



BeneMeat

# Official Statement of BeneMeat on the Proposed Regulation of Territorial Supply Constraints (TSCs)

We believe that the proposed regulation of Territorial Supply Constraints (TSCs) should not be adopted, as it constitutes a disproportionate interference with the right to property.

The right to property is not a medieval privilege, but one of the fundamental legal institutions of European civilization, the content of which has been shaped since the time of Ancient Rome. It has traditionally been understood as the right to possess, use, dispose of property and enjoy its fruits. An inherent part of this right is the owner's freedom to decide whether to sell their property, to whom it will be sold, at what price and under what contractual conditions. Administrative determination of potential purchasers or the conditions of sale therefore interferes with the very substance of the right to property.

**We recognize that the proposed regulation of TSCs pursues the legitimate objective of strengthening the functioning of the European Union's Single Market. However, any restriction of a fundamental right must satisfy the proportionality test under Article 5(4) of the Treaty on European Union.** This test comprises three cumulative criteria:

1. The first is **suitability**, namely whether the chosen measure is genuinely capable of achieving the legitimate objective pursued. The regulation of TSCs alone, however, will not ensure the proper functioning of the Single Market. It merely makes the use of a particular commercial practice more difficult by creating additional regulatory obstacles. We are not aware of any analysis demonstrating that the proposed regulation will actually resolve the identified problem. On the contrary, there is a risk that, if the expected outcome is not achieved, additional regulatory interventions will follow.
2. The second criterion is **necessity**, meaning that the least restrictive measure capable of achieving the same objective must be chosen. We are not aware of any analysis identifying alternative means of achieving the intended objective, comparing their effectiveness, or assessing their impact on the rights of the affected parties. Decisions taken by market participants should primarily be tested by the market itself, rather than by administrative intervention based on an assumed entitlement of purchasers to obtain the same commercial or transactional conditions as other market participants.

3. The third criterion is **proportionality stricto sensu**, requiring the benefits of the measure to be weighed against the harm it causes. On the one hand stands the right to property, the content of which includes the owner's freedom to decide how to dispose of their property, similarly to the exercise of intellectual property rights. On the other hand stands the legitimate objective of ensuring a Single Market free from unjustified barriers.

**It should also be recalled that the concept of the Single Market was originally designed primarily to eliminate regulatory barriers created by Member States, not to establish a subjective right of purchasers to obtain identical commercial conditions throughout the European Union.** Freedom to conduct a business and freedom of contract naturally lead to different purchasers obtaining different commercial terms depending on a variety of objective and commercial factors.

Given that no analysis is available demonstrating that the proposed regulation constitutes a proportionate interference with the property rights of sellers, nor any analysis demonstrating that it is the least burdensome instrument compared with other possible solutions, which have neither been identified nor evaluated, we believe that the proposed regulation of Territorial Supply Constraints is not consistent with the principle of proportionality under Article 5(4) of the Treaty on European Union.

**The right to property is not merely the formal right to own property. Its very essence lies in the owner's freedom to dispose of that property, including the decision whether to sell it, to whom it will be sold, at what price and under what conditions. If the state begins to replace those decisions with its own judgment, it does not merely restrict the exercise of the right to property, but interferes with its very substance.** Such interference can only be justified where it is necessary, proportionate and properly supported by evidence. In our view, these conditions are not met in the case of the proposed regulation of Territorial Supply Constraints.

**BeneMeat**

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