers and companies outside the EU, including in developing countries.

In this context, this Communication aims at contributing to fair and sustainable commercial relationships and a level playing field for market participants in the food supply chain through helping to reduce the harmful effects and possible cross-border obstacles caused by UTPs, especially for SMEs.

3. PROBLEMS CAUSED BY UTPS

The possible repercussions of UTPs at EU level have not only raised concerns in the European Commission but also in the European Parliament. In January 2012, the Parliament adopted a resolution¹² which highlighted the European dimension of the imbalances in the food supply chain which can lead to unfair practices. This resolution identified a list of

¹⁰ Commission Decision of 30 July 2010 establishing the High Level Forum for a Better Functioning Food Supply Chain (2010/C 210/03)

¹¹ Belgium, Germany, the Netherlands, and Finland

¹² European Parliament Resolution on imbalances in the food supply chain of 19.01.2012

specific UTPs and called for them to be subject to specific regulation, supervision and sanctions.

In order to better understand the issue, the Commission published a Green Paper on UTPs in January 2013 to gather stakeholder views on the occurrence of UTPs in the food and non-food supply chain¹³, and to identify possible ways to address them. The results of the ensuing public consultation provided the following important insights.

1. While UTPs can, in principle, be present in any sector, stakeholder feedback to the Green Paper suggests that they are particularly problematic in the food supply chain.
2. The main categories of UTPs identified in the Green Paper and confirmed by a number of stakeholders can be described as follows:
 - a trading partner's retroactive misuse of unspecified, ambiguous or incomplete contract terms
 - a trading partner's excessive and unpredictable transfer of costs or risks to its counterparty
 - a trading partner's use of confidential information
 - the unfair termination or disruption of a commercial relationship.
3. Territorial supply constraints were also identified as a problematic practice. These constraints are sometimes imposed by multi-national suppliers on retailers and impede them from sourcing identical goods across borders or from a central location. However, territorial constraints are of a different nature than the UTPs categorised above and the Commission will therefore assess them separately.
4. The direct effects of the abovementioned UTPs, in particular when they are applied in an unpredictable way, can result in undue costs or lower-than-expected revenues for the trading partner in the weaker bargaining position. Unpredictable changes of contract terms may also lead to overproduction and result in unnecessary food waste. Being subject to UTPs, or even the prospect of being exposed to UTPs in the future, may impact the weaker trading partner's ability or willingness to fund investments. The Commission is also currently undertaking a study on choice and innovation in the retail sector. This should clarify the evolution and drivers for choice and innovation at overall market level. Moreover, the diverse regulatory environment that addresses UTPs at national level implies that SMEs — with their limited legal resources — are confronted with a complex situation regarding UTPs and the possible remedies. The resulting uncertainties may dissuade some companies, in particular SMEs, from entering new geographic markets or even from cross-border trade. This was illustrated by an EU-wide survey among farmers and primary producers in the agri-food market. 46% of the respondents to the survey

¹³ Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe COM(2013) 37, 31 January 2013

found that UTPs have a negative effect on access to new markets or cross border activities¹⁴.

4. THE DIVERSE LANDSCAPE OF MEASURES AGAINST UTPs IN THE EU

4.1. Fragmentation in addressing UTPs

To some extent, the current regulatory framework at EU level contains some rules aimed at addressing unfair practices in or beyond the food supply chain. Existing instruments, such as the above-mentioned reform of the CAP, competition law, the framework on marketing practices¹⁵, unfair contract terms in consumer contracts¹⁶, the proposed Directive on trade secrets¹⁷ and other cross-sectorial legislation can be useful in addressing UTPs in certain situations but do not, in most cases, apply to the specific UTPs mentioned above. The proposal for a Regulation on a Common European Sales Law¹⁸ prohibits certain unfair terms in business-to-business contracts which may provide useful clarity in sustainable long term relationships. However, the application of this law, once agreed by the co-legislators, would depend on a bilateral agreement between the trading parties concerned.

There is a lot of divergence in how UTPs are addressed at national level. Some Member States have adopted regulatory measures but a number of them have opted for self-regulatory approaches or have not taken specific action against UTPs in supply chains, relying instead on general principles. The Member States that have sought to tackle UTPs specifically in their regulation have either put in place specific business-to-business rules, have complemented their national competition law or extended the application of the Unfair Commercial Practices Directive¹⁹ to B2B relations. Some Member States that had initially addressed UTPs through voluntary approaches, have subsequently decided to address these practices through legislation.

