

Questions and answers on the fair trading practices initiative

Date: 27 March 2013

1- What is the purpose of the initiative? Why are we doing this?

The purpose of the initiative is to promote fair business practices in the food supply chain as a basis for commercial dealings. It aims to generate a culture change through a commitment of signatories to fair trading practices coupled with measures aimed at integrating those principles into company day to day operations and control their application.

The framework also aims to ensure that companies address disputes in a fair and transparent manner whilst reassuring the complainant that it will not suffer from retaliation.

Focus on SMEs: The framework is designed for all companies irrespective of their size. Conscious however of the administrative burden that some requirements may generate for SMEs, special attention has been given to SMEs so as to fit their specific needs.

2- Who are the signatories?

The organisations that signed up to the framework are: AIM, CELCAA, ERRT, EuroCommerce, Euro Coop, FoodDrinkEurope, UEAPME, UGAL.

3- Who is responsible for managing this initiative?

The Governance Group is responsible for managing the initiative. Its composition reflects the different interests in the food supply chain.

The Governance Group is established on 1 April 2013 and is supported by a permanent secretariat.

Contact details of secretariat:

Rodrigo Gouveia, Secretary General Euro Coop rgouveia@eurocoop.coop or Chiara Tomalino: ctomalino@eurocoop.coop.

4- What are the benefits of signing up?

By registering, companies signal their commitment to good practice in their commercial dealings. It encourages a culture change based on a common understanding of fairness and promotes the use of cost efficient means of dealing with disputes, whilst reassuring the complainant that he will not suffer from retaliation. This will have a beneficial effect on the image of our sector and the reputation of signatory companies.

This framework provides an efficient, cost effective and transparent solution to deal with alleged unfair trading practices. It is managed by a permanent Governance Group whose composition reflects the various links in the supply chain. It is voluntary and tailored to the needs of businesses in the food supply chain.

The benefits of joining are set down in the following document "**7 good reasons for your company to sign the voluntary Framework**".

5- *What countries are covered?*

Registration is open to any company in the food & drink supply chain operating in the EU.

Companies that have registered commit to apply those principles in their commercial dealings:

- Nationally;
- for cross border transactions in the EU;
- with small and medium sized enterprises based outside the EU provided that the contract is performed in the EU.

6- *Who can register?*

Only companies can register.

The initiative is open to companies of all sizes in the (fresh & processed) food & drink supply chain, including farmers, wholesalers, processors and retailers (including purchasing companies).

The framework does not apply to companies in support services (eg. logistics, packaging, etc.).

7- *What does it cost to register and to participate?*

There is no annual or initial registration fee.

Each company carries the cost of implementing its commitments but the stakeholder associations are syndicating tools, for example for self-assessment and training, that will make it cost effective for registered companies to do so. They will also suggest ranges of solutions for meeting obligations such as the designated dispute resolution contact point.

There are clearly resource needs, but they can be held to a reasonable rate and spread over time.

8- *I am a non-food company, can I register?*

No. This system applies only to food products. However, if a company has both a food and a non food business it can register and it will be encouraged to apply the principles and commitments under the framework for their non-food operations where similar conditions exist.

9- *Who is going to sign?*

Registration is by a top executive or a number of executives having the power to commit the whole company in the EU.

10- Is registration at group level or national level?

Registration on the website is for the group across the EU including all subsidiaries. However, implementation of the framework obligations is primarily national. Companies are free to set up this dispute resolution contact point at national or group level.

11- How do I register? What do I need to do to register?

Once the website is in place, formal registration will be via the website of the initiative using a standard form. You will be asked to:

- confirm that you have undertaken a self-assessment;
- provide the name of the top executive committing the company;
- provide details of contact persons for dispute resolution and for the management of follow up actions as part of the initiative.

You will receive a confirmation from the secretariat that your registration has been accepted and subsequently the name of your company will appear on the registry of signatory organisations together with the name of the contact person for management of the framework.

Before the website is set up and starting in April 2013, companies signal their intention to commit to the framework by signing the model letter of intent (cf. question 12 below).

12- What is the letter of intent and what does it implies?

The letter of intent is a model letter through which companies signal their commitment to the principles of good practice and their intention to sign up to the framework when the web site is operational.

This letter is common to all sectors and sets out the requirements that companies need to fulfil when they sign up to the framework.

13- What does self-assessment consist in?

