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Submission to Department of Business, Enterprise and Innovation on the Draft EU Directive on Unfair Trading Practices in Business to Business Relationships in the Food Supply Chain (COM (2018) 173 Final – 2018/0082 (COD))

1 June 2018

Musgrave welcomes the opportunity to respond to the Department of Business, Enterprise and Innovation Consultation on the Draft EU Directive on Unfair Trading Practices in Business-to-Business Relationships in the Food Supply Chain. There are a number of areas in this submission which we would be glad to discuss in further detail with representatives from the Department, as part of the consultative process.

As the number one supporter of Irish suppliers through our leading brands SuperValu, Centra, Daybreak, and Marketplace, we are pleased to offer our views on the functioning of the food supply chain in Ireland and the EU, particularly from a retail perspective.

As a consumer-centric business, we share the Commission's and Department's views that any proposals must be pro-consumer, must not add additional cost or impact the quality retail experience to which consumers are accustomed.

We also share the view that proposals must take account of the place of all operators in the food supply chain. Recognising our important role in Ireland's agrifood sector and wider economy, we believe that proposals must be mindful of the unique make-up of the Irish food retail environment and of long-term stable relationships between Musgrave and our suppliers built up over time – indeed, some over generations. We are acutely aware of our role in supporting growth in the agrifood sector into the future, during what is a particularly challenging time for the industry in Ireland.

Our primary concerns with the Draft Directive, and suggestions for improvement, relate to the following:

1. Brexit

Musgrave is proud of our role in Ireland's agrifood sector, supporting over 1,800 Irish suppliers, including 400 nascent food companies through our Food Academy start-up programme. We are keen to continue our work with Bord Bia and other Government agencies on the future development of the Irish agrifood sector.

Undoubtedly, this is a critical time for Ireland's agrifood industry, given the unprecedented threat posed by Brexit. We are planning across our business to minimise impact on our 30,000 employees and more than 800 retail partners in towns, villages and cities around Ireland.

We are also planning with our suppliers with which we have long-term and stable relationships, so that, together, we are poised to respond to the outcome that transpires.



Our number one priority is to ensure there is no impact on the quality shopping experience that our consumers expect from our leading brands.

Therefore, we are surprised to note that the proposal for a Draft Directive does not mention Brexit.

The European Commission is proposing to introduce EU-wide legislation, as Brexit negotiations are ongoing, and at a time when the Irish food sector (including production and retail) is most under threat. We appreciate that the Commission is seeking to introduce proposals that protect the future of the sector and introduce consistency across Member States. However, given the significant links between the Irish and United Kingdom economies in agrifood particularly, we have serious concerns as to whether the Directive, as drafted, is appropriate for a post-Brexit environment - its economic and practical impact must be thoroughly tested.

Proposals which threaten the viability of any part of the food sector would be seriously ill-advised and it is our view that additional financial burdens and business complexities must not be placed on the food retail sector. We ask that urgent consideration is given to Ireland's unique position, in the context of this Directive, and against a Brexit backdrop.

Furthermore, we have a concern in relation to applicability of the Directive, in a post-Brexit environment. Should the United Kingdom opt to partially adopt, or indeed not adopt the Directive, it could mean that UK-headquartered retailers operating in Ireland would not be bound to the same regulatory requirements that Irish companies like Musgrave are. This would be an unfair advantage and an imbalanced approach.

A further concern is that the Draft Directive also stipulates that buyers cannot '*cancel orders for perishable food products at such short notice that it is not possible to expect the supplier to sell such goods elsewhere*'. Musgrave does not cancel orders at short notice, unless previously agreed with suppliers in such rare occurrences as, for example, 'Storm Emma'.

Our concern in a post-Brexit environment - which could, per Central Bank¹ estimations, see delays of up to four-and-a-half hours from 90% increases in border checks and bureaucracy - is that cancellation of orders may become a business reality, should stock be unavailable or delayed. In such instances, while arrangements would be made with suppliers by Musgrave, it would not be feasible to comply with the Directive as drafted - this provision must be examined urgently.

Summary: The Directive as drafted does not take account of the impact of Brexit on the agrifood sector. Any resulting complexities or bureaucracy would serve to add additional pressure, to a sector which is already potentially negatively impacted. Furthermore, if the UK does not adopt the Directive post-Brexit, UK retail companies operating in Ireland would not be bound to the same regulatory requirements as Irish

¹ Byrne S. and Rice J: Central Bank of Ireland (2018) *Non-Tariff Barriers and Goods Trade: a Brexit Impact Analysis*, accessed 30 May 2018 at: [https://www.centralbank.ie/docs/default-source/publications/research-technical-papers/06rt18-non-tariff-barriers-and-goods-trade-a-brexit-impact-analysis-\(byrne-and-rice\).pdf?sfvrsn=4](https://www.centralbank.ie/docs/default-source/publications/research-technical-papers/06rt18-non-tariff-barriers-and-goods-trade-a-brexit-impact-analysis-(byrne-and-rice).pdf?sfvrsn=4)



retailers. Finally, the Draft Directive must take account of the potential for cancellations or delays, that may result from Brexit.

