



Brussels, 3.6.2024
SWD(2024) 106 final/2

This document corrects document SWD(2024) 106 final of 23.4.2024

General clause regarding Germany has been removed under point 4.3 Prohibited UTPs (Article 3) - overview, section General clauses on page 9. The number of Member states has been corrected.

The text shall read as follows:

COMMISSION STAFF WORKING DOCUMENT

Unfair Trading Practices (UTP) - Overview tables on Member States' transposition choices and enforcement activities

Accompanying the document

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Implementing the prohibition of unfair trading practices to strengthen the position of farmers and operators in the agricultural and food supply chain – State of play

{COM(2024) 176 final}

Contents

1. Introduction	3
2. Main elements of Directive (EU) 2019/633	3
3. Overview on transposition dates.....	5
4. Transposition choices	6
4.1. Choice of the legislative instrument.....	6
4.2. Scope of application and business size - overview	8
4.3. Prohibited UTPs (Article 3) - overview	9
4.3.1. Payment delays - overview	11
4.3.2. Cancelling orders at short notice – overview	12
4.4. Enforcement measures and sanctions (Article 6) – overview	12
4.5. Stricter national practices (Article 9) – overview	14
4.6. Focus on prohibitions to sell or buy below production costs to re-sell at a loss or below purchase price or any other obligation to respect a certain price level	29
5. Aggregated overall data on Member States' enforcement activities in 2022 and 2023 ...	30
6. Additional insights from the 2023 annual utp survey.....	32
6.1. Suppliers' awareness of the existence of the UTP Directive.....	32
6.2. Suppliers' awareness of the existence of national enforcement authorities	32
6.3. Suppliers' main reasons for not raising an issue with a national enforcement authority	33

Member State abbreviations:

Austria	AT
Belgium	BE
Bulgaria	BG
Cyprus	CY
Czechia	CZ
Germany	DE
Denmark	DK
Estonia	EE
Greece	EL
Spain	ES
Finland	FI
France	FR
Croatia	HR
Hungary	HU
Ireland	IE
Italy	IT
Lithuania	LT
Luxembourg	LU
Latvia	LV
Malta	MT
Netherlands	NL
Poland	PL
Portugal	PT
Romania	RO
Sweden	SE
Slovenia	SI
Slovakia	SK

1. INTRODUCTION

The present Staff Working Document ('SWD') provides a summary overview of the Member States' transposition choices and enforcement activities of Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain ('the Directive')¹. It accompanies the report on "Implementing the prohibition of unfair trading practices to strengthen the position of farmers and operators in the agricultural and food supply chain – State of play" ('the report') and provides further details.

The Directive was adopted by the European Parliament and the Council on 17 April 2019. The Directive is binding on all 27 Member States ('MS'). It provides for a minimum level of harmonisation by establishing a list of prohibited unfair trading practices ('UTPs') between buyers and suppliers in the agricultural and food supply chain.

The present SWD covers information on the state of implementation in all 27 MS and provides information on a selection of MS' transposition choices. It exclusively refers to national provisions that are contained in the national laws transposing the UTP Directive, i.e. they do not refer to other provisions having been introduced in certain Member States through other legislative instruments and that may have a similar impact.

On-going modifications and reviews of national laws (either as a consequence of the conformity checks by the Commission (COM) or for diverse other reasons) have been taken into account in this SWD only if they had officially been notified to the COM via THEMIS/Directives before 1 March 2024. Moreover, it is worth underlining that compliance with the Directive of national provisions that maintain or introduce stricter rules than those laid down by the UTP Directive, or compliance with the rules on the functioning of the internal market, are not assessed by the COM in this SWD or in the context of the conformity check.²

2. MAIN ELEMENTS OF DIRECTIVE (EU) 2019/633

The food supply chain is prone to the development of unfair trading practices (UTPs) due to the imbalances between small and large operators. The Directive provides for minimum harmonisation on the prohibited UTPs in all Member States (MS) to protect farmers and smaller suppliers from the UTPs that had been identified as the most problematic.

1.1. KEY ELEMENTS OF THE DIRECTIVE

- Protection of weaker suppliers against stronger buyers
- List of 16 targeted UTPs regulated at EU level, and possibility for MS to have a longer list of UTPs
- Enforcement by designated enforcement authorities
- Transposition of the Directive into national law by 1 May 2021 and application six months later (1 November 2021) to new contracts (existing

¹ 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, OJ L 111, 25.4.2019, p. 59.

² https://commission.europa.eu/document/download/a21336e2-2a7c-43d2-bb35-d4eee7aa4cd3_en?filename=BRT-2023-Chapter%204-Compliance%20implementation%20and%20preparing%20proposals_0.pdf

contracts had to be brought in line within 12 months after publication of the transposition laws in the national Official Journal).

1.2. SCOPE IN TERMS OF OPERATORS

The Directive protects any supplier of agricultural and food products with a turnover of **up to EUR 350 million** with differentiated levels of protection provided below that threshold. This covers not only farmers, but also producer organisations and food industry below that threshold.

Buyers who are stronger than the supplier, i.e. in a higher turnover category as defined by the Directive, cannot apply UTPs to their suppliers.

1.3. PROHIBITED PRACTICES

10 BLACK UTPs (prohibited, whatever the circumstances, the supplier cannot agree to them, they are prohibited no matter what):

- Payments later than 30 days for perishable agricultural and food products
- Payments later than 60 days for non-perishable agri-food products
- Short-notice cancellations of perishable agri-food products
- Unilateral contract changes by the buyer
- Payment for unrelated services
- Risk of loss and deterioration transferred to the buyer
- Refusal of a written confirmation of supply agreements by the buyer, despite request of the supplier
- Misuse of trade secrets by the buyer
- Commercial retaliation by the buyer
- Transferring the costs of examining customer complaints to the supplier

6 GREY UTPs (prohibited only, if not agreed beforehand in clear and unambiguous terms between the parties):

- Buyer returns unsold products to the supplier
- Payment of the supplier for stocking, display and listing
- Payment of the supplier for promotion
- Payment of the supplier for advertising
- Payment of the supplier for marketing
- Payment of the supplier for staff of the buyer, fitting out premises

MS can adopt national rules going beyond the Directive in terms of scope, e.g. protect more suppliers, also with a turnover beyond EUR 350 million or introduce additional unfair trading practices to the lists of black and grey practices. However, such measures cannot distort the internal market.

1.4. ENFORCEMENT

- MS have designated authorities in charge of enforcing the new rules, including the ability to impose fines and initiate investigations based on complaints.

- The Directive protects the confidentiality of complainants thereby addressing the complainant's fear about retaliation from the buyer. E.g. a producer who wants to complain, can claim confidentiality (of identity and business secrets) when he addresses the enforcement authority. The complainant can also ask a producer organisation of which he/she is a member to complain on his behalf.
- The COM has set up a "UTP Enforcement Network" in which national enforcement authorities cooperate to discuss the application of the Directive, to exchange best practices, to discuss new cases and developments, and to share information on the implementing measures adopted and on enforcement practices.

1.5. EVALUATION OF THE DIRECTIVE

- Art. 12 of the Directive requires an evaluation of this Directive to be carried out by 1 November 2025 to assess
 - the effectiveness of the measures implemented at national level as well as
 - the effectiveness of cooperation among the competent enforcement authorities.
- The evaluation is currently being carried out based, among others,
 - on MS' annual reports to the COM with regard to the application and enforcement of the laws under this Directive,
 - on a study carried out by an external contractor,
 - on annual surveys carried out across all Member States and targeting suppliers covered by the Directive at the different stages of the agricultural and food supply chain, including a baseline survey conducted before the implementation of the Directive.

The evaluation will be accompanied by proposals if appropriate.

3. OVERVIEW ON TRANSPOSITION DATES

By December 2022 all MS had transposed the Directive.

Member State	Date of the notification of complete transposition to the Commission
AT	13-01-2022
BE	02-02-2022
BG	05-10-2021
CY	29-12-2021
CZ	09-12-2022
DE	19-10-2021
DK	20-12-2021
EE	27-10-2021
EL	12-11-2021
ES	23-12-2021
FI	19-10-2021
FR	09-09-2021

HR	26-10-2021
HU	08-06-2021
IE	28-09-2021
IT	02-12-2021
LT	15-07-2021
LU	02-06-2021
LV	07-10-2021
MT	22-07-2021
NL	17-11-2021
PL	09-12-2021
PT	28-10-2021
RO	15-04-2022
SE	08-10-2021
SI	13-09-2021
SK	20-07-2021

The following link contains an overview of the national transposition measures as communicated by the Member States to the Publications Office of the EU: [Directive - 2019/633 - EN - EUR-Lex \(europa.eu\)](#). This SWD provides an English version of select national provisions for clarity and ease of understanding. Only the original text of transposition laws as enacted by each respective Member State is considered authentic.