This diversity of approaches implies that the extent and type of protection granted against UTPs, as well as potential enforcement mechanisms in place would depend on where the company with strong bargaining power and applying UTPs is situated. This could be problematic in a situation where multi-country procurement is increasing. Moreover, responses by public authorities to the Green Paper consultation reported isolated cases of ‘forum shopping’, i.e. a practice whereby the stronger contractual party unilaterally

¹⁴ Impact of Unfair Trading Practices in the European agri-food sector, April 2013, organised by Dedicated on behalf of COPA COGECA (European association of farmers and agri-cooperatives)

¹⁵ Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising

¹⁶ Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

¹⁷ Proposal for a Directive of the European Parliament and the Council on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure of 28 November 2013 COM(2013) 813 final

¹⁸ Proposal for a Regulation of the European Parliament and the Council on a Common European Sales Law of 11 October 2011 COM (2011) 635 final

¹⁹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market

determines in which Member State, and hence under which regulatory framework, the contract is applied in order to avoid the national frameworks with stricter measures against UTPs. This issue was explicitly raised by 5 Member States in the public consultation and during discussions in various stakeholder fora organised by the Commission.

4.2. Enforcement

Any party exposed to UTPs may in principle seek redress via litigation in court under provisions of general civil law against abusive contract clauses. However, some stakeholders especially SMEs have highlighted that litigation through courts is, in practice, often not an effective way of addressing UTPs. Firstly, litigation is generally costly and time consuming. Secondly, and perhaps more importantly, the weaker party in a commercial relationship in the food supply chain (in most cases an SME) often fears that initiating litigation may lead the stronger party to terminate the commercial relationship (the 'fear factor'). This can discourage parties that are subject to UTPs from taking legal action, which in turn can limit the deterrence factor for the trading party applying UTPs.

Against this background, some Member States have put in place other redress mechanisms to tackle UTPs in vertical supply chains. A number of Member States have designated an enforcement authority which is independent from the market players concerned, and some other Member States are currently discussing possible reforms in this direction.

In some cases, the national competition authority has been designated for the enforcement of rules against abusive behaviour towards economically dependent undertakings and/or abuse of a superior bargaining position. However, there are also examples of Member States having designated other existing authorities (e.g. authorities responsible for food-related issues or consumer protection) or having established new administrative authorities to enforce rules against UTPs. Several of these authorities have the power to conduct investigations and they typically accept confidential complaints.

In some other Member States a voluntary dispute resolution mechanism has been established by stakeholders to try to settle disputes out of court. In other cases, a 'mixed approach', consisting of voluntary schemes complemented with public enforcement, was retained.

Farmers and SME suppliers emphasise that the existence of an administrative authority with the power to launch investigations and to accept confidential complaints on alleged UTPs would be crucial to tackling the issue of the fear factor described above. Most of these stakeholders call for the establishment of an independent enforcement body at national level, because effective enforcement would be a key factor in reducing the occurrence of UTPs.

Other stakeholders considered that voluntary frameworks and self-regulatory solutions should be looked at first. In case such models should turn out not to effectively address UTPs, an independent authority could be envisaged.

4.3. The Supply Chain Initiative

The Supply Chain Initiative was developed in the context of the Commission's High Level Forum for a Better Functioning Food Supply Chain which is composed of national authorities and key stakeholder representatives at EU level from the supply and retail sides of the food sector. In November 2011, all market representatives involved in the Forum's working party on UTPs jointly agreed on a set of principles of good practice in vertical relationships in the food supply chain²⁰. These principles include: predictability of changes in contract terms; responsibility for own entrepreneurial risk; and justifiability of requests and charges.

In a second step, a voluntary framework for implementing the principles of good practice (the Supply Chain Initiative) was launched in September 2013²¹. Individual companies may join the Supply Chain Initiative once they have assessed their compliance with the principles of good practice. Individual disputes can, according to the framework and subject to certain conditions, be addressed by dispute resolution mechanisms, mediation and arbitration. To prevent UTPs, the implementation framework focuses on organisational requirements at company level, including training of staff and the ability to participate in the dispute resolution mechanisms defined in the framework. Breaches of these organisational requirements can lead to the concerned company being excluded from the initiative. The framework commits its members to provide assurance that the weaker parties using the dispute resolution mechanisms are not subject to commercial retaliation.

