

12.12.2019

DAFM Public Consultation on the transposition of the UTP Directive (Directive (EU) 2019/633)

Submission by the Irish Co-operative Organisation Society (ICOS)

ICOS welcomes the introduction of this EU Directive tackling Unfair Trading Practices in business-to-business relations in the food supply chain. Farmer-owned co-operatives play an important part in this supply chain; They integrate the roles of the producer, processor, marketer to add value and increase the economic weight of farmers. ICOS therefore supports action being taken which will further protect farmers and their co-operatives and create a fairer and more equitable food supply chain.

As such, we recommend the following elements be taken account of within the transposition and implementation of this Directive in Ireland:

Co-operative Democratic Decision Making Must be Protected

The implementation of this directive must protect co-operatives and respect their functioning, as farmer-owned co-operatives are themselves the most effective way of increasing the bargaining power of farmers, which is the ultimate goal of the directive. Therefore, the unique relationship between a co-operative and its members, which is not simply one of buyer and supplier, but one of member, owner and decision-maker, must be accounted for.

Changes to the Terms of Supply Agreements (Article 3.1.C)

The directive prohibits unilateral changes to supply agreements by buyers regarding the frequency, method, place, timing or volume of the supply or delivery of goods, the quality standards, terms of payment or the prices.

In the case where the supply agreement is between a co-operative and a supplier, the role of democratically elected supplier representatives must be recognised in this regard, as they are officially mandated to agree to specific contract changes including on quality standards and to decide on prices, on behalf of all suppliers.

Five-Week Delivery Periods (Article 3.1.A)

The clarification provided by the European Commission (in its correspondence to the DAFM on the 16.10.2019) with regard to delivery periods longer than one month, in relation to Article 3.1.A on payment delays, must be taken into account within the implementation of the Directive. This is necessary in order to allow for the continuation of five-week delivery periods operated by certain dairy co-operatives.

This clarification allows for delivery periods longer than one month, provided that payment periods are calculated from a presumed delivery period of one month. This means that suppliers can continue to deliver over a five-week period, i.e. 35 days, and the buyer (the co-operative) has the remaining 25 days, or the balance of the 30 days, to pay.

The Scope of the Directive Must be Extended

In terms of its transposition in Ireland, ICOS believes that the opportunity must be used to extend the scope of the directive to further protect farmers and their co-operatives and address ongoing unfair trading practices which routinely exist.

The legislation should apply to and protect all businesses

Unfair trading practices are unfair and damaging to all businesses, no matter their size. If a practice is recognised within the directive as being unfair and contrary to good commercial conduct, it should be prohibited in all cases.

90% of Irish co-operatives are SMEs. However, the remaining 10% represent the vast majority of the Irish dairy production pool. Therefore, in order to ensure protection for the vast majority of Irish dairy farmers, it is necessary to include non-SME suppliers within the scope of the protection offered in the directive. This is also necessary to ensure the overall effectiveness of the directive, prevent competition distortions and create a truly level playing field, as well as to avoid disadvantaging SME suppliers.

Stocking, displaying and listing fees should be prohibited entirely

Under the directive a number of practices have been allowed so long as they are included within supply contracts.

These include the payment by the supplier of stocking and displaying fees. These fees, often referred to as “Hello Money” are currently prohibited entirely under the Irish Grocery Goods Regulation and must continue to be so under the new rules, in order to not reintroduce harmful practices into the food supply chain, which reflect the uneven bargaining power held by retailers as the “gatekeepers” to consumers.

This exclusion should also be extended to listing fees which are equally damaging and one-sided on suppliers and which continue to grow, as stocking and displaying fees are prohibited.

Additional Unfair Trading Practices Which Must be Prohibited under the Legislation:

- **The unilateral imposition of quality standards that are not based on current legislation, quality schemes, science or good practice which have a distorting effect on free trade:** ICOS has long highlighted the unfair trading practices Irish farmers are subject to by meat processors in this country, and in particular the penalties imposed by the so-called “Quality Payment System” on more than four movements between farms prior to slaughter or movement within the last 70 days before slaughter. These issues are not addressed within the list of UTPs in the EU directive. We call for the list of prohibited UTPs to therefore be extended to cover these practices which are subverting the free trade of factory fit cattle in Ireland, stifling competition and are therefore negatively impacting prices for the entire livestock industry.
- **Below-Cost Selling:** As under the EGalim Law introduced in France in 2018, it should be compulsory for products to be sold to retailers at a minimum of 10% above the loss selling

threshold. This is necessary to protect suppliers from aggressive negotiation by retailers and would provide an assurance for a sustainable income for farmers.

- **Excessive Promotional Offers:** Again, using the example set by the EGalim law in France, excessive promotional offers must be prohibited, through the capping of promotions at 34% of the retail price of a given product or an equivalent increase in the quantity sold. This would prohibit offers such as “buy one, get one free” or “2 for the price of 1”, which devalue agri-food products in the eyes of the consumer.

Enforcement Authority

A **new independent enforcement authority** should be appointed to oversee the implementation of the directive and ensure effective regulation of the sector on these issues.

The current Irish Grocery Goods Regulation is ineffective because its enforcement is the responsibility of the Competition and Consumer Protection Commission (CCPC), which has another, and at times contradictory, remit with regard to its role in the protection of consumers. The need for a new dedicated regulator to carry out the objectives of the new EU Directive has been highlighted by the CCPC itself and we would support this call, in order to ensure the maximum effectiveness of the directive.

The authority should be led by a high-profile political appointment, through the **establishment of an Ombudsman office or equivalent** with responsibility of investigating alleged breaches of the directive and proactively promoting fair trading and fair pricing in the food supply chain. This would address the ongoing issue of how to tackle UTPs, without suppliers risking commercial retaliation. To make it clear that the provisions of the directive have a high level of enforcement, the findings by this Ombudsman should be binding.

The Irish Co-operative Organisation Society (ICOS) is a co-operative umbrella organisation that serves and promotes commercial co-operative businesses and enterprises, across multiple sections of the Irish economy. We represent 130 co-operatives, which include multipurpose dairy co-ops, livestock sector co-ops as well as food, fishing and beverage co-ops. Collectively, they have over 150,000 individual members, employ over 12,000 people in Ireland (a further 24,000 abroad) and have a combined turnover of €15 billion.