

FIT FOR FUTURE Platform Opinion

Topic title	Evaluation of unfair trading practices (UTP) in B2B relationships in the agricultural and food supply chain
	AWP 2024
	Directive (EU) 2019/633 of 17 April 2019 on unfair trading practices (UTP) in B2B relationships in the agricultural and food supply chain <i>Legal reference</i>
Date of adoption	17 October 2024
Opinion reference	2024/4
Policy cycle reference	<input type="checkbox"/> Contribution to ongoing legislative process - <i>Commission work programme reference</i>
	<input checked="" type="checkbox"/> Contribution to the (ongoing) evaluation process Agricultural & food supply chain – combating unfair trading practices <i>Title of the (ongoing) evaluation</i> The Directive (EU) 2019/633 on unfair trading practices in the agricultural and food supply chain sets minimum rules that aim at improving the protection of farmers and small and medium sized suppliers in the agricultural and food supply chain. According to legal obligations, the European Commission must carry out an evaluation of this Directive and present a report on its main findings by 1 November 2025, and, if appropriate, proposals on how to better protect suppliers against unfair trading practices. The Commission evaluation will assess the degree to which the Directive achieved its objectives with respect to the first years of implementation. The evaluation will also identify the potential for simplification and burden reduction. It will cover all EU Member States from the adoption in 2019 to 2024 (included).
	<input type="checkbox"/> Included in Annex VI of the Task force for subsidiarity and proportionality -

	<div><input type="checkbox"/> Other</div> <div>Please specify</div>
Have your say: Simplify!	Suggestions submitted by Fair Trade Advocacy Office Europe on 11 July 2024 (S32965069) to simplify, reduce potential burdens or future-proof existing EU laws for the benefit of citizens or businesses

SUGGESTIONS SUMMARY

- Suggestion 1:** The ongoing evaluation of the Commission should assess how effective the directive was in enabling operators, in particular small and medium sized enterprises, to fully benefit from the rules provided therein, aiming at strengthening their bargaining power in the food supply chain. It should also identify the main obstacles and other factors affecting the directive's functioning
- Suggestion 2:** Under the assessment of effectiveness, coherence and EU added value, the evaluation should pay particular attention to the aspects of legal clarity of the directive and its scope and the level of harmonisation, examining whether they are most conducive to higher goal fulfilment. The evaluation should pay particular attention to whether a broader scope of the directive, in terms of including all stakeholders regardless of their turnover, could lead to a higher goal fulfilment. The evaluation should examine an optimal threshold for exempting the smallest stakeholders, in order to minimise their regulatory burden
- Suggestion 3:** The grey and black lists should be periodically reviewed and if necessary updated, to enhance the lists' effectiveness, to prevent actors from exploiting their position of strength to bypass the legislation and in case of new unfair trading practices
- Suggestion 4:** During the ongoing evaluation, the Commission should assess whether there is a need to establish a legal framework and clearer obligations at EU level in cases with cross-border dimension

SHORT DESCRIPTION OF THE LEGISLATION ANALYSED

Unfair trading practices (UTPs) in business-to-business relationships deviate from good commercial conduct and are contrary to good faith and fair dealing. The food supply chain is vulnerable to unfair trading practices due to stark imbalances between small and large operators along the chain. Farmers and small operators in the food supply chain often do not have sufficient bargaining power to defend against them. Such imbalances are likely to lead to unfair trading practices when larger and more powerful trading partners seek to impose certain practices or contractual arrangements to the detriment of smaller suppliers of agricultural and food products. Such unfair trading practices, for example, include late payments, cancelling orders at short notice or unilateral changes to the terms of supply.

[Directive \(EU\) 2019/633](#) of 17 April 2019 on unfair trading practices in B2B relationships in the agricultural and food supply chain sets out a minimum list of prohibited unfair trading practices between buyers and suppliers in the agricultural and food supply chain and lays down minimum enforcement rules. It aims to stop unfair trading practices by buyers against suppliers because of their weaker bargaining position, and to avoid the costs of such practices being passed on to primary producers. The rules protect small and medium-sized suppliers, as well as larger suppliers with an annual turnover not exceeding EUR 350 million. The protection depends on the relative size of the supplier and the buyer in terms of annual turnover. The Directive establishes a list of 16 prohibited practices. It requires Member States to designate

enforcement authorities with the power to launch investigations, receive complaints and fine operators who break the rules.