4. TRANSPOSITION CHOICES

4.1. Choice of the legislative instrument

13 MS introduced new and separate legislation	<p>CY, DK, EE, EL, IE, IT, LT, LU, MT, NL, PL, RO, SE</p> <p>With the exception of IE, IT, PL and RO, these MS did not have national UTP rules beforehand.</p> <p>IT and PL abolished pre-existing legislation.</p> <p>IE integrated it with a legislative measure strictly corresponding to the text of the Directive (which enabled an expedite transposition proceeding).</p> <p>CY only relied on a general prohibition of abuse of economic dependence.</p> <p>The LT instrument partially overlaps with an existing piece of legislation, namely the Law on the Prohibition of Unfair Practices of Retailers of 22 December 2009, no. XI-626, which applies to retailers with significant market power and which, in the case of conflict, prevails over the transposition instrument.</p> <p>In SE, before transposition, UTPs were only addressed by means of extending consumer protection to business-to-business relationships.</p>
14 MS amended pre-existing legislation or incorporated	<p>AT, BE, BG, CZ, DE, ES, FI, FR, HR, HU, LV, PT, SI, SK</p> <p>Among those, HU submitted pre-existing legislation without any addition or modification resulting from the transposition process.</p>

it into a wider legislative instrument	
18 MS qualified the transposition measure as legislation on UTPs, without any reference (within this formal qualification) to market or competition law	<p>CY, DK, EE, EL, IE, IT, LV, NL, HR, HU, LU, LT, MT, PL, PT, RO, SE, SK</p> <p>SK has formally qualified this piece of legislation as referring to unfair terms, in fact covering or including unfair practices within the concept of unfair terms.</p>
Other	<p>FI formally qualified the statutory instrument as a Food Market Act (providing additional rules on market regulation, such as those on agreements under Regulation (EU) No 1308/2013³).</p> <p>BG introduced a new chapter (on UTPs in the agricultural and food supply chain) in its Competition Protection Act.</p> <p>CZ amended its legislation on significant market power and abuse thereof in the agrifood sector.</p> <p>BE integrated the transposition measures in the Code of Economic Law.</p> <p>FR supplemented provisions of the Commercial Code.</p> <p>DE amended its Agricultural Market Structure Act and the Act was renamed as ‘Act on strengthening agricultural organisations and supply chains’: ‘Agricultural Organisation and Supply Chain Act - AgrarOLkG’</p> <p>SI did the same as DE in regard of its Agriculture Act,</p> <p>ES amended its legislation on the functioning of the food chain.</p> <p>AT amended the Federal Act on Better Local Supply and Fairer Competition, inserting a new Section on ‘Unfair trading practices related to the sale of agricultural and food products’.</p>
24 MS have adopted sector-specific legislation exclusively applying to the agricultural and food sector	<p>All MS except LV, FR and PT</p> <p>LV’s provisions also include prohibitions applicable to non-food product retailers.</p> <p>FR and PT’s transposition are partially based on pre-existing provisions that have a general (as opposed to an agri-food sector) scope.</p>

³ [OJ L 347, 20.12.2013, p. 671.](#)

4.2. Scope of application and business size - overview

TRANSPOSITION REGARDLESS OF BUSINESS SIZE	
6 MS transposed regardless of business size	<p>CY, EE, ES, FR, IT, SK</p> <p>While maintaining the general application of the implementing legislation regardless of business size, some of these MS have referred to business size to provide for some exceptions or variations. E.g., in</p> <p>CY payment deadlines vary based on business size in the case of products delivered on a regular basis by suppliers of grapes for the production of wine to buyers with an annual turnover of less than EUR 2 000 000;</p> <p>ES legislation does not apply to hotel, restaurant and catering businesses with a turnover of less than EUR 10 million; and businesses engaging in accommodation services with turnover of less than EUR 50 million.</p>
TRANSPOSITION TAKING BUSINESS SIZE INTO ACCOUNT (TO SOME EXTENT)	
6 MS followed the approach of the Directive	<p>BG, IE, LU, MT, NL, RO</p> <p>They target relationships between suppliers whose annual turnover is lower than a given threshold, and buyers whose annual turnover is higher than the same threshold.</p>
2 MS followed an approach based on that of the Directive	<p>PL, SI</p> <p>SI limited the scope of application to businesses with “significant market power”</p> <p>PL to businesses with a “significant disproportion in economic potential” and then defined the power or disproportion having regard to relative business size. However, among these, only SI has used the size categories of the Directive to include the same types of relationships without further assessment⁴.</p> <p>Lastly, PL has used the same size categories as the ones of the Directive but only to establish a presumption and not a conclusive definition without further assessment⁵.</p>
13 MS enlarged the scope on business size to varying degrees	<p>AT, EL, BE, CZ, DE, DK, FI, HR, HU, LT, LV, PT, SE</p> <p>EL has lowered the threshold of the first category of suppliers from EUR 2 million to EUR 500 000.</p> <p>AT has added a sixth category to include suppliers with a turnover of more than EUR 350 million and no more than EUR 1 bn in relationship with buyers of more than EUR 5 bn turnover.</p> <p>BE has only taken the suppliers’ size into account, extending the application of the legislation for all buyers to suppliers with an annual turnover not exceeding EUR 350 million. However, there is no turnover limit for producer organisations recognised under Article 152 of Regulation (EU) No 1308/2013.</p>

⁴ “A buyer shall be deemed to have significant market power: 1. if the annual turnover (...)”.

⁵ “Significant disproportion in economic potential in the case of practices involving the unfair use of contractual advantage by buyers against suppliers shall be presumed to exist between (...)”. The question on whether the presumption is absolute or rebuttable is critical to understand the scope of application of Polish legislation in respect of the one demanded by the Directive. Indeed, if the presumption was absolute, then the scope of application of Polish legislation would be wider than the one envisaged by the Directive (being still possible to prove that the same disproportion exists out of the legislative size categories). By contrast, if the presumption was rebuttable, then some relationships, that would fall within the Directive’s scope of application, would fail to be covered by the Polish national legislation whenever counter evidence is provided with regard to the existence of the significant disproportion.

	<p>CZ has followed the threshold approach in the Directive and introduced also additional categories of buyers with an annual turnover in the territory of the Czech Republic exceeding CZK 5 billion (approx. EUR 197 million) irrespective of the size of the supplier.</p> <p>HR, LV and SE have only taken the buyers' size into consideration and apply the legislation to all buyers whose total annual turnover is at least (for HR) or exceeds (for SE and LV) EUR 2 million.</p> <p>FI has taken the same approach to only take into account the buyer's size, however, its legislation does not apply if the supplier's turnover exceeds that of the buyer and, in any case, if it exceeds EUR 350 million and the buyer's turnover is greater.</p> <p>DE applies the Directive's thresholds, but a wider scope has been temporarily introduced for the sales of some food and agricultural products.</p> <p>LT applies the extension of scope only with regard to the provisions on late payments. It applies to all buyers and benefits suppliers whose turnover does not exceed EUR 350 million.</p> <p>DK, HU and PT apply business size only with regard to certain UTP prohibitions, whereas all other rules apply regardless of business size. For PT, the Directive's size categories only affect the scope of application of payment terms, whereas for other UTPs size does not matter. In DK, the Directive's UTP prohibitions apply to all transactions irrespective of the turnover of the businesses and their relative bargaining power, except for payment terms.</p>
--	---

4.3. Prohibited UTPs (Article 3) - overview

NO EXTENSION OF RULES	
5 MS transposed without any extension of the rules	DK, IE, LU, MT, NL
2 MS' transposition mainly coincided with the Directive except for a few stricter prohibitions	<p>LT, SE</p> <p>LT introduced an obligation for written sales contracts.</p>
GENERAL CLAUSES (to be understood as clauses allowing for the assessment of wider imbalances in the contractual relations between parties of a transaction and/or related services)	
10 MS introduced a general clause (9 in addition to the UTPs listed in the Directive, CZ as part of its "black practices")	<p>CZ, ES, FR, HR, IT, LV, PL, PT, RO, SI</p> <p>HR and LV included a general clause prohibiting unfair practices in the light of general principles.</p> <p>CZ: the amended legislation prohibits negotiating or enforcing contractual terms that create a significant imbalance in the rights and obligations of the contracting parties to the detriment of the supplier.</p> <p>ES: the Food Chain legislation already established general principles on commercial relationships, in addition to the general principles under civil law.</p> <p>IT: the transposing legislation, as well as the repealed one, include general principles of transparency, good faith and fairness in the field of contract terms and business practices.</p>

	<p>PL provides for a general prohibition of the unfair use of contractual advantage.</p> <p>RO provides a general clause by means of definition of unfair commercial practices as those that are contrary to good commercial practices, good faith and fair dealing and that are unilaterally imposed by one commercial partner to another.</p> <p>SI prohibits the abuse of significant market power as a form of exploitation of counterparty contrary to good business practice.</p> <p>Moreover, some MS have general clauses in the field of unfair commercial practices or competition law. This is the case, e.g., for</p> <p>FR, whose Commercial Code already contained general clauses applicable in the relevant field;</p> <p>PT, whose pre-existing general scope legislation, still applicable in the field of the application of the Directive, demands transparency and balance in commercial relations.</p> <p>Whether general clauses may be relevant to prohibit UTPs when these are not specifically mentioned in the transposing legislation is a question that should be addressed in view of their concrete application by national courts and administrative authorities.</p>
GREY, BLACK AND ADDITIONAL PRACTICES	
All MS used the list of prohibited practices	
All MS except one followed the distinction between “grey” and “black” practices	<p>Only HU provides for a single (‘black’) list and explicitly bans a supplier from validly consenting upfront to the covered trading practices.</p> <p>HU relies on a previously adopted legislative instrument without any specific modifications being made in the course of the Directive’s transposition. Most practices included in the Directive are covered, though are, in part, defined differently; some of these are affected by wider or more stringent prohibitions.</p> <p>This partly applies to FR, where only some practices have been specifically regulated by the transposition legislation, whereas others may be covered by general clauses of wider application;</p> <p>Where ‘grey lists’ are used, MS impose transparency requirements concerning the type of information to be provided to the supplier in order to justify a ‘grey practice’⁶.</p>
8 MS have moved “grey” list practices into the “black” list	<p>CY: all UTPs are moved to black for fruits and vegetables</p> <p>CZ, DE, FR, LV, SK: return of unsold products;</p> <p>FR, HR, LV: charges for fitting out premises;</p> <p>FR, LV, RO: charges for stocking, displaying and listing</p>
16 MS added practices to the “black” list	AT, BG, CY, CZ, EL, ES, FR, HR, HU, IT, LV, PL, PT, RO, SI, SK.
6 MS added practices to the “grey” list	BG, EE, HR, LV, RO, SK.

