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Freshfel Europe responds to draft report on the Proposal for a Directive on Unfair Trading Practices in business-to-business relationships in the food supply chain

The fruit and vegetable supply chain is defined by specific characteristics: there is (sometimes high) perishability and seasonality, a very short commercial cycle; a myriad of distribution channels, huge diversity across categories and within single product lines; a fragmented production base, and a consolidated retail sector and regular fluctuations across supply and demand, which can lead to price volatility. Given this fluctuation and market requirements, daily adjustments and flexibility in commercial practices are often required, alongside the overall programming of seasons which typically guides the well-established and long-term relationships between different operators across the chain. To summarise, the fruit and vegetable supply chain has some features which sets it apart from other supply chains, just like other chains also have their own peculiarities. Therefore, the one-size-fits-all approach of both the Commission proposal, and of the majority of the European Parliament's amendments will not obtain the results it sets out to achieve.

- **Producer Organisations and their role in the supply chain:** When closely following the discussions regarding Unfair Trading Practices (UTP) in the food supply chain, we worry that the debate concentrates on one or a few supply chains in particular. For example, amendment 207 proposes to include transactions between Producer Organisations (PO) or cooperatives and their members in the scope of the proposal, which is justified on the basis of a specific situation in the dairy sector. Whilst not denying that certain chains are experiencing specific challenges, these structural problems do rarely occur in the fruit and vegetable sector. The role, rights, and obligations of POs in the fruit and vegetable supply chain are already regulated in Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products. The PO is a way for growers to gain bargaining power, not to lose it.
- **Obligation of written contracts:** Written contracts in the fruit and vegetable sector occur. However, to make them mandatory would imply to consequences which might be to the detriment of the supplier:
 - It would place a huge administrative burden on the small growers. The bigger companies have legal and administrative services that are able to deal with this extra workload, the smaller companies don't.
 - In some instances, written contracts are already in place. And even though this seems to work well, the current flexibility which benefit both partners, will be jeopardised with the introduction of mandatory written contracts. As the fruit and vegetable sector works with (highly) perishable products, and production and consumption of fruit and vegetables depend on many factors, such as the weather, flexibility in the agreements between supplier and buyer is in the majority of cases seen as a benefit. When obliging both parties to enter into a written agreement, they will lose this flexibility, meaning that the stated quantity and price will have to be delivered, regardless of adverse circumstances. It will also entail more food loss/waste as it will not be possible anymore to adjust the quantities to the volatile circumstances.
- **Proof of quality:** It will be a challenge for the authorities to determine the responsibility for quality issues and wastage, especially given the complexity of the fresh produce supply chain. In implementing this legislation, this reality needs to be reflected. Therefore, the onus must remain on the supplier to prove the produce was of marketable quality and adhered to agreed specifications on arrival at the buyer's premises.

On the other hand, we laud the European Parliament for:

- **Proposing a definition of perishability.** However, two caveats are necessary:
 - First, the definition needs to be clear and unambiguous. Within the fruit and vegetable supply chain, there is huge diversification between the different categories in terms of perishability between e.g. a couple of days for berries and lettuce, to months for e.g. kiwi and apple. The last category needs scale marketing to cover the full season. Therefore, a definition linked to the product's microbiological instability when not kept at appropriate storage temperature or conditions would be appropriate, such as proposed in [amendment 286](#).
 - Second, the notion of 'perishability' varies depending on the point of view. A product can be sold as fresh, but, contrary to first intention, pass through the chain to be frozen, canned, or (minimally) processed. In that case, from the point of view of the seller the product is fresh and perishable, but different from the point of view of the buyer, the product might not be perishable at all.
- **Making a clear statement regarding the location for lodging a complaint.** The grower, the principle target of this proposal, should have the possibility to lodge a complaint in his own Member State, in his own language.

In general, the legislation should consider the complexity of a complete supply chain, including traders and wholesalers, not just by focussing on the simplified producer-processor-retailer relation. Concretely, the administrative burden placed on suppliers and trading companies arising from this proposal should be minimised. This could be achieved by having a consistent approach throughout the Union, by harmonising the implementation of this proposal. This will promote a more thorough understanding of the trading practices required, it will ease the administrative burden for companies operating in multiple states, and it will ensure that operators in Member States applying more lenient fines do not secure an advantage over those based in countries with more stringent laws in place.

Freshfel Europe, the European Fresh Produce Association, represents the fresh fruit and vegetable supply chain in the European Union and is registered in the transparency register under the reference: 1637225479-02. We incorporate more than 150 direct members and associated members, including companies and national associations of producers, shippers, exporters, importers, distributors, retailers, and their service providers. Through the membership of national associations, we have a wide, representative outreach of the EU fruit and vegetable production and trade.