When transposing the Directive into their national law (by May 2021), EU countries could choose to be stricter than the Directive and go beyond – but not below - its scope and level of protection. In line with the minimum harmonisation nature of the Directive, Member States had freedom in implementing the Directive's provisions in terms of e.g. reference to turnover thresholds, enforcement authorities' competences, definition and listing of prohibited practices, operationalisation of enforcement, etc. Against this backdrop, it is necessary to consider which elements of the Directive and its implementation are attributable to which governance levels. All EU countries have already notified the complete transposition of the Directive into national law and the conformity check by the Commission is ongoing. To assess the effectiveness of measures taken by Member States in the context of this Directive, the Commission carries out [annual surveys with farmers and suppliers protected by the Directive](#). The baseline survey was conducted in 2020/2021.

Sources:

[Directive \(EU\) 2019/633](#)

[Report on the state of Transposition and implementation \(2021\)](#)

[Call for evidence](#)

[Annual survey of the JRC](#)

PROBLEM DESCRIPTION

The Fit for Future Platform has acknowledged the issues raised by the legislation concerned as follows:

Regarding: modernisation and future proofing of existing laws, including via digitalisation, the efficient labelling, authorisation and reporting obligations, the simplification of EU legislation

UTPs can put operators' profits and margins under pressure, reducing companies' investment capacity and have an impact on the workforce. Therefore, combatting UTPs is a prerequisite for enabling actors of the agri-food chain to pursue their business and to invest into the green and digital transition. The directive on unfair trading practices (UTP) in B2B relationships in the agricultural and food supply chain was due to be transposed into national legislation by May 2021. In some Member States the rules entered into force in 2022. Since then, actors in the food supply chain have been affected by inflation and high costs for agricultural inputs, such as energy prices and fertilizers. The directive has generally been welcomed by actors in the food supply chain, however, evidence suggests that it is difficult to draw any conclusions at this stage as to whether the directive has had any effect in balancing the power between actors in the food supply chain. The directive has not been in effect for long and its transposition has coincided with an unstable market situation in the agri-food sector.

The recent [call for evidence](#) from the Commission and the surveys conducted by the JRC suggest that suppliers in many cases do not report unfair trading practices, often due to fear of retaliation or because they are simply unaware of their rights and possibilities provided for in the directive. It also suggests that unfair trading practices still occur, and that the occurrence of some practices even has increased. Hence, it is important to take the specific economic context of the past years into account when evaluating the legislation, based on a solid collection of data from relevant actors. It is furthermore important that the Commission, in its upcoming evaluation, focus the analysis on shortcomings pointing to possible measures to increase the effectiveness of the current regulation in combating unfair trading practices. It is furthermore important to increase the awareness of the directive, the rights and possibilities provided therein, as well as to step up capacity building.

The directive sets minimum requirements which Member States may go beyond in their national transposition of the directive. The varying degree of implementation in Member States, where some Member States have gone further in their national implementation compared to the minimum requirements, have caused legal uncertainty not least in cases when the buyer and seller are based in different Member States. In any future review of the legislation, it is important that the Commission focus on increasing the legal clarity of the directive and review specific provisions that, based on the implementation so far and input received, have caused legal uncertainty. This is important not least in view of the current negotiations on the proposal for a [Regulation on combatting late payments in commercial transactions \(COM\(2023\) 533\)](#) and taking into account the experiences from stakeholders so far, ranging from authorities in Member States to small scale primary producers and business operators of all sizes.

Specific issues on the local and regional level:

The food supply chain is diverse, its structure and composition vary between Member States and consists of market players from local level, such as primary producers, to large multinational companies operating in several Member States and in third countries. Since the aim of the directive is to strengthen the position of farmers and SME suppliers in the agricultural and food supply chain, it is important to especially consider feedback from these stakeholders in view of the coming review of the legislation. Such aspects may include, but should not be limited to, the enforcement of the legislation, such as the ability for actors to report UTP's