⁶ Among these, CZ only requires that the practice is agreed in writing.

5 MS prohibit some of the practices for both buyer and supplier, e.g. commercial retaliation	CY, ES, IT, PL, SK
--	---------------------------

4.3.1. *Payment delays - overview*

DISTINCTION BETWEEN PERISHABLE AND NON-PERISHABLE PRODUCT SALES	
16 MS distinguish between perishable and non-perishable product sales	<p>AT, CY, DE, DK, EL, ES, FR, HR, IE, IT, LU, LV, MT, NL, PL, SI.</p> <p>Those MS follow the provisions of the UTP Directive by establishing a 30-day term for perishable product sales and a 60-day term for non-perishable product sales.</p>
11 MS apply stricter payment delays	<p>BE, BG, CZ, EE, FI, HU, LT, PT, RO, SE, SK</p> <p>RO has reduced to 14 days the term for payment for perishable products and to 30 days the one for all other products.</p> <p>BG, CZ, EE and SE have introduced a single 30-day term for both perishable and non-perishable product sales.</p> <p>FI has reduced to 14 days the term for payment for all products, but has made it possible, for non-perishable products to have a longer term of up to 30 days to be agreed in the contract; an even longer term can be agreed in clear and unambiguous terms upon request of the supplier: 30 days for perishable and 60 days for non-perishable products.</p> <p>BE, HU and SK do not distinguish between perishable and non-perishable products; BE and HU apply a 30-day payment term to all agricultural and food products. For HU, however, a 15-day term applies if the supplier fails to provide a correctly-issued invoice within 15 days after the delivery of goods.</p> <p>For SK the rule is generally more stringent: a 15-day term applies from the date of the correctly-issued invoice.</p> <p>LT applies stricter provisions on late payments, i.e. where agricultural and food products are sold by suppliers with an annual turnover below EUR 350 million.</p> <p>PT confirms the 30 days term for the payment of perishable products but in addition, has established an alternative term of either 30 or 60 days for non-perishable products depending on the relative business size and the specific sector; buyers in the hospitality sector are always subject to the 60 days term for non-perishable products.</p>

4.3.2. *Cancelling orders at short notice – overview*

24 MS include the 30-day period as a minimum standard	<p>AT, BE, BG, CY, CZ, DE, DK, EL, ES, FI, FR, HR, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI</p> <p>Some of them, however, have not entirely followed the wording of the Directive's provision with regard to the wider requirement prohibiting any late cancellation (though filed earlier than 30 days from delivery), this indicating 'at such short notice that a supplier cannot reasonably be expected to find an alternative means of commercialising or using those products'.</p> <p>Conversely, in RO a stricter rule applies to the delisting of private label products: in this case, cancellation is deemed unfair if filed less than 60 days from delivery.</p>
6 MS empower the responsible Ministry/Government to set periods of less than 30 days for specific sectors in duly justified cases	<p>BE, DK, FR, IE, IT, SE</p> <p>Under Article 3(1)(b), those MS empower the responsible Ministry (or the Government in the case of SE) to set periods of less than 30 days for specific sectors in duly justified cases.</p>
4 MS introduce other provisions	<p>CY: The Council of Ministries is able to adopt implementing regulations in respect of transposition (which may include regulatory power in the field of cancellation periods).</p> <p>FR has introduced two shorter periods with regard to wholesalers (24 hours) and for fresh fruits and vegetables (3 days, unless the products are sold under a private label in which case 6 days apply).</p> <p>HU has a different structure, literally referring to changes rather than cancellation; no reference is made to a specific period for the advance notice.</p> <p>SK: All buyers are prohibited from not fulfilling contractual obligations without legal justification.</p>

4.4. **Enforcement measures and sanctions (Article 6) – overview**

FINANCIAL SANCTIONS	
27 MS provide financial sanctions	ALL
THRESHOLDS FOR FINANCIAL SANCTIONS	
Range of variation between minimum and maximum, where determined	<p>Minimum amounts range from EUR 5 (DE) to EUR 5 000 (SI). Maximum amounts range from EUR 2 329,37 (MT) to EUR 2 500 000 (PT).</p> <p>In some cases the maximum amount is determined on the basis of the infringing party's turnover (also in these cases percentages differ, going from 0.2% (LV) to 10% (CZ, HU, IT and NL)).</p> <p>In other cases it is calculated as a percentage of:</p> <ul style="list-style-type: none"> (i) the purchase price (IT, SK) (ii) the charges imposed on the supplier (SK), or

	(iii) the profit made by the infringing party in the transaction affected by the unfair practice (IT, MT).
11 MS provide minimum thresholds	BE, BG, ES, IT, LV, LT, LU, HU, PT, RO, SI.
24 MS provide maximum thresholds	All except DK, FI, SE.
14 MS specify the criteria and factors involved in determining the amount of the sanction in specific circumstances.	<p>AT, BE, CY, CZ, EL, ES, FI, HR, LV, PL, PT, RO, SE, SK</p> <p>Criteria and factors involved in determining the amount include the nature of the violation, its duration, and the extent to which the consequences were harmful (criteria vary among MS).</p>
2 MS included explicitly the principle of effective, proportionate and dissuasive penalties	<p>LU, LT</p> <p>EL legislation refers to proportionality and deterrence, but not to effectiveness, when regulating the administrative authority's power to identify the applicable measures, whereas</p> <p>FI legislation refers to the need for reasonableness in determining financial sanctions but not to the other principles. FI also applies proportionality to injunctive measures but only on trade secret infringements⁷.</p>
REMEDIES	
17 MS use some type of penalty to deter non-compliance with injunctions (<i>astreintes</i> type)	<p>BE, BG, CY, DE, DK, FI, FR, LT, LU, LV, MT, NL, PL, PT, RO, SE, SK.</p> <p>Similar to injunctions, national laws transposing the Directive have introduced other measures among those that may be enacted by administrative enforcement authorities:</p> <ul style="list-style-type: none"> • 'warnings' under BE law can be issued to companies with a specific time limit to comply. • 'corrective measures', aimed at eliminating the unlawful state of affairs and setting a reasonable time limit for their performance, under CZ law. • 'precautionary measures' under ES, LU and PT law; • HU measures, enabling the administrative authority to prohibit the trader from applying the provisions of the standard service agreement if (i) it is not clearly worded, (ii) the service or consideration is not specified, or (iii) the fee charged is not proportionate to the costs; • 'compliance notices' under IE law; • Latvian measures, allowing to use alternative options for preventing the violation without initiating a formal case. <p>While civil remedies are rarely mentioned in transposing acts, there are some exceptions:</p> <ul style="list-style-type: none"> • Some MS provide for contract terms to be nullified: AT, BE, DE, EE, ES, FR, HU, IT, PT, SI; • others provide for restitutionary measures:

⁷ The information on the French law is currently unavailable.

	<p>FI (only in case of infringement of trade secrets) and IE (restitution of undue charges).</p> <ul style="list-style-type: none"> others provide for compensatory measures: FI (only in case of infringement of trade secrets), FR, MT (where damages are liquidated by the Administrative Review Tribunal), RO (where losses suffered by suppliers due to buyers' UTP make the latter liable and obliged to pay an amount equal to three times those losses).
COMMITMENTS	
6 MS clearly regulate commitments	<p>BE, BG, CZ, HR, HU, PL</p> <p>Their approval by the enforcing authority normally excludes a finding of an infringement and a penalty, unless the commitment is not fulfilled. In BE the acceptance or refusal of the commitment does not prevent further administrative or criminal enforcement. A different type of infringers' commitments is regulated under Romanian law, providing for a possible reduction of fines when the infringer clearly and unequivocally recognises liability and proposes measures to remove the causes of the infringement.</p>

4.5. Stricter national practices (Article 9) – overview

Member States' additional practices (NB: only the original text is authentic)	
AT	<p>Additional "black" practices:</p> <ol style="list-style-type: none"> Not to discriminate between suppliers in a situation of economic imbalance between supplier and buyer. Unless justified, the buyer cannot forbid the supplier the direct marketing of the products.
BE	No additional practices.
BG	<p>Additional "black" practices:</p> <ol style="list-style-type: none"> A prohibition or restriction imposed by the buyer on the supplier under the contract to offer or purchase goods or services to or from third parties. A prohibition, restriction or sanctions imposed by the buyer on the supplier under the contract to provide the same or better commercial terms to third parties. Unilateral termination of the agreement by the buyer without proper justification or termination without a notice given in a reasonable time that is sufficient for the supplier to cover at least investment costs, including in view of previous business relations between the parties to the agreement. <p>➤ As for the UTP on unfair shift of risk, the law adds also "missing quantities".</p> <p>Additional "grey" practices:</p> <ol style="list-style-type: none"> The buyer requires the supplier to cover the cost of transport and/or logistics. The buyer requires the supplier to retroactively decrease the price of products either directly or by means of unreasonable discounts, bonuses and charges or service delivery. <p>➤ As for the UTP on charges for fitting out premises, "maintenance" of premises is added too.</p>
CY	<p>Additional "black" practices:</p> <ol style="list-style-type: none"> The buyer keeps or places a supplier's agricultural and food products in another supplier's packaging or transport containers.