The initiative is managed by a governance group which is composed of different stakeholder associations representing operators in the food supply chain. To date, nine months after the launch, 98 retail, wholesale and manufacturing groups and companies have registered, representing 736 operating companies across all EU Member States. The number of SMEs registering is increasing. However, not all relevant stakeholder associations have signed up to the framework. Notably, representatives of primary producers (i.e. farmers) and the meat processing industry have refrained from participating in the scheme's governance group at EU level. Although they agree with the principles, these stakeholders are concerned about the lack of independent and effective enforcement within the Supply Chain Initiative. Some of them do however participate at national level.

The concerned stakeholders do not consider that the Supply Chain Initiative sufficiently addresses the aforementioned fear factor for economically dependent trading parties, notably because a company exposed to UTPs has no possibility to submit confidential complaints. The voluntary initiative provides for confidentiality only in the case of aggregated disputes through the possibility for stakeholder associations to require an interpretation of the principles from the governance group, and access to dispute resolution mechanisms requires the agreement of both contractual parties. Nor does the initiative provide for investigations or sanctions if a company breaches the principles of good practices.

²⁰ <http://www.supplychaininitiative.eu>

²¹ Id.

It should be recognised that there are limits to how far a self-regulatory initiative can go in providing for a dispute resolution mechanism. Hence, supplementing the Supply Chain Initiative with independent enforcement measures, in those Member States where such measures currently do not exist, would increase the effectiveness of the initiative and would appear to remove the main reason for which certain stakeholder groups have not joined the framework of the Supply Chain Initiative.

In this context it should be noted that the European Parliament's own-initiative report on retail related matters adopted in December 2013 supported the principles and framework of the Supply Chain Initiative, but at the same time invited the Commission to examine the need and feasibility of independent enforcement to address the aforementioned fear factor of small players in the supply chain.²²

5. AN EFFECTIVE STRATEGY AGAINST UTPS

5.1. Comprehensive market take-up of the Supply Chain Initiative

Voluntary codes of conduct are an important cornerstone in creating an environment where undertakings deal with each other in a fair and sustainable way. They can efficiently help to set up the right mind-sets, negotiation approaches and resolution mechanisms in organisations, thereby reducing or ideally eliminating unfair trading practices. Moreover, voluntary codes can provide for dispute resolution procedures between two parties in a vertical relationship, which can often help avoid lengthy and cumbersome legal action. The Supply Chain Initiative therefore constitutes a very important step in addressing UTPs. Setting up national platforms under the Supply Chain Initiative can further strengthen its positive effects.

Suggested way forward:

- (1) The Commission encourages all undertakings and relevant organisations in the food supply chain to sign up to a voluntary initiative addressing UTPs, in particular the Supply Chain Initiative, in order to show their commitment, build trust in the food supply chain and achieve the critical mass and broad coverage such schemes require to be effective.
- (2) The Commission encourages undertakings in the food supply chain to actively promote the Supply Chain Initiative to their business partners and inform them of their rights and obligations. They should by default inform each of their trading partners once they have joined the Supply Chain Initiative and should encourage their trading partners to do the same.
- (3) The governance group of the Supply Chain Initiative should continue and enhance its efforts to build more awareness among SMEs and find efficient ways for them to join the initiative. SMEs are the key beneficiaries of such schemes, so it is crucial that their participation is maximised.

²² European Parliament resolution of 11 December 2013 on the European Retail Action Plan for the benefit of all actors

- (4) The governance group of the Supply Chain Initiative should continue its efforts to drive and facilitate the creation of national platforms in each EU Member State.
- (5) The Commission will continue to facilitate the exchange of information and discussion between key stakeholder groups and to closely engage with the initiative's governance group to maximise its reach, in particular towards SMEs, and will continue to closely monitor the development of the initiative and encourage the Supply Chain Initiative to work on reinforcement of the dispute mechanism and sanctioning systems.

