Sistema sanzionatorio e mercato agroalimentare
Percorsi interni e dimensione transnazionale

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ABSTRACT

La protección de la cadena agroalimentaria en el ordenamiento español

This paper examines the transposition of Directive (EU) 2019/633 of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain into Spanish law, focusing on its legislative process and the substantive implications of the measures adopted.

Unlike other transposition processes, Spain opted to amend the existing Law 12/2013 of 2 August on measures to improve the functioning of the food chain (LFMCA), through a two-stage legislative process. First, Royal Decree-Law 5/2020 introduced Article 12 ter, establishing the obligation to pay a price equal to or higher than the effective cost of production, with the aim of preventing value destruction throughout the food chain. This provision was subsequently incorporated into Law 8/2020. Second, Law 16/2021 expressly transposed Directive 2019/633, while retaining and refining the aforementioned provision, particularly regarding the definition and calculation of the effective cost of production.

The paper analyses the controversy surrounding this measure, which has raised concerns about its impact on competition, the prohibition of sales below cost, and the absence of clear mechanisms for verifying compliance. It contrasts the critical position of the National Commission on Markets and Competition with the Supreme Court's judgment of 18 June 2024 (STS 1081/2024), which upheld the compatibility of Article 12 ter with EU law, emphasising the proportionality of the measure, the preservation of contractual autonomy, and the objective of ensuring a fair standard of living for the agricultural population under Article 39 TFEU.

Finally, the paper examines the transposition of the black and grey lists of unfair trading practices through Article 14 bis LFMCA. Particular attention is paid to the Spanish legislator's decision to extend the application of several prohibitions to either party in the commercial relationship, departing from the Directive's buyer-oriented approach. This analysis highlights the distinctive features of the Spanish transposition model and the tensions between the protection of agricultural producers, contractual freedom, and the preservation of competition in the food supply c