



Council of the
European Union

Brussels, 12 December 2016
(OR. en)

15508/16

AGRI 676
AGRILEG 197

OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council

To: Delegations

Subject: Strengthening farmers' position in the food supply chain and tackling unfair trading practices
- Council conclusions (12 December 2016)

Delegations will find in the annex the Council conclusions on:

Strengthening farmers' position in the food supply chain and tackling unfair trading practices,

adopted by the Council at its 3509th meeting held on 12 December 2016.

Council conclusions on Strengthening farmers' position in the food supply chain and tackling unfair trading practices

THE COUNCIL OF THE EUROPEAN UNION

1. HAVING REGARD to the Commission January 2016 report on "Unfair business-to-business trading practices in the food supply chain", the June 2016 resolution of the European Parliament on unfair trading practices, the report of the European Economic and Social Committee of 30 September 2016 on unfair business-to-business trading practices in the food supply chain, the outcome of the political Forum "Rethinking the food supply chain" held in Kaunas on 31 March 2016 and of the International Experts' Conference on "Strengthening of the farmers' position in the food supply chain" which took place in Bratislava on 30 June-1 July 2016, President Juncker's 2016 State of the Union Speech as well as the report of the Agricultural Markets Task Force presented to the Council on 15 November 2016. RECALLING the attention the issue of strengthening farmers' position in the food supply chain has regularly gained in the work of the Council.
2. CONSIDERING the sustainability of the food supply chain to be of strategic importance for the European Union and its proper functioning essential for the benefit of European consumers and farmers.
3. EMPHASIZING that, in order to achieve a well-functioning food supply chain as well as economic growth and employment, it is paramount that relations among all actors of the chain are balanced, that added value is fairly distributed among them and that consumers can make their choices on an informed basis. HIGHLIGHTING the importance of facilitating access to local products.

4. STRESSING that the long-term sustainability and competitiveness of farming and agri-food businesses in the EU have to be taken into account in the policy considerations regarding the current Common Agricultural Policy as well as the future CAP post 2020.

Strengthening farmers' position in the food supply chain

5. EXPRESSES CONCERN that, although the situation varies across the EU, farmers remain the most vulnerable link in the food supply chain despite multiple efforts to change this, and that this fact is especially obvious in times of crisis in the agricultural markets.
6. NOTES that the risks inherent to the agri-food business are not evenly distributed along the food chain. ACKNOWLEDGES that farmers often bear most of the risks in the food chain and that risks should be more fairly shared among the different actors of the chain.
7. NOTES that, in order to maintain and improve the viability of farms, their competitiveness and their resilience, it is necessary to explore risk management tools at EU level, complementary to and coordinated with Member States national strategies, including their application at regional level.
8. NOTES that properly functioning futures markets could offer an important risk management tool for farmers and other actors of the supply chain in times of increased price volatility by sharing the risk and giving farmers stability for forward planning, and STRESSES the importance of training and technical advice to facilitate participation in these markets.
9. SUPPORTS further development and dissemination of standard contracts to be used by the operators in the supply chain voluntarily, as well as sharing and promoting best practices concerning contractualization.

10. WELCOMES the initiatives taken by the European Commission aimed at improving the farmers' position in the food supply chain, in particular the establishment of the High Level Forum for a Better Functioning Food Supply Chain, the afore-mentioned Agricultural Markets Task Force and measures contributing to the development of producer organizations, including cooperatives.
11. ACKNOWLEDGES that the current Common Agricultural Policy provides some instruments for the strengthening of the position of farmers. However, their efficiency seems to differ significantly across Member States and there is potential to improve some of these tools, such as further promoting organization of and cooperation between farmers across the EU, supporting producers organizations and vertical cooperation within the food chain in inter-branch organizations, as well as increasing legal clarity for a better use of the agriculture-specific derogations from competition law by producers organizations, including cooperatives, while respecting existing cooperative structures.
12. NOTES that, in order to secure a better functioning food supply chain, it is crucial to reduce information asymmetry and increase market transparency, including at consumers level, in particular as regards timely information on prices or margins at every level of the food supply chain, where feasible, while minimizing administrative burden and costs.
13. WELCOMES the formation of monitoring platforms such as the Milk Market Observatory and Meat Market Observatory, and the work done by the European Food Prices Monitoring Tool, while POINTING OUT that extending such monitoring to all levels of the chain, and not only at farm gate, on a selected number of products, commodities and inputs would bring a clear added value in helping farmers to adapt properly to market signals, while respecting the principles of confidentiality, fair competition and keeping administrative costs to the minimum.
14. ENCOURAGES observatories at EU and national level to cooperate and exchange data in order to enhance market transparency and better assist farmers in making informed decisions.

