

Fair Relations in the Food Supply Chain

Establishing Effective European Enforcement Structures



British Institute of
International and
Comparative Law

Executive Summary

1. The British Institute of International and Comparative Law (BIICL) recently launched its report on how an EU-level enforcement mechanism should be set up to stop Unfair Trading Practices (UTPs) within food supply chains serving the EU market.
2. The European Commission acknowledged in a 2013 Green Paper that UTPs were clearly occurring in a number of EU Member States and that a “common set of enforcement principles” might be necessary to establish at EU level. The BIICL report is a response to the Green Paper, and follows on from a previous BIICL report which looked at Models of Enforcement in Europe for Relations in the Food Supply Chain, already in place in different EU Member States.
3. Although the European Commission focuses on the fair functioning of the internal market, its focus does not address the harmful consequences of UTPs on suppliers in a weak bargaining position or the secondary impacts on workers and the environment globally due to price squeezing, which is transmitted throughout the whole of the supply chain.
4. The BIICL report suggests that the EU should adopt a directive based on Article 114 (or alternatively, Articles 116 or 115) of Treaty of Lisbon, which establishes objectives of Member State enforcement and rules for their coordination with the EU institutions and other Member States.
5. Careful attention must be given to the design of the directive, and a number of important issues must be taken into account and included in its final structure. In particular:
 - a. All actors and stakeholders in the food supply chain doing business in any EU Member State should have access to the mechanism regardless of their geographic origin.
 - b. The mechanism must provide a means by which to protect the anonymity and confidentiality of any parties which may complain of UTPs to the enforcement mechanism, especially suppliers who are concerned that they may lose business if they complain.
 - c. The mechanism must be equipped with a number of different enforcement tools that can be used to change behaviour and deter poor practice. For example, softer options such as informal dialogue may be helpful in cases where the UTPs at issue are not severe, or for first-time offences, whereas the capability to impose a financial penalty or even incarceration may be necessary for more serious or repeated breaches. The EU must determine the nature of its role with regard to enforcement, specifically whether it wants to take primary responsibility for enforcement, or whether it wants to pass that responsibility to the Member States.
 - d. It is necessary to establish procedures for coordination between the proposed network of enforcement authorities in the Member States and the EU, such as case prioritisation or allocation procedures. These rules will help determine which Member State (or states) is best-placed to deal with a specific case, or whether the case is best handled at the EU level.
 - e. Methods for international cooperation with non-EU enforcement authorities should be developed to address UTPs that have an impact both within and outside of the EU.
6. When creating such a mechanism, The EU must determine which food businesses will be subject to the enforcement mechanism, as determined by size, power or placement within the supply chain.

The BIICL Report is available for download at: <http://www.biicl.org/eurolawresearch>.