	<ol style="list-style-type: none"> 2. The buyer retains reusable packaging or transport containers for agricultural and food products, which belong to the supplier, for more than 30 days, after the date of the delivery of the products as stated on the sales invoice. 3. The supplier places agricultural and food products in packaging or transport containers of another supplier. 4. The supplier does not issue invoices for agricultural and food products, at the time of the delivery and respectively the buyer holds agricultural and food products without invoice. There is an exception for products for which, in order to set the payable amount, a laboratory analysis is required. For those products the invoice should be issued within 10 days. The issuance of invoice is not compulsory when agricultural and food products delivered to Preparation and Packaging Stations.
CZ	<p>Additional “black” practices:</p> <ol style="list-style-type: none"> 1. Negotiating or enforcing contractual terms that create a significant imbalance in the rights and obligations of the contracting parties to the detriment of the supplier. 2. Unequal treatment of the supplier involving the negotiation or enforcement of different contractual conditions for the purchase or sale of agricultural or food products or the provision of related services under comparable performance, without a justifiable reason 3. Tying the conclusion of a purchase or sale contract for agricultural or food products or the provision of related services to the condition of purchasing additional services. 4. Negotiating a price that will result in the tax document for the payment of the price for the purchase or sale of agricultural or food products or the provision of related services not containing the final price after all agreed discounts from this price, except for pre-agreed quantity discounts. 5. Negotiating or enforcing compensation for a penalty imposed by the supervisory authority on the buyer with significant market power against the supplier, without the supplier causing the penalty to be imposed by a breach of its obligation. 6. Conducting an audit or other form of control of the supplier by the buyer with significant market power or a person authorised by them, including the demand for analyses of agricultural products or food products at the expense of the supplier. 7. Falsely indicating the country or place of origin of agricultural or food products or falsely labelling the country or place of origin of one or more components of an agricultural or food product that constitutes more than 50% of that product or item. 8. Requiring the supplier to cover the costs of discounts on agricultural or food products fully or partially sold by the buyer as part of the buyer's promotional campaign if the buyer does not specify the period and provide the anticipated quantity of products to be ordered with a discount before the start of the promotional campaign. 9. Conditioning deliveries on the use of third-party services, the terms and price of which are determined by the buyer. 10. Failure to comply with the written form of the contract or failure to negotiate the mandatory contract terms or failure to provide one copy of the contract to the supplier. 11. Claiming or receiving of a payment, discount or other consideration of which the amount, subject matter and extent of the consideration to be given for the payment, discount or other consideration have not been agreed in writing before the supply or

	<p>processing of the agricultural or food products or the provision of the associated services to which the payment, discount or other consideration relates has commenced or adequate consideration has not been given for the payment, discount or other consideration.</p> <p>CZ has a clause as part of the additional black practices allowing the enforcement authority to assess wider imbalances in the contractual relations between the parties.</p>
DE	No additional practices.
DK	<p>No additional practices.</p> <p>However, DK distinguishes into 2 Articles the situation of regular and one-off delivery. For both situations, it also regulates the situation that the supplier has more than EUR 350 million turnover, which is a situation not covered by the Directive. In these situations the buyer is supposed to pay after 60 days.</p>
EE	<p>Additional “grey” practices:</p> <ol style="list-style-type: none"> 1. Requires the seller to use only certain types, shapes and sizes of transport packaging, unless otherwise provided for in the legislation governing the handling of the agricultural products or foodstuffs.
EL	<p>Additional “black” practices:</p> <ol style="list-style-type: none"> 1. The buyer obliges the seller in writing or orally to sell quantities of products to it, without at the same time being bound to purchase the products.
ES	<p>Additional “black” practices:</p> <ol style="list-style-type: none"> 1. Non-compliance with the general obligation of concluding written contracts register (Article 8) 2. Non-compliance by the buyer with the obligation to register contracts in a digital centralised register of contracts managed by the Ministry of Agriculture (Article 11a) 3. Promotional activities that mislead the consumer as to the actual price and image of food and food products, which could harm the consumer’s perception of the quality or value of those products, shall not be agreed. For the purposes of the analysis of such conduct by the competent authorities, account shall be taken of the purchase price set out in the food contract. To this end, operators must clearly identify their price in advertising information, posters and purchase tickets, so that it cannot give rise to misunderstandings, in such a way as to give the consumer accurate knowledge of the scope of the promotional activity (Article 12a(3)). 4. In order to avoid the destruction of the value in the food chain, each operator of the food chain shall pay the immediately preceding operator a price equal to or greater than the cost of production of that product actually incurred or borne by that operator. Accreditation shall be carried out in accordance with the means of proof admitted to the law (Article 12b(1)). 5. In order to protect the marketing capacity of primary producers, operators making the final sale of food or food products to consumers may not charge or offer a retail price below the actual purchase price of that price. Failure to comply with this provision shall be considered as unfair sale. Loss-making sales to the public of perishable food or food that are close to their expiry shall not be regarded as unfair provided that clear information is provided to consumers. Under no circumstances may joint offers or gifts to purchasers be used to avoid the application of this provision. An operator making the final sale of the product to the

	<p>consumer may under no circumstances pass on to any of the previous operators its business risk arising from its commercial policy on prices offered to the public (Art 12 b (2) - (5)).</p> <p>6. The criteria for the management of trademarks must be predetermined and prevent unfair treatment, such as the exploitation by an undertaking of the situation of economic dependence in which its client or supplier companies may find themselves, as provided for in the relevant legislation. Operators shall also act in good faith in marketing the relevant innovations of their suppliers' food products. (Article 14)</p> <p>Additional "grey" practices⁸:</p> <p>7. Prohibition of additional payments, except if linked to the risk of listing new products or the partial financing of promotional services for a product as reflected in the final price per unit, as long as these have been agreed upon by the parties in writing, accompanied by a description of the consideration offered in relation to such payments (Article 12(2)).</p> <p>8. Non-compliance with the rules governing agreements on promotional activities (Article 12a(2)), which shall contain information regarding deadlines (start and end dates), transfer prices, volumes and other issues of interest, as well as promotion aspects relating to the procedure, type, development, geographical coverage and evaluation of the outcome of the procedure (Article 12a(2)).</p> <p>9. Food contracts shall specify in writing the information to be provided by the parties for the effective fulfilment of their respective contractual obligations, as well as the time limit for the delivery of such information, which must in any case be proportionate and justified on objective grounds relating to the subject-matter of the contract, without prejudice to the application of the antitrust rules. Under no circumstances may an operator of the chain require any form of obtaining, using or disclosing business secrets from another operator, unless this is stated in the written contract in accordance with the provisions of the preceding paragraph. Business secrets obtained in the process of negotiation or execution of a food contract shall be used exclusively for the purposes for which they were provided, with due regard to the confidentiality of the information transmitted or stored. Likewise, no information on a developing product or on upcoming launches may be required under any circumstances. Operators may not require or disclose business secrets from other operators and, in particular, documents enabling such commercial information to be verified.'</p>
FI	<p>Additional "black" practice:</p> <p>1. The buyer returns unsold agricultural and food products to the supplier without paying for those unsold products or without paying for the disposal of those products. However returns are accepted if they are agreed in clear and unambiguous terms for products which have not been in supplier's assortment beforehand the agreement lasts for up to three months.</p>
FR	No additional practices.
HR	<p>Additional "black" practices: (Article 4):</p> <p>1. It shall be forbidden for the buyer to take advantage of its significant bargaining power over its suppliers by imposing unfair trading practices.</p>

⁸ The additional grey practices introduced by the Spanish legislator lay down the limits and conditions for agreements between the parties pertaining to certain promotional activities or the sharing of certain commercial information. Failure to comply with the limits and conditions laid down by the legislator for such agreements will result in an infringement.