Tackling Unfair Trading Practices

15. EXPRESSES CONCERN that, although the situation varies across Member States, due to their weaker bargaining position farmers are often subject to practices that grossly deviate from good commercial conduct and are contrary to good faith and fair dealing ("unfair trading practices", hereinafter "UTPs").
16. NOTES that examples of such practices include, but are not limited to, unduly late payments, unfair shifting of costs or risks, unilateral and/or retroactive changes to contracts and unfair termination of contract.
17. TAKES NOTE of the fact that twenty Member States have already adopted national legislations and initiatives to combat UTPs, and that more are planning to do so in the near future.
18. ACKNOWLEDGES the valuable contribution of voluntary initiatives, in particular the Supply Chain Initiative, to the cultural change and exchange of best practices that is needed to deal with UTPs, and therefore STRESSES the importance of continuing, developing and strengthening these initiatives. At the same time, IS AWARE of their limitations to secure effective deterrence against such practices and TAKES NOTE they could be complemented, inter alia, by a regulatory approach at EU level.
19. UNDERLINES the importance of a level-playing field for all actors in the food supply chain across the EU that could be achieved by a common legislative framework on UTPs and RECALLS the strong support of European Parliament for such a regulatory approach, as expressed in its June 2016 resolution.
20. TAKES NOTE OF the underlying principle in the report of the Agricultural Markets Task Force in favour of a baseline approach which does not undermine functioning systems in Member States, while at the same time addressing the issue of effective enforcement.

21. HIGHLIGHTS the importance of avoiding red tape and thus CALLS for any regulatory EU framework to be streamlined, easily implementable and cost-effective. While respecting the principle of subsidiarity and having regard to different Member States' legal systems such a framework, if necessary, should outline a baseline definition for UTPs and foresee the possibility of anonymous complaints to tackle the "fear factor", an independent investigation body and an effective system of sanctions.

Follow up

22. CALLS ON the Commission to take account of these conclusions in its forthcoming action to strengthen the position of the farmers in the food supply chain.

23. In particular, CALLS on the Commission to undertake, in a timely manner, an impact assessment with a view to proposing an EU legislative framework or other, non-legislative measures to address UTPs in line with these conclusions, while respecting the principle of subsidiarity and safeguarding well-functioning national systems as well as already existing national statutory protection. When preparing its impact assessment, INVITES the Commission to examine the implementation and functioning of national systems in the Member States and to take account of elements common to those systems. Any EU framework should be complementary to existing voluntary initiatives, both at EU and Member States' level.

24. CALLS on the Commission to address, in a reasonable timeframe and in a coordinated way, the issue of lack of transparency and information asymmetry in all levels of the food supply chain, where possible, including at consumers level.

25. INVITES the Commission to provide legal clarity for a better understanding and use of agriculture-specific derogations from competition law by producer organizations, including cooperatives, while respecting existing cooperative structures.

26. ENCOURAGES Member States to cooperate through exchanges of best practices as regards existing national regulatory systems on UTPs and producer organizations.

27. COMMITS itself to assessing, in the first half of 2018 and on the basis of a report from the Commission, progress made regarding fighting UTPs and strengthening the farmers' position in the food supply chain.
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