5.2. Principles of good practice

Those Member States that have already tackled UTPs at national level have chosen different approaches to do so, including different definitions of unfair practices. Such national definitions range from very broad descriptions to detailed lists of prohibited practices. On the other hand, some Member States have not taken any specific action against UTPs at all. In order to address UTPs effectively throughout the EU, and particularly across borders, a common understanding for rules addressing UTPs would be beneficial.

The Supply Chain Initiative does not include a precise definition of UTPs, but provides a list of principles of good practices and examples of fair and unfair practices. These principles have been jointly agreed by all relevant EU stakeholder associations in the vertical food supply chain in the framework of the High Level Forum.

Therefore, they represent a useful basis for identifying the unfair practices that could be addressed in potential initiatives on UTPs. The identification of UTPs in turn allows the definition of principles to address them. It is recalled that in applying such principles economic actors must also ensure that they comply with all applicable rules, including national and/or European competition law, as relevant.

The principles defined in the High Level Forum and endorsed by Supply Chain Initiative are as follows:

- (a) **Written agreements:** Agreements should be in writing, unless impracticable or where oral agreements are mutually acceptable and convenient. They should be clear and transparent, and cover as many relevant and foreseeable elements as possible, including rights and procedures of termination.
- (b) **Predictability:** Unilateral changes to contract terms shall not take place unless this possibility and its circumstances and conditions have been agreed in advance. The agreements should outline the process for each party to discuss with the other any changes necessary for the implementation of the agreement or due to unforeseeable circumstances, as provided in the agreement.
- (c) **Compliance:** Agreements must be complied with.
- (d) **Information:** Where information is exchanged, this shall be done in strict compliance with competition and other applicable laws, and the parties should take reasonable care to ensure that the information supplied is correct and not misleading.

- (e) Confidentiality: Confidentiality of information must be respected unless the information is already public or has been independently obtained by the receiving party lawfully and in good faith. Confidential information shall be used by the recipient party only for the purpose for which it was communicated.
- (f) Responsibility for Risk: All contracting parties in the supply chain should bear their own appropriate entrepreneurial risks.
- (g) Justifiable request: A contracting party shall not apply threats in order to obtain an unjustified advantage or to transfer an unjustified cost.

Suggested way forward:

- (6) The Commission encourages Member States to examine whether their current national regulatory framework is appropriate to address UTPs, taking into account best practice in other Member States. Member States should also consider possible other effects of UTPs, such as increased food waste. For this purpose, Member States are invited to assess whether their frameworks could rely on a list of practices or a general provision that allows for addressing possible breaches of the aforementioned principles.
- (7) In addition, Member States should encourage undertakings on their territory to join voluntary codes of conducts, both at national and EU level.
- (8) The Commission will continue to support the exchange of best practices between Member States, e.g. by organising workshops with experts from national administrations.

5.3. Ensuring effective enforcement at national level

In order to ensure a credible deterrence factor against the use of UTPs, appropriate enforcement is needed.

If the weaker party in a commercial relationship is economically dependent on its stronger trading party, it may refrain from asking redress for a UTP through court litigation or voluntary resolution mechanisms. Situations of economic dependency may occur. For example, a study undertaken by the Spanish Competition Commission²³ shows that on the average almost 40% of the revenues of suppliers in the grocery supply chain was generated by only three retailers in 2010. In extreme cases, the situation of economic dependency means that the economic viability of a buying or selling party depends on individual commercial relationships. In cases where UTPs are not denounced due to the "fear factor" of losing the contractual relation, frameworks against UTPs can be significantly strengthened by the weaker party's possibility to have recourse to an independent authority or body with enforcement powers and the possibility to protect the confidentiality of the complainant.

Suggested way forward:

²³ Report on the relations between manufacturers and retailers in the food sector, Comision Nacional de la Competencia, October 2011

- (9) The Commission invites Member States to assess the effectiveness and credibility of their available mechanisms for the enforcement of rules against UTPs. Member States are invited to consider whether further procedural or organisational measures may be appropriate, drawing on best practice in other Member States. Particular attention should be given to the capacity to preserve the confidentiality of individual companies submitting complaints and the possibility to conduct investigations.
- (10) National enforcement mechanisms, which could include dedicated bodies, should be enabled to effectively cooperate at EU level in order to address UTPs applied across borders and avoid possible regulatory arbitrage.
- (11) The Commission will continue to support the coordination between Member States by facilitating the exchange of information between the national enforcement mechanisms.
- (12) In developing and applying enforcement measures, Member States should act proportionally, bearing in mind any impact for stakeholder and consumer welfare. In particular, they should apply the same enforcement criteria and practices to domestic and foreign market operators.

