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Austria Pushes for Rules against Unfair Trade Practices

Report Categories:

Agricultural Situation

Agriculture in the Economy

Agriculture in the News

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Report Highlights:

The Austrian government made it a high priority to set rules for fighting unfair trade practices in the food supply chain. Farmers would be vulnerable to such practices employed by the powerful food retail chains. A last-ditch trilogue under the Austrian EU Presidency could reach an agreement between the EU Parliament, the Commission, and the Council on a new set of rules to protect smaller players in the food sector against unfair treatment from large operators. In addition, Austria has introduced national measures against unfair trade practices such as a whistleblower system, a fairness catalogue for companies, and an ombudsman's office.

Unfair Trade Practices in the Food Supply Chain– a Key Priority of the Austrian EU-Presidency

Already before Austria took over its third EU (European Union) presidency in July 2018, Federal Minister of Sustainability and Tourism, Elisabeth Köstinger, made legally binding EU regulations for “Unfair Trade Practices” (UTPs) in the food supply chain one of her priorities. She stressed the importance of this issue not only at an EU level but also nationally in Austria. The fight against UTPs has clearly been expressed in the [Austrian government program 2017-2022](#).

The aim of the Austrian national efforts and the Commission proposal, which has been presented the first time in mid-April 2018, is to improve farmers’ and medium sized businesses’ position in the food supply chain. Smaller operators – mainly farmers – would be vulnerable to UTPs employed by powerful partners, especially the big food retail chains. The ban of UTPs should ensure fairer treatment for the weaker partners in the food supply chain and regulate effective enforcement provisions. National enforcement authorities will be handling complaints, a following investigation, and will also impose penalties.

The most important UTPs, of which the draft EU regulation should prevent from, include:

- No unilateral or retroactive changes of the supply agreement terms imposed by the buyer (agreements terms should always be confirmed in writing).
- No more than 60 days term of payment for non-perishable goods.
- No unilateral cancellation of an order of perishable products in less than 30 days from the agreed delivery date.
- Unless subject to a clear upfront agreement between the parties the regulation also outlaws:
 - A buyer returning unsold food products to a supplier.
 - A buyer charging a supplier payment to secure or maintain a supply agreement on food products.
 - A supplier paying for a buyer’s promotion, advertising or marketing campaign.

Agreement on UTP Rules Reached Before the End of the Austrian Presidency

Despite the fact that negotiations on UTPs had already been postponed to January 2019, when Romania would have taken over the EU presidency, Austrian Minister Köstinger invited the EU Commission, the EU Parliament, and the EU Council under the presidency of Austria, to a trilogue to come to an agreement on UTPs before Christmas.

The final scope of the Commission’s proposal on UTP’s had divided stakeholders. The controversial issue was whether or not large companies, in addition to small and medium sized firms, should also be included in the legislation. The food industry and retailers put pressure on the discussion arguing that the proposed legislation would be discriminatory and rule out large companies.

Finally, in a last minute effort, the EU Parliament, the Commission, and the Council reached a political agreement on December 19, 2018, on a new set of rules that would ensure the protection of EU farmers and a large majority of EU agri-food companies against practices contrary to good faith and fair dealing. After having reached the deal, Austria's Minister Elisabeth Köstinger said "out with unfair trade practices in the agri-food chain, and with retailers and operators using their size to bully their smaller counterparts." She also said that with the new rules, "we strengthen family farms who often have to fight a David against Goliath battle". The outgoing Council chair wanted farmers to get a fair price and "be acknowledged for the crucial role they play in our society." Finally, she stated that this has been the most important dossier in the agriculture sector during the Austrian Presidency.

The new regulation on UTPs will apply to anyone involved in the food supply chain with a turnover of maximum Euro 350 million with differentiated protection provided below that threshold. The new legislation covers retailers, food processor, wholesalers, cooperatives or producers' organizations, and single producers who would be engaging of any of the UTPs.

Member States (MS) are required to designate authorities in charge of enforcing the new rules. MS may also introduce further measures nationally.

Austrian Situation Regarding UTPs in the Food Sector

The Austrian food retail market is highly consolidated. The top three retail chains together account for about 70 percent of total retail revenues. In contrast to the retail sector, Austrian farm structure is small scale. Very often farmers and small operators do not have sufficient bargaining power to defend against UTPs employed by the powerful retailers. The Austrian government expressed its political will to support small players in the food supply chain against unfair treatment from large operators.

One of the first steps to accomplish this goal was to introduce a whistleblowing-system at the [Austrian Federal Competition Authority](#) (BWB) at the beginning of 2018. The whistleblowing-system makes it possible to send documents that may suggest UTPs to the BWB anonymously. The BWB then investigates the case granting anonymity for the whistleblower. In October 2018, the BWB published a "Fairness Catalogue" for companies. Most of the Austrian retail chains signed a self-commitment declaration to follow the rules of the BWB Fairness Catalogue in November 2018. In addition, the Austrian Council of Ministers decided, in beginning of December 2018, on the introduction of an ombudsman's office for UTPs. This office should start operation in the course of 2019.