

# **Comparative analysis of the implementation of the unfair trading practices Directive in the business-to-business agricultural- and food supply chain**

*How is Directive (EU) 2019/633 implemented in The Netherlands, Hungary, Germany & Belgium and are the implementations adequate to actively combat unfair trading practices in these MSs?*

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## Abstract

Unfair Trading Practices (UTPs) are practices that grossly deviate from good commercial conduct. With the implementation of Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, the European Union tried to level the playing field in the food supply chain, providing small and medium-sized suppliers protection against UTPs conducted by (big) buyers. In this thesis, the goals and requirements of this Directive, as well as the implementation in Germany, The Netherlands, Hungary & Belgium are investigated and comparatively analysed. This is done to answer the question whether the implementation in these Member States are adequate to actively combat UTPs. Adding to that, the potential pitfalls and their solutions relating to the diverging implementation in these Member States are discussed. It is found that, in general, the implementation is done correctly by these Member States, but since a Directive gives the Member States a lot of leeway in how far they want to go to protect the suppliers, fragmentation of the single market might be the end result. It is therefore advised that the implementations are brought more in line with each other, to make sure that the internal market of the EU is not compromised. Next to that, some UTPs, definitions, and evaluation efforts remain vaguely defined or even undefined in the Directive and its implementation, giving room for improvement. Lastly, it is not sure whether the diverging implementation of the Directive in these Member States will take away the climate of fear suppliers are operating in, possibly compromising the goal of actively combatting UTPs as a whole.

*Key words: Unfair Trading Practices, Food Supply Chain, Directive (EU) 2019/633, Comparative Analysis, European Union, Internal Market*

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## List of Abbreviations

ACM	<i>Autoriteit Consument &amp; Markt</i> (Authority Consumer & Markets of The Netherlands)
AMTF	Agricultural Market Task Force
CAP	Common Agricultural Policy
CotR	Committee of the Regions
EC	European Commission
EESC	European Economic and Social Committee
EP	European Parliament
EU	European Union
FSC	Food Supply Chain
MS(s)	Member State(s)
SCI	Supply Chain Initiative
SME(s)	Small- and Mediumsized Enterprise(s)
TFEU	Treaty on the Functioning of the European Union
UTP(s)	Unfair Trading Practice(s)

# 1 Introduction

## 1.1 General Introduction

With the adoption of Directive (EU) 2019/633 by the European Commission, regarding unfair trading practices (UTPs) in business-to-business relationships in the agricultural and food supply chain (hereafter 'The Directive'), the EU tried to level the playing field in the food supply chain, by protecting small- and medium-sized (SME) suppliers from UTPs by their buyers. The first call for such legislation came already in 2009<sup>1</sup>, and some MSs already had measures in place to prevent (some of) these UTPs from occurring<sup>2,3</sup>. UTPs generally occur when a contracting party with a larger bargaining power (the oligopolistic buyer) behaves unfair to the contracting party with a smaller bargaining power (the SME supplier)<sup>4</sup>. Examples of these UTPs can be the cancellation of an order of perishable goods 30 days before the delivery date, ultimately resulting in a situation where the supplier is forced to find another buyer in a short period of time or accept a lower price. The Directive distinguishes between practices that are always unfair, which are put on the so called 'blacklist', while other practices are not deemed unfair when they were agreed upon beforehand in a written manner, which are put on the 'grey list'. Next to that, an enforcement authority is set up, who must ensure that the rules are followed. Since a Directive allows MSs to deviate from the standards set in the Directive, it must be noted that the possibility arises where the Directive is the baseline and where the MSs can decide if they want to beef up the protection of their SME suppliers. This could result in diverging rules in different MSs: some might only use the mere baseline, while others go far beyond the requirements set in the Directive, leading to a patchwork of legislation, and potentially compromising the internal market. On the other hand, some organizations argue that the (implementation of the) Directive does not go far enough regarding the protection of the SME suppliers<sup>5</sup>. Adding to that, it is worth asking what the solutions to (potential) problems due to the diverging implementation of this Directive might be. Therefore, the research question mentioned below was formulated.

## 1.2 Research Question

How is Directive 2019/633 implemented in The Netherlands, Hungary, Germany & Belgium and are the implementations adequate to actively combat UTPs in these MSs?

This main research question will be answered by answering the following sub-questions:

- What does Directive 2019/633 require and what does it want to achieve?
- How does enforcement work in these MSs and what are the different legal angles to address these UTPs?
- What can be potential pitfalls of the legislation?
- What solutions might reduce the negative effects that might occur following the implementation of Directive 2019/633 in these different MSs?

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<sup>1</sup> European Commission, *Staff Working Document Impact Assessment: Initiative to improve the food supply chain (unfair trading practices)* (12<sup>th</sup> of April 2018) p. 8

<sup>2</sup> Czech Republic: Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof.

<sup>3</sup> Hungary: Act XCV of 2009 on the prohibition of unfair distributor conduct vis-à-vis suppliers regarding agricultural and food industry products – 'UTP Act'.

<sup>4</sup> European Commission, *Staff Working Document Impact Assessment: Initiative to improve the food supply chain (unfair trading practices)* (12<sup>th</sup> of April 2018) p. 10

<sup>5</sup> FairTrade Advocacy, Oxfam, TraidCraft, SOMO, IFOAM EU Group, *The Unfair Trading Practices Directive: a transposition and implementation guide*. (August 2019)

### 1.3 Methodology

To answer the research questions, a literature study will be carried out. Based on the information gathered in the literature study, the research will be performed.

For sub-question one regarding the requirements and the goals of the Directive, a literature study of the Directive itself and other relevant legislation and/or articles will be carried out.

To answer sub-question two regarding the enforcement mechanisms and the different legal angles to address UTPs in the MS, the relevant legislation, as well as relevant articles, will be investigated with a literature review. All the MSs legislation, as well as the text of the Directive, will be put in a table for direct comparative analysis. This table will be the basis for answering sub-question two and three. Based on these findings, sub-question four will be answered.

Regarding sub-question three, the relevant legislation, as well as relevant articles, will be investigated with a literature review, but for answering the part regarding the potential pitfalls, a hypothetical answer will be formulated since the legislation is relatively new and since no case-law exists (yet).

The fourth sub-question will primarily be answered on basis of the findings of sub-question three and comes with a literature review as well.

All the answers on these sub-questions will be used to answer the main research question.

For the literature review, all Dutch, German & English articles that focus on Directive 2019/633 and/or the implementation thereof in the relevant MS will be considered relevant. The relevant legislation of the implemented Directive in the MS themselves will be analyzed in the original language (apart from the Hungarian one, which will be a translation in English) and will be comparatively analysed to the goals set in the Directive itself.



## 2 What does the Directive 2019/633 require and what does it want to achieve?

### 2.1 Introduction to UTPs

The introduction of the single market brought operators in the food supply chain (FSC) benefits through more market opportunities. However, power imbalances between the actors in the chain exist because structural changes in the chain occurred over time. The abuse of these power imbalances might lead to unfair trading practices (UTPs). UTPs are defined as practices that are imposed by one trading party to another, grossly deviate from good commercial conduct and are contrary to principles of good faith and fair dealing<sup>6</sup>. These practices can even be part of the contract terms themselves, since the weaker party is not always in a position to negotiate fair contract terms. The party with the stronger bargaining position may impose unfair terms on the weaker party, which favours the economic interest of the stronger party. The latter could then use unbalanced terms and conditions due to its bargaining power and the weaker party could not be in the position to reject such terms due to the fear of being driven out of business. Examples of these UTPs can be deviations from contract terms, unpredictable and excessive transfer of costs, shift of risks to the counterparty, unfair termination and/or disruption of a commercial relationship, late payments, unilateral changes to contracts, and termination of the contract on short notice.

The unequal positions between the trading parties are a result of various effects, such as a significant difference in turnover size, high investments upfront for the weaker party, or economic dependency. Next to that, the weaker trading party is often not in a position to abandon the contract or to switch to another buyer, because there could be a lack of alternative buyers. These trading practices can therefore occur at any stage of the supply chain, can be part of a contract negotiation or they can be imposed after the contract has been agreed upon by changing the contract retroactively. However, even when a contract has been signed that appears to be fair for both parties, UTPs may still emerge since these contracts might be so complex that the parties do not understand what the terms imply in practice or they could not have the same information about the transaction, leading to UTPs by the stronger party. In this light, small- and medium sized enterprises (SMEs) are usually the weaker party since they might lack the knowledge required to see all the implications of the complex contract terms.

In a perfect market, the unfair dealing between these parties would result in a switch to another trading partner by the weaker party, but the high cost of switching or the lack of this possibility results in a stronger bargaining position, which might encourage the stronger party to impose UTPs. The fact that it might be impossible to switch to another trading partner is of key importance in the development of these unfair practices. Next to that, the fear of the weaker party is that when they would complain, the commercial relationship could be terminated. Complaints are therefore less likely to occur due to this 'fear factor'<sup>7</sup>. For example, 87% of the suppliers do not take any action (except for a discussion) with their buyers, 65% of the suppliers do not take any action due to fear of retaliation, while 50% of the suppliers doubt the public remedies' effectiveness<sup>8</sup>.

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<sup>6</sup> Patrick Kelly, 'Unfair trading practices in the food supply chain' [2018] EPRS - European Parliamentary Research Service PE 625.172

<sup>7</sup> Commission, 'Green Paper on Unfair Trading Practices in the Business-to-Business Food and Non-Food Supply Chain in Europe' (Communication) COM(2013) 037 final

<sup>8</sup> AIM-CIAA 'Survey on Unfair Commercial Practices in Europe' [March 2011]

<<http://www.dlf.no/filestore/CIAAIMSurveyonUCP-Europe.pdf>> accessed 22 December 2021

## 2.2 How did Directive (EU) 2019/633 come about?

Back in 2009, the European Commission (EC) started to address these UTPs as a problem in the FSC. It published a communication in 2009 on the 'Better functioning of the food supply chain in Europe'<sup>9</sup> which mentioned UTPs for the first time. The European Parliament (EP) followed by adopting a resolution called 'Fair revenues: A better functioning food supply chain in Europe.'<sup>10</sup> In 2010, Parliament recognized the differences in economic power and contractual differences between retailers and farmers that affect their competitiveness. To counteract that, Parliament encouraged the Member States (MSs) and the Commission to adopt *ad hoc* measures<sup>11</sup>, while the European Commission issued the 'Retail market monitoring report'<sup>12</sup> and published the 'High-level forum for a better functioning food supply chain'<sup>13</sup>, which eventually led to the creation of the voluntary Supply Chain Initiative (SCI) in 2013. The SCI consists of a list of Principles of Good Practice with the aim of increasing the fairness in business-to-business relations in the FSC, including examples of UTPs in trading practices<sup>14</sup>.

The European Parliament adopted a resolution for a fairer and more efficient retail market in 2011 in which they stressed their concern for the dominance of bigger actors in the FSC, which would harm competition and, at the same time, affect the entire FSC<sup>15</sup>.

The European Commission then published a Green Paper on UTPs in 2013<sup>16</sup>, and all these efforts ultimately resulted in two reports issued in 2016<sup>17,18</sup>, which presented the regulatory efforts against UTPs and the plans for the future. The reports found that the SCI performed generally satisfactorily, but they call for further strengthening. The EP was especially in favour of the harmonisation of the legislation at the EU level, but the Commission believed that the proliferation of legislative measures was not of added value, although they kept monitoring the situation via the Agricultural Market Task Force (AMTF), aiming to give advice on how the farmers' position could be improved<sup>19</sup>. Next, the EP adopted a resolution on UTPs in the FSC in June 2016<sup>20</sup>. According to the latter, the SCI did not ensure confidentiality and lacked statutory powers for investigations and sanctions. The EP therefore urged the EC to take action since the farmers did not participate in negotiating the SCI.

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<sup>9</sup> Commission 'A better functioning food supply chain in Europe' (Communication) COM(2009) 591

<sup>10</sup> European Parliament, Resolution on fair revenues for farmers: A better functioning supply chain in Europe (2009/2237(INI)) [2009] OJ C 308E

<sup>11</sup> European Parliament, Resolution on a more efficient and fairer retail market (2010/2109(INI)) [2010] OJ C 33E/02

<sup>12</sup> Commission, 'Commission identifies barriers hampering more efficient and fairer retail services in Europe' (Press Release) IP/10/885

<sup>13</sup> Commission, 'Commission adopts European Retail Action Plan and consults on unfair trading practices' (Press Release) IP/13/78

<sup>14</sup> Supply Chain Initiative, 'About the Initiative', (SCI) <<https://www.supplychaininitiative.eu/about-initiative>> accessed 25 November 2021

<sup>15</sup> European Parliament, Resolution on a more efficient and fairer retail market (2010/2109(INI)) [2010] OJ C 33E/02

<sup>16</sup> Commission (n. 9)

<sup>17</sup> Commission, 'Report on unfair trading practices in the food supply chain' (Communication) COM(2016) 32 final

<sup>18</sup> Commission, 'Agricultural Markets Task Force Presents Recommendations on farmers in the food supply chain' (Press Release) IP/16/3658

<sup>19</sup> Commission, 'Fairness in the food supply chain: Commission welcomes Parliament's support to ban unfair trading practices' (Press Release) IP/19/1651

<sup>20</sup> European Parliament, Resolution on unfair trading practices in the food supply chain (2015/2065 (INI)) [2016] (2018/C 086/05)

In the same year, the AMTF reported that the policy framework that governed the FSC should be improved and that UTPs should be covered by enforced legislation<sup>21</sup>. The EC added that it would consider the recommendations from the report and would present a response<sup>22</sup>.

Based on these recommendations, the EC performed a public consultation, an impact assessment, and a stakeholder consultation<sup>23</sup>. Finally, in 2018, the EC made its' proposal for a Directive on UTPs public. The Commission proposed a framework that provided small- and medium-sized enterprises (SMEs) and farmers with more protection from businesses conducting UTPs<sup>24</sup>. The political agreement was then reached in December 2018 and after endorsement by the EP and the EC, the Directive entered into force in 2019.<sup>25</sup>

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<sup>21</sup> Commission, 'Enhancing the position of farmers in the supply chain' (Press Release) IP/16/3658

<sup>22</sup> Commission (n. 18)

<sup>23</sup> Commission, 'Fairness in the food supply chain: Commission welcomes Parliament's support to ban unfair trading practices' (Press Release) IP/19/1651

<sup>24</sup> Commission, 'European Commission acts to ban unfair trade practices in the food supply chain' (Press Release) IP/18/2702

<sup>25</sup> Directive (EU) 2019/633 of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain [2019] OJ L 111/59 (UTP Directive)

### 2.3 What does Directive (EU) 2019/633 want to achieve?

In the agricultural and food sector, imbalances in bargaining power between buyers and suppliers of agricultural- and food products often occur. These imbalances might cause unfair trading practices when large and powerful buyers seek to impose certain practices and/ or contractual obligations which are to their advantage in relation to a sales transaction<sup>26</sup>.

Directive (EU) 2019/633 aims at laying down a minimum Union standard of protection by harmonizing MSs' diverging measures relating to UTPs<sup>27</sup>. This is because a majority of MSs already has specific national rules that protect suppliers of agricultural and food products against UTPs in business-to-business relationships, but reliance on contract law or self-regulatory initiatives (such as the SCI) does not address the fear of commercial retaliation or the financial risks involved in challenging such practices, limiting the value of those forms of redress<sup>28</sup>.

A Directive is therefore used to ensure a cohesive regime, while MSs can opt for stricter national rules, provided that such rules are proportionate<sup>29</sup> and compliant with internal market rules<sup>30</sup>.

National rules would apply alongside voluntary governance measures, such as the SCI. The use of voluntary measures should be explicitly encouraged<sup>31</sup> and MSs also have the option to provide for alternative voluntary enforcement mechanisms<sup>32</sup>.

Business risk in the agricultural sector is particularly fraught with uncertainty due to its reliance on biological processes and its exposure to weather conditions, which is compounded by the fact that agricultural and food products are to a greater or lesser extent perishable and seasonal<sup>33</sup>.

Therefore, UTPs are likely to have a negative impact on the living standards of the agricultural community either direct, as it concerns the agricultural producers and their organizations as suppliers, or indirect, through cascading of the consequences of the UTPs in the chain in a manner that negatively affects the primary producers<sup>34</sup>.

UTPs are particularly harmful for small and medium-sized enterprises (SMEs), but bigger enterprises with an annual turnover not exceeding EUR 350 000 000 should also be protected, to avoid the costs of such practices being passed on to the particularly vulnerable agricultural producers downstream<sup>35</sup>.

Next to that, suppliers should not only be protected against UTPs by buyers that are established in the same MS or another MS, but also against buyers that are established outside the Union. On the other hand, suppliers from outside the Union should be protected against these UTPs from buyers inside the Union<sup>36</sup>. This Directive applies therefore to situations where either the supplier and/or the buyer is situated in the EU<sup>37</sup>.

UTPs can also occur at any stage of the sale of an agricultural or food product, before, during or after a sales transaction, therefore MSs should ensure that the Directive applies to such practices whenever they occur<sup>38</sup>.

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<sup>26</sup> UTP Directive, Recital 1

<sup>27</sup> UTP Directive, Recital 44

<sup>28</sup> UTP Directive, Recital 8

<sup>29</sup> UTP Directive, Recital 39

<sup>30</sup> UTP Directive, Article 9

<sup>31</sup> UTP Directive, Recital 41

<sup>32</sup> UTP Directive, Article 7

<sup>33</sup> UTP Directive, Recital 6

<sup>34</sup> UTP Directive, Recital 7

<sup>35</sup> UTP Directive, Recital 9

<sup>36</sup> UTP Directive, Recital 12

<sup>37</sup> UTP Directive, Article 1

<sup>38</sup> UTP Directive, Recital 15

As clarified in Recital 11, public authorities also fall under the buyers' definition when buying agricultural and food products and should therefore be held to the same standards. In these situations, the turnover size of the 'buyer' does not matter, but the turnover of the supplier should not exceed EUR 350 million<sup>39</sup>.

Suppliers of agricultural and food products should be able to file complaints against certain UTPs. Commercial retaliation by buyers against suppliers who exercise their rights, or the threat thereof, should be prohibited and treated as an UTP<sup>40,41</sup>.

Also, unilateral, and retrospective changes to clear and unambiguous terms of the supply agreement are prohibited<sup>42</sup> and certain practices, such as short-notice cancellation<sup>43</sup> and commercial retaliation<sup>44</sup>, are considered as unfair by their very nature and should not be subject to the parties' contractual freedom<sup>45</sup>.

Next to that, suppliers should be given a choice as to the authority to which they address complaints, it could be their native enforcement authority, or the enforcement authority in the country of the buyer<sup>46,47</sup>.

Therefore, MSs should designate enforcement authorities to ensure the effective enforcement of the prohibitions<sup>48</sup>. Those authorities should be able to act either on their own initiative<sup>49</sup> or based on complaints by parties affected by UTPs<sup>50</sup>, complaints by whistle-blowers, or anonymous complaints<sup>51</sup>.

These enforcement authorities should have the necessary resources and expertise to ensure effective enforcement<sup>52,53</sup>, and they should have the necessary powers and expertise to conduct investigations<sup>54</sup>.