2. Existing Regulatory Environment

We note that the EU Commission is aiming to introduce consistency across Member States. However, we support the view that, in line with key principles of market-freedom, freedom of contract, proportionality and subsidiarity, national schemes that already work well should be preserved.

We also note that the proposal for a Directive references 'weak governance' as a rationale for introducing coordinated enforcement regimes across Member States. We do not believe that Ireland has a 'weak governance' framework in place.

In Ireland, the trading relationships in the food supply chain are currently effectively regulated by the Grocery Regulations, despite their having resulted in increased bureaucracy. Consultation with the industry on the Draft Regulations was widespread, resulting in a regulatory environment that, while adding significant complexity, is relatively balanced and appropriate for all actors in the supply chain, and most importantly for the Irish consumer. Musgrave is fully compliant with these Regulations.

They take account of the unique characteristics of the Irish food retail market which, from a Musgrave perspective, sees our independent SME retail partners competing with large multinational retail players with bases across Europe and into the United States and beyond.

Therefore, in transposing the Directive, we recommend that strong consideration is given to the extent to which existing Irish Regulations already satisfy its requirements, and whether significant amendment is required. In our view, the existing Grocery Regulations should be preserved.

Summary: The Directive as drafted should take account of national schemes which are functioning effectively. The Grocery Regulations which were introduced in recent years were shaped in consultation with industry and, while adding real complexity, take account of the realities of Ireland's food sector. They should be maintained in full.

3. Ambiguous Language

Elements of the proposed Directive are similar to the existing Grocery Regulations. However, there are several changes that have the potential to significantly impact retail businesses, and existing relationships with suppliers, depending on how they are interpreted.

One of these areas is the definition of 'perishable goods', as distinct from "food products", which is not clear. Given that most products in a store need to be packaged in some way to prevent the product from becoming unfit for consumption, a much clearer definition of the distinction between these two groups of products is necessary. Misinterpretation by individual businesses may lead to imbalances, if not clarified.



In addition, the definition of “buyer” is unclear. Currently under the Grocery Regulations, turnover is used as a guide to define those organisations that are covered by the Regulation. We are concerned that without a similar reference point, our independent retail partners and their relationships with local suppliers would be under the scope of this Directive, which would be unworkable and could significantly impact their businesses.

We propose that these definitions are clarified, and their impact measured, as part of Draft Directive examination.

Summary: Ambiguous definitions, particularly in relation to ‘perishable goods’ and ‘buyer’ have the potential to significantly impact the scope and application of the Draft Directive. They should be updated and clarified.

Conclusions

In summary, the Draft EU Directive as proposed comes at a time of significant challenge for the agrifood sector in Ireland and the question must be asked as to whether the proposal takes sufficient account of the potentially negative impact of Brexit, on the sector.

There are also challenges in relation to practicalities of the retail/food supply environment, which need further consideration. The existing Grocery Regulations were shaped to respond to the uniqueness of Ireland’s food supply and retail environment. To seek to alter these Regulations, which are complex, but effective and working well, is not required in our view.

Finally, it is vital that ambiguous language in relation to ‘perishable’ foods and ‘buyers’ is clarified. Maintaining language which could be interpreted in a number of ways, could place the retail sector, and indeed the Musgrave business, at a significant disadvantage. This would have potential knock-on effects, not only to our business, but to the local and national economies of Ireland.

We would welcome the opportunity to discuss this submission in more detail.

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About Musgrave

Musgrave is a family business supporting other family businesses in Ireland. Our more than 800 retail partners are independent entrepreneurs operating their own businesses and providing vital employment in towns, villages and cities around Ireland. Together with our retail partners, we employ 30,000 people nationwide and indirectly support a further 10,000 roles in communities around Ireland.

Our support for Irish suppliers is unrivalled, and we are hugely proud of our credentials in this area. Musgrave is committed to long-term stable relationships with our suppliers which deliver mutual benefit, which positively impact the communities in which we operate, and which ensure value and quality for our customers.



With programmes such as Food Academy - the first of its kind - conceived by Musgrave and run in conjunction with Bord Bia and the agencies of the Department – the Local Enterprise Offices - we mentor nascent food businesses to grow and scale. Our relationships with over 1,800 food suppliers in Ireland are built on a sustainable, long-term approach and fair and workable terms and conditions, that take account of the realities of both the retail and food production/manufacturing sectors.

Musgrave is committed to supporting the agrifood sector in Ireland with 100% of the own-brand beef, chicken and lamb and 75% of goods on the shelves of SuperValu and Centra sourced or produced in Ireland, contributing over €1.6 billion to the Irish economy annually.

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