	<p>2. The following shall be regarded as unfair trading practices in the agricultural and food supply chain – which includes all actors involved in the production, processing and/or marketing of agricultural and food products – which are imposed on suppliers by taking advantage of the buyer’s significant bargaining power:</p> <ul style="list-style-type: none"> • the absence of a written agreement between the buyer and supplier, or the existence of a written agreement between the buyer and supplier which was not drawn up in accordance with the provisions of this Act, or obligations imposed on the supplier which are not provided for in the written agreement between the buyer and supplier; • payments which are not clearly indicated or specified on an invoice or sales receipt; • general business terms and conditions of the buyer which are not in accordance with the provisions of this Act; • the possibility for the buyer to terminate the agreement with the supplier unilaterally, in non-written form or without giving well-founded reasons for terminating the agreement; • disproportionately high contractual penalties compared with the value and significance of the object of the agreement <p>(Article 5): (Exceptions under Article 6 (1) and (2))</p> <p>3. The agreement between the supplier and buyer shall be concluded in writing before the agricultural or food product is delivered and shall contain all the provisions essential to the contractual parties’ business relations, in particular provisions on</p> <ul style="list-style-type: none"> • the price of the agricultural or food product and/or the method for setting, i.e. calculating, the price; • the quality and type of agricultural or food product to be delivered to the buyer; • the conditions and time-limits for payment for the agricultural or food product to be delivered; • the conditions and time-limits for the delivery of the agricultural or food products covered by the agreement; • the place of delivery of the agricultural or food product identifiable and/or identified by the address of the place of delivery, and <p>4. the duration of the agreement. The price of the agricultural or food product referred to in point 1 of paragraph 1 of this Article may be set as a fixed amount, and may be set and/or calculated by combining various factors, which shall be set out in the agreement and may include, for example, market indicators reflecting changes in market conditions, the quantities delivered and the quality or composition of the agricultural products delivered.</p> <p>(Article 7):</p> <p>5. For the delivery of an agricultural or food product in accordance with an agreement concluded between the supplier and buyer, or for a service linked to the delivery of an agricultural or food product, an invoice, or sales receipt, shall be issued in accordance with the tax regulations.</p> <p>6. Any sales receipt issued by the buyer on the supplier’s behalf shall contain at least the elements related to the calculation of value, namely the quantity of goods accepted, the quality and the set price, and the clearly stated amount of any agreed discounts or rebates and an exact specification of what those amounts relate to, in accordance with the publicly available and binding conditions of the buyer towards the supplier.</p>
--	--

	<p>7. The buyer shall be liable for the content of the sales receipt. (Article 8):</p> <p>8. The purchaser and/or processor and the trader shall draw the supplier's attention to the application of the general terms and conditions as well as to the manner in which general terms and conditions are published.</p> <p>9. The terms and conditions of the general terms and conditions shall be clear and comprehensible.</p> <p>10. General terms and conditions shall not contain terms which are considered unfair trading practices within the meaning of this Act. (Article 11):</p> <p>11. the buyer requires the supplier to pay – or agrees with and/or charges the supplier – compensation for services which were not provided or which were provided but were not agreed between the parties;</p> <p>12. the buyer requires the supplier to pay – or agrees with and/or charges the supplier – compensation for safekeeping and handling after the delivery of the supplier's agricultural or food product and/or requires the conclusion of fictitious services or processes which will not be carried out and for which there is no consideration or reason other than postponing the due date of payment;</p> <p>13. the buyer reduces the quantity, quality and/or value of an agricultural or food product of standard quality in a non-transparent way for the supplier;</p> <p>14. the buyer requires the supplier – and/or agrees on an obligation with the supplier – to issue any security instrument for transferred raw materials, without the buyer being obliged to issue a security for the transferred, but as yet unpaid for, agricultural or food products;</p> <p>15. the buyer makes the conclusion of an agreement and business cooperation with the supplier conditional upon compensation for goods and services;</p> <p>16. the buyer requires the supplier not to sell agricultural or food products to other buyers at lower prices than those paid by the buyer;</p> <p>17. the buyer requires the supplier to pay – or agrees with and/or charges the supplier – compensation for delivery of an agricultural or food product to the place of delivery or outside the agreed place of delivery;</p> <p>18. the buyer requires the supplier to pay – or agrees with and/or charges the supplier – compensation for extending the buyer's sales network, improving (refurbishing) the buyer's existing points of sale, extending the buyer's storage capacity, or extending the buyer's distribution network;</p> <p>19. the buyer makes the conclusion or extension of the agreement and the receipt of delivery of agricultural or food products covered by the agreement with the supplier conditional upon a request for the production and delivery of agricultural or food products which can be regarded as interchangeable with the products delivered or agreed upon (the buyer's brand);</p> <p>20. the buyer requires the supplier to pay – or agrees with and/or charges the supplier – compensation for market research;</p> <p>21. the buyer unilaterally deletes products from the list of agreed products which the supplier delivers to the buyer, or significantly reduces orders for a particular agricultural or food product from the supplier without giving the supplier a minimum of 30 days' written notice;</p> <p>22. the buyer requires the supplier to pay – or agrees with and/or charges the supplier – the costs of additional quality checks on the supplier's agricultural or food products, unless the additional checks establish that the supplier's product does not meet the agreed quality standard, in which</p>
--	--

	<p>case the cost of the additional checks for the supplier shall not exceed those of the buyer for the additional analysis;</p> <ol style="list-style-type: none"> 23. the buyer agrees with and/or charges the supplier compensation which is not shown on the supplier's invoice; 24. the buyer fails to take over from the supplier the agreed quantity of agricultural or food products, including agricultural or food products that are the buyer's brand in accordance with the agreed schedule, except in justified cases stipulated in the agreement, or the buyer refuses to accept deliveries of agricultural or food products, including agricultural or food products that are the buyer's brand, at the maturity of the obligation for the supplier to deliver, except for reasons that are contractually established as reasonable reasons for refusing to accept delivery; 25. the buyer sells an agricultural or food product to the final consumer at a price lower than the purchase price plus VAT at which the buyer purchased the product, unless the product is approaching its expiry date or in the event of the withdrawal of the agricultural or food product from the range, or full clearance due to the closure of a sales facility; 26. the buyer sells an agricultural or food product below the production price in the case of the buyer's own production (the buyer's brand), unless the product is approaching its expiry date or in the event of the withdrawal of the agricultural or food product from the range, or full clearance due to the closure of a sales facility; 27. the buyer sells production- and market-sensitive agricultural and food products below their final selling price; 28. the buyer sells production- and market-sensitive agricultural and food products at a discount, at their selling price, which for the final consumer shall not be lower than 34% of the final selling price, which may include a price discount due to an increase in packaging or the product's net weight, without increasing the final selling price. <p>Additional "grey" practices: (Article 12):</p> <ol style="list-style-type: none"> 29. the buyer requires the supplier to pay – and/or charges the supplier – compensation for data on the sale of the supplier's agricultural and food products at cash registers at the buyer's points of sale; 30. the buyer requires the supplier to pay – and/or charges the supplier – compensation for fines and other penalties imposed on the buyer pursuant to a decision of a competent authority. <p>HR has introduced a general clause.</p>
HU	<p>Additional 'black' practices:</p> <ol style="list-style-type: none"> 1. requiring a price reduction for the trader if making payment within the period of payment stipulated; 2. excluding the applicability of default interest, contractual penalty or any other additional obligation against the trader intended to ensure performance of the contract; 3. with the exception where products are made under the trader's brand name, binding the supplier to grant exclusive sales right to the trader without offering proper compensation in return, or demanding the best conditions for the trader relative to other traders; 4. failing to publish the standard service agreement provided for in Subsection (5), derogating from the standard service agreement published, and the trader applying any condition not therein provided for; 5. the trader imposing any restriction as regards the lawful use of a trademark by the supplier;

	<ol style="list-style-type: none"> 6. the trader offering products to final consumers at prices below the price invoiced by the supplier or, if produced by the trader himself, below cost - covering general operation costs -, not including the case where a campaign not exceeding fifteen days is held for the clearance sale of inventories of goods - notified to the agricultural administration body in advance - due to the trader going out of business or changing profile, as well as reduced-value goods (including close-to-expiry products of which the trader has extensive quantities for unforeseen reasons); 7. charging to the supplier - in any way or form - any quantity-based price reduction, commission or fee in connection with products sold by the trader, with the exception of any subsequent proportional price reduction in connection with the commercial attributes of the product granted to the trader as an incentive for increasing the quantity of products marketed, on the basis of extra sales achieved by comparison to previous sales levels established by the parties, or to an estimated level considered commensurate without taking into account the tax applicable to the product in question; 8. the trader's failure to reimburse within the time limit provided for in Paragraph <i>h)</i> the supplier the public health product charges payable by the supplier on products supplied to the trader; 9. non-compliance with the provisions set out in Subsection (2b) or (2c): <p>Additional "grey" practices:</p> <ol style="list-style-type: none"> 10. applying any contract term not originally included in writing in the contract between the trader and a supplier, if such term is not inserted into the contract in writing within three working days from the supplier's express request therefore;
IE	No additional UTPs.
IT	<p>Additional "black" practices:</p> <ol style="list-style-type: none"> 1. Obligation of written contracts with a minimum duration of 12 months, except in the case of reasoned derogations (Article 3). 2. The use of double-down electronic tenders and auctions for the purchase of agricultural and food products (Article 5(1)(a)). 3. Imposing excessive contractual conditions on the seller, including selling agricultural and food products at prices below production costs (Article 5(1)(b)). 4. Failure, in the conclusion of a contract for the supply of agricultural and food products, also to fulfil one of the conditions laid down in Article 168(4) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 (Art 5(1)(c)). 5. The imposition, directly or indirectly, of conditions of purchase, sale or other contractual conditions which are unjustifiably onerous (Article 5(1)(d)). 6. The application of objectively different conditions to equivalent supplies (Article 5(1)(e)). 7. Making the conclusion, the performance of contracts and the continuity and regularity of the same commercial relationship subject to the performance of services by the contracting parties which, by their nature and according to commercial usage, have no connection with the subject of both (Article 5(1)(f)). 8. The obtaining of undue unilateral benefits which are not justified by the nature or content of the commercial relationship (Article 5(1)(g)). 9. The adoption of any other unfair commercial conduct which proves to be so, also taking into account all the whole set of commercial relationships determining the supply conditions (Article 5(1)(h)).