At the time of registering, companies will have reviewed their internal procedures to ensure that they are compliant with the framework. This means that:

- They confirm compliance with the principles of good trading practice (it does not necessarily mean that all contracts have already been modified at the time of registration but that this process is well underway and will be completed at the earliest opportunity).
- Training is being set up or adapted to ensure compliance with the Principles. Priority targets will already have undergone training but it may not yet have been rolled out to all relevant staff by the time registration takes place.
- They are prepared to engage in all the dispute resolution options proposed in the framework.
- They agree that commercial retaliation is a breach of principles and process commitments.
- They communicate their registration to business partners.

- They have appointed contact person(s) for internal dispute resolution and for process-related issues. These can be the same or different persons.

A scorecard/self-assessment tool is under development and will propose a standardised procedure to carry out self-assessment.

Focus on SMEs: A “lighter” and less burdensome procedure is foreseen for SMEs: a score card/self-assessment tool will be developed and tailored to their needs.

14- What are process commitments?

Process commitments are obligations that companies need to fulfil to meet the requirements under the framework together with the principles. Process commitments aim to ensure that companies take the necessary steps to integrate the principles in their daily activities and report on their activity. They include:

- self-assessment;
- appointment of contact point to manage relations under this framework;
- training;
- dispute resolution options, including establishment of contact person for internal dispute resolution (eg. internal ombudsman);
- communication to business partners;
- participation in the annual survey in each market where the company operates.

15- Training: who should benefit from training? Do I get any support?

Training is seen as a key instrument to make the principles part of companies’ values. The framework foresees that training programmes should be adapted or set up to integrate the principles but is not prescriptive as to how training should be conducted.

A common e-learning module is being developed to enable companies to fulfil their obligation in a cost effective manner and will be made available as of July 2013.

A standard training set is available.

Focus on SMEs: National federations are encouraged to develop training tools on the principles and the framework, especially for SMEs.

16- Do I need to have registered to lodge a complaint for an alleged breach of principle(s) by a registered commercial partner?

The framework covers relations between companies who agree to abide by principles of good practice in their commercial relationships. To benefit from the full set of options for amicable dispute resolution under this framework, companies should be registered.

Focus on SMEs: The framework nevertheless foresees that SMEs established outside the EU and having contracts enforceable in the EU could benefit from the framework without having to register.

17- What happens in case of an alleged breach of a principle?

Unless provided otherwise by national law, in case of an alleged breach of a principle, the complainant/plaintiff can lodge a complaint using the following options:

- commercial track, e.g. bringing the issue to a higher level within the companies concerned;
- contract options;
- internal dispute resolution: companies appoint a person to handle their disputes who is independent from the commercial negotiation;
- mediation (this requires the agreement of both parties);
- arbitration (this also requires the agreement of both parties);
- of course registered companies do not renounce their right to use the courts.

When resorting to dispute resolution options, the complainant is asked to choose the option that best fits needs and is proportionate to the nature of the dispute.

The company that is alleged to have breached the principles commits not to take retaliatory action, which would be a serious breach of the principles and process.

Focus on SMEs: Only registered companies can claim to resort to resolution options. SMEs have every interest to register so as to benefit from these options

18- What are the sanctions and remedies for breaches of principles?

The remedies, sanctions and/or penalties, including financial compensation for proven damages for non-compliance with the principles are determined by the dispute resolution options. They are enforceable according to national law.

19- What is an aggregated dispute?

An aggregated dispute is a dispute regarding an alleged serious breach of a Principle introduced by several companies similarly affected.

The EU-level Governance Group will only appreciate cases having a cross border dimension and cases for which there is no national stakeholder platform in place. It will take a decision as to whether interpretation or guidance regarding a principle is needed:

- if not, the Governance Group will decline to issue guidance or interpretation due to a lack of power.
- if yes, the guidance will be developed by the Governance Group, whilst ensuring the anonymity of the parties concerned. Interpretation or guidance will have no retroactive effect and no effect on on-going disputes.

Once approved by the Governance Group, guidance or interpretation will be communicated to all concerned and publicised on the website. Companies will be expected to consider this guidance in interpreting the principles.

At all times, the confidentiality and anonymity of all the parties involved (complainants and companies alleged to have breached principles) will be guaranteed by application of the rules of procedures.

20- Who can launch an aggregated dispute and how?

An aggregated dispute can be launched by a member of the governance group in the case of a serious alleged breach of principles which affects several of its members and with a view to obtaining guidance or interpretation of existing principles.

Any association aggregating a complaint for consideration will:

- collect the relevant information in a legally compliant manner in order to verify that the complaint has substance;
- ensure that interpretation or guidance regarding a principle or example is required, and
- guarantee at all times the anonymity of the parties concerned as well as the confidentiality of any sensitive information.