They should also have the power to impose fines and to publish investigation results<sup>55</sup>, which might encourage behavioural changes and pre-litigation solutions between the parties<sup>56</sup>.

However, there should be safeguard measures in place to control the exercise of the powers of the enforcement authority<sup>57,58</sup>, and close cooperation between the enforcement authorities of the different MSs and the Commission<sup>59,60</sup>.

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<sup>39</sup> UTP Directive, Article 2

<sup>40</sup> UTP Directive, Recital 25

<sup>41</sup> UTP Directive, Article 3(1)(h)

<sup>42</sup> UTP Directive, Article 3(1)(c)

<sup>43</sup> UTP Directive, Article 3(1)(b)

<sup>44</sup> UTP Directive, Article 3(1)(h)

<sup>45</sup> UTP Directive, Recital 16

<sup>46</sup> UTP Directive, Recital 30

<sup>47</sup> UTP Directive, Article 5(1)

<sup>48</sup> UTP Directive, Article 4(1)

<sup>49</sup> UTP Directive, Article 6(1)(a)

<sup>50</sup> UTP Directive, Article 5(1) & 5(2)

<sup>51</sup> UTP Directive, Recital 28

<sup>52</sup> UTP Directive, Recital 32

<sup>53</sup> UTP Directive, Article 6(1)

<sup>54</sup> UTP Directive, Recital 33

<sup>55</sup> UTP Directive, Article 6(1)(e) & 6(1)(f)

<sup>56</sup> UTP Directive, Recital 34

<sup>57</sup> UTP Directive, Recital 35

<sup>58</sup> UTP Directive, Article 6(2)

<sup>59</sup> UTP Directive, Recital 36

<sup>60</sup> UTP Directive, Article 8

To facilitate cooperation, the Commission should organize regular meetings with the enforcement authorities to facilitate effective enforcement<sup>61,62</sup> and for the purpose of information exchange, a website is established by the Commission, containing references to the national enforcement authorities<sup>63,64</sup>.

Lastly, the Commission should have an overview of the implementation in the MSs and therefore, the enforcement authorities should submit annual reports with quantitative and qualitative information on complaints, investigations and decisions taken<sup>65,66</sup>.

To check if the implementation is effective, the Commission should send a report to the EP, the Council, the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR)<sup>67</sup>, which should assess the effectiveness of the national measures, the effectiveness of cooperation among enforcement authorities<sup>68</sup>, and whether the protection of buyers (in addition to the protection of suppliers) would be justified in the future<sup>69</sup>.

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<sup>61</sup> UTP Directive, Recital 37

<sup>62</sup> UTP Directive, Article 8(2)

<sup>63</sup> UTP Directive, Recital 38

<sup>64</sup> UTP Directive, Article 8(3)

<sup>65</sup> UTP Directive, Recital 42

<sup>66</sup> UTP Directive, Article 10(1)

<sup>67</sup> UTP Directive, Article 12(1)

<sup>68</sup> UTP Directive, Article 12(2)

<sup>69</sup> UTP Directive, Recital 43

## 2.4 What does Directive (EU) 2019/633 require?

The Recitals of the Directive describe the goal that needs to be achieved, but the actual requirements for achieving these goals are specified in the Articles of the Directive. These Articles lay down what exactly is required from the different MSs, their enforcement authorities, and the Commission, to achieve these goals.

First, it requires a scope to determine what a UTP is, and what and/or who falls within or outside the scope<sup>70</sup>, preceded by an introduction about the topic of the Directive. Here, the turnover scheme for estimating the bargaining power of a buyer/ supplier is introduced (with an exemption for public authorities, against which suppliers are always protected unless they have a turnover larger than EUR 350 million). Five categories are identified in Article 1: lower than EUR 2 million, between EUR 2 – 10 million, between EUR 10 – 50 million, between EUR 50 – 150 million, and finally, between EUR 150 – 350 million. If a supplier falls within one of these five turnover-based categories, and the buyer falls in a larger turnover-based category, then the Directive applies to the transactions between those parties. The same provision establishes that either buyer and/or supplier must be established in the Union to fall within the scope of the Directive. This means that (e.g.) suppliers from outside the Union are protected against buyers from inside the Union and the other way around. Next to that, business-to-consumer (B2C) transactions are excluded from the scope. This means that only UTPs in the business-to-business domain fall within the scope of the Directive. Lastly, the Directive applies to services, insofar they are mentioned in Art. 3.<sup>71</sup> Examples of these services are advertising, marketing and fitting-out the premises of the buyer for the promotion of the suppliers' product<sup>72</sup>.

The Directive includes multiple definitions<sup>73</sup>. These definitions start with agricultural- and food products, which are listed in Annex 1 TFEU, as well as products processed for use as food using products of that Annex<sup>74</sup>. A buyer is defined as a natural or legal person, a public authority in the Union, or a group of natural or legal persons, who buys agricultural- and food products<sup>75</sup>. A public authority is defined as a national, regional, or local authority who are governed by public law or associations formed by such authorities or bodies governed by public law<sup>76</sup>. A supplier is then defined as a natural or legal person, or a group of such producers, or a group of natural or legal persons, such as producer organisations<sup>77</sup>. Lastly, perishable agricultural- or food products are products that by their nature, or at their stage of processing, are liable to become unfit for sale within 30 days after processing, production or harvesting<sup>78</sup>.

Then the practices that are always prohibited on the so-called 'black-list' are introduced<sup>79</sup>. These practices are payments later than 30 days after delivery (or 30 days after the date on which the amount payable for the agreed delivery period is set, whichever is later) for perishable agricultural- and food products, and 60 days for non-perishable agricultural- and food products<sup>80</sup>. This UTP is also known as late payments. Next to that, short order cancellations of perishable

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<sup>70</sup> UTP Directive, Article 1

<sup>71</sup> UTP Directive, Article 1(2)

<sup>72</sup> UTP Directive, Article 3(2)(d)(e)(f)

<sup>73</sup> UTP Directive, Article 2

<sup>74</sup> UTP Directive, Article 2(1)

<sup>75</sup> UTP Directive, Article 2(2)

<sup>76</sup> UTP Directive, Article 2(3)

<sup>77</sup> UTP Directive, Article 2(4)

<sup>78</sup> UTP Directive, Article 2(5)

<sup>79</sup> UTP Directive, Article 3(1)

<sup>80</sup> UTP Directive, Article 3(1)(a)

agricultural- and food products are also prohibited. The period that is considered 'short notice' is set 30 days before the delivery date, but MSs can choose to make that period shorter<sup>81</sup>. Unilateral changes of the supply agreement by the buyer are also prohibited, if they are related to the frequency, method, place, timing, volume, quality standards, terms of payment or the price<sup>82</sup>. Payments required for by the buyer that are not related to the sale of the product are not allowed<sup>83</sup>, as well as required payments by the buyer for loss and/or deterioration occurring on the buyers' premises and/or after ownership has conferred, that are not the fault of the supplier<sup>84</sup>.

The buyer cannot refuse to confirm a supply agreement in a written manner, but Producer Organisations (POs) or cooperatives are excluded if the buyer is a member thereof<sup>85</sup>. Unlawful acquisition, use or disclosure of the suppliers' trade secrets by the buyer is forbidden<sup>86</sup>, as well as threatening or carrying out commercial retaliation actions against the supplier if the supplier only exercises its' rights (by filing a complaint for instance)<sup>87</sup>. Lastly, requiring compensation by the buyer for examining customer complaints is prohibited if negligence or fault on part of the supplier is absent<sup>88</sup>.

Art. 3(2) then introduces the practices that are in principle prohibited unless they are agreed upon beforehand and included in a clear and unambiguous manner in the supply agreement<sup>89</sup>. This list of practices is called the 'grey-list'. These practices are then described as follows. The return of unsold agricultural- and food products by the buyer to the supplier without paying for the product or the disposal of that product<sup>90</sup>. In that case, the buyer can also charge the supplier payments as a condition for stocking, displaying, or listing, or for making a product available on the market (launching a product)<sup>91</sup>. Next to that, the buyer can require the supplier to bear all (or part) of the cost of any discount if it is part of a promotion, but only if the buyer can specify the period of the promotion and the expected quantity used for the discount beforehand<sup>92</sup>. The buyer can require the supplier to pay for advertising by the buyer<sup>93</sup>, can require the supplier to pay for marketing by the buyer<sup>94</sup>, and can charge the supplier for fitting-out the premises used for the sale of the suppliers' product<sup>95</sup>. The buyer shall provide the buyer a written estimate of the payments per unit or the overall payment, when charging the supplier for the mentioned services. The buyer shall also provide a written estimate of the cost to the supplier for launching a product, advertising a product, marketing the product, and for fitting out the premises used for the sale of the product, on basis of an estimate<sup>96</sup>.

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<sup>81</sup> UTP Directive, Article 3(1)(b)

<sup>82</sup> UTP Directive, Article 3(1)(c)

<sup>83</sup> UTP Directive, Article 3(1)(d)

<sup>84</sup> UTP Directive, Article 3(1)(e)

<sup>85</sup> UTP Directive, Article 3(1)(f)

<sup>86</sup> UTP Directive, Article 3(1)(g)

<sup>87</sup> UTP Directive, Article 3(1)(h)

<sup>88</sup> UTP Directive, Article 3(1)(i)

<sup>89</sup> UTP Directive, Article 3(1)(i)

<sup>90</sup> UTP Directive, Article 3(2)(a)

<sup>91</sup> UTP Directive, Article 3(2)(b)

<sup>92</sup> UTP Directive, Article 3(2)(c)

<sup>93</sup> UTP Directive, Article 3(2)(d)

<sup>94</sup> UTP Directive, Article 3(2)(e)

<sup>95</sup> UTP Directive, Article 3(2)(f)

<sup>96</sup> UTP Directive, Article 3(3)



To enforce all these prohibitions, an enforcement authority is introduced, as well as the option that MSs can have more than one enforcement authority, given by the fact that there should be one contact point for the cooperation among other authorities and/or the Commission<sup>97</sup>. Because suppliers operate in a climate of fear, the complaints mechanism, and the way the confidentiality of the supplier is guaranteed is introduced in Article 5. It lays down that the supplier can make a complaint to its' own MS or to the MS where the buyer is situated<sup>98</sup>. It also lays down who can make a complaint on behalf of the supplier<sup>99</sup>, the obligation of the enforcement authority to inform the complainant of how it intends to follow up on the complaint<sup>100</sup>, the obligation of the authority to notify the complainant if it seems that there are insufficient grounds for a complaint<sup>101</sup>, the obligation of the authority to perform an investigation if there is sufficient ground for a complaint<sup>102</sup>, and lastly, the obligation for the authority to require the buyer to stop the UTP if the buyer has infringed the prohibitions laid down in this Directive<sup>103</sup>.

The specific powers of these enforcement authorities regarding the investigations, inspections, and sanctions are then laid down in Art. 6, while also providing for a safeguard measure regarding these powers in respect of the right of defence. The enforcement authority shall have the necessary resources and expertise, can conduct investigations on its own initiative or based on a complaint<sup>104</sup>, can require buyers and suppliers to provide information necessary for investigating UTPs<sup>105</sup>, can carry out unannounced on-site inspections<sup>106</sup>, can take decisions when finding an infringement, but can also abstain from taking such decisions if the risk of disclosing information that the complainant requested confidentiality for exists<sup>107</sup>. The enforcement authority can also impose fines or other penalties<sup>108</sup>, and finally, can publish its' decisions taken on a regular basis<sup>109</sup>. The penalties decided upon should be dissuasive, proportionate, and effective, and should also consider the gravity, duration, recurrence, and nature of the infringement. The MSs shall ensure that the exercise of these powers is safeguarded, including the cases where a complainant requested confidential treatment<sup>110</sup>.

Article 7 then introduces the option for alternative dispute resolution mechanisms. MSs may promote the voluntary use of effective and independent alternative dispute resolution mechanisms.

Next to that, Article 8 lays down the cooperation between enforcement authorities of the different MSs, as well as the Commission. It states that the authorities should meet once a year to discuss the application of this Directive, facilitated by the Commission, and it establishes a website that allows the authorities and the Commission to exchange information and provides for contact details.

For effective cooperation, enforcement authorities should publish an annual report about their activities regarding this Directive. This report should contain the number of received complaints

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<sup>97</sup> UTP Directive, Article 4

<sup>98</sup> UTP Directive, Article 5(1)

<sup>99</sup> UTP Directive, Article 5(2)

<sup>100</sup> UTP Directive, Article 5(4)

<sup>101</sup> UTP Directive, Article 5(5)

<sup>102</sup> UTP Directive, Article 5(6)

<sup>103</sup> UTP Directive, Article 5(7)

<sup>104</sup> UTP Directive, Article 6(1)(a)

<sup>105</sup> UTP Directive, Article 6(1)(b)

<sup>106</sup> UTP Directive, Article 6(1)(c)

<sup>107</sup> UTP Directive, Article 6(1)(d)

<sup>108</sup> UTP Directive, Article 6(1)(e)

<sup>109</sup> UTP Directive, Article 6(1)(f)

<sup>110</sup> UTP Directive, Article 6(2)

and the number of investigations opened or closed. For each closed investigation, a summary, the outcome, and the decision are published. MSs should send this report annually to the Commission before the 15<sup>th</sup> of March. The Commission has the option to implement acts laying down the rules on information necessary, rules on content and form of such information, and arrangements for making this information available to MSs, international organisations, other competent authorities in third countries, or the public, safeguarding the protection of personal data, legitimate interest, and business secrets. Implementing acts shall be adopted in accordance with the examination procedure<sup>111</sup>.

The Committee for the Common Organisation of the Agricultural Markets assists the Commission on behalf of the MSs for the examination procedure for new implementing acts regarding this Directive<sup>112</sup>.

MSs who want to grant suppliers a higher level of protection can do that. MSs can only introduce stricter rules, if they are compatible with the rules on the functioning of the internal market. Rules on UTPs that are not within the scope of this Directive are also allowed under the same conditions<sup>113</sup>. MSs can move, for instance, practices that are only allowed when they are previously agreed upon, the 'grey-list', as described in Art. 3(2), to the list of prohibited practices described in Art. 3(1), the 'black-list'.

This Directive will then be reviewed by the Commission before the 1<sup>st</sup> of November 2025 and it shall present a report on the main findings to the EP and the Council, as well as the EESC and the CotR. The evaluation should then at least contain: the effectiveness of the measures implemented at the MS level and the effectiveness of cooperation among competent enforcement authorities (and ways to improve that). The evaluation should be based on the annual reports mentioned in Art. 10. By the 1<sup>st</sup> of November 2025, the Commission shall present an interim report on the state of transposition, which is addressed to the same parties.<sup>114</sup>

Finally, this Directive should be transposed into national legislation by the 1<sup>st</sup> of May 2021, but not later than the 1<sup>st</sup> of November 2021 and it should be communicated by the MSs to the Commission.<sup>115</sup> It shall enter into force on the fifth day following its publication date in the Official Journal of the European Union<sup>116</sup>, and is addressed to all MSs<sup>117</sup>.

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<sup>111</sup> UTP Directive, Article 10

<sup>112</sup> UTP Directive, Article 11

<sup>113</sup> UTP Directive, Article 9

<sup>114</sup> UTP Directive, Article 12

<sup>115</sup> UTP Directive, Article 13

<sup>116</sup> UTP Directive, Article 14

<sup>117</sup> UTP Directive, Article 15

## 2.5 Conclusion

The focus of this chapter was on finding the goals and technical requirements of the Directive, for which the Recitals and Articles of the Directive were analysed. The Directive wants to strengthen the suppliers' position on top of voluntary initiatives such as the SCI, and aims to prevent UTPs, while making it easier for suppliers of agricultural- and food products to act in the form of legal proceedings when they are confronted with these UTPs.

Not only suppliers in the Union are covered by this Directive, but UTPs conducted by buyers from outside the Union are also covered, as well as suppliers from outside the Union confronted by UTPs from a buyer within the Union. The Directive requires the MSs to implement a turnover scheme, for estimating an agricultural- or food-suppliers' bargaining power. Next to that, it requires that the MSs implement a list of prohibited practices (the 'blacklist') and a list of practices that are prohibited unless specifically agreed upon beforehand (the 'greylist'). For enforcing the Directive, an authority is designated who is responsible for investigating the complaints, while guaranteeing confidentiality to a certain degree, as laid down in Article 5. To do this, the enforcement authority has specific powers, that are laid down in Article 6, but suppliers can also opt for an alternative dispute resolution mechanism, if that is provided by the MS where they file the complaint, as stated in Article 7. The powers of the authority have safeguard clauses built in, so that the buyer still has all his rights to defend. For uniform implementation, the authorities meet with the Commission once a year and a website for the authorities' contact details is published. The enforcement authorities also report once a year to the Commission for evaluation purposes and for general overview by the Commission. The Commission should send a report to the EP, the Council, the EESC and the CotR, for assessing the effectiveness of the national measures, their effectiveness and regarding the cooperation among national enforcement authorities. In the future, the protection of buyers will be investigated based on this report as well. Next, the enforcement authorities should closely cooperate together for a uniform enforcement procedure. However, MSs can choose to go beyond the protection of the Directive by, for example, moving UTPs from the 'grey-list' to the 'black-list'. For new implementing acts, the Committee procedure is followed, while the obligation for the Commission to evaluate this Directive, and the specifications of this evaluation are also laid down. The Directive should be transposed not later than the 1<sup>st</sup> of November in the MSs' legislation, while it enters into force on the fifth day following its publication date in the Official Journal of the European Union. Concludingly, it applies to all MSs.

### 3 How does enforcement work in these MSs and what are the different legal angles to address these UTPs?

#### 3.1 Introduction

For the comparative analysis of the implementation of this Directive, four European MSs are chosen. First, the Netherlands, since they adopted only the minimum form of protection given to suppliers of agri-food products by the Directive, and since they had no UTP legislation in place beforehand. Secondly, Germany, since they went a slight step further than minimum protection, and since they had some form of UTP legislation in place beforehand. An example of the improved protection is moving the return of unsold goods to the supplier from the 'grey-list' (partially prohibited) to the 'black-list' (fully prohibited). Thirdly, Belgium, because they also went a step further than minimum protection, but this step is in a different direction compared to Germany, and secondly because they also had some form of UTP legislation in place beforehand. An example of the increased protection for suppliers in Belgium is the abandoning of the turnover scheme, while also moving the return of unsold goods from the 'grey-list' to the 'black-list'. Lastly, Hungary, since that was one of the few MSs that already had extensive UTP legislation in place, and therefore offered much more protection before the introduction of this Directive. However, if we compare the text of the Directive to the Hungarian legislation, discrepancies arise. For example, unclear or incomplete implementation of certain prohibitions, while prohibiting certain practices that are not within the scope of the Directive. It might be that the law of the braking lead applies to Hungary in this case.

Since these four MSs have diverging backgrounds regarding this specific type of legislation, and since they also implemented the Directive in a different manner, they will be compared and examined below and the potential pitfalls of their legislation will be reviewed.

To conclude this part, the potential pitfalls on EU level with regard to the functioning of the internal market will be reviewed as well.