	<p>10. The imposition on a party of services ancillary to the main subject-matter of the supply, even if they are supplied by third parties, without any objective, direct and logical connection with the supply of the contract product (Article 5(1)(i)).</p> <p>11. The exclusion of the application of interest for late payment to the detriment of the creditor or of the costs of debt recovery (Article 5(1)(j)).</p> <p>12. The provision in the contract of a clause requiring the supplier, after delivery of the products, to have a minimum period of time before it can issue the invoice, except in the case of delivery of the goods in several instalments in the same month, in which case the invoice may be issued only after the last delivery of the month (Article 5(1)(k)).</p> <p>13. The imposition of an unjustified and disproportionate transfer of the economic risk from one party to its other party (Article 5(1)(l)).</p> <p>14. The imposition on the buyer by the supplier of products with expiry dates that are too short in relation to the contractual residual life of the product (Article 5(1)(m)).</p> <p>15. The imposition on the buyer by the supplier of contractual links for the maintenance of a given set, understood as all the goods offered for sale by a trader to meet the needs of his customers (Article 5(1)(n)).</p> <p>16. Requiring the buyer by the supplier to include new products in the range (Article 5(1)(o)).</p> <p>17. The imposition on the buyer, by the supplier, of preferential positions in respect of certain products in the shelf or in the course of business (Article 5(1)(p)).</p> <p>IT has introduced a general clause.</p>
LT	No additional practices.
LU	No additional practices.
LV	<p>Additional “black” practices: There are additions to both the black and grey lists.</p> <ol style="list-style-type: none"> 1. Setting unfair and unjustified penalties for a breach of the terms of the contract. 2. Altering an order of agricultural and food products two days or less before delivery thereof. 3. Refusing to accept from an agricultural and food product supplier those agricultural and food products that are usable for at least a further two thirds of the shelf life designated for them, if this shelf life exceeds 30 days. 4. Ensuring the lowest price by limiting the freedom of the agricultural and food product supplier to agree on a lower price with another agricultural and food product retailer. 5. An agricultural and food product retailer dealing with a producer or a producers’ cooperative society shall be prohibited from applying unfair and unjustifiably long deadlines for payments for fresh vegetables and berries. <p>Additional “grey” practices:</p> <ol style="list-style-type: none"> 6. Require the supplier of agricultural and food products to pay directly or indirectly for the logistics service. 7. Require the agricultural and food product supplier to obtain products, services or property from a third party designated by the buyer. 8. Apply a discount to the agricultural and food products which was applied to them to stimulate sales of those products for a specified period, in which those products nevertheless failed to be sold.

	LV has introduced a general clause.
MT	No additional practices.
NL	No additional practices.
PL	<p>Additional “black” practices:</p> <ol style="list-style-type: none"> 1. An unjustified reduction in the amount due for the supply of agricultural or food products after acceptance by the purchaser, either in full or in the agreed part, in particular as a result of a request for a rebate. <p>PL has introduced a general clause according to which “Practices involving the unfair use of the contractual advantage of a buyer over a supplier or a supplier over a buyer are prohibited. The use of contractual advantage shall be unfair if it is contrary to good conduct and threatens or undermines a vital interest of the other party. Contractual advantage is the existence of a significant disproportion in the economic potential of a buyer as compared to a supplier or of a supplier as compared to a buyer.” (significant imbalance is presumed if threshold met).</p>
PT	<p>Additional “black” practices:</p> <ol style="list-style-type: none"> 1. Without prejudice to the applicable rules in the area of standard contractual terms and conditions, any business-to-business commercial practices leading to the situations below shall be prohibited: <ol style="list-style-type: none"> a) making sales to another company impossible at a lower price; b) obtaining prices, payment conditions, sales methods or commercial cooperation terms that are exorbitant in relation to the general conditions of sale; c) unilateral, direct or indirect imposition of: <ol style="list-style-type: none"> i) special offers on a particular product; ii) any payments in consideration for a special offer; d) obtaining any benefits from current or past special offers or any other benefits which are not effective and proportional, specifically through the issue of credit and debit notes with a deadline longer than three months from the date of the invoice to which they refer; e) retroactively changing, albeit non-contractually, the terms and conditions laid down in supply contracts; f) the supplier being penalised for failure to fulfil orders, where said orders are disproportionate compared to the normal amounts consumed by the purchaser or the normal volume supplied by the seller, where a delivery would have been made under normal conditions but cannot be made for unforeseeable reasons of force majeure, with the onus being on the supplier to prove such impediment; [...] 2. For the purposes of subparagraph 1(b), prices, conditions of payment and terms of sale or commercial cooperation shall be deemed exorbitant if they have the effect of giving the purchaser or reseller a benefit that is disproportionate to the volume of purchases or resales or, where applicable, the services provided. 3. Any business-to-business trading practices involving the deduction, by one of the parties, of invoiced amounts due for the supply of goods and services shall also be prohibited where: <ol style="list-style-type: none"> a) the reasons for the deductions are not duly specified, and b) the other party objects, giving grounds, within 25 days. 4. Any unilateral practice which is intended to or supports the following shall also be prohibited: <ol style="list-style-type: none"> a) the imposition of a duty to fulfil the contract early, without

	<p>compensation; b) the imposition of deductions not provided for in the contract, after delivery of the goods or services.</p> <p>5. Trading practices of the purchaser which impose a payment, directly or in the form of a discount, are also prohibited in the following cases: a) in respect of the failure to meet the purchaser's expectations as regards the volume or value of the sales; b) in respect of the introduction or reintroduction of products; [...] d) due to costs of transport and storage after delivery of the product; e) as a contribution to the opening of new facilities or refurbishment of existing ones; f) as a condition for beginning a commercial relationship with a supplier.</p> <p>6. The period laid down in point 1(d) may, exceptionally, be extended by mutual agreement between the parties in the case of the sale of new vehicles, leisure vessels and sailing boats, industrial machinery, agricultural machinery and motor caravans, where duly justified; for example, where it cannot be complied with due to logistical complexity. It may not, however, exceed six months.</p> <p>7. Any contract clause that breaches the provisions laid down in this Article shall be null and void.</p> <p>8. Business practices not banned under this Article, specifically based on the size or the sector of activity of those involved, must be the subject of self-regulation by the instruments referred to in Article 16.</p> <p>Without prejudice to the above Articles, the following trading practices of purchasers in commercial transactions concerning agricultural or agrifood products are prohibited:</p> <p>9. Rejection or return of products delivered on the grounds of lower quality of some or all of the order or late delivery without the purchaser having demonstrated that the supplier was responsible for such shortcomings.</p> <p>PT has introduced a general clause.</p>
RO	<p>Additional “black” practices: The buyer is prohibited from:</p> <ol style="list-style-type: none"> 1. setting a period of notice which is less than 60 days for delisting a private brand product of a producer for categories of products which include the marketing of a supermarket’s own brand; 2. requiring invoicing and/or re-invoicing and collecting from the supplier any costs other than those agreed in the commercial contract; the costs associated with extending the buyer’s distribution network, and holding events promoting the buyer’s business and image cannot be charged to the supplier; 3. using self-invoicing for agricultural and/or food products, except in the cases provided for in Article 320 of Law No 227/2015 on the Fiscal Code, as amended; 4. applying financial and commercial reductions in the form of rebates, with the exception of discounts and returns, the cumulative reductions of which shall not be higher than 20 %, applied on the basis of the amount invoiced between the buyer and the supplier for agricultural and/or food products, by way of derogation from Law No 227/2015, as amended; 5. disclosing the terms and conditions of the commercial contract for the purchase of agricultural and/or food products, unless this is necessary for

