



INTERNATIONAL BUYING GROUPS : AT THE HEART OF GOVERNMENT CONCERNS.

The current French farmers' movement bring to public attention the issue of the relocation of trade negotiations abroad, and of the international buying groups in which certain some retailers take part.

The media took up the subject and have been communicating widely on the subject over the last few days.

A long story

Historically, international buying groups were created to sell services to suppliers, with a logic to develop jointly business relationships.

At the same time, retailers began to develop local buying groups around the 2000s, with the aim of increasing sales volumes. This system fell into disuse but came back in 2014 with a number of new buying groups: Auchan/Système U, Carrefour/Cora and Intermarché/Casino.

The only retailer not to have created a local partnership in 2015, Leclerc opted the year after for an alliance with a German retailer Rewe. Eurelec was born.

The phenomenon accelerated in 2023 when Système U, which had just left the French central buying group Envergure it had created with Carrefour, finally joined Everest, a buying group based in Rotterdam.

For its part, Carrefour created lately Eureka, the company's internal buying group, based in Madrid.

The motivations of retailers are often based on a well-known consolidation issue that has been observed for years. The impact of this consolidation is such that it leads competitors to form alliances together. Another aim of these alliances can be to harmonize buying conditions for several countries in which the retailers are present.

One or more applicable laws?

The localization of these buying groups based abroad means that a foreign law can be designated in the contract.

Thus the question is to know whether the foreign law referred to in the contract would be the only one applicable, even if the products were delivered by a French company to French warehouses, and purchased by the consumer in stores located in France?

In other words, should we consider inapplicable the French regulation regarding annual contracts and annual deadline, the safeguarding of agricultural raw materials, price revision clauses... everything that constitutes the Egalim 2 law, and more generally the protective rules of French law, particularly the provisions against abusive practices?

On the one hand, the principle of relocation buying groups is not, per se, illegal. The freedom of trade and industry allows a retailer located in a national territory to set up its buying structure in another territory, and more particularly in another member state of the European Union.

On the other hand, a clause regarding the applicable law does not allow the parties to avoid international public policy rules and the laws of the countries in which the contract will ultimately be executed.

The contract is therefore subject to at least two systems of law: the law designated by the parties and the public policy law of the country in which the contract should be performed.

Even if the question is still under debate, we can consider that French laws, which frames the supplier-retailer relations are overriding mandatory provisions.

In other words, regarding France, this means that the conformity of the negotiation and the validity of the contract will be examined not only regarding the foreign law that may be designated in the contract, but also regarding French law.

Nevertheless, it should be mentioned that the Minister of the Economy can impose sanctions regardless of the law designated in the contract. He acts indeed as a defender of economic public policy and is not party to the contract.

Therefore, international buying groups have the choice of either challenging in court the application of French law or applying it.

Don't forget the objectives of French law.

It should be noticed that the French law aim at improving farmers' remuneration and protect the balance in commercial relationships.

vFrench law is developed in line with the preservation of agricultural and food sectors, but also, as we saw during the Covid crisis, non-food essential products. These provisions contribute to the protection of food sovereignty and, more generally, industrial sovereignty.

Even if French law still needs some improvement, can we really be opposed to these objectives, which are part of a long-term vision of the sector ?

That is the big issue at stake: the public authorities have understood the importance of preserving these essential sectors for France. It is, in fact, everyone's long-term interest: farmers, manufacturers, retailers and consumers.

It now remains to see what kind of controls will be put in place to ensure compliance with the effective rules for all operators, whether established within our borders or beyond.

What is the future of this topic?

Negotiations at a European level are not going to stop, even if the inclusion of a country like France, with its (strictly controlled) standards, makes operations more complex. Manufacturers will have to consider the need of adaptation to this type of negotiation, which may raise questions of adjustment and coherence of international trade policies. In addition to using the regulatory framework, manufacturers will need to think about transforming their organization to adjust power in negotiations, the only way to ensure long-term success for all market players.