## 3.2 The Netherlands

### 3.2.1 Law

Regels strekkende tot implementatie van Richtlijn (EU) 2019/633 van het Europees Parlement en de Raad van 17 april 2019 inzake oneerlijke handelspraktijken in de relaties tussen ondernemingen in de landbouw- en voedselvoorzieningsketen (PbEU 2019, L 111/59) (Wet oneerlijke handelspraktijken landbouw- en voedselvoorzieningsketen)

*Law published by:* the Ministry of Agriculture, Nature & Food Quality

*Authority:* Authority Consumer & Market (ACM, Autoriteit Consument & Markt)

*Alternative dispute mechanism:* appointed by the Minister of Agriculture, Nature, and Food Quality

### 3.2.2 Scope & definitions

Relationship of supplier and buyer is defined as in the Directive.

Scope is not expanded to other type of supply relations. Examples of these are the supply of inputs that are not agri-food products or services that are not covered in the Directive.

Next to that, The Netherlands targets relationships between buyers and suppliers, who fall in a different turnover category, as defined in the Directive.

Lastly, the Dutch legislation does not contain any reference about the operator's place of establishment.

### 3.2.3 UTPs

The Netherlands transposed the Directive in such a way, that both the 'black-list' and the 'grey-list' are the same as in the Directive.

The period that is considered as 'late payment' is the same as in the Directive for perishable and non-perishable products. For the former, 60 days, and for the latter, 30 days.

Short-order cancellation is considered when the cancellation happens within 30 days before the delivery.

### 3.2.4 Enforcement

The Netherlands appointed the 'Autoriteit Consument & Markt' (Authority Consumer & Market, ACM) as their primary enforcement agency for the enforcement of the Directive. The ACM is, contrary to the European Commissions' report on the state of the transposition and implementation of Directive (EU) 2019/633, a competition authority that also governs consumer's rights and the market itself. An alternative enforcement authority is not specifically designated in the implementation of the Directive, but a committee can be appointed by the Minister of Agriculture, Nature, and Food Quality. The conclusion of this committee is binding, unless one of the two parties submits it to the court within three months after the conclusion of the committee. Also, the cooperation duties with foreign authorities and the EC, for evaluating the effectiveness of the Directive, are designated in the legislation.

Furthermore, the confidentiality of the supplier is safeguarded, and the supplier should also specifically identify for which information it requests confidentiality. However, there is no possibility to discontinue the proceedings if this would cause the information, that was requested to be confidential, to be disclosed.

The Netherlands has granted the authorities all the powers prescribed by Article 6 of the Directive, except for the power to publish the decisions taken.

Regarding the sanctions and enforcement measures, the Netherlands has provided the enforcement authority with the power to impose financial sanctions. The minimum amount is not

defined, and the maximum amount is EUR 900,000 or 10% of the infringing parties' turnover<sup>118</sup>, whichever one of the two is more. When offenders make the same mistake in a timespan of five years after the initial infringement, the maximum amount can be doubled<sup>119</sup>. However, the Netherlands has not specified that penalties must be effective, proportionate, and dissuasive. The power of the enforcement authority to address extraterritorial issues is not defined, and neither are the forms of cooperation with other MSs' administrative authorities regarding transborder infringements.

The legislation states that the findings of the secondary enforcement authority can be appealed in court but does not provide for specific rules of coordination between the judicial and the secondary administrative authority<sup>120</sup>.

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<sup>118</sup> Wet oneerlijke handelspraktijken landbouw- en voedselvoorzieningsketen, Art. 10(1)

<sup>119</sup> Wet oneerlijke handelspraktijken landbouw- en voedselvoorzieningsketen, Art. 10(2)

<sup>120</sup> Wet oneerlijke handelspraktijken landbouw- en voedselvoorzieningsketen, Art. 6(3)

### 3.3 Germany

#### 3.3.1 Law

Gesetz zur Stärkung der Organisationen und Lieferketten im Agrarbereich (Agrarorganisationen- und-Lieferketten-Gesetz - AgrarOLkG)

*Law published by:* Ministry of Justice (Bundesministerium der Justiz), but responsible for enforcing the legislation is the Ministry of Agriculture and Food (Bundesministerium für Landwirtschaft und Ernährung) together with the Ministry of Economics and Energy (Bundesministerium für Wirtschaft und Energie).

*Authority:* Federal Office for Agriculture and Food (Bundesanstalt für Landwirtschaft und Ernährung – BLE) together with the competition authority (Bundeskartellamts).

*Alternative dispute mechanism:* Ombudsman (Ombudsstelle).

#### 3.3.2 Scope & definitions

Relationship of supplier and buyer is defined as in the Directive. Scope is not expanded to other type of supply relations.

Germany also applies the Directives' threshold regarding turnover size, but until the 1<sup>st</sup> of May 2025, the provisions also apply to the sale of meat and milk, and the sale of fruit, horticultural products, and vegetables, including potatoes, by suppliers that have a turnover of up to EUR 4 billion in the respective sales segment in Germany, provided that the turnover of the supplier does not exceed 20% of the turnover of the buyer.

It is expressly stated in German legislation that the rules apply to sale transactions where either the buyer or the supplier is situated in the Union<sup>121</sup>. However, Germany has not laid down that the definition of a buyer is irrespective of its' place of establishment.

#### 3.3.3 UTPs

Germany has implemented all the prohibitions under the 'black-list' and the 'grey-list', but also provided for a prohibition of the exploitation of the economic imbalance between buyer and supplier through UTPs. Next, Germany moved the return of unsold products from the 'grey-list' to the 'black-list'. Furthermore, the period that is considered as 'late payment' is the same as in the Directive for perishable and non-perishable products. For the former, 60 days, and for the latter, 30 days. Short-order cancellation is considered when the cancellation happens within 30 days before the delivery date.

#### 3.3.4 Enforcement

Germany has appointed two authorities<sup>122</sup>: the Federal Office for Agriculture and Food (Bundesanstalt für Landwirtschaft und Ernährung, BLE) is the enforcement authority of the Directive, but some of its' decisions need to be shared with the competition authority (Bundeskartellamts). Cooperation duties between national authorities and foreign authorities enforcing this Directive are also laid down as provided for in Article 8 of the Directive. Germany requires the supplier to request confidentiality if the supplier thinks that it is needed, but the proceedings can be discontinued if the confidentiality can be no longer guaranteed by the enforcement authority. Furthermore, Germany granted the enforcement authority all the powers as prescribed in Article 6 of the Directive. One of these powers available to the enforcement

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<sup>121</sup> Agrarorganisationen-und-Lieferketten-Gesetz – AgrarOLkG, Art. 10.1(2)

<sup>122</sup> Agrarorganisationen-und-Lieferketten-Gesetz – AgrarOLkG, Art. 7(1)

authority is imposing financial sanctions. Germany does not provide minimum thresholds, but the maximum financial sanction is EUR 750,000. Germany did not explicitly incorporate the principle that penalties must be effective, proportionate, and dissuasive. Germany does, however, have a type of penalty to deter non-compliance<sup>123</sup>. The maximum fine for non-compliance is EUR 300,000. Next to that, contract terms can be nullified if a violation of the implementation of the Directive is found.

The German legislation explicitly provides for the option that the administrative authorities' decision can be appealed in court<sup>124</sup>. The coordination between administrative and judicial authorities is not provided with specific rules or guidelines. Alternative dispute resolution is also an option by using an ombudsman. Cooperation with authorities of other MSs is also regulated in German legislation. Lastly, the German legislation specifies that either the buyer or supplier, or both, should be established in Germany.

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<sup>123</sup> Agrarorganisationen-und-Lieferketten-Gesetz – AgrarOLkG, Art. 28(4)

<sup>124</sup> Agrarorganisationen-und-Lieferketten-Gesetz – AgrarOLkG, Art. 32(1)



## 3.4 Hungary

### 3.4.1 Law

Act XCV of 2009 on the prohibition of unfair distributor conduct vis-à-vis suppliers regarding agricultural and food industry products – ‘UTP Act’.

Law published by: Hungarian Parliament by decree

Authority: NEBIH (National Food Chain Safety Office)

Alternative dispute mechanism: Not available

### 3.4.2 Scope & definitions

The scope of the legislation is limited to *‘traders acting as a reseller of agricultural and food products purchased from suppliers directly or indirectly within the framework of gainful business activities unaltered and without processing’*. Buyers of agricultural products that process the product before reselling it are excluded from the scope of application. The scope is not widened to other types of supply relationships, such as the supply of physical inputs which are not agri-food products. Next to that, the turnover size of a trader only affects certain prohibitions in Hungary, while all other rules apply regardless of the turnover size.

Furthermore, the Hungarian legislation does not provide for a definition of perishable products. Lastly, the Hungarian legislation does not contain any reference to the operators’ place of establishment.

### 3.4.3 UTPs

Hungary is the only country that only provides a ‘black-list’ that prohibits the supplier from validly consenting upfront to the covered trading practices. Next to that, Hungary relies on a previously adopted legislative instrument, that has no specific modifications regarding the course of the Directive. Some practices covered in the Directive are defined differently, some of these are affected by wider or more stringent prohibitions, but some are seemingly not clearly transposed in the current legislative instrument. Next to that, Hungary did not incorporate the derogations provided for by Art. 3(1) of the Directive and no additional derogations are made. These derogations are, for example, related to late payments by a buyer to a supplier where such payments are made in the framework of the school scheme pursuant to Art. 23 of Regulation (EU) 1308/2013. The Hungarian legislation does also not provide for a 30-day period that is considered as ‘short-notice’ when a buyer cancels a contract. The Hungarian legislation does not even speak of cancellation, but of changes instead. However, no specific period is defined.

### 3.4.4 Enforcement

The authority for enforcing the legislation is the food market authority called NEBIH. No second authority is defined. If the supplier wants to protect its’ identity when filing for a complaint, it should request it according to Hungarian legislation. However, also the authority can take confidentiality initiative in this regard, as it is provided for by legislation<sup>125</sup>.

It is not specifically defined that a procedure can be stopped when it is necessary that the confidential information is disclosed. Next, the Hungarian legislation does not give the authority the explicit power to require the buyer to end the prohibited practice, but it has the power to approve commitments undertaken by the infringer. The maximum fine is determined by the infringing parties turnover and lies on 10%. Hungary did not explicitly specify the principle that

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<sup>125</sup> Act XCV of 2009 on the prohibition of unfair distributor conduct vis-à-vis suppliers regarding agricultural and food industry products – ‘UTP Act’, Art. 4(1)

penalties must be effective, proportionate, and dissuasive. Moreover, the Hungarian legislation enables the authority to prohibit the trader from applying the provisions of the standard service agreement if it is not clearly worded, or if the service or consideration is not specified, or if the fee charged is not proportionate to the cost. Every trader should publish its' standard service agreement and send it to the authority. Hungarian legislation also provides for the contract terms to be nullified. Commitments are also clearly regulated in Hungary, where the approval of the authority normally excludes a finding of an infringement and a penalty, unless the commitment is not fulfilled. Next to that, the Hungarian legislation does not provide for the option that the authorities' decision can be appealed in court. There is no alternative dispute resolution mechanism in Hungarian legislation, and cooperation duties with foreign authorities is not defined.

## 3.5 Belgium

### 3.5.1 Law

Wetsontwerp tot omzetting van Richtlijn 2019/633/EU van het Europees Parlement en de Raad van 17 april 2019 inzake oneerlijke handelspraktijken in de relaties tussen ondernemingen in de landbouw- en voedselvoorzieningsketen en tot wijziging van het Wetboek van economisch recht. Doc 55 2177/001

Belgium adds this Directive to their already implemented law from the 4<sup>th</sup> of April 2019, which is concerned with UTPs in the general supply chain (not necessarily agricultural products or food)

*The European Commission started an infringement procedure for not notifying complete transposition of Directive 2019/633 by the set date of the 1<sup>st</sup> of July 2021 (European Commission, 2021), but by December 2021, Belgium transposed the legislation into national law.*

Law published by: Ministry of Economy

Authority: Economic Inspection

Alternative dispute mechanism: Not available

### 3.5.2 Scope & definitions

Relationship of supplier and buyer is defined as in the Directive. Scope is expanded to other type of supply relations. Examples of these are the supply of inputs that are not agri-food products or services that are not covered in the Directive. However, the definition of an agricultural- and food product is expanded, so that suppliers of animal feed enjoy the same protection<sup>126</sup>. In Belgium, all suppliers with a turnover lower than EUR 350 million fall within the scope of the legislation<sup>127</sup>. Belgium did not define that the legislation applies, irrespective of the buyer and suppliers' place of establishment in the Union. The Belgian law does not distinguish between perishable and non-perishable agri-food products.

### 3.5.3 UTPs

The Belgian legislation only provides for periods, that are considered late payments or short order cancellation, of 30 days since Belgium does not differentiate between perishable and non-perishable agri-food products. The legislation also provides for an option regarding shorter time periods, for specific sectors that can still to be determined in the future by parliament. The 'grey-list' is the same as in the Directive.

### 3.5.4 Enforcement

Belgium has appointed the 'Economic Inspection' (Economische Inspectie) as their primary enforcement agency for the enforcement of the Directive. This bureau is part of the ministry of Economics. An alternative enforcement authority is not specifically designated in the implementation of the Directive. The cooperation duties with foreign authorities and the EC, for evaluating the effectiveness of the Directive, are designated in the legislation. Furthermore, the confidentiality of the supplier is safeguarded, and the supplier should also specifically identify for which information it requests confidentiality. There is no possibility to

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<sup>126</sup> Wet inzake oneerlijke handelspraktijken in de relaties tussen ondernemingen in de landbouw- en voedselvoorzieningsketen – Art. 1.8/1, 1<sup>o</sup>

<sup>127</sup> Wet inzake oneerlijke handelspraktijken in de relaties tussen ondernemingen in de landbouw- en voedselvoorzieningsketen – Art. 1.8/1, 4<sup>o</sup>

discontinue the proceedings if this would cause the information, that was requested to be confidential, to be disclosed.

Belgium has granted the authorities all the powers prescribed by Article 6 of the Directive. Regarding the sanctions and enforcement measures, Belgium has provided the enforcement authority with the power to impose financial sanctions, administrative persecution, or judicial persecution. The minimum and maximum fine is not defined. However, it is defined that the contractual clauses that contain the UTPs are prohibited, null, and void. When the offender is unwilling to act after an infringement has been found, the persecution can be handed over to the prosecution after 60 days. However, Belgium has not specified that penalties must be effective, proportionate, and dissuasive. The enforcement authority does also not have the power to address extraterritorial cases.

The legislation states that the findings of the secondary enforcement authority can be appealed in court but does not provide for specific rules of coordination between the judicial and the secondary administrative authority.

## 4 What can be potential pitfalls of the legislation?

### 4.1 The Netherlands

#### 4.1.1 Scope & definitions

Since the operators' place of establishment is not defined in the legislation, as well as the cooperation duties of the enforcement authority with foreign authorities in the Union, makes it questionable whether the Dutch legislation is fit for tackling transborder infringements and infringements that fall partially outside the Netherlands.

Next to that, the Netherlands adopted the turnover scheme from the Directive as one of only four MSs, while the neighbouring countries Germany & Belgium implemented them in different ways. Since 26% of the Dutch agricultural export in 2020 went to Germany, followed by Belgium at 11%<sup>128</sup>, implementation discrepancies with these neighbouring countries might cause a skewed playing field for Dutch suppliers. For instance, a practice that is illegal between a Dutch and Belgium trader could be perfectly legal in the Netherlands itself, since Belgium did not include the turnover scheme as a requirement for most of their legislated UTPs.

#### 4.1.2 UTPs

The Netherlands implemented the 'black-list' and 'grey-list' in the same way as in the Directive. This gives suppliers from the Netherlands who supply domestically the bare minimum protection. When these suppliers trade with foreign entities, the foreign legislation could give them better protection, but the suppliers might not be in a situation where they know every detail of foreign legislation. For example, when a Dutch supplier trades with a Belgian buyer, the Belgian laws appear to give the most protection to the Dutch supplier. However, if the Dutch supplier is a SME, it could be that he or she is unaware of the diverging Belgian UTP legislation. On the other hand, the Belgian buyer could be very aware of the diverging legislation, but since he or she knows that the Dutch buyer is probably not aware of the complex legislative circumstances, the buyer could still take advantage of the situation, offering much less protection to the Dutch supplier overall. This could result in a situation where either the Dutch supplier should have a lawyer that is also up to date regarding the diverging legislation in all the MSs, or a situation where the Belgian buyer could take advantage of the unawareness of the Dutch supplier.

#### 4.1.3 Enforcement

The enforcement authority of the Netherlands is the ACM, but for alternative enforcement, the Minister can appoint a special committee. How this works in practice and how effective this stimulates the use of alternative enforcement mechanisms, such as the SCI, can only be seen in the future. However, the fact that the Minister should appoint a committee for alternative enforcement gives the idea that this is not as stimulated as it is in the Directive.

Next to that, the cooperation duties with foreign authorities and the EC are defined, but the cooperation duties for transborder infringements are not. This gives rise to the question whether the Dutch legislation can cover more complex transborder infringements. Furthermore, the fact that the Dutch authority cannot discontinue the proceeding if the confidential information must be disclosed, gives also rise to the question whether the confidentiality of the supplier is adequately guaranteed.

The Dutch authority can also not publish the decisions taken, combined with the fact that there

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<sup>128</sup> Ministerie van Landbouw, Natuur en Voedselkwaliteit, 'De Nederlandse agrarische sector in internationaal verband' [2021] Rijksoverheid <https://www.rijksoverheid.nl/documenten/rapporten/2021/01/22/de-nederlandse-agrarische-sector-in-internationaal-verband> accessed on 13th of January 2022

are no minimum penalties and the fact that it is not described that penalties should be effective, proportionate, and dissuasive, gives rise to the question whether the penalties will actually be dissuasive at all. However, it must be said that repeating offenders will get their fine doubled. Lastly, the fact that the penalties will be dissuasive.

## 4.2 Germany

### 4.2.1 Scope & definitions

Germany gives the exemption to suppliers of meat and milk, fruit, horticultural products, vegetables (including potatoes), by suppliers that have a turnover of up to EUR 4 billion in the respective sales segment in Germany, provided that the turnover of the supplier does not exceed 20% of the turnover of the buyer until the 1<sup>st</sup> of May 2025. This increases the scope of the Directive to suppliers that are larger than those covered in the Directive itself, which in itself might not be a pitfall, but it might grant German suppliers more protection than their foreign counterparts.

### 4.2.2 UTPs

Germany moved the return of unsold goods from the 'grey-list' to the 'black-list'. This means that returning unsold goods to the supplier is always prohibited. Germany also added the payments by the supplier for storage by the buyer to the 'black-list' too, while the other prohibitions are the same as in the Directive. The unilateral change of contract clause is also expanded in Germany, where it is prohibited that buyers change the contract terms related to storage, listing, marketing, and setting up the premises. Furthermore, the listing fees are prohibited in Germany as well, except for cases that involve launching a new product on the market. However, the unlawful acquisition, use or disclosure of trade secrets from the supplier by the buyer is not defined in German UTP legislation. Lastly, Germany made legislation about the agreement on price deduction more clear than the Netherlands for example, because they provide for the fact that the buyer should notify the supplier within reasonable times before the discount starts, and if the buyer does not do that, the buyer cannot demand the discounted price.

### 4.2.3 Enforcement

Since the German legislation provides for the option that the parties can go to court, it is noteworthy that the coordination between administrative and judicial authorities is not provided for. This could be a pitfall if big buyers would bring every case before a court, which might be too expensive for a SME supplier. Also, the cooperation between the ombudsman and the two other enforcement authorities give rise to the question if this will not give administrative issues when problems arise.

## 4.3 Hungary

### 4.3.1 Scope & definitions

Since the scope of the legislation is limited to traders acting as a reseller without processing, the Hungarian scope differs from the scope of the Directive. This could make certain practices legal if the buyer only minimally processes the product. It should be noted that the turnover scheme is not implemented in Hungary as it is in the Directive, which results in a situation where suppliers enjoy more protection than in other MSs. Next to that, non-perishable products enjoy the same protection in Hungary as perishable products, which also results in more protection than the Directive provides for. Lastly, since the Hungarian legislation does not contain any reference to the operators' place of establishment, it could be the case that the Hungarian legislation is not that effective in battling transborder infringements.

### 4.3.2 UTPs

The Hungarian legislation only provides for a single 'black-list', while other practices are not defined as they are in the Directive. This gives rise to the question whether the Hungarian legislation is still an effective instrument to combat UTPs, since it is not in line with the minimum requirements of the Directive, while going a lot further regarding some other UTPs. Next to that, the derogations that apply to e.g., schools do not apply in Hungary, which makes Hungarian legislation diverge even more from the course of the Directive. Lastly, no specific period that is considered 'short-notice' is defined, which could make a typical 'short-order cancellation' hard to prove.

### 4.3.3 Enforcement

There is no second authority defined in Hungary, so the promotion of the use of voluntary or alternative initiatives in Hungarian legislation is non-existent. Hungary did not define a minimum penalty, nor did it define the fact that penalties should be effective, proportionate, and dissuasive, so one could ask whether the penalties will be effective, proportionate, or dissuasive. Furthermore, there is no option that the parties go to court in the legislation, nor is the cooperation with foreign authorities regulated. This gives rise to the question whether the Hungarian legislation can battle transborder infringements.



## 4.4 Belgium

### 4.4.1 Scope & definitions

Since Belgium excluded the definition of perishable-food products, all suppliers of food products fall under the same definition, granting them more protection than suppliers abroad. Next to that, Belgium did not implement the turnover scheme, protecting all suppliers with a turnover not larger than 350 000 000 EUR against all buyers. For suppliers, this is not a pitfall, but for SME buyers that are located abroad, the Belgium legislation might not be known and might incentivize them not to do business with Belgian suppliers, since their rules are far more strict or difficult to comply with.

### 4.4.2 UTPs

Belgium implemented the 'black-list' and 'grey-list' in the same manner as in the Directive. However, some details have been included regarding the payments by the supplier for a discount by the buyer. In Belgium, the supplier should expressly agree to the estimated cost provided by the buyer, and if that is not the case, the supplier should not have to bear the costs. This differs with the text of the Directive, where only the obligation for the buyer to provide an estimate of the costs is given. This might also incentivize buyers from abroad not to do business with Belgian suppliers, since their legislation simply poses more challenges than the domestic legislation in, for example, the Netherlands and Germany would.

### 4.4.3 Enforcement

One of the pitfalls of the Belgian enforcement is that the legislation only applies to cases where either buyer or supplier have an office in Belgium, which makes the legislation not fit for battling foreign infringements, while possibly also excluding certain parties that do not have an official office in Belgium. Next to that, there is no minimum or maximum fine defined in Belgian legislation, combined with the fact that it is not noted that penalties should be effective, proportionate and dissuasive, makes it questionable whether the penalties actually will be effective. Furthermore, since no second enforcement authority is appointed, the use of voluntary initiatives like the SCI will probably be minimal. However, Belgium did include the clause that contracts containing UTPs are null and void, granting more protection to SME suppliers than the Netherlands for example. Only time will tell how much foreign buyers are incentivized not to do business with Belgian suppliers due to their diverging UTP legislation and the compliance cost associated with that.

## 4.5 European Union

### 4.5.1 Scope & definitions

Since there are differences in MSs regarding certain definitions, a pitfall might arise here. For example, Hungary identifies a buyer as someone that *does not process* the agri-food product, while other MSs do identify a buyer as such. This could lead to situations where Hungarian suppliers are less favoured than suppliers in neighbouring countries. Next to that, since Belgium and Hungary decided not to adopt the turnover scheme, the amount of protection granted to suppliers differs even more between MSs. Moreover, the operators' place of establishment is in all four investigated MSs' poorly defined, which gives rise to the question whether the implementation of the Directive will be effective in battling transborder infringements. Since Belgium did not implement the turnover scheme as mentioned before, asymmetries arise here as well. The non-implementation of the turnover scheme causes Belgian suppliers to be more protected than their German and Dutch neighbours on the other side of the border. On the other hand, German or Dutch buyers could be incentivised not to do business with Hungarian or Belgian suppliers, since the UTP legislation in those MSs is far more strict and less favourable to them. These outcomes could result in more fragmentation of the single market, since every MS adopted the Directive in a different manner. Lastly, with special regard to the turnover scheme, the scope of the Directive is defined that only small suppliers are protected from big buyers. This results in situations where small buyers from within the EU still hold a larger bargaining position against big suppliers from outside the EU.

### 4.5.2 UTPs

The diversion in the implementation of this Directive could result in situations described above. If, for example, the Netherlands prohibited just the bare minimum of standards, while Hungary drastically expanded the list of UTPs, Dutch suppliers on one side of the border could be far less favoured when trading domestically than their Hungarian counterparts. However, when supplying to or buying from Hungary, the Hungarian legislation also applies, so then the 'more strict' Hungarian rules will make the playing field level again. The future will decide if SMEs will benefit from this situation, since they might not be in a position where they know all the details of all the foreign countries' legislation they trade with. Next to that, since Hungary's prohibited UTPs differ from the UTPs in the Directive and since 12 MSs did not implement the Directive at all by the 23<sup>rd</sup> of July 2021<sup>129</sup>, it could be noteworthy to ask whether this Directive actually will give the bare minimum protection to SME suppliers. Moreover, all the MSs' legislation contains the prohibition on conducting commercial retaliation, since the suppliers oftentimes operate in a climate of fear. It must be noted that no case law exists yet, so the future will tell whether the defined prohibition is accurate enough to prove and prohibit commercial retaliation. Moving the return of unsold goods from the black-list to the grey-list is a common tactic in Germany and Hungary, but will most likely contribute to the patchwork of legislation that exists here, since not all MSs adopted such measures. Furthermore, some UTPs remain vaguely defined, such as an act of commercial retaliation. Also, economic dependence and UTPs arising from the economic dependence are not defined, resulting in a situation where buyers force suppliers to sign a contract containing numerous 'grey-list' UTPs, since the suppliers could be economically dependant on the buyer. Lastly, some UTPs are not mentioned in the Directive, while the European Economic and Social

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<sup>129</sup> Commission, 'Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the state of the transposition and implementation of Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain' (Report) COM (2021) 652 final, chapter 2

Committee (EESC)<sup>130</sup>, the Committee of the Regions (CoR)<sup>131</sup>, FairTrade Advocacy Office, and Oxfam International<sup>132</sup> unanimously agree that these practices should be prohibited as well. Examples of these practices are buying below production cost, and double race auctions.

#### 4.5.3 Enforcement

The fact that Hungary does not provide for alternative enforcement, nor does it promote the use of voluntary initiatives, combined with the fact that the Netherlands only defines an alternative enforcement authority as a committee that must be appointed by the Minister in the future, gives rise to the question whether the implementation of the Directive will promote the use of alternative (voluntary) enforcement mechanisms at all. Next to that, the cooperation duties with foreign authorities regarding transborder infringement is poorly defined in the Netherlands and Hungary, which could result in the inability to battle transborder infringement in a coordinated manner. Furthermore, the confidentiality clause in the legislation is also interpreted differently across the investigated MSs. This makes suppliers in different MSs protected to a divergent extent to the climate of fear and the commercial retaliation which arises from that. Adding to that is the clause that contracts containing UTPs are null and void, which is not implemented in every MS, resulting in a situation where suppliers are not equally protected in all MSs. Moreover, the initiative of complaining is with the suppliers, and although anonymity is partially guaranteed, there is no certainty that the SME suppliers will actually complain when they operate in a climate of fear. There is also no option mentioned where the enforcement authorities can pro-actively engage with non-EU suppliers, who could be not familiar with the contents of the Directive at all. Next to that, the only one eligible for filing a complaint is the supplier, their organization, or their non-profit organization. This results in a situation where UTPs might be noted by someone else, but since they are not eligible for filing a complaint, nothing will happen. Lastly, the contents of the enforcement report are defined differently across the MSs, resulting in situations where enforcement authorities in Belgium can publish the name of the infringing party, while the authority of the Netherlands can not. The contents of these reports also do not contain evaluation parts regarding the functioning and the enforcement of the legislation, which might hamper effective evaluation.

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<sup>130</sup> European Economic and Social Committee (EESC) 'Towards a Fair Food Supply Chain' (Opinion) NAT/823-EESC-2021

<sup>131</sup> European Committee of the Regions 'Unfair trading practices in the food supply chain' (Opinion) 2018/C 387/09

<sup>132</sup> Tom Wills, et al., 'The Unfair Trading Practices Directive: a transposition and implementation guide' (*FairTrade Advocacy*, August 2019) <[www.fairtrade-advocacy.org/wp-content/uploads/2019/07/The-Unfair-Trading-Practices-Directive.pdf](http://www.fairtrade-advocacy.org/wp-content/uploads/2019/07/The-Unfair-Trading-Practices-Directive.pdf)>

## 5 What solutions might reduce the negative effects that might occur following the implementation of Directive 2019/633 in these different MSs?

### 5.1 Introduction

For the last sub-question, the solutions to the possible pitfalls and the general recommendations that might improve the functionality of the Directive and its' implementation in the different MSs will be reviewed and discussed.

First, the possible improvements of the Directive will be investigated since the text of the Directive provides for the foundation of the MSs' legislation. For these possible improvements, reports, and press releases by the EESC, CotR, FairTrade Advocacy Office, Oxfam International, EuroCommerce, and scientific scholars will be reviewed.

Next, the improvements for the four different MSs that were investigated for this thesis will be given. However, since these MSs all adopted the Directive in a different manner, they therefore require different recommendations for their legislation.

### 5.2 European Union

#### 5.2.1 The Directive

The first recital of the Directive already speaks about the significant imbalances in bargaining power between suppliers and buyers of agricultural products. This makes the question arise whether this Directive will counterbalance the concentration of bargaining power. The Committee of the Regions notes here that market fluctuations exacerbate these power imbalances and that a link exists between combating UTPs and regulating the price volatility of these products. Therefore, it is needed that rules are implemented to harmonise the conditions for a healthy competition<sup>133</sup>. However, as can be seen in the previous chapter on the implementation in the different MSs, a harmonised implementation in all MSs is not achieved. Since the Commission chose for the option to primarily grant the suppliers (and their organisations) more power, instead of curbing the power of the downstream sector, a quote from Jean-Christophe Bureau from 2012 becomes topical today:

*'The attempt to strengthen producers' organisations, rather than curbing the power of the oligopolistic downstream sector, bears the risk of double marginalization, which might eventually be costly for consumers and lower the demands for products such as fruit and vegetables'*<sup>134</sup>

This double marginalization refers to a scenario where both a powerful producer and a powerful buyer impose their mark-ups on a food product. The result is bad for (only) the consumer, since neither party wants to pay for the other's mark-up, resulting in a scenario where the consumer pays a double mark-up<sup>135</sup>. It is therefore advised to curb the power of the oligopolistic downstream sector as well, to achieve a more effective regulation with regard to the product price paid by consumers.

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<sup>133</sup> European Committee of the Regions 'Unfair trading practices in the food supply chain' (Opinion) 2018/C 387/09

<sup>134</sup> Jean-Christophe Bureau, et al., 'Where Is the Common Agricultural Policy Heading?' [2012] 47(6) Intereconomics 316

<sup>135</sup> Viktoria Daskalova, 'Regulating Unfair Trading Practices in the EU Agri-food Supply Chain: a Case of Counterproductive Regulation?' [2020] 21 YARS 7

Besides this phenomenon, the Directive might also be an example of regulatory iatrogenesis, which means that UTPs are aggravated by the implementation of the Directive. In other words: the Directive could make the situation worse for producers instead of better. This theory is based on an article of regulatory scholar Peter Grabosky who identified five types of regulatory interventions that tend to backfire. The included scenarios are escalation, displacement, over-deterrence, perverse incentives, and misunderstanding opportunity costs<sup>136</sup> which will be explained below. Especially escalation, displacement, and over-deterrence are applicable on (the implementation of) this Directive, while perverse incentives relate more to the CAP and the functioning of the EU. Furthermore, misunderstanding opportunity costs is not related to this Directive, since this relates to situations where regulation benefits become increasingly expensive to realise. Then, there comes a moment in time at which the money spent on this regulation to secure this marginal compliance improvement could be better spent on other goals.

First, escalation means that counterproductive regulation can escalate the problems or risks it is trying to eliminate. Counterproductive regulation could mean that an attempt to regulate might backfire, thereby defeating itself essentially, or it may otherwise inflict collateral damage that was not foreseen beforehand. In the case of escalation, trade diversion to foreign suppliers in countries with less stringent UTP regulations might cause more problems for the domestic suppliers than the UTPs themselves originally did, escalating the problem at hand. This will not be a problem for situations where the buyer and the supplier are both situated in the EU, but can make a significant difference in cases where either the buyer or the supplier are situated in the EU. For example, if a buyer of bananas is located in Belgium, then he must obey all the rules Belgium implemented, regardless of the suppliers' and its' own turnover size. However, if this buyer of bananas moved to neighbouring country the Netherlands, the turnover size does matter (possibly excluding some suppliers from complaining against him/her) and one of the UTPs that was put on the black-list by Belgium is on the grey-list instead. This results in a situation where he/she can impose more UTPs, without the possibility for the supplier to file a complaint, since they do not fall in a different turnover category. The remedy for this problem is a more harmonised implementation approach among the MSs, but as noted earlier: this is now not achieved. The reason for this is that a Directive, unlike a Regulation, allows MSs a lot of leeway in how far they want to go to protect the suppliers, since the Directive only provides for a mere baseline for the MSs that just obliges them to achieve the goals laid down in the Directive. Next to that, domestic political preferences may also influence the amount of protection given to suppliers. Add that all together, and the result is a non-harmonized approach by the MSs. Moreover, the Directive seeks to regulate certain contractual terms, which might shift the unfair behaviour to non-regulated contract terms, which may have the same (or worse) consequences, since there is no law governing them as strict as the Directive (yet). It is therefore necessary to improve the evaluation of the enforcement of this Directive, to notice these changes in unfair behaviour and UTPs in time and to react adequately.

Second, displacement means that the problem moves but does not disappear. Companies might want to move operations to a certain country, which has less stringent rules on UTPs, thereby exporting the problem. This is in essence the same situation as the example of mentioned before. Another form of displacement is when a problem for one policy area is solved but a problem for another policy area is created. An example of this kind of displacement could be that the Directive on UTPs might have solved problems in competition law about previously unaddressed power imbalances and superior bargaining power. However, the issue of UTPs as a consequence of the imbalance in bargaining power then could shift to private law, like business torts, unfair trading

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<sup>136</sup> Peter N. Grabosky, 'Counterproductive regulation' [1995] 23(4) International journal of the Sociology of Law 347

law, contract law, and maybe even other UTPs that are not addressed in the legislation itself. Therefore, it can be argued that this shift to private law in the absence of a remedy for the existing power imbalance issue itself has limited the usefulness of the approach as a whole and that it requires additional legislation. However, no case law exists here yet, since the Directive is just implemented by the MSs, so the exact effects are unsure.

Third, over-deterrence mainly refers to the relationship between the many derogations that primary producers (or producers' organisations) get under the Common Agricultural Policy (CAP). An example of this is the derogation that producers' organisations get on Art. 101 TFEU (which prohibits cartels) and the extra protection they get under the new Directive (Art. 5(2) giving them the right to complain on behalf of the supplier) on the one hand, and on the other hand the goal of the CAP, the Directive, and the EU internal market policy itself: safeguarding not only producers' interest, but also consumers' interest. The latter one is now at stake, since two powerful parties (producer organisations versus big buyers) are now in a position to impose their markup on a food product, while they are both unwilling to pay for the other parties' markup, resulting in a situation where the consumer pays more for the same end product. Explanatory for this scenario is the quote from Jean-Christophe Bureau provided earlier as well.

Lastly, perverse incentives occur in this light when the regulation at hand stimulates the behaviour it aims to regulate and when the obtained benefits of the regulation are not received by those who are intended to benefit from them. Although this scenario is more related to the CAP than to the Directive, it should be noted that the CAP is highly relevant for the producers who should benefit from the UTP Directive. An explanation for this scenario of perverse incentives is that CAP subsidies for farmers might have created the incentive to behave unfair. Subsidies do not solve the problem of the power imbalances or the UTPs, since shielding farmers with subsidies from the effect of buyer power makes UTPs by buyers sustainable in the long run. Subsidies cannot be viewed separately from other structural issues on the market (such as power imbalance)<sup>137</sup>. This means that these subsidies alone do not transform the market into a more fair-trade one, but keep the problems existing, resulting in more regulations like the UTP Directive, to solve the problems the CAP helps sustaining. It must be noted here that the problems above cannot be improved by changing the contents of the Directive itself, but they should be improved in a wider view regarding EU law and harmonised implementation in the MSs.

Unfortunately, the examples mentioned above might not be the only pitfalls of this Directive that need improvement. It is also argued that the UTP Directive does not provide a normative framework for elaborating UTPs, does not provide analytical tools to distinguish fair from unfair practices, and it does not give insights as to how future problems of fairness in the FSC could be resolved<sup>138</sup>. Adding to that, EU MSs take different approaches in implementing this Directive, resulting in a patchwork of legislation and a possible fragmentation of the single market. Some MSs make competition law stricter in combination with an extension of consumer protection law in business-to-business law, while others apply general competition law and add no extension of consumer protection to business-to-business transactions, but apply general contract law instead<sup>139</sup>. This position is also shared by EuroCommerce, the representative of retailers and wholesalers in Europe, as their Director-General Christian Verschueren said:

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<sup>137</sup> Viktoria Daskalova (n. 135)

<sup>138</sup> Viktoria Daskalova, 'The New Directive on Unfair Trading Practices in Food and EU Competition Law: Complementary or Divergent Normative Frameworks?' [2019] 10(5) *Journal of European Competition Law & Practice* 281

<sup>139</sup> Viktoria Daskalova (n. 135)

*“(…) The directive left national authorities a lot of leeway in how they implemented the legislation, with a number of member states going far beyond the requirements in the Directive, with a real risk of creating further fragmentation in the single market and regulating practices with very little impact on farmers. (…)”<sup>140</sup>*

To solve this problem, more harmonisation measures regarding the implementation between the different MSs is required. Moreover, it is argued that Art. 43 of the Treaty on the Functioning of the European Union (TFEU) is not adequate as the legal basis for this Directive, as the Directive aims at the protection of suppliers against UTPs conducted by their buyers. Second, the implemented rules on UTPs might impact the structure of EU law since they are complementary to EU competition law. The Directive is focused on the balance of bargaining power between buyer and supplier. This is opposed to competition law, which focuses on abuses of dominance addressing practices that affect the overall market. Third, the actual effect and the effectiveness is uncertain since the empirical basis for the influence of this Directive is relatively dire. Fourth, this Directive does not propose umbrella prohibitions, which might provide legal certainty, but since it is unclear on which basis the UTPs were chosen, it is also uncertain whether this approach allows for sufficient flexibility to cover other UTPs that might evolve over time. Fourth, the current UTPs seem exploratory, specific, and few, which might give rise to an ad hoc and too limited targeting of UTPs. However, once the Directive has been fully consolidated, the enforcement structures, in combination with the possibility of extending and adjusting the list of UTPs after some years, could make it likely that the implementation of the Directive will be the foundation for a new branch of EU law<sup>141</sup>.