	<p>the fulfilment of its obligations towards the supplier or compliance with legal provisions; this provision shall also apply to the supplier;</p> <ol style="list-style-type: none"> 6. delaying the receipt and preparation of the acceptance documents for agricultural and food products; 7. invoicing the value of the services provided, referred to in Article 4 (2) (a), (b), (e) and (f), in excess of 5 % of the value received by the supplier under the contract concluded between the parties; 8. purchasing and marketing food products without verification of their traceability if the purchase price is below the average cost of production on the relevant market during the period of purchase according to official statistics at European Union level; 9. requiring the supplier, directly or indirectly, to purchase or sell from a third party; 10. requiring the supplier to pay taxes, whatever their form and name, which obliges the supplier to artificially increase the invoice price of the product; 11. delisting, threatening to delist or withdrawing one or more agricultural and/or food products from display in order to put pressure on or carry out trade retaliation against the supplier in order to make it accept unfavourable contractual clauses; 12. listing and displaying on the shelves only the buyer's own brand, so that the offer includes at least one private brand of a competing producer in the product category in question; 13. applying different commercial conditions to producers' private brand products compared to the retailer's own brand products for listing/display on shelves; 14. refusing to list an agricultural and/or food product registered under national and/or European quality schemes, offered by a supplier, on the grounds of a lack of volumes and seasonality; 15. offering or selling agricultural and/or food products at a loss, except as provided for by the legislation in force; 16. taking over the terms of trade agreed with the supplier for the purchase of retail channel products and applying them to purchases of wholesale channel products from the supplier. <p>Additional "grey" practices: In order to avoid unfair trading practices, irrespective of when they occur in the agricultural and food supply chain, unless, at the request of the supplier, they have been agreed in advance in clear and unambiguous clauses in the commercial contract or in a subsequent supplementary agreement, it shall be prohibited for the buyer to:</p> <ol style="list-style-type: none"> 17. refuse the supplier a price renegotiation within a period of more than 10 days from the date of the request; the terms of the price renegotiation shall take effect within the period laid down in the contract; 18. oblige the supplier to make staff available for the sale of the products or any other activity related to the sales-promotion process; 19. impose a payment on the supplier for the secondary placement of its agricultural and food products for sale. <p>RO has introduced a general clause.</p>
SE	No additional UTPs
SI	<p>Additional "black and grey" practices: Prohibited trading practices (Article 61f(4) of the relevant Slovenian Act) shall include:</p>

	<ol style="list-style-type: none"> 1. reimbursement for services which have not been rendered or for services which have been rendered but which have not been agreed in writing and clearly in advance between the parties; 2. reimbursement for the introduction, maintenance or extension of a product range or products; 3. reimbursement for the storage or display or shelving of products at points of sale, or for making such products available on the market, or for the cost of personnel to furnish premises used for the sale of the supplier's products, unless clearly and unambiguously agreed in advance by the supplier and the buyer in the supply contract or in subsequent written agreements between the supplier and the buyer, which will be implemented and the implementation of which can be demonstrated; 4. the charging of rebates for the promotion, advertising and marketing of agricultural and food products, unless the supplier and the buyer have agreed in writing, clearly, unambiguously and in advance in the supply contract or in subsequent written agreements between the supplier and the buyer, which will be implemented and which can be demonstrated to have been implemented; 5. reimbursement of the costs of concluding the contract; 6. a contribution to the expansion of the store's sales network, the improvement or conversion of existing outlets, the expansion of storage capacity, the extension of the distribution network and similar activities; 7. the return of unsold perishable agricultural and food products and products which have a shelf life of at least one third of the period from delivery to maturity, without payment by the buyer for these unsold products or for the disposal of these products, or both, unless the return of non-perishable agricultural and food products has been clearly and unambiguously agreed in advance in the supply contract or in subsequent written agreements between the supplier and the buyer, the implementation of which can be demonstrated; 8. payment for goods not sold during the period of the promotion at the promotional purchase prices; 9. regular or disproportionate discount for payment of invoices before their due date; 10. charging compensation for a reduction in turnover, sales or margin due to a reduction in the sale of certain goods; 11. failure to comply with the payment deadlines; 12. failure to take over the agreed quantities of products in accordance with the agreed buying-in dynamics, if these deviate from the agreement by more than 25 percent; 13. making the conclusion of a contract or business cooperation conditional upon counter-supply on non-competitive terms; 14. demanding exclusivity of sale of particular goods, except for goods manufactured for sale under a trade mark or at the customer's request and to the customer's specifications; 15. making the conclusion or renewal of a contract or the acceptance of products conditional upon the requirement to manufacture and supply trade-marked products which are deemed to be interchangeable with the manufacturer's trade marks; 16. a requirement by the buyer that the supplier does not sell the products to third parties at prices lower than those paid by the buyer; 17. cancellation of an order for perishable agricultural and food products within a period so short that the supplier cannot reasonably be expected to find an alternative means of marketing or using the products;
--	---

	<p>cancellation within a period of less than 30 days shall always be regarded as a short period;</p> <ol style="list-style-type: none"> 18. discriminatory or disproportionate charging of compensation for unloading of the goods supplied; 19. a demand for payment for deterioration or loss of agricultural or food products, or both, occurring on the buyer's premises or after the transfer of ownership to the buyer, where such deterioration or loss is not due to the negligence or fault of the supplier; 20. the transfer of commercial risk to the customer after delivery in respect of fines or other penalties imposed, unless the fine or other penalty imposed is due to a defect in the goods for which the supplier is responsible; 21. the imposition of disproportionate or unfair contractual penalties; 22. prohibiting the assignment of claims; 23. refusal to confirm in writing the terms of the contract of supply between the buyer and the supplier, or failure to comply with the obligations laid down in Article 61g of the Agriculture Act as regards the written form or the mandatory elements of the contract; 24. unilateral changes of the terms of the contract for the supply of agricultural and food products concerning the frequency, manner, place, time limits or extent of supply or delivery of agricultural and food products, quality standards, payment terms or prices, or concerning the provision of services; 25. the unlawful acquisition, use or disclosure by the Buyer of the Supplier's trade secrets in accordance with the law governing trade secrets; 26. threats of retaliatory measures by the buyer (e.g. withdrawal of products from the offer, reduction of ordered quantities of products or suspension of certain services provided by the Buyer to the Supplier, such as marketing or promotions of the Supplier's products) or the taking of such measures if the Supplier is exercising its contractual or legal rights, including by filing a complaint with the authorities referred to in Article 61i of the Agriculture Act or by cooperating with those authorities during the proceedings; 27. a claim by the buyer for compensation for costs incurred in investigating a customer complaint in connection with the sale of the Supplier's products, even if the Supplier is not negligent or at fault. <p>SI has introduced a general clause.</p>
SK	<p>Additional “black” practices:</p> <ol style="list-style-type: none"> 1. Pecuniary performance or performance in kind provided by a party to a business relationship for <ol style="list-style-type: none"> a. Including the party in a customer’s register of suppliers or a supplier’s register of customers, including changes to such a register. b. Including a supplier’s food in the records of food sold by a customer, including changes to such records. c. Renewal or expansion of the business network of the party to the business relationship. d. Lower profit or margin of a customer compared with the customer’s intended profit or margin. e. A visit by a party to a business relationship to a prospective party to a business relationship with a view to establishing a business relationship.

	<p>f. Placing certain food in a customer's establishment even if it is an establishment located outside the territory of the Slovak Republic.</p> <p>g. Market research or a service related to computer processing of data carried out by a customer.</p> <ol style="list-style-type: none"> 2. Examination of the supplier's premises by the customer or analyses and tests of the supplier's food by the customer; this shall not apply if the customer carries out an examination of the supplier's premises or analyses and tests of the supplier's food at its own expense, to a reasonable extent and, in case of an examination of premises, with the supplier's consent. 3. Giving priority to the results of other checks of food quality and safety, nutritional data and other mandatory information on food over the results of checks carried out by governmental authorities under a special regulation without a fundamental change of circumstances. 4. Reimbursement of a penalty imposed on a customer by governmental authorities; this does not apply if the reason for imposing the penalty is a proven breach of the supplier's obligations. 5. Reimbursement of a pecuniary performance or performance in kind provided by a customer to a consumer for the exercise of the consumer's rights under the Civil Code and special regulations in the field of consumer protection; this does not apply if the reason for exercising the right is a proven breach of the supplier's obligations. 6. Purchase of food by a consumer at a purchase price below the economically justified costs of the buyer [i.e. re-sale at loss by retailers]. 7. An advance on future contractual penalties; disadvantaging a supplier or group of suppliers by requiring the supplier(s) to use a particular type of packaging if another supplier is allowed to use a more economically advantageous alternative for the supply of the same or similar goods. 8. Other acts or omissions of a party to a business relationship vis-à-vis the other party to the business relationship which departs from fair trade. 9. Passing on costs associated with the tax burden or passing on services that constitute unfair terms into the reduction of a purchase price. 10. Making the supply of a supplier's food conditional on the production of the food under the customer's brand name. 11. Refusal to indicate on the packaging of food sold under a customer's brand name the brand name and registered office of the supplier, if the supplier so requests. 12. Wrongful or unjustified set-off of claims of parties to a business relationship. 13. A different time of acquisition of the ownership title to food or a different time of passage of the risk of damage to food than the time of acceptance of the food by the customer. 14. Multiple contractual penalties against a party to a business relationship for a breach of the same contractual obligation. 15. A contractual penalty the amount of which is disproportionate to the value and importance of the corresponding breached contractual obligation. <p>Additional "grey" UTP:</p> <ol style="list-style-type: none"> 16. Fulfilment of a condition agreed between the parties to the business relationship, relating to the off take of a certain quantity or volume of food, which is charged separately.
--	---

4.6. Focus on prohibitions to sell or buy below production costs to re-sell at a loss or below purchase price or any other obligation to respect a certain price level

<p>4 MS have introduced a provision on sale or purchase below production cost</p>	<p>ES, HR, HU, IT</p> <p>ES: Article 12b (1) of Ley de cadena: “In order to avoid the destruction of the value in the food chain, each operator of the food chain shall pay the immediately preceding operator a price equal to or greater than the cost of production of that product actually incurred or borne by that operator. Accreditation shall be carried out in accordance with the means of proof admitted to the law”.</p> <p>HR: Article 11 (1) “...other prohibited unfair trading practices involving the buyer and supplier shall be practices in which: ... 25. the buyer sells an agricultural or food product below the production price in the case of the buyer’s own production (the buyer’s brand), unless the product is approaching its expiry date or in the event of the withdrawal of the agricultural or food product from the range, or full clearance due to the closure of a sales facility; 26. the buyer sells production- and market-sensitive agricultural and food products below their final selling price;”</p> <p>HU: Article 3(2)(q) of Act XCV: “ the trader offering products to final consumers at prices below the price invoiced by the supplier or, if produced by the trader himself, below cost - covering general operation costs -, not including the case where a campaign not exceeding fifteen days is held for the clearance sale of inventories of goods - notified to the agricultural administration body in advance - due to the trader going out of business or changing profile, as well as reduced-value goods (including close-to-expiry products of which the trader has extensive quantities for unforeseen reasons);”</p> <p>IT: Article 5: “imposing excessive contractual conditions on the seller, including selling agricultural and food products at prices below production costs”.</p> <p>Article 7(1): “Without prejudice to the provisions of Legislative Decree No 114 of 31 March 1998 and Decree No 218 of the President of the Republic of 6 April 2001 concerning the procedures and penalties laid down therein, the sale at a loss of fresh and perishable agricultural and food products shall be permitted only in the case of unsold products at risk of perishability or in the case of commercial transactions planned and agreed with the supplier in writing”.</p>
<p>3 MS have introduced a provision on re-sale at a loss</p>	<p>ES, HU, RO</p> <p>ES: Article 12b(2) of Ley de Cadena: “In order to protect the marketing capacity of primary producers, operators making the final sale of food or food products to consumers may not charge or offer a retail price below the actual purchase price of that price”.</p> <p>HU: Article 3(2)(q) of Act XCV: “ the trader offering products to final consumers at prices below the price invoiced by the supplier or, if produced by the trader himself, below cost - covering general operation costs -, not including the case where a campaign not exceeding fifteen days is held for the clearance sale of inventories of goods - notified to the agricultural administration body in advance - due to the</p>

	<p>trader going out of business or changing profile, as well as reduced-value goods (including close-to-expiry products of which the trader has extensive quantities for unforeseen reasons);”</p> <p>RO: Article 3(16) of Law no. 81/2022 of 11 April 2022: “The buyer is prohibited from purchasing and marketing food products without verifying their traceability if the purchase price is lower than the average cost of production on the relevant market at the time of purchase, according to official statistics at European Union level.”</p>
2 MS have introduced any other obligation to respect a certain price level	<p>ES, IT</p> <p>ES: Article 9 Ley de cadena: “The price of the food contract to be received by a primary producer or a group thereof must in any case be higher than the total costs borne by the producer or actual cost of production, which shall include all the costs incurred in carrying out his activity, inter alia, the cost of seeds and nursery plants, fertilisers, phytosanitary, pesticides, fuels and energy, machinery, repairs, irrigation costs, animal feed, veterinary costs, depreciation, interest on loans and financial products, work contracted and labour employed or provided by the producer himself or by members of his household. The actual cost shall be determined by reference to the total marketed production for all or part of the business or production cycle, which shall be attributed in the manner in which the supplier considers that it best conforms to the quality and characteristics of the products covered by each contract”.</p> <p>IT: Article 7(3) on application of the prohibition on sale at a loss: “In the event of a breach of the provision referred to in paragraph 1, the price fixed by the parties shall be automatically replaced, pursuant to Article 1339 of the Civil Code, by the price resulting from the purchase invoices or, if it is not possible to match the purchase invoices, by the price calculated on the basis of the average production costs recorded by the Institute for Food Agricultural Market Services - ISMEA or, failing that, by the average price charged for similar products in the reference market.”</p>

5. AGGREGATED OVERALL DATA ON MEMBER STATES’ ENFORCEMENT ACTIVITIES IN 2022 AND 2023

- **In 2022, over 80% of own initiative (ex officio) cases and investigations indicated below refer to Spain only.** In 2023, around 75% of own initiative cases and investigations indicated below refer to Spain only.
- In some cases, there might be a correlation between a higher number of guidance cases and a smaller number of complaints. The differences in the number of the cases may also depend on the internal rules of enforcement authorities.
- **In 2023, out of the EUR 22 million of the total amount of fines for the number of detected infringements, EUR 20 million amount to Poland only.**

Number of enforcement activities	2022	2023⁹
Number of guidance cases	809	603
Number of mediation cases	8	42
Number of complaints received during the reporting period (incl. anonymous hints)	178	271
Number of complaints rejected/closed/withdrawn	45	92
Number of investigations opened during the reporting period	1 437	1 580
Number of ex officio cases opened during the reporting period	1 393	1 107
Number of investigations closed during the reporting period	812	1 007
Number of investigations resulting in finding an infringement	218*	269*
Number of sector inquiries	55	84
*Total amount of fines for the number of detected infringements	EUR 15.1 million	EUR 22 million (excluding EE, EL, FR, MT, SK, FI)

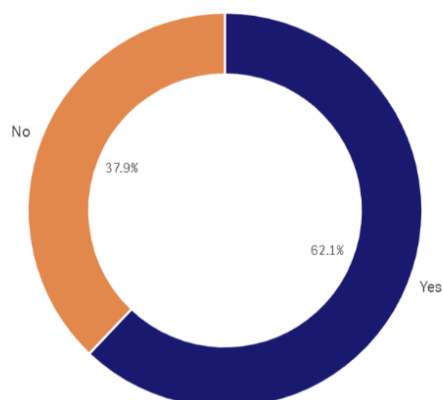
⁹ Excluding Estonia, Greece, France, Malta, Slovakia, Finland.

6. ADDITIONAL INSIGHTS FROM THE 2023 ANNUAL UTP SURVEY

6.1. Suppliers' awareness of the existence of the UTP Directive

On the question whether respondents were aware that the European Parliament and the Council had adopted on 17 April 2019 the Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, around 38% of the approximately 1 500 respondents replied that they were not aware.

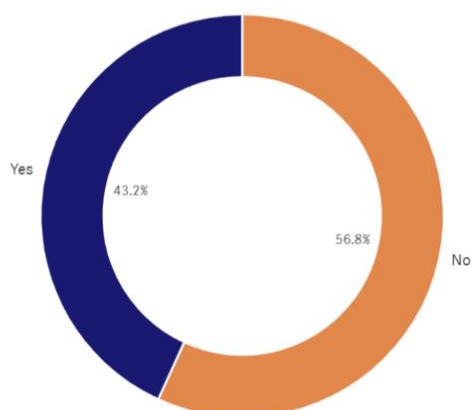
Awareness of the directive
% of respondents in the 4th wave



6.2. Suppliers' awareness of the existence of national enforcement authorities

Asked whether they knew which was the enforcement authority in their country they could turn to, to file a complaint with regard to UTPs, 57 % of respondents replied that they were not aware.

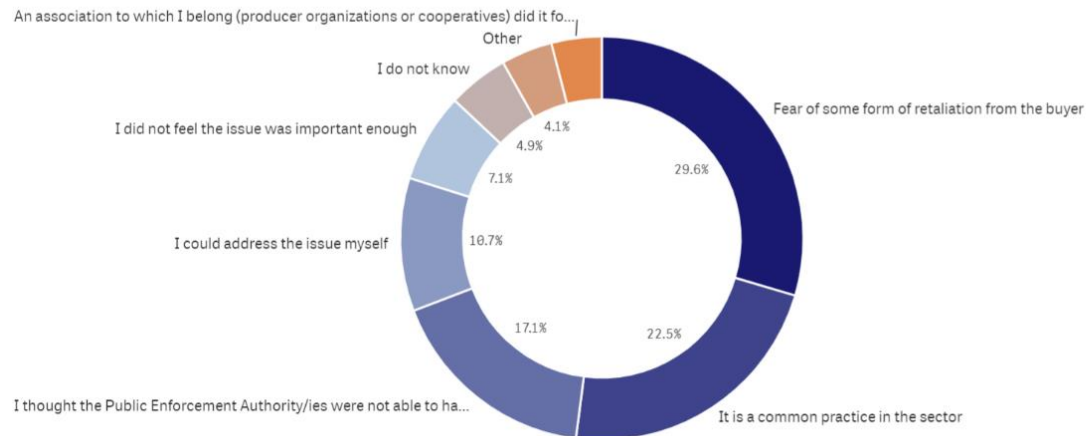
Awareness of the enforcement authority to file a complaint
% of respondents in the 4th wave



6.3. Suppliers' main reasons for not raising an issue with a national enforcement authority

Asked for the main reasons for not raising an issue with a national enforcement authority despite having experienced a UTP, respondents mainly indicated fear of some form of retaliation from the buyer (30%), followed by considering it as a common practice in the sector (23%) or thinking the public enforcement authority would not be able to handle it (17%).

Main reasons for not raising the issue
% of respondents in the 4th wave



Results of all Commission UTP surveys are available here: [Unfair Trade Practices \(europa.eu\)](https://unfairtradepractices.europa.eu)