5.4. The potential benefits and costs of reducing UTPs

The potential benefits of eliminating or at least reducing UTPs may be substantial. When attempting to identify such benefits and costs, it appears that effects can arise at different levels. In individual bilateral relationships, the potential benefits of addressing UTPs are rather obvious.

UTPs often have a direct negative financial impact on the companies to which they are applied. Moreover, unpredictable behaviour by trading parties abusing their superior bargaining position could lead to economic efficiency losses, for example lower investments or over/underproduction due to unpredictability and increased transaction costs linked to the risk of unilateral and unexpected changes of the commercial terms. Hence, there could be significant gains from making commercial relationships more sustainable in the food supply chain. Possibly, this could extend beyond the direct benefits and financial relief for companies previously subject to UTPs, i.e. in most cases SMEs. The mechanisms suggested in this Communication could also mitigate the impacts of UTPs on weaker parties in third countries, including in developing countries.

For the market as a whole, the assessment of the effects of UTPs and the overall welfare impacts of their possible reduction or elimination is more complex. As regards the potential impact on consumers, there is no evidence suggesting a negative impact on consumer prices²⁴ in those Member States where UTPs are regulated and where action against abuses at business-to-business level is taken by public bodies. Where UTPs could have negative effects on product choice, availability and quality, a reduction or an elimination of these practices can be expected to be beneficial for consumers.

²⁴ As regards general price developments, the European Food Prices Monitoring Tool is one useful instrument: http://ec.europa.eu/enterprise/sectors/food/competitiveness/prices_monitoring_en.htm

In terms of cost impact, there would be no additional costs for businesses already adhering to or planning to adhere to the Supply Chain Initiative or similar national frameworks. The suggested approach would not imply any costs for Member States where the current framework meets the criteria described above. In those Member States that would choose to adjust their framework in line with the above, the enforcement costs would depend on whether an existing mechanism is used for these purposes or whether new procedural or organisational arrangements are put in place.

6. CONCLUSIONS

Practices between market participants in the food supply chain are in most cases fair and sustainable for both parties. Nevertheless, stakeholders throughout the supply chain agree that UTPs do exist and especially SMEs make the case that they occur relatively frequently and have negative effects on their financial viability and capability to conduct business. The Green Paper consultation, accompanying studies and some of the most recent national initiatives suggest that a ‘mixed approach’, i.e. voluntary schemes complemented with credible and effective enforcement based on comparable principles, may be appropriate in addressing UTPs. In the presence of a credible deterrence factor, voluntary initiatives such as the Supply Chain Initiative could be the primary way of resolving conflicts between trading parties, while public enforcement or court litigation would only be resorted to if the more efficient and quicker alternative of a bilateral solution is not viable. Thus, the way forward suggested in this Communication would not only complement but also strengthen the Supply Chain Initiative by making it more attractive for those stakeholder groups that have so far refrained from joining, due to their concerns about a lack of effective enforcement.

In order to address the issues around UTPs, this Communication suggests a combination of voluntary and regulatory frameworks, identifying UTPs and principles to address them, taking into account different national circumstances and approaches. While some Member States have adopted specific legislation, others rely on general principles of law and/or on self-regulatory initiatives. In considering whether further measures are needed, in line with this Communication and taking into account best practice, Member States should act proportionally and take account of any impact on stakeholders and consumer welfare. At the level of the Commission, the proposed actions do not have any budgetary impact over and above of what is already foreseen for the years to come in the official programming.

The Commission will monitor and assess the progress made by evaluating (i) the actual impact of the Supply Chain Initiative and its national platforms²⁵ and (ii) the enforcement mechanisms set up by Member States to increase all parties' trust and confidence in the proper functioning of a sustainable food supply chain.

²⁵ In this context, the Commission will consider prolonging the mandate of the High Level Forum for a Better Functioning of the Food Supply Chain to follow the implementation of the actions set out in this Communication through a transparent dialogue with private stakeholders and national authorities.

The Commission will present a report to the Council and the European Parliament at the end of 2015. In light of this report, the Commission will decide whether further action should be taken at EU level to address the described issues.