#### 5.2.2 Recommendations on Scope & definitions

First, the turnover size restriction of the Directive could be expanded, because small buyers from within the EU still might have more bargaining power than big suppliers outside the EU (Figure 1). Therefore, size does not necessarily mean bargaining power<sup>142</sup>, because as mentioned before, the small buyer from within the EU has access to the internal market, while the big supplier from outside the EU does not. In this situation, the small buyer has more bargaining power than the big supplier, since the small buyer can use the fact that he is the gateway to the internal market of the EU for the big supplier. Next to that, economic dependency remains undefined. This might be risky regarding the UTPs in Art. 3(2) of the Directive, as the Article allows UTPs if they were previously agreed upon. This might still be unfair to suppliers since they might be economically dependent on the retailers<sup>143</sup>. Moreover, a mechanism should also be set up to track whether the gross-value that is added in the food chain also reaches these weaker actors the Directive aims to protect<sup>144</sup>. On top of that, the European Economic and Social Committee (EESC) argues that the approach taken in this Directive will fragment the single market, so a more harmonized coherent approach is advised<sup>145</sup>.

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<sup>140</sup> Pressrelease by Christian Verschuere, Director-General of EuroCommerce, (EuroCommerce, 27th of October 2021) <https://www.eurocommerce.eu/media/199806/2021.10.27%20%20UTP%20Directive%20implementation.pdf>

<sup>141</sup> Hannah Schebesta, Tom Verdonk, Kai Purnhagen, & Bert Keirsbilck, ‘Unfair Trading Practices in the Food Supply Chain: Regulating Right?’ [2018] 9(4) European Journal of Risk Regulation 690

<sup>142</sup> European Economic and Social Committee (EESC) ‘Towards a Fair Food Supply Chain’ (Opinion) NAT/823-EESC-2021

<sup>143</sup> Tom Wills, et al., ‘The Unfair Trading Practices Directive: a transposition and implementation guide’ (*FairTrade Advocacy*, August 2019) <[www.fairtrade-advocacy.org/wp-content/uploads/2019/07/The-Unfair-Trading-Practices-Directive.pdf](http://www.fairtrade-advocacy.org/wp-content/uploads/2019/07/The-Unfair-Trading-Practices-Directive.pdf)>

<sup>144</sup> European Economic and Social Committee (EESC) (n. 142)

<sup>145</sup> European Economic and Social Committee (EESC) (n. 142)

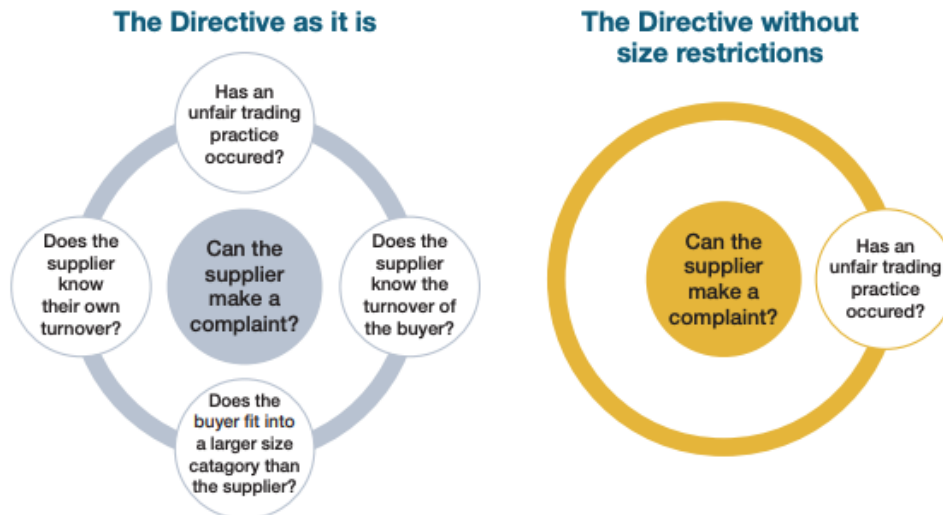


Figure 1: How expanding the scope of the Directive can cover all suppliers regardless of their size<sup>146</sup>

Not only economic dependency is undefined in this Directive, also a general prohibition in the principle of unfair trading practices is missing, which could be a potential answer to future abusive practices that remain undefined in the text of this Directive<sup>147</sup>. It is important to define in the Directive what constitutes an UTP in a sufficiently open way. A possible addition to the definitions under Art. 2 of the Directive would then be:

*‘unfair trading practice’ means the action of subjecting or endeavouring to subject a trading partner to obligations which would create an imbalance between the rights and obligations of the parties;*<sup>148</sup>

The Committee of the Regions (CotR) also argues that it is necessary to broaden the scope of this Directive, to cover all the products, and all the operators, such as operators providing services or inputs that are not agri-food products<sup>149</sup>. The CotR even goes a step further by saying that the overall framework where farmers operate in should be changed if the Commission really wants to improve the situation of the farmers by this Directive.

Therefore, it is necessary that alongside this Directive, contractualisation should be made more attractive to producers. This should be done to introduce additional measures on price transparency, and to tackle the over-concentration of the distribution agri-supply sectors (not covered in the Directive), and of agri-food products, while also developing fairer international trade relations regarding agriculture. It should help if contracts take agricultural production costs into account as a mere baseline to provide for more price-transparency, alongside additional price-transparency measures, such as the inclusion in the contracts signed with farmers of criteria and methods used to set the price, so that suppliers can calculate at any time the price they are

<sup>146</sup> Tom Wills, et al. (n. 143)

<sup>147</sup> European Committee of the Regions (n. 133)

<sup>148</sup> European Committee of the Regions (n. 133)

<sup>149</sup> European Committee of the Regions (n. 133)



entitled to<sup>150</sup>. Action is needed to ensure a more balanced commercial relationship between buyers and suppliers.

### 5.2.3 Recommendations on UTPs

Regarding the prohibited and partially prohibited UTPs, there could be some improvements as well. Multiple actors argue that the list of UTPs is extended<sup>151,152,153</sup> and that some UTPs need to be more precisely defined<sup>154,155</sup> to grant suppliers the required protection. The list of UTPs could therefore be extended with the following practices: a prohibition of double race auctions<sup>156,157,158</sup> related to human rights abuse in the Italian tomato sector<sup>159</sup>, a prohibition on buying below production costs<sup>160,161</sup>, a prohibition on reselling at a loss<sup>162</sup> and a prohibition on the use of price criteria and methods whereby the price is not and cannot be determined<sup>163</sup>. The argumentation behind those UTPs is the following: Double race auctions (or online auctions where suppliers are placed against each other on short notice) cause an incentive for suppliers to offer their products at the lowest price possible. This is oftentimes a price below the production cost, affecting the farmers and workers in the supply chain negatively<sup>164</sup>. Although there is no obligation for suppliers to participate in such auctions, they are confronted with the fact that it might be the only way of making sure that their products can enter the market, which leaves them with little to no choice<sup>165</sup>. Moreover, buying below production costs should be prohibited, to assure that farmers can keep making a living out of producing their products. It is also a driver of low income in the food supply chain as a whole and a driver of poor working conditions<sup>166</sup>. The prohibition on reselling at a loss uses the same argumentation as the previous prohibition but is also suggested to halt the destruction of value at every stage in the food supply chain<sup>167</sup>. Lastly, the prohibition on the use of price criteria and methods whereby the price is not and cannot be determined is suggested, to make sure that both parties are able to know the price at which the product is valued throughout the duration of the contract. This prohibition should have as an effect that more price transparency is realised in the food supply chain, resulting in fairer price for producers who are now oftentimes unable to determine the price themselves because these mechanisms or methods are too untransparent<sup>168</sup>.

Next to extending the list of prohibited practices, some UTPs require a more precise definition. Examples of these are the precise definition of 'an act of commercial retaliation' because there is

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<sup>150</sup> European Committee of the Regions (n. 133)

<sup>151</sup> Tom Wills, et al. (n. 143)

<sup>152</sup> European Committee of the Regions (n. 133)

<sup>153</sup> European Economic and Social Committee (EESC) (n. 142)

<sup>154</sup> Tom Wills, et al. (n. 143)

<sup>155</sup> European Committee of the Regions (n. 133)

<sup>156</sup> Tom Wills, et al. (n. 143)

<sup>157</sup> European Committee of the Regions (n. 133)

<sup>158</sup> European Economic and Social Committee (EESC) (n. 142)

<sup>159</sup> Oxfam Italy, Terra! 'Human Suffering in Italy's Agricultural Value Chain' (21<sup>st</sup> of June 2021) < <https://policy-practice.oxfam.org/resources/human-suffering-in-italys-agricultural-value-chain-620479/>>

<sup>160</sup> European Committee of the Regions (n. 133)

<sup>161</sup> European Economic and Social Committee (EESC) (n. 142)

<sup>162</sup> European Committee of the Regions (n. 133)

<sup>163</sup> European Committee of the Regions (n. 133)

<sup>164</sup> Tom Wills, et al. (n. 143)

<sup>165</sup> Oxfam Italy, Terra! (n. 159)

<sup>166</sup> Tom Wills, et al. (n. 143)

<sup>167</sup> European Committee of the Regions (n. 133)

<sup>168</sup> European Committee of the Regions (n. 133)

no definition of that in the legislation, which makes producers who are victims to such practices vulnerable in court, since they need to prove that they are victims to (the threat of) an unidentified practice. Also, UTPs arising from economic dependency from the supplier to the buyer remain undefined and should be banned as well. Most of the UTPs can only occur when such types of unbalanced relationships exist, so banning it in a more general sense should grant suppliers more protection. Lastly, a derogation to the late payment under Art. 3(1)(a) of the Directive should be made regarding agreements reached by interbranch organisations recognised under Art. 157 of Regulation (EU) No 1308/2013, since this Regulation already provides for different rules from those included in the Directive about payment deadlines.

#### 5.2.4 Recommendations on Enforcement

First, the EU could promote the 'own-initiative'-option of the enforcement authority even more. Since suppliers oftentimes operate in a climate of fear, they are less likely to file complaints themselves. Therefore, an enforcement authority that investigates on its own initiative could help these particularly vulnerable suppliers. Not only the domestic suppliers could be in this vulnerable position, but non-EU suppliers might be even more vulnerable since they rely on the buyer to have access to the EU internal market. Therefore, the authorities should also pro-actively engage these non-EU suppliers, who might be unfamiliar with the Directive and its' diverging implementation in the different MSs at all.

Next to that, Art. 10 regarding the reporting duties of the enforcement authority could be expanded with the following: potential updates of the legislation based on the found UTPs, evaluation of the mechanism of complaints, level of cooperation between domestic and foreign authorities, and lastly, a comparison between the number of complaints received by non-EU suppliers against those of domestic ones, to check whether the non-EU suppliers enjoy the protection offered by the Directive or if they are unaware. Adding to that, the authorities could also create a dialogue forum in cooperation with the involved stakeholders, to assess the functionality of the enforcement more easily. Lastly, the initiative of complaining is still with the suppliers in this Directive. Although there is a guaranteed anonymity, this will not make sure that the climate of fear the suppliers operate in, is taken away. It could therefore help to expand the list of people who are eligible to file a complaint to anyone who notices UTPs. Otherwise, situations might occur where UTPs happen, but since the victim is too scared to file a complaint, nothing happens.

## 5.3 The Netherlands

### 5.3.1 Recommendations on Scope & definitions

The Netherlands could expand the scope to other types of supply relations, such as the supply of inputs that are not agri-food products or services that are not covered in the Directive to cover all suppliers and offer them protection against all buyers.

Adding to that, the turnover scheme could be abandoned in the Netherlands, since their second largest trading partner Belgium<sup>169</sup> also abandoned this. This would have as a consequence that all suppliers are protected from all buyers, which ultimately grants suppliers more protection than they have now. Moreover, this would result in a more harmonised implementation approach between the Netherlands and Belgium, making it easier for buyers and suppliers to comply with both countries' legislation.

Next to that, the Netherlands could also abandon the distinction between perishable and non-perishable agri-food products, to grant suppliers of non-perishables more protection against, for example, late payments. Lastly, the Netherlands could grant everyone the right to file a complaint regarding UTPs, to protect the suppliers that operate in a climate of fear even more. It is currently the situation that only the supplier or their organizations can file complaints. This could have as a potential negative consequence that anyone (not only the supplier) can file complaints, making it harder for the buyer to defend him-/herself against anonymous complaints. On the other hand, since the suppliers operate in a climate of fear, it is easy to argue that they might not want to file a complaint, because they fear for repercussions from the buyer. In that light, it might be a good idea to allow anyone to file complaints, since outside parties who notice UTPs can then also inform the authorities on the suppliers' behalf.

### 5.3.2 Recommendations on UTPs

Since the Netherlands adopted the 'black-list' and the 'grey-list' in the same fashion as in the Directive, some improvements can be made here. For example, the Netherlands could move the return of unsold goods from the 'grey-list' to the 'black-list', just like their main trading partners, Germany and Belgium, did. This would result in a more harmonised approach with its' two main trading partners, as well as better protection for the suppliers against UTPs.

Moreover, the Netherlands could also adopt the prohibitions that are suggested by the EESC, CotR, FairTrade Advocacy Office, and Oxfam International. These prohibitions are buying below production costs, resale at a loss, the use of double-race auctions, and the abuse of economic dependency. This would greatly improve the protection of the suppliers, since these UTPs are not uncommon, while they are not adopted in the Directive.

Moreover, the prohibition on commercial retaliation could be better defined, since it now remains vague what (threatening with) commercial retaliation exactly means. This ambiguity could lead to suppliers not filing complaints, since they are not sure if the judge will see the 'threat of commercial retaliation' in the same way as they do. Lastly, the Netherlands could implement that the supplier should explicitly agree with the estimates of the buyer when the buyer asks for payments by the supplier according to Art. 3(3) of the Directive. Examples of these compensations are discount payments, investigating customer complaints payments & advertising payments. If the supplier does not explicitly agree, then he or she should not have to bear these costs. The difference with the current regulation is that the buyer is now only obliged to provide the information to the supplier, so there is a possibility where the supplier does not agree with the

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<sup>169</sup> Ministerie van Landbouw, Natuur en Voedselkwaliteit (n. 128)

estimated costs, but since the buyer provided him or her the information and since the supplier might be dependent on the buyer, he or she must oblige anyway.

### 5.3.3 Recommendations on Enforcement

The Netherlands could start with giving the authority the power to publish the actual decisions taken, to make the penalties even more dissuasive. This could lead to a situation where buyers are deterred from using UTPs, since their name might be published by the authorities if they get caught. This is currently not (yet) the case. Next to that, it could be specified that penalties must be effective proportionate and dissuasive to protect suppliers even better. Currently, there is a risk that the penalties are not fulfilling their goals because of this missing part of legislation. Furthermore, the fact that the proceedings cannot be stopped in the Netherlands, when disclosure of confidential information is necessary, makes suppliers and their confidentiality less protected than in other MSs. This could have as a consequence that a supplier might be too afraid to file a complaint, since his or her confidentiality is only partially guaranteed. Moreover, the Netherlands could implement that every report of a closed investigation by the authority should include an evaluation of the process, for more efficient enforcement procedures in the future. Also, the promotion of the legislation to non-EU suppliers could be addressed in the articles regarding the enforcement authority, to promote the protection of these weaker actors even more. These parties are especially vulnerable, since they might not know every (diverging) detail of the different MSs' legislation, so promoting information would contribute to a decrease in their vulnerability. The Netherlands could also implement cooperation duties with foreign MSs' authorities, to battle transborder infringements more efficient, and provide for specific rules of coordination between the judicial and the administrative authority, to prevent endless court sessions initiated by big buyers and to improve the cooperation and communication between the judicial and enforcement authority. Lastly, the legislation could be supplemented with the fact that contracts containing UTPs are null and void, to give suppliers more protection, power and rights when UTPs are found proven by the authority.

## 5.4 Germany

### 5.4.1 Recommendations on Scope & definitions

Germany could expand the scope of the Directive to other types of supply relations, such as the supply of inputs that are not agri-food products or services that are not covered in the Directive to cover all suppliers and offer them protection against all buyers. Germany granted suppliers with a turnover of up to EUR 4 billion in certain sales segments temporary protection against buyers under certain conditions but could also abandon the turnover scheme, to protect all suppliers from all buyers since turnover size does not equal bargaining power. Currently, blatantly unfair practices could still occur since the buyer and the supplier simply not fall within a different turnover category. Moreover, Germany could also abandon the distinction between perishable and non-perishable agri-food products, to grant suppliers of non-perishables more protection. Lastly, Germany could grant anybody the right to file a complaint against UTPs, because this right is now with the supplier (or their producer organisation), while that may lead to situations where UTP complaints are not being filed because the supplier operates in a climate of fear. This could have as a potential negative consequence that it is harder for the buyer to defend him- or herself against anonymous complaints. On the other hand, since the suppliers operate in a climate of fear, it is easy to argue that they might not want to file a complaint, because they fear for repercussions from the buyer. In that light, it might be a good idea to allow anyone to file complaints, since outside parties who notice UTPs can then also inform the authorities on the suppliers' behalf.

### 5.4.2 Recommendations on UTPs

Germany moved the return of unsold goods UTP from the 'black-list' to the 'grey-list' but did not implement any of the additional UTPs that were suggested by, among others, the EESC. Germany could therefore implement buying below production costs, resale at a loss, the use of double-race auctions, and the abuse of economic dependency, because these common UTPs are now still allowed, leaving suppliers in a vulnerable position. Just as in the Directive, (threatening with) commercial retaliation is poorly defined. This could be improved to prevent needless courtcases and to give suppliers more certainty against what exactly they are (not) protected. Moreover, Germany could implement that the suppliers should explicitly agree with the estimated cost provided by the buyer, when the supplier should pay for services provided for in Art. 3(3) of the Directive. This can help improve the position of the supplier: when they don't explicitly agree to the estimate provided, they do not have to bear the costs. The difference with the current situation is that the buyer is now only obliged to provide the information to the supplier, so there is a possibility where the supplier does not agree with the estimated costs, but since the buyer provided him or her the information and since the supplier might be dependent on the buyer, he or she must oblige anyway.