The aggregated complaint will initially be submitted to the Co-Chair or Governance Group member representing the sector in which the complaint originates to verify the anonymity of the complaint and, if necessary, edit it to prevent, directly or indirectly, identification of the parties and eliminate any commercially sensitive information.

21- There is no national stakeholder platform in my country. What should I do?

As disputes mainly arise on a local level, the framework encourages the setting up of national stakeholder platforms mirroring inasmuch as possible the EU-level platform.

In the case of absence of a national platform an alleged breach of principles affecting several companies and requiring guidance and interpretation can be brought to the attention of the EU level Governance Group via their national and EU level sector representative organisations.

22- What happens in case of breach of framework obligations (process commitments)?

The framework foresees a procedure to flag issues if a registered company is alleged not to meet its process commitments.

The procedures to flag an issue are any of the following:

- the case is raised with the company directly
- the Governance Group is informed via a dedicated form on the web site and can intervene

- a complaint is brought to a member of the Governance Group who can resolve it promptly with the Governance Group member of the sector concerned or table it for discussion, while keeping the identity of the complainant confidential.

23- Are sanctions foreseen for breaches of process commitments?

The Governance Group will deal with complaints for alleged breaches of process commitments in a gradual and proportionate manner as follows:

- for minor breaches, no publication of the company name is foreseen;
- for major breaches of a process commitment, graduated steps are taken, including a request to explain and rectify and a warning letter with sufficient delays to comply. If the major breach is intentional, persists and remains unexplained, measures can lead up to suspension or exclusion, with publication on the website and in the annual report. In the latter case, the excluded party will need to reapply should it wish to rejoin the Framework.

The Governance Group may agree to reconsider the sanction, provided that new evidence or arguments are introduced.

24- What is the role of national federations?

National federations are encouraged to support the framework by developing training tools and awareness raising activities. They will play an important role especially in rallying SMEs to the framework.

Furthermore, as disputes arise mainly on the national level, national federations are encouraged to set up similar stakeholder platforms to support the framework and for the handling of disputes.

The framework foresees a procedure whereby a national dialogue / scheme can ask to be recognised as compliant with the European framework. Companies taking part in a compliant national scheme would be deemed compliant with the European framework obligations. They would however still need to register in the European framework and comply with additional requirements as the case may be (eg. reporting obligations).

Where a national platform gives guidance on interpretation of a Principle as a result of an aggregated dispute referred to it, it has the obligation to inform the EU-level Governance Group to guarantee a coherent interpretation across the EU.

25- I am covered by regulation at national level, what is the benefit of joining?

Irrespective of the regulatory framework in place, by signing up to the framework, companies signal their commitment to fair trading relationships. They draw a benefit in terms of commercial relations based on fair trading practices and subsequently in terms of image.

The framework acts as a complement to existing national legislation. Signatory companies may find an advantage in resolving their disputes by making use of the framework rather than going to court.

Where national rules already impose requirements on companies, they take precedence over the framework.

26- *What is the role of the annual survey? Why is it important?*

When registering, companies commit to participate in an annual survey. The survey will consist in a simple web based questionnaire. It will be conducted by an external service provider, ensuring the anonymity and confidentiality of the data.

The annual survey will enable the Governance Group to assess the functioning of the system, its impact and effectiveness. It is also a means to receive feedback from registered companies on their experience with the framework and identify ways of improving it.

Companies participate in the survey for each of the markets where they operate.

Focus on SMEs: Only registered companies can take part in the annual survey. SMEs are therefore encouraged to register so as to be given an opportunity to be heard via the survey.

27- *I am not registered in the framework but would like to share my feedback or experience with registered companies, how can I do it?*

In addition to the web-based survey, EU level sector organisations represented in the Governance Group can survey their own members regarding the functioning of the system, including non-registered companies.

EU level sector organisations will inform the Governance Group that they are carrying out such survey and ensure that the results are presented in a way that is compatible with the annual survey under the framework.

28- *What is critical mass?*

The success of the initiative relies on the ability of participants to reach a critical mass of transactions on national markets.

Performance indicators and targets help measure progress in reaching a critical mass of transactions in all sectors and national markets.

29- What is the European Commission's involvement in the voluntary framework?

The principles and the framework were developed by the multi-stakeholder dialogue formed as part of the High Level Forum on a better functioning of the food supply chain run by the European Commission.

The framework operates independently from the European Commission. However, the European Commission offers support with translation of the Principles and Framework. It will closely monitor the development of the initiative and have the opportunity to comment on a preliminary version of the annual report. The final report will also be shared with the European Parliament.

30- Where can I find more information?

The stakeholder association(s) of which you are a member hold all key documents and tools on their own website pending the creation of the official website.