

Proposal for a Directive on unfair trading practices in the food supply chain

Position of the contract catering industry for Trilogue negotiations

In view of ongoing Trilogue negotiations, FoodServiceEurope urges negotiators to consider the **specificities of the contract catering sector and its unique position in the food supply chain**. The contract catering industry supports the fostering of fair contractual relations amongst all actors in the supply chain as essential to provide high-quality, safe, and affordable food to consumers. However, initiatives at EU level must remain balanced and proportionate to achieve the overall objective of the proposal, that is, to strengthen the position of farmers in the food supply chain. We thus call EU institutions to incorporate the following elements in the final text:

(i) Where the buyer is operating a social food service, operators in the food supply chain should retain the possibility to agree on longer payment terms

- The prohibition for buyers to agree with their suppliers on payment terms of more than 30 days for perishable products would be disproportionately burdensome for contract catering operators, who do not enjoy equivalent protection in respect of their clients. The Directive in fact only applies to the sale of food products and does not cover food services, despite the fact contract catering services are provided in a Business-to-Business context.
- Clients, especially public-sector entities, often operate on much longer payment terms and rarely on 30 days. This means operators in the contract catering sector would be unfairly squeezed between their buyers, often public authorities outsourcing catering services, and their suppliers.
- The AGRI report aggravates the situation by also preventing parties to expressly agree on payment periods for non-perishable foods that are longer than 60 calendar days. It is our understanding non-perishable products do not require at EU level the additional protection being foreseen. The protection provided by Directive 2011/7/EU should be sufficient in that it already protects creditors against grossly unfair extensions of payment terms.
- Several national legislations considered as best practice such as in the UK, Spain and Portugal either exclude or provide specific exceptions for our sector. A similar approach should be followed at EU level with regard to payment terms and a proposed wording is submitted below.

(ii) FoodServiceEurope strongly supports the explicit inclusion of public authorities under the scope of the Directive

- Public authorities often need to ensure food services for example in schools, hospitals and prisons either by outsourcing these services to private operators or providing the service directly themselves through “in house” catering entities, thus effectively competing with private companies in the provision of such services. In these circumstances, public authorities are also purchasers of food and engage in commercial relationships with other actors in the food supply chain, such as farmers, manufacturers, wholesalers or importers.

- However, from the text of the proposal and the accompanying impact assessment it is unclear whether the definition of buyer may encompass also public bodies that directly procure food products using in-house resources.
- It is therefore very much welcoming that the AGRI Report expressly includes a mention to public authorities being covered under the provision on payment terms foreseen in Article 3 (1) (a), as proposed in amendment 43.
- The fact that an explicit mention is included under the late payment provision alone, however, could raise the question of whether they would be covered by the other provisions where no such mention is included. Therefore, FoodServiceEurope urges negotiators to clarify that public bodies are covered by the entire scope of the Directive. This could be achieved by including such a mention in the recitals.

(iii) FoodServiceEurope strongly supports the clearer definition of perishable agricultural and food products being put forward by both the European Parliament and the Council

- For the proposal to reflect the legislator's intent, the definition of perishable food products needs to be adjusted so it more clearly applies to fresh produce alone.
- To that end the wording being put forward by the European Parliament and Council is very much welcomed in that it clarifies the concept applies only to food products with a shelf-life not exceeding 30 days or otherwise intended to be supplied fresh to the consumer.
- FoodServiceEurope therefore urges negotiators to maintain such amendments and ensure the definition is unambiguous and clear.

Please find below additional details on the specificity of the contract catering sector that justify our position above and the proposed wording for Article 3 (1) (a) that is suggested at the bottom:

Contract catering has a unique place in the food supply chain, different from commercial restaurants, hotels and retailers in general

- Contract catering encompasses food and ancillary services provided to people working or living in communities – private and public undertakings, schools, universities, hospitals, retirement homes, prisons – under the terms of a contract with the client communities. It is therefore characterised by a three-party relationship between the contract catering operator, the client organisation that outsources the service and agrees the contractual terms and the final consumer to which the service is provided.
- The terms in which the services are provided will depend on different types of contracts. In most cases meals are delivered to the end consumer at a subsidised social price. For example, meals provided to students in schools are often subsidized by the public authorities and the final consumer does not pay the price in full. Payment of the full price will thus be made by the client organisations under the terms of the agreed contract and at a moment that is delayed vis-à-vis the moment where the service is provided.
- It is important to note that contractual relationships between contract caterers and their business partners, including farmers and SMEs, have never been considered problematic in the longstanding

debate on unfair trading practices in the food supply chain at EU level. The report of the Agricultural Markets Taskforce, the public consultation and the impact assessment accompanying the proposal, do not provide any evidence that unfair trading practices occur between contract catering companies and their suppliers.

- In addition, **several national legislations considered as best practice such as in the UK, Spain and Portugal either exclude or provide specific exceptions for our sector.**

Contract catering operators already face significant cash flow challenges that would be exacerbated by payment provisions in the draft Directive

- Notwithstanding the requirements of Directive 2011/7/EU on combating late payments in commercial transactions, contract catering companies continue to be subjected to late payments in particular by national and local public authorities. The Commission's report, published in 2016, on the implementation of the late payment directive highlighted that public entities in more than half of all Member States do not respect the deadline imposed by law, while most companies refrain from exercising their rights for fear of damaging their commercial relationships.
- In some Member States, payment terms from public authorities can reach up to 200 days, creating serious burdens in terms of cash flow for catering companies which must pay suppliers in time. In addition, this needs to be done without compromising the quality of the service and the meals provided to the final users, who often belong to vulnerable groups, such as children in schools, the elderly in retirement homes, patients' in hospitals and people in prisons. The option of terminating a service provision for undue late payments is thus in many cases not even available to the companies that may be bound by public service obligations.
- The proposal for a Directive would no longer allow for longer payment terms to be expressly agreed through fair contractual arrangements, thus preventing operators in the supply chain from addressing the concrete circumstances of each contract. In addition, it creates an asymmetry in terms of rights and obligations for our sector as the proposal does not cover the relationships between contract catering operators and their client organizations, even if the suppliers are SMEs. This is the case because the scope of the proposal is limited to the sale of food products and does not cover food services. The extension of the scope to cover food services, while ideally sought, would likely fall outside the remit of the legal basis under which the Directive is being adopted.
- Contract catering operators would therefore be increasingly squeezed between the terms of payment imposed on them by their clients and the terms of payment they would be bound to respect towards their suppliers.
- **Furthermore, in light of the widespread and documented lack of enforcement in some Member States, the possibility of longer payment terms if “expressly agreed in the contract and provided it is not grossly unfair to the creditor” within the meaning of article 7 of the Late Payment Directive, should be maintained.**

Payment terms: wording suggested to allow for contract catering services the possibility to operate on longer payments if agreed by the supplier

Article 3 (1) (a)

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(a) a buyer pays a supplier for perishable food products later than 30 calendar days after the receipt of the supplier's invoice or later than 30 calendar days after the date of delivery of the perishable food products, whichever is the later. This prohibition shall be without prejudice:</p> <ul style="list-style-type: none"> - to the consequences of late payments and remedies as laid down in Directive 2011/7/EU; - to the option of a buyer and a supplier to agree on a value sharing clause within the meaning of Article 172 a) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council. 	<p>(a) a buyer pays a supplier for perishable food products later than 30 calendar days after the receipt of the supplier's invoice or later than 30 calendar days after the date of delivery of the perishable food products, whichever is the later. This prohibition shall be without prejudice:</p> <ul style="list-style-type: none"> - to the consequences of late payments and remedies as laid down in Directive 2011/7/EU; - to the option of a buyer and a supplier to expressly agree on a longer payment term where the buyer is operating a social food service and provided it is not grossly unfair to the supplier, within the meaning of article 7 of Directive 2011/7/EU; - to the option of a buyer and a supplier to agree on a value sharing clause within the meaning of Article 172 a) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council.