### 5.4.3 Recommendations on Enforcement

First, Germany could implement the fact that penalties must be effective, proportionate, and dissuasive, to assure that penalties fulfil these requirements and achieve their goals. Next to that, Germany could implement the coordination duties between their two administrative and the judicial authority with further guidelines, to prevent endless battles in court and to prevent procedural difficulties between the authorities, since they might not be used to working with each other. Also, Germany could implement coordination duties between the ombudsman and the two other administrative authorities, to improve the enforcement mechanism itself and thereby granting suppliers better protection. This could also promote the use of the voluntary dispute resolution mechanism, preventing needless investigations by the authorities that could also be

resolved by the ombudsman. Moreover, the reports of the enforcement authority can be extended with monitoring and evaluation obligations, to check whether the enforcement mechanisms work as they are supposed to.

Lastly, Germany could implement more efforts to address non-EU suppliers. These suppliers are in a particular vulnerable position, since they might not know every (diverging) detail of the different MSs' legislation, so making them aware of the new legislation will most likely improve their position and decrease their vulnerability.

## 5.5 Hungary

### 5.5.1 Recommendations on Scope & definitions

First, Hungary could include buyers that do not process the products to the buyer's definition, to make the legislation meet the criteria of the Directive and to grant the suppliers who sell to buyers that do process their products, the protection they need. Next to that, Hungary could expand the scope of the Directive to other types of supply relations, such as the supply of inputs that are not agri-food products or services that are not covered in the Directive to cover all suppliers and offer them protection against all buyers. Lastly, the Hungarian legislation could also grant everyone the right to file a complaint, now this right is with the supplier or their producer organisation, but since the suppliers operate in a climate of fear, this could cause UTPs against no one dares to complain. This could have as a potential negative consequence that anyone (not only the supplier) can file complaints, making it harder for the buyer to defend him- or herself against anonymous complaints. On the other hand, since the suppliers operate in a climate of fear, it is easy to argue that they might not want to file a complaint, because they fear for repercussions from the buyer. In that light, it might be a good idea to allow anyone to file complaints, since outside parties who notice UTPs can then also inform the authorities on the suppliers' behalf.

### 5.5.2 Recommendations on UTPs

Hungary could implement the missing 'grey-list' UTPs of the Directive, which includes the unlawful use of the suppliers' trade secrets, (threatening with) commercial retaliation by the buyer, and the compensation for investigating customer complaints. This should be done to make the legislation more in-line with the Directive and thereby granting the suppliers more protection as stated in the Directive. Next to that, the Hungarian legislation also does not provide for the derogations made in Art. 3(1) of the Directive, for example regarding late payments by institutions that fall under the school payment scheme. It is recommended that Hungary also implements these parts of the legislation, to make it compliant with the Directive and to give schools the derogations they are entitled to. Lastly, the Hungarian legislation does not provide for an exact period that is considered short notice but speaks of 'changes to the contract in an unreasonable timespan' instead. This could lead to ambiguity and needless court cases about what exactly is an unreasonable timespan and therefore it is recommended that a period of 30 days is implemented in the legislation, as this is the period that other MSs (for instance, Belgium) chose.

### 5.5.3 Recommendations on Enforcement

First, Hungary could implement alternative dispute resolution mechanisms and by that, promote the use of voluntary mechanisms like the SCI. This could prevent needless investigations by the authority, which could inflict the possibility of a commercial retaliation, which on its' turn contributes to the climate of fear. Next to that, Hungary could also implement the fact that the procedure can be stopped when the requested confidentiality of the supplier can be no longer guaranteed. This could contribute to the reduction of the climate of fear, since the supplier now knows that his or her anonymity is guaranteed. Moreover, the Hungarian authority currently does not have the power to stop practices, but only to approve commitments by the infringer, which could be changed in the former as well to protect the interests of the suppliers even more. Also, the Hungarian legislation does not explicitly provide for the fact that the authorities' decision can be appealed in court, which could harm both the suppliers' and the buyers' interests, since they are not (clearly) entitled to the right to defend themselves. It is also not explicitly stated that the penalties given by the authority should be effective, proportionate, and dissuasive, which could be implemented as well to assure that the penalties achieve their goal. The cooperation duties with

foreign MSs' authorities are also not provided and could be implemented as well to battle transborder infringements in a more schematic manner. Moreover, the reports of the authority do not contain monitoring and evaluation efforts, which could be included as well to optimize the enforcement mechanisms and procedures of the Directive. Lastly, it could be included in Hungarian legislation that their differentiating legislation should be promoted to foreign buyers and suppliers, and especially non-EU suppliers, since they are in a vulnerable position. These foreign suppliers might not know every detail of the Hungarian legislation, so promoting information would contribute to the decrease in their vulnerability and the occurrence of UTPs against them, while this can also be used to address extraterritorial issues.



## 5.6 Belgium

### 5.6.1 Recommendations on Scope & definitions

Belgium could expand the scope of the Directive even more to other types of supply relations, such as services that are not covered in the Directive to cover all suppliers and offer them protection against all buyers. Next to that, Belgium could include that everyone should be able to file a complaint, instead of just the supplier and their producer organisations. This could have as a potential negative consequence that anyone (not only the supplier) can file complaints, making it harder for the buyer to defend him- or herself against anonymous complaints. On the other hand, since the suppliers operate in a climate of fear, it is easy to argue that they might not want to file a complaint, because they fear for repercussions from the buyer. In that light, it might be a good idea to allow anyone to file complaints, since outside parties who notice UTPs can then also inform the authorities on the suppliers' behalf.

### 5.6.2 Recommendations on UTPs

Belgium, as well as Germany, moved the return of unsold goods to the 'black-list' but did not implement any of the suggested additional UTPs, such as buying below production costs, resale at a loss, the use of double-race auctions, and the abuse of economic dependency. Currently, these common UTPs can still occur in Belgium, since they are not defined in Belgian legislation. Therefore, it is necessary to include those UTPs, to grant the suppliers more protection. Moreover, (threatening with) commercial retaliation is poorly defined, so this can be improved to prevent needless courtcases and to give suppliers more certainty against what exactly they are (not) protected, resulting in more protection for the suppliers.

### 5.6.3 Recommendations on Enforcement

First, Belgium could implement the fact that proceedings can be discontinued when the requested confidentiality of the supplier can be no longer guaranteed. This could contribute to the reduction of the climate of fear, since the supplier now knows that his/her anonymity is guaranteed. Next to that, Belgium could implement a maximum fine, and implement that penalties should be effective, proportionate and dissuasive, to safeguard that penalties are actually achieving their goal. Moreover, the Belgian legislation could provide for specific rules of coordination between the judicial and the administrative authority, to prevent endless battles in court over every decision and to prevent issues in the cooperation between these two authorities. Also, since the Belgian legislation is strict compared to neighbouring countries Germany and the Netherlands, the Belgian legislation could also provide for mechanisms to communicate their relatively strict policy to foreign suppliers. These foreign suppliers are especially vulnerable to UTPs, since they might not know every detail of the Belgian legislation, so promoting information would contribute to the decrease in their vulnerability and the occurrence of UTPs against them, while this can also be used to address extraterritorial issues. Furthermore, a secondary enforcement authority is now not provided, and by implementing that, the use of voluntary measures could be promoted in Belgium, which could be useful as well to make it easier to resolve conflicts on a voluntary basis between buyer and supplier, without the need of the enforcement authority, penalties, and possible commercial retaliation by the buyer. Lastly, the report of the Belgian authority does not contain any evaluation or monitoring efforts, which could greatly improve the quality of enforcement procedures if implemented.

## 5.7 Conclusion on the Recommendations

The recommendations regarding the scope and definitions section are a more harmonised implementation between the MSs, the abandonment of the turnover size restriction, including the definition of economic dependency and prohibiting UTPs arising from that, setting up a mechanism that tracks whether the added gross-value actually reaches the small suppliers, including a general prohibition on unfair trading practices, broadening the scope to cover all products and operators (especially operators providing services or inputs that are not agri-food products), making contractualisation more attractive to producers, and finally, the inclusion of additional measures on price transparency. Regarding the UTPs, the recommendations are expanding the list of UTPs by prohibiting double race auctions, buying below production costs, reselling at a loss, and finally, the use of price criteria and methods whereby the price is not and cannot be determined. Next to that, some UTPs require a more precise definition. '(Threatening with) an act of commercial retaliation' could be better defined, as well as UTPs arising from economic dependency, which remains undefined. Furthermore, a derogation to the late payment prohibition under Art. 3(1)(a) of the Directive should be made as well regarding agreements reached by interbranch organisations, since they already provide for different rules from those included in the Directive. The enforcement recommendations are promoting the 'own-initiative' option and the voluntary dispute resolution mechanism even more, while to Art. 10, regarding the report of the enforcement authority, the following could be added: potential updates of the legislation based on the found UTPs, evaluation of the mechanism of complaints, level of cooperation between domestic and foreign authorities, and a comparison between the number of complaints received by non-EU suppliers against those of domestic ones. Enforcement authorities could also create a dialogue forum in cooperation with the involved stakeholders, to assess the functionality of the enforcement more easily. Furthermore, the initiative of complaining could be expanded to anyone who notices UTPs. It should also be included that penalties given by the authority should be effective, proportionate and dissuasive. Moreover, the enforcement authorities should actively promote the implemented legislation to non-EU suppliers. All of the investigated MSs are advised to implement the recommendations noted above, since they apply to all of them. When taking a further look at the different MSs that were investigated in this research, it becomes clear that a harmonised implementation approach is not achieved. The only notable thing missing in Belgian legislation is the lack of a secondary enforcement authority and a maximum fine. Next to that, it is recommended that the Netherlands and Germany step up to the Belgian level of protection. They could do so by abandoning the distinction between perishable and non-perishable agri-food products and by implementing that the supplier should explicitly agree with the estimates of the buyer when the buyer asks for payments by the supplier according to Art. 3(3) of the Directive, by adding that the proceedings can be stopped when disclosure of confidential information is necessary, by moving the return of unsold goods to the 'black-list' (for the Netherlands), and lastly, by adding that contracts containing UTPs are null and void. Hungary is strongly recommended to bring their 'grey-list' of UTPs in line with the Directive. They should also clarify some vague definitions in their legislation, add a secondary enforcement authority and add an exact period of what is considered 'short-notice'. Lastly, their enforcement authorities' decision should be appealable in court, and the enforcement authority should have the power to stop UTPs by the buyer.

## 6 Conclusion

The main research question of this thesis is: *how is Directive 2019/633 implemented in The Netherlands, Hungary, Germany & Belgium and are the implementations adequate to actively combat UTPs in these MSs?* First the question 'how is Directive 2019/633 implemented in The Netherlands, Hungary, Germany & Belgium' is answered. The Directive is implemented correctly in Germany, Belgium and the Netherlands, while it is implemented correctly to the utmost extent in Hungary, where some additions regarding the 'grey list' and the derogations on the late payments prohibition should make the implementation completely correct.

Second, the question 'are the implementations adequate to actively combat UTPs in these MSs?' is answered. This question's answer has two aspects. The first aspect is yes, the implementations are adequate to actively combat the UTPs listed in the Directive, because they simply prohibit the UTPs listed in the Directive and because an enforcement authority is introduced who should safeguard the prohibitions. The second aspect is more complicated, because it involves the precise definitions of the words *adequate* and *actively*. An example of this with regard to *actively* is the following question: can UTPs be combatted *actively* if the initiative of complaining is with the SME supplier, who operates in a climate of fear, who might be economically dependent on his or her (big) buyer, and lastly, whose confidentiality is only partially guaranteed? This thesis explained that the aforementioned example is oftentimes reality for suppliers, so it can be argued whether the implementations of this Directive are able to *actively* combat UTPs, especially since the investigated MSs did not give the enforcement authority the power to perform investigations on its' own initiative. Second, *adequacy* is investigated in the same light. An example of this with regard to the adequacy of the implementation of this Directive, is another question that arises: can the implementation be adequate, if some UTPs (related to human rights abuse in Italy for example) are left out of the list of prohibitions, and if turnover-size is taken as an indicator for bargaining power while it is not? Adding to that, is it adequate to keep economic dependency undefined, to keep (the principle of) UTPs undefined, and lastly, to leave comprehensive evaluation efforts by the enforcement authorities, that might improve the implementation over time, unaddressed?

It can be argued that the implementation of the Directive gives the suppliers to some extent protection to the practices mentioned in the Directive, but it leaves them particularly vulnerable to the practices and dependent economic relations that remain unaddressed. Concludingly, the research question focuses on the implementation *in the MSs*, which is answered above. However, since trade is often transboundary, one could argue that the diverging implementation between the MSs fragments the EU single market, with all its' consequences.

The implementation of this Directive is a first step to a level playing field in the food supply chain, but it is not the most perfect step and it is hopefully not the last.

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#### Legislation

Belgium: Wetsontwerp tot omzetting van Richtlijn 2019/633/EU van het Europees Parlement en de Raad van 17 april 2019 inzake oneerlijke handelspraktijken in de relaties tussen ondernemingen in de landbouw- en voedselvoorzieningsketen en tot wijziging van het Wetboek van economisch recht. Doc 55 2177/001

Czech Republic: Act No. 395/2009 Coll., on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof.

Directive (EU) 2019/633 of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain [2019] OJ L 111/59 (UTP Directive)

Germany: Gesetz zur Stärkung der Organisationen und Lieferketten im Agrarbereich (Agrarorganisationen-und-Lieferketten-Gesetz - AgrarOLkG)

Hungary: Act XCV of 2009 on the prohibition of unfair distributor conduct vis-à-vis suppliers regarding agricultural and food industry products – 'UTP Act'.

The Netherlands: Regels strekkende tot implementatie van Richtlijn (EU) 2019/633 van het Europees Parlement en de Raad van 17 april 2019 inzake oneerlijke handelspraktijken in de relaties tussen ondernemingen in de landbouw- en voedselvoorzieningsketen (PbEU 2019, L 111/59) (Wet oneerlijke handelspraktijken landbouw- en voedselvoorzieningsketen)

## Annex

Table 1 - Legislative text of Directive (EU) 2019/633 as well as the implemented legislative text of The Netherlands, Germany, Hungary & Belgium

Directive (EU) 2019/633	Wet oneerlijke handelspraktijken landbouw- en voedselvoorzieningsketen (NL)	Agrarorganisationen-und-Lieferketten-Gesetz - AgrarOLkG (DE)	'UTP Act' (HU)	Wetsontwerp inzake oneerlijke handelspraktijken in de relaties tussen ondernemingen in de landbouw- en voedselvoorzieningsketen (BE)
<b>Article 1 - Subject matter and scope</b>		<b>Part 3 - Section 10 - Scope of Application</b>	<b>General Provisions</b>	
<p>(1) With a view to combating practices that grossly deviate from good commercial conduct, that are contrary to good faith and fair dealing and that are unilaterally imposed by one trading partner on another, this Directive establishes a minimum list of prohibited unfair trading practices in relations between buyers and suppliers in the agricultural and food supply chain</p>			<p>Section 1 - This Act aims to provide for fair business conduct among the organisations trading in agricultural and food industry products and their suppliers.</p>	

and lays down minimum rules concerning the enforcement of those prohibitions and arrangements for coordination between enforcement authorities.				
(2). This Directive applies to certain unfair trading practices which occur in relation to sales of agricultural and food products by:	Art. 5(1) Articles 2, 3 & 4 apply exclusively between the following parties:	Section 10 - Scope of Application. (1) This section applies to the sale of agricultural, fishery and food products by suppliers with an annual turnover not exceeding EUR 350 000 000. 1. Buyers who have an annual turnover of more than 2 000 000 euros, provided that their annual turnover is higher than that of the supplier, whereby the following flat rates apply:		Chapter 2, Artikel 5: "Art. VI.109/4. This act applies between suppliers and buyers in the agricultural- and food supply chain, if the supplier does not have a turnover larger than 350 000 000 EUR.
(a) suppliers which have an annual turnover not exceeding EUR 2 000 000 to buyers which have an annual	(a) suppliers which have an annual turnover not exceeding EUR 2 000 000 to buyers which have an annual turnover of more than EUR 2 000 000;	suppliers with an annual turnover up to 2 000 000 euros to buyers with an annual turnover over 2 000 000 euros		



turnover of more than EUR 2 000 000;				
(b) suppliers which have an annual turnover of more than EUR 2 000 000 and not exceeding EUR 10 000 000 to buyers which have an annual turnover of more than EUR 10 000 000;	(b) suppliers which have an annual turnover of more than EUR 2 000 000 and not exceeding EUR 10 000 000 to buyers which have an annual turnover of more than EUR 10 000 000;	suppliers with an annual turnover over 2 000 000 euros to 10 000 000 euros to buyers with an annual turnover over 10 000 000 euros		
(c) suppliers which have an annual turnover of more than EUR 10 000 000 and not exceeding EUR 50 000 000 to buyers which have an annual turnover of more than EUR 50 000 000;	(c) suppliers which have an annual turnover of more than EUR 10 000 000 and not exceeding EUR 50 000 000 to buyers which have an annual turnover of more than EUR 50 000 000;	suppliers with an annual turnover over 10 000 000 euros to 50 000 000 euros to buyers with an annual turnover over 50 000 000 euros		

(d) suppliers which have an annual turnover of more than EUR 50 000 000 and not exceeding EUR 150 000 000 to buyers which have an annual turnover of more than EUR 150 000 000;	(d) suppliers which have an annual turnover of more than EUR 50 000 000 and not exceeding EUR 150 000 000 to buyers which have an annual turnover of more than EUR 150 000 000;	suppliers with an annual turnover over 50 000 000 euros to 150 000 000 euros to buyers with an annual turnover over 150 000 000 euros		
(e) suppliers which have an annual turnover of more than EUR 150 000 000 and not exceeding EUR 350 000 000 to buyers which have an annual turnover of more than EUR 350 000 000.	(e) suppliers which have an annual turnover of more than EUR 150 000 000 and not exceeding EUR 350 000 000 to buyers which have an annual turnover of more than EUR 350 000 000.	suppliers with an annual turnover over 150 000 000 euros to 350 000 000 euros to buyers with an annual turnover over 350 000 000 euros		
The annual turnover of the suppliers and buyers referred to in points (a) to (e) of the first subparagraph shall be understood in accordance with the relevant parts of the Annex to Commission	The annual turnover of the suppliers and buyers referred to in points (a) to (e) of the first subparagraph shall be understood in accordance with the relevant parts of the Annex to Commission Recommendation 2003/361/EC regarding the definitions of <b>small-</b>	(2) The annual turnover and the level according to the table in paragraph 1 number 1 are at the time of the conclusion of the contract between the supplier and the buyer according to Articles 3, 4 and 6 of the Annex to the Commission Recommendation of 6 May		Chapter 2, Art. 5. The annual turnover of the suppliers and buyers referred to in points (a) to (e) of the first subparagraph shall be understood in accordance with the relevant parts of the Annex to Commission Recommendation 2003/361/EC ( 8 ) and in particular Articles 3, 4 and 6 thereof, including the

<p>Recommendation 2003/361/EC ( 8 ) and in particular Articles 3, 4 and 6 thereof, including the definitions of 'autonomous enterprise', 'partner enterprise' and 'linked enterprise', and other issues relating to the annual turnover.</p>	<p><b>medium- and micro-sized enterprises.</b></p>	<p>2003 regarding the definition of micro-enterprises and small and medium-sized enterprises (2003/361/EG) (OJ L 124 of 20.5.2003, p. 36) in the currently valid version. The annual turnover is to be calculated on an annual basis in accordance with Article 4 Paragraph 1 Clause 1 of the Annex to Recommendation 2003/361/EC; the last statement of account must be used for this purpose. <b>(3) During the contract negotiations, the supplier and buyer are obliged to provide each other with information as to which level according to the table in paragraph 1 number 1 their respective annual turnover is to be assigned to, or, if the requirements according to paragraph 1 sentence 2 first half-sentence are met, how high it is respective annual turnover.</b></p>		<p>definitions of 'autonomous enterprise', 'partner enterprise' and 'linked enterprise', and other issues relating to the annual turnover.</p>
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<p>By way of derogation from the first subparagraph, this Directive applies in relation to sales of agricultural and food products by suppliers which have an annual turnover not exceeding EUR 350 000 000 to all buyers which are public authorities.</p>	<p>By way of derogation from the first subparagraph, this Directive applies in relation to sales of agricultural and food products by suppliers which have an annual turnover not exceeding EUR 350 000 000 to all buyers which are public authorities.</p>	<p>or 2. Buyers who are public authorities, <b>if at least one of the two contracting parties has its registered office in the European Union. This section also applies until May 1, 2025 to the sale of dairy and meat products as well as fruit, vegetable and horticultural products including potatoes by suppliers who have annual sales in the respective sales segment in Germany of no more than EUR 4,000,000,000 , to Buyer if Supplier's total annual sales do not exceed 20 percent of Buyer's total annual sales. The German Bundestag reserves the right to extend this period based on the result of the evaluation pursuant to Section 59.</b></p>		
<p>This Directive applies to sales where either the supplier or the buyer, or both,</p>				<p>Chapter 2, Art. 5. It applies to transactions where the supplier or the buyer, or both, are situated <b><i>in Belgium.</i></b></p>

are established in the Union.				
This Directive also applies to services, insofar as explicitly referred to in Article 3, provided by the buyer to the supplier. This Directive does not apply to agreements between suppliers and consumers.				
(3) This Directive applies to supply agreements concluded after the date of application of the measures transposing this Directive in accordance with the second subparagraph of Article 13(1).	This act applies from the 1st of November 2021 (Staatsblad 2021, nr. 260)	Section 59(1) - (1) The Federal Ministry of Food and Agriculture, with the participation of the Federal Ministry for Economic Affairs and Energy, evaluates Part 3 Chapter 1 Section 1 inserted by the Second Act amending the Agricultural Market Structure Act of June 2, 2021 (...)		Chapter 3, Art. 18. This act applies from the 1st of November 2021

(4) Supply agreements concluded before the date of publication of the measures transposing this Directive in accordance with the first subparagraph of Article 13(1) shall be brought into compliance with this Directive within 12 months after that date of publication.	Art. 12 - Supply agreements concluded before the 1st of May 2021 shall be brought into compliance with this act within 12 months after the 1st of May 2021	Section 58(2) - Supply agreements that were concluded before June 9, 2021 must be adapted to the specifications of Part 3 Chapter 1 by June 8, 2022.		Art. 12 - Supply agreements concluded before the 1st of November 2021 shall be brought into compliance with this act within 12 months after the 1st of November 2021.
<b>Article 2 - Definitions</b>	<b>Article 1 - Definitions</b>	<b>Part 1 - Section 2 - Definitions; ordinance authorization</b>	<b>Section 2</b>	<b>Hoofdstuk 2 - Wijziging van het Wetboek van economisch recht.</b>
For the purposes of this Directive, the following definitions apply:	In this act, the following definitions apply:	(1) The following definitions apply to this Act:	(1) This Act applies to:	

<p>(1) 'agricultural and food products' means products listed in Annex I to the TFEU as well as products not listed in that Annex, but processed for use as food using products listed in that Annex;</p>	<p>'agricultural and food products' means products listed in Annex I to the TFEU as well as products not listed in that Annex, but processed for use as food using products listed in that Annex;</p>	<p>1. agricultural product is a) an agricultural product obtained by primary production (agricultural product) or b) a product obtained from a primary agricultural product through treatment or processing (processed agricultural product), insofar as the respective product is listed in Annex I of the Treaty on the Functioning of the European Union; (...) 3. Food product is a food made from at least one agricultural or fishery product, including water-based beverages, in the manufacture of which at least one agricultural or fishery product has been used;</p>	<p>d) agricultural and food industry product: any product specified in Article 2 of Regulation (EC) 178/2002 of the European Parliament and the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety that can be sold to the end customer without further processing.</p>	<p>(1) 'agricultural and food products' means products listed in Annex I to the TFEU as well as products not listed in that Annex, but processed for use as food using products listed in that Annex;</p>
<p>(2) 'buyer' means any natural or legal person, irrespective of that person's place of establishment, or any public authority in the Union, who</p>	<p>'buyer' means any natural or legal person, not being a consumer, irrespective of that person's place of establishment, or any public authority in the Union, who buys agricultural and food</p>	<p>5. buyer is a) any natural or legal person engaged in an economic activity, including groups of natural or legal persons such as groups of producers and associations of such groups, b) any authority in the European</p>	<p>chase or sale of the product; c) trader shall mean any legal entity, business association without a legal personality and other economic entity or</p>	<p>(2) 'buyer' means any natural or legal person, irrespective of that person's place of establishment, or any public authority in the Union, who buys agricultural and food products; the term 'buyer' may include a group of</p>

<p>buys agricultural and food products; the term 'buyer' may include a group of such natural and legal persons;</p>	<p>products; the term 'buyer' may include a group of such natural and legal persons;</p>	<p>Union, who purchases agricultural, fisheries or food products for a fee, regardless of whether the purchase is based on a purchase agreement;</p>	<p>individual, including organisations affiliated to the former as per the Accounting Act, and in the case of common purchase all the businesses constituting the purchase society, that sells the product purchased directly or indirectly from the supplier or resells it <b>without transformation (processing)</b> to the end customer for profit, as well as third party collaborators that provide services related to the supply or sale of the said products to such persons or organisations in a direct business contact to the supplier of the products;</p>	<p>such natural and legal persons, including public authorities</p>
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<p>(3) 'public authority' means national, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;</p>	<p>'public authority' means national, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;</p>	<p>6. authorities are a) institutions under public law, b) mergers of at least two institutions under public law;</p>		<p>(3) 'public authority' means national, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law;</p>
<p>(4) 'supplier' means any agricultural producer or any natural or legal person, irrespective of their place of establishment, who sells agricultural and food products; the term 'supplier' may include a group of such agricultural producers or a group of such natural and legal persons, such as producer organisations, organisations of suppliers and</p>	<p>'supplier' means any agricultural producer or any natural or legal person, irrespective of their place of establishment, who sells agricultural and food products; the term 'supplier' may include a group of such agricultural producers or a group of such natural and legal persons, such as producer organisations, organisations of suppliers and associations of such organisations;</p>	<p>7. supplier is a) any producer of an agricultural or fishery product, b) any other natural or legal person, c) any majority of persons referred to in letter a or letter b, in particular any association of producers and any association of such associations, who sells agricultural, fishery or food products for a fee, regardless of whether the sale transaction is based on a sales contract.</p>	<p>a) supplier shall mean any legal entity, business association without a legal personality and other economic entities or individuals involved in the production and processing of agricultural and food industry products, as well as producers and producer groups specified in the relevant legal act, that sell produced and processed products to traders;</p>	<p>(4) 'supplier' means any agricultural producer or any natural or legal person, irrespective of their place of establishment, who sells agricultural and food products; the term 'supplier' may include a group of such agricultural producers or a group of such natural and legal persons, such as producer organisations, organisations of suppliers and associations of such organisations;</p>

associations of such organisations;				
(5) 'perishable agricultural and food products' means agricultural and food products that by their nature or at their stage of processing are liable to become unfit for sale within 30 days after harvest, production or processing.	'perishable agricultural and food products' means agricultural and food products that by their nature or at their stage of processing are liable to become unfit for sale within 30 days after harvest, production or processing.	4. Perishable agricultural, fishery and food products are those agricultural, fishery and food products which, due to their nature or their processing stage, can be assumed to be within 30 days of harvest or production, regardless of any protective measures, or are no longer suitable for sale within 30 days of processing;		
<b>Article 3 - Prohibition of unfair trading practices</b>	<b>Artikel 2</b>	<b>Part 3 - Chapter 1 - Section 1: Unfair Trading Practices</b>	<b>Section 3 - Unfair distributor conduct</b>	<b>Artikel 6</b>
1. Member States shall ensure that at least all the following unfair trading practices are prohibited:	(1) A buyer is acting unlawfully towards a supplier if he does any of the following:	Section 23 - Prohibition of Unfair Trading Practices The exploitation of the economic imbalance between the buyer and the supplier through unfair commercial practices by the buyer is prohibited. An exploitation of the economic imbalance according to sentence 1 only exists if the buyer:	(1) Unfair distributor conduct is prohibited. (2) The following are regarded as unfair distributor conduct:	The following market practices are regarded as unfair:

			<p><u>a) the establishment of such conditions for the supplier as a result of which risk is shared in a way that provides unilateral benefits to the trader;</u></p>	
			<p><u>g) if the costs resulting from sanctions imposed on the trader by authorities for any breach of law falling within the scope of the trader's operation are shifted onto the supplier;</u></p>	
			<p><u>i) if a discount is required for the case that payment is effected within the set deadline;</u></p>	
			<p><u>j) if the trader disclaims the applicability of late-payment interest, default penalty and other accessory contractual obligations ensuring performance;</u></p>	

			<u>k) with the exception of products made under the trader's brand name, if an exclusive sale obligation is imposed on the trader without a proportionate consideration or if the application of the most advantageous conditions is required vis-à-vis the trader concerned relative to other traders;</u>	
			<u>p) if the trader restricts the supplier's lawful trademark use</u>	

<p>(a) the buyer pays the supplier, (i) where the supply agreement provides for the delivery of products on a regular basis: — for perishable agricultural and food products, later than 30 days after the end of an agreed delivery period in which deliveries have been made or later than 30 days after the date on which the amount payable for that delivery period is set, whichever of those two dates is the later; — for other agricultural and food products, later than 60 days after the end of an agreed delivery period in which deliveries have been made or later than 60 days after the</p>	<p>(a) the buyer pays the supplier, (i) where the supply agreement provides for the delivery of products on a regular basis: — for perishable agricultural and food products, later than 30 days after the end of an agreed delivery period in which deliveries have been made or later than 30 days after the date on which the amount payable for that delivery period is set, whichever of those two dates is the later; — for other agricultural and food products, later than 60 days after the end of an agreed delivery period in which deliveries have been made or later than 60 days after the date on which the amount payable for that delivery period is set, whichever of those two dates is the later; for the purposes of the payment periods in this point, the agreed delivery periods shall in any event</p>	<p>Section 11 - Payment deadlines. (1) The general provisions apply to claims for payment from contracts pursuant to Section 10 Paragraph 1, unless otherwise specified below. (2) The buyer shall pay the agreed price to the supplier no later than within the following periods: 1. for perishable agricultural, fishery or food products within 30 days of delivery, 2. for other agricultural, fishery or food products, within 60 days of delivery. If a regular delivery has been agreed, the period according to sentence 1 begins with the expiry of the agreed delivery period, but no later than one month after the first delivery. Buyer and supplier can agree that, contrary to sentence 1, the time of receipt of an invoice or equivalent payment schedule takes the place of the time of delivery or the</p>	<p>h) if the consideration for the product is paid to the supplier later than thirty days following takeover except for the case of defective performance;</p>	<p>1° the supplier pays the buyer: a) where the supply agreement provides for the delivery of products on a regular basis: — for perishable agricultural and food products, later than 30 days after the end of an agreed delivery period in which deliveries have been made or later than 30 days after the date on which the amount payable for that delivery period is set, whichever of those two dates is the later;</p>
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<p>date on which the amount payable for that delivery period is set, whichever of those two dates is the later; for the purposes of the payment periods in this point, the agreed delivery periods shall in any event be considered not to exceed one month;</p>	<p>be considered not to exceed one month;</p>	<p>expiry of the delivery period.</p>		
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<p>(ii) where the supply agreement does not provide for the delivery of products on a regular basis: — for perishable agricultural and food products, later than 30 days after the date of delivery or later than 30 days after the date on which the amount payable is set, whichever of those two dates is the later; — for other agricultural and food products, later than 60 days after the date of delivery or later than 60 days after the date on which the amount payable is set, whichever of those two dates is the later. Notwithstanding points (i) and (ii) of this point, where the buyer sets the</p>	<p>(ii) where the supply agreement does not provide for the delivery of products on a regular basis: — for perishable agricultural and food products, later than 30 days after the date of delivery or later than 30 days after the date on which the amount payable is set, whichever of those two dates is the later; — for other agricultural and food products, later than 60 days after the date of delivery or later than 60 days after the date on which the amount payable is set, whichever of those two dates is the later. Notwithstanding points (i) and (ii) of this point, where the buyer sets the amount payable: — the payment periods referred to in point (i) shall start to run from the end of an agreed delivery period in which the deliveries have been made; and — the payment periods referred</p>	<p>Section 11 - Payment deadlines. (1) The general provisions apply to claims for payment from contracts pursuant to Section 10 Paragraph 1, unless otherwise specified below. (2) The buyer shall pay the agreed price to the supplier no later than within the following periods: 1. for perishable agricultural, fishery or food products within 30 days of delivery, 2. for other agricultural, fishery or food products, within 60 days of delivery. If a regular delivery has been agreed, the period according to sentence 1 begins with the expiry of the agreed delivery period, but no later than one month after the first delivery. Buyer and supplier can agree that, contrary to sentence 1, the time of receipt of an invoice or equivalent payment schedule takes the place of the time of delivery or the</p>		<p>1° the supplier pays the buyer: b) where the supply agreement does not provide for the delivery of products on a regular basis: — for perishable agricultural and food products, later than 30 days after the date of delivery or later than 30 days after the date on which the amount payable is set, whichever of those two dates is the later; INotwithstanding points (i) and (ii) of this point, where the buyer sets the amount payable: — the payment periods referred to in point (i) shall start to run from the end of an agreed delivery period in which the deliveries have been made; and — the payment periods referred to in point (ii) shall start to run from the date of delivery;</p>
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<p>amount payable: — the payment periods referred to in point (i) shall start to run from the end of an agreed delivery period in which the deliveries have been made; and — the payment periods referred to in point (ii) shall start to run from the date of delivery;</p>	<p>to in point (ii) shall start to run from the date of delivery;</p>	<p>expiry of the delivery period.</p>		
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		<p><u>Section 12 - Agreement on the return of unsold products. Buyer cannot validly agree with Supplier to return unsold agricultural, fishery or food products to Supplier without paying Supplier: 1. the purchase price owed for the products and 2. the costs for the disposal of the products if the products can no longer be used.</u></p>	<p><u>b) the application of a contractual provision, not including obligations related to defective performance, stipulating the following with regard to the products delivered by the supplier to the trader: ba) the supplier's repurchase or retake obligation, or bb) repurchase or retake at a price reduced to an inappropriate extent in consideration of product characteristics or further usability by the supplier;</u></p>	
<p>b) the buyer cancels orders of perishable agricultural and food products at such short notice that a supplier cannot reasonably be expected to find an alternative means of commercialising or using those products; notice of</p>	<p>b) the buyer cancels orders of perishable agricultural and food products at such short notice that a supplier cannot reasonably be expected to find an alternative means of commercialising or using those products; notice of less than 30 days shall</p>	<p>Section 13 - Agreement on short-term termination of the contract for the purchase of perishable products The Buyer cannot validly agree with the Supplier to terminate the contract for the purchase of perishable agricultural, fishery or food products or to cancel individual deliveries on such</p>	<p>m) if the trader places or changes an order with the supplier regarding the product without leaving a reasonable deadline;</p>	<p>2° the buyer cancels orders of perishable agricultural and food products at such short notice that a supplier cannot reasonably be expected to find an alternative means of commercialising or using those products; notice of less than 30 days shall always be considered as short notice. The King can, <b><i>De Koning kan, by decree adopted after consultation in the Council</i></b></p>

<p>less than 30 days shall always be considered as short notice; Member States may set periods shorter than 30 days for specific sectors in duly justified cases;</p>	<p>always be considered as short notice</p>	<p>short notice that the Supplier cannot reasonably find any alternative marketing or use for will have more of these products. A termination of the contract or the cancellation of a delivery that takes place less than 30 days before the agreed delivery date is always to be regarded as short-term within the meaning of sentence 1.</p>		<p><b><i>of Ministers and on the joint assignment of the ministers responsible for the economy, the middle class and Agriculture, set terms of less than thirty days for the sectors He determines;</i></b></p>
		<p><u>Section 14 - Agreeing on Payments or Discounts for Storage of Products. The Buyer cannot validly agree with the Supplier that the Supplier will contribute to the costs of storing the delivered agricultural, fishery or food products at the Buyer through payments or discounts.</u></p>	<p><u>d) the trader on its own or with the involvement of a third party collaborator charges the supplier a fee for (...) keeping its product in the trader's stock;</u></p>	

<p>(c) the buyer unilaterally changes the terms of a supply agreement for agricultural and food products that concern the frequency, method, place, timing or volume of the supply or delivery of the agricultural and food products, the quality standards, the terms of payment or the prices, or as regards the provision of services insofar as these are explicitly referred to in paragraph 2;</p>	<p>(c) the buyer unilaterally changes the terms of a supply agreement for agricultural and food products that concern the frequency, method, place, timing or volume of the supply or delivery of the agricultural and food products, the quality standards, the terms of payment or the prices, or as regards the provision of services insofar as these are explicitly referred to in Article 3</p>	<p>Section 15 - Agreement on Unilateral Contract Amendment. The buyer cannot validly agree with the supplier that the buyer can unilaterally change the contract for the supply of agricultural, fishery or food products with respect to 1. the frequency, manner, place, time or scope of delivery, 2. the quality standards of the products, 3. the payment conditions, 4. the prices, <b>5. the storage of the products, 6. the listing of the products, 7. the marketing of the products, including offers for sale, advertising, price reductions as part of sales promotions and making them available on the market, or 8th. the cost regime for setting up the buyer's premises where the supplier's products are sold.</b></p>	<p>n) if the trader unilaterally amends the contract for an objectively unjustifiable reason that is not attributable to a circumstance regarded as external to the trader's operation;</p>	<p>3° the buyer unilaterally changes the terms of a supply agreement for agricultural and food products that concern the frequency, method, place, timing or volume of the supply or delivery of the agricultural and food products, the quality standards, the terms of payment or the prices, or as regards the provision of services insofar as these are explicitly referred to in Article VI.109/6;</p>
<p>(d) the buyer requires payments from the supplier that are not related</p>	<p>(d) the buyer requires payments from the supplier that are not related to the sale of the</p>	<p>Section 16 - Agreement on the assumption of costs by the supplier (2) The buyer cannot validly agree with</p>	<p><i>e) the trader on its own or with the involvement of a third party collaborator</i></p>	<p>4° the buyer requires payments from the supplier that are not related to the sale of the</p>

<p>to the sale of the agricultural and food products of the supplier;</p>	<p>agricultural and food products of the supplier;</p>	<p>the supplier that the supplier has to bear costs that are not specifically related to the sale of the supplier's agricultural, fishery or food products. These include, for example, costs for the buyer's business decisions, which the buyer typically makes independently of its suppliers, and costs caused by misconduct by the buyer's personnel.</p>	<p><i>charges the supplier a fee by any legal title</i>  <i>ea) for service not actually provided;</i>  <i>eb) for any activity performed by the trader that is unrelated to sale to the end customer and constitutes no added service for the supplier, in particular for the placement of the product at a specified location in the trader's shop if it does not constitute an added service for the supplier;</i>  <i>ec) requiring the use of or providing services not requested by the supplier and not serving its interests; ed) fees for services requested by the supplier and actually provided by the trader are also regarded as such if they are disproportionate;</i></p>	<p>agricultural and food products of the supplier;</p>
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<p>(e) the buyer requires the supplier to pay for the deterioration or loss, or both, of agricultural and food products that occurs on the buyer's premises or after ownership has been transferred to the buyer, where such deterioration or loss is not caused by the negligence or fault of the supplier;</p>	<p>(e) the buyer requires the supplier to pay for the deterioration or loss, or both, of agricultural and food products that occurs on the buyer's premises or after ownership has been transferred to the buyer, where such deterioration or loss is not caused by the negligence or fault of the supplier;</p>	<p>Section 16 - Agreement on the assumption of costs by the supplier (1) The buyer cannot effectively agree with the supplier that the supplier has to bear costs that the buyer incurs through no fault of the supplier 1. a deterioration or total loss of quality of the agricultural, fishery or food products that has occurred after the delivery has been handed over to the buyer</p>	<p><i>c) the trader on its own or with the involvement of a third party collaborator transfers the costs serving the trader's business interests, in particular those related to business establishment, operation and functioning, to the supplier in part or in whole;</i></p>	<p>5° the buyer requires the supplier to pay for the deterioration or loss, or both, of agricultural and food products that occurs on the buyer's premises or after ownership has been transferred to the buyer, where such deterioration or loss is not caused by the negligence or fault of the supplier;</p>
		<p><u>Section 17 - Agreement on Payments or Discounts for Listing of Products. The buyer cannot validly agree with the supplier that the supplier contributes to the cost of listing the agricultural, fishery or food products to be supplied by payment or discount. Sentence 1 does not apply to the costs incurred for listing products when they are launched on the market.</u></p>	<p><u>d) the trader on its own or with the involvement of a third party collaborator charges the supplier a fee for becoming one of the trader's suppliers or for including or keeping its product in the trader's stock;</u></p>	

<p>(f) the buyer refuses to confirm in writing the terms of a supply agreement between the buyer and the supplier for which the supplier has asked for written confirmation; this shall not apply where the supply agreement concerns products to be delivered by a member of a producer organisation, including a cooperative, to the producer organisation of which the supplier is a member, if the statutes of that producer organisation or the rules and decisions provided for in, or derived from, those statutes contain provisions having</p>	<p>f. the buyer refuses to confirm in writing the terms of a supply agreement between the buyer and the supplier for which the supplier has asked for written confirmation; this shall not apply where the supply agreement concerns products to be delivered by a member of a producer organisation, including a cooperative, to the producer organisation of which the supplier is a member, if the statutes of that producer organisation or the rules and decisions provided for in, or derived from, those statutes contain provisions having similar effects to the terms of the supply agreement;</p>	<p>Section 19 - Confirmation of the content of the contract Upon request, the buyer must confirm the content of an oral delivery contract or an oral framework agreement on which this is based in text form. Sentence 1 also applies to verbal ancillary agreements to a contract. The content of a framework agreement on which the supply contract is based does not have to be confirmed in accordance with sentence 1 if 1. the buyer is a group of producers to which the supplier belongs, and 2. the supply contract is based on the provisions applicable to the members of the group of producers.</p>	<p><i>l) if a non-written contractual provision is applied between the trader and the supplier and it is not put into writing in spite of the supplier's relevant request within three business days thereof; &amp; o) if the trader fails to publish the Business Rules mentioned in paragraph (5), deviates from the published Business Rules or applies a condition not contained therein;</i></p>	<p>6° the buyer refuses to confirm in writing the terms of a supply agreement between the buyer and the supplier for which the supplier has asked for written confirmation; this shall not apply where the supply agreement concerns products to be delivered by a member of a producer organisation, including a cooperative, to the producer organisation of which the supplier is a member, if the statutes of that producer organisation or the rules and decisions provided for in, or derived from, those statutes contain provisions having similar effects to the terms of the supply agreement;</p>
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similar effects to the terms of the supply agreement;				
(g) the buyer unlawfully acquires, uses or discloses the trade secrets of the supplier within the meaning of Directive (EU) 2016/943 of the European Parliament and of the Council ( 9 );	g. The buyer unlawfully acquires, uses or discloses trade secrets of the supplier, within the meaning of the Law on protection of trade secrets			7° The buyer unlawfully acquires, uses or discloses trade secrets of the supplier, within the meaning of the Law on protection of trade secrets, within the meaning of the law of the 30th of July 2018, regarding the protection of trade secrets.
(h) the buyer threatens to carry out, or carries out, acts of commercial retaliation against the supplier if the supplier exercises its contractual or legal rights, including by filing a complaint with enforcement authorities or by cooperating with enforcement authorities during an investigation;	(h) the buyer threatens to carry out, or carries out, acts of commercial retaliation against the supplier if the supplier exercises its contractual or legal rights, including by filing a complaint with enforcement authorities or by cooperating with enforcement authorities during an investigation;	Section 18 - Threats of Retaliation Buyer shall not threaten Supplier with commercial retaliation or take any such action against Supplier if Supplier 1. asserts his contractual or legal rights, including the exercise of his right of appeal under Article 25, or 2. complying with its legal obligations, including its duty to cooperate with the enforcement authority in connection with an ex officio investigation.		8° the buyer threatens to carry out, or carries out, acts of commercial retaliation against the supplier if the supplier exercises its contractual or legal rights, including by filing a complaint with enforcement authorities or by cooperating with enforcement authorities during an investigation;

<p>(i) the buyer requires compensation from the supplier for the cost of examining customer complaints relating to the sale of the supplier's products despite the absence of negligence or fault on the part of the supplier.</p>	<p>(i) the buyer requires compensation from the supplier for the cost of examining customer complaints relating to the sale of the supplier's products despite the absence of negligence or fault on the part of the supplier.</p>	<p>Section 16 - Agreement on the assumption of cost by the supplier. (1) The buyer cannot effectively agree with the supplier that the supplier has to bear the cost that the buyer incurs through no fault of the supplier (...) 2. Dealing with Buyer's customer complaints relating to the Supplier's agricultural, fishery or food products.</p>		<p>9° the buyer requires compensation from the supplier for the cost of examining customer complaints relating to the sale of the supplier's products despite the absence of negligence or fault on the part of the supplier.</p>
<p>The prohibition referred to in point (a) of the first subparagraph shall be without prejudice: — to the consequences of late payments and remedies as laid down in Directive 2011/7/EU, which shall apply, by way of derogation from the payment periods set out in that Directive, on the basis of the payment periods set out in this Directive; — to</p>	<p>2. The prohibition referred to in point (a) of the first subparagraph shall be without prejudice: — to the consequences of late payments and remedies as laid down in Directive 2011/7/EU, which shall apply, by way of derogation from the payment periods set out in that Directive, on the basis of the payment periods set out in this act; — to the option of a buyer and a supplier to agree on a value sharing clause within the meaning of</p>	<p>Section 11 - (3) Paragraph 2 does not apply to  1. Pricing elements subject to value sharing clauses, and 2. Payments under the school scheme in accordance with Article 23 of Regulation (EU) No 1308/2013. (4) Payment periods longer than those specified in paragraph 2 cannot be agreed. Statutory provisions remain unaffected, according to which only the agreement of shorter payment periods than those specified in paragraph 2 is permissible.  <b>(5) Section 271a subsection</b></p>		<p>Art. 6(1). The prohibition referred to in point (a) of the first subparagraph shall be without prejudice: — to the consequences of late payments and remedies as laid down in Directive 2011/7/EU, which shall apply, by way of derogation from the payment periods set out in that Directive, on the basis of the payment periods set out in this act; — to the option of a buyer and a supplier to agree on a value sharing clause within the meaning of Article 172a of Regulation (EU) No 1308/2013.</p>



<p>the option of a buyer and a supplier to agree on a value sharing clause within the meaning of Article 172a of Regulation (EU) No 1308/2013.</p>	<p>Article 172a of Regulation (EU) No 1308/2013.</p>	<p><b>2 number 1 of the Civil Code shall also apply if the debtor is an authority.</b> (6) Contrary to Section 286 (3) sentence 1 of the Civil Code, the debtor shall be in default at the latest if he does not pay within 30 days of the beginning of the period resulting from paragraph 2.</p>		
<p>The prohibition referred to in point (a) of the first subparagraph shall not apply to payments: — made by a buyer to a supplier where such payments are made in the framework of the school scheme pursuant to Article 23 of Regulation (EU) No 1308/2013; — made by public entities providing healthcare in the meaning of point (b) of Article 4(4) of Directive</p>	<p>3. The prohibition referred to in point (a) of the first subparagraph shall not apply to payments: — made by a buyer to a supplier where such payments are made in the framework of the school scheme pursuant to Article 23 of Regulation (EU) No 1308/2013; — made by public entities providing healthcare in the meaning of point (b) of Article 4(4) of Directive 2011/7/EU: — under supply agreements between suppliers of grapes or must for wine</p>	<p>See Section 11 above, <b>derogation for suppliers of grapes, must or wine production is not made.</b></p>		<p>Art. 6(1) The prohibition referred to in this Article does not apply to payments: - from a buyer to a supplier, if these payments are made in the framework of the school scheme pursuant to Article 23 of Regulation (EU) 1308/2013. - made by public entities providing healthcare in the meaning of Artikel 4, section 3, third paragraph of the law of the 2nd of August 2002 regarding late payments; -under supply agreements between suppliers of grapes or must for wine production and their direct buyers, provided:</p>

<p>2011/7/EU: — under supply agreements between suppliers of grapes or must for wine production and their direct buyers, provided:</p>	<p>production and their direct buyers, provided:</p>			
<p>(i) that the specific terms of payment for the sales transactions are included in standard contracts which have been made binding by the Member State pursuant to Article 164 of Regulation (EU) No 1308/2013 before 1 January 2019, and that this extension of the standard contracts is renewed by the Member States from that date without any significant changes to the terms of payment to the disadvantage of suppliers of grapes or must; and (ii) that</p>	<p>1°. that the specific terms of payment for the sales transactions are included in standard contracts pursuant to Article 164 of Regulation (EU) No 1308/2013 before 1 January 2019, and that this extension of the standard contracts is renewed by the Member States from that date without any significant changes to the terms of payment to the disadvantage of suppliers of grapes or must; and (ii) that the supply agreements between suppliers of grapes or must for wine production and their direct buyers are multiannual or become multiannual.</p>			<p>l) that the specific terms of payment for the sales transactions are included in standard contracts pursuant to Article 164 of Regulation (EU) No 1308/2013 before 1 January 2019, and that this extension of the standard contracts is renewed by the Member States from that date without any significant changes to the terms of payment to the disadvantage of suppliers of grapes or must; and (ii) that the supply agreements between suppliers of grapes or must for wine production and their direct buyers are multiannual or become multiannual.</p>

the supply agreements between suppliers of grapes or must for wine production and their direct buyers are multiannual or become multiannual.				
<b>2. Member States shall ensure that at least all the following trading practices are prohibited, unless they have been previously agreed in clear and unambiguous terms in the supply agreement or in a subsequent agreement between the supplier and the buyer:</b>	<b>Art. 3 - A buyer acts unlawfully towards a supplier if he carries out one of the following trading practices, unless they have been previously agreed in clear and unambiguous terms in the supply agreement or in a subsequent agreement between the supplier and the buyer:</b>			<b>Art. 7 - "Art. VI.109/6. are considered unfair, unless they have been previously agreed in clear and unambiguous terms in the supply agreement or in a subsequent agreement between the supplier and the buyer. The following practices:</b>
a) the buyer returns unsold agricultural and food products to the supplier without paying for	a) the buyer returns unsold agricultural and food products to the supplier without paying for those unsold products	Put on the 'black-list' by Germany. See Section 12 above.		1° the buyer returns unsold agricultural and food products to the supplier without paying for those unsold products or

those unsold products or without paying for the disposal of those products, or both;	or without paying for the disposal of those products, or both;			without paying for the disposal of those products,
(b) the supplier is charged payment as a condition for stocking, displaying or listing its agricultural and food products, or of making such products available on the market;	(b) the supplier is charged payment as a condition for stocking, displaying or listing its agricultural and food products, or of making such products available on the market;	Section 20 - Unfair trading practices in the absence of an agreement. (1) Buyer's request for payment or discount from Supplier for 1. the listing of the delivered agricultural, fishery or food products when they are placed on the market (...) is unfair, unless this commercial practice has previously been clearly and unambiguously agreed between the buyer and the supplier, in particular taking into account Section 16.		2° the supplier is charged payment as a condition for stocking, displaying or listing its agricultural and food products, or of making such products available on the market;

<p>c) the buyer requires the supplier to bear all or part of the cost of any discounts on agricultural and food products that are sold by the buyer as part of a promotion;</p>	<p>c) the buyer requires the supplier to bear all or part of the cost of any discounts on agricultural and food products that are sold by the buyer as part of a promotion;</p>	<p>Section 20 - Unfair trading practices in the absence of an agreement. (1) Buyer's request for payment or discount from Supplier for (...) 2. the marketing of the delivered agricultural, fishery or food products, including sales offers, advertising, price reductions as part of sales campaigns and making them available on the market, unless this commercial practice has previously been clearly and unambiguously agreed between the buyer and the supplier, in particular taking into account Section 16.</p>	<p><i>f) the requirement of a supplier contribution to a discount provided by the trader to the end customer for a period longer than the discount term, even if it is a partial contribution, or a supplier's contribution in excess of the discount rate provided to the end customer;</i></p>	<p>3° the buyer requires the supplier to bear all or part of the cost of any discounts on agricultural and food products that are sold by the buyer as part of a promotion;</p>
<p>(d) the buyer requires the supplier to pay for the advertising by the buyer of agricultural and food products;</p>	<p>(d) the buyer requires the supplier to pay for the advertising by the buyer of agricultural and food products;</p>	<p>Section 20, see above</p>		<p>4° the buyer requires the supplier to pay for the advertising by the buyer of agricultural and food products;</p>
<p>(e) the buyer requires the supplier to pay for the marketing by the buyer of agricultural and food products;</p>	<p>(e) the buyer requires the supplier to pay for the marketing by the buyer of agricultural and food products;</p>	<p>Section 20, see above</p>		<p>5° the buyer requires the supplier to pay for the marketing by the buyer of agricultural and food products;</p>

<p>(f) the buyer charges the supplier for staff for fitting-out premises used for the sale of the supplier's products.</p>	<p>(f) the buyer charges the supplier for staff for fitting-out premises used for the sale of the supplier's products.</p>	<p>Section 20 - Unfair trading practices in the absence of an agreement. (1) Buyer's request for payment or discount from Supplier for (...) 3. arranging the premises in which the supplier's products are sold is unfair, unless this commercial practice has previously been clearly and unambiguously agreed between the buyer and the supplier, in particular taking into account Section 16.</p>		<p>6° the buyer charges the supplier for staff for fitting-out premises used for the sale of the supplier's products.</p>
<p>Member States shall ensure that the trading practice referred to in point (c) of the first subparagraph is prohibited unless the buyer, prior to a promotion that is initiated by the buyer, specifies the period of the promotion and the expected quantity of the agricultural and food products to be</p>	<p>Art. 3. c. - the buyer specifies, before a promotion at the initiative of the buyer, the period in which the promotion takes place and the expected quantity of agricultural and food products that will be ordered at the price obtained after deduction of the discount</p>	<p>Section 20 - Unfair trading practices in the absence of an agreement (2). An agreement on price reductions as part of sales campaigns within the meaning of paragraph 1 number 2 is only effective if the buyer also undertakes to inform the supplier in writing in good time before the start of the sales campaign of the campaign period and an estimate of the quantity of the products that to be ordered at the lower price. If the buyer</p>		<p><i>Art. 7(3): "Art. 7(3): However, such a practice is not considered unfair if, before a promotion on his own initiative, the buyer determines the period in which the promotion takes place and the expected quantity of agricultural and food products that will be ordered against the specified deducted price. The purchaser shall provide a written estimate of the amount to be paid by the supplier and/or the elements on which this estimate is based. <b>The supplier expressly agrees to these costs. If this is not the</b></i></p>

<p>ordered at the discounted price.</p>		<p>does not fulfill his contractual obligation to inform the supplier, he cannot demand the agreed price reduction.</p>		<p><b>case, he should not have to bear these costs.</b></p>
<p>3. Where a payment is required by the buyer for the situations referred to in points (b), (c), (d), (e) or (f) of the first subparagraph of paragraph 2, if requested by the supplier, the buyer shall provide the supplier with an estimate in writing of the payments per unit or the overall payments, whichever is appropriate, and, insofar as the situations referred to in points (b), (d), (e) or (f) of the first subparagraph of paragraph 2 are concerned, shall also provide, in writing, an estimate of the</p>	<p><b>Art. 4</b> Where a payment is required by the buyer for the situations referred to in points (b), (c), (d), (e) or (f) of the first subparagraph of Art. 3, if requested by the supplier, the buyer shall provide the supplier with an estimate in writing of the payments per unit or the overall payments, whichever is appropriate, and, insofar as the situations referred to in points (b), (d), (e) or (f) of the first subparagraph of Art. 3 are concerned, shall also provide, in writing, an estimate of the cost to the supplier and the basis for that estimate.</p>	<p><i>Section 20 - Unfair trading practices in the absence of an agreement (2). An agreement on price reductions as part of sales campaigns within the meaning of paragraph 1 number 2 is only effective if the buyer also undertakes to inform the supplier in writing in good time before the start of the sales campaign of the campaign period and an estimate of the quantity of the products that to be ordered at the lower price. If the buyer does not fulfill his contractual obligation to inform the supplier, he cannot demand the agreed price reduction.</i></p>		<p><i>Where a payment is required by the buyer for the situations referred to in points 2°, 3°, 4°, 5° en 6°, the buyer shall provide the supplier with an estimate in writing of the payments per unit or the overall payments, whichever is appropriate, and, insofar as the situations referred to in points 2°, 4°, 5°, of 6° of the first subparagraph are concerned, shall also provide, in writing, an estimate of the cost to the supplier and the basis for that estimate.</i></p>

cost to the supplier and the basis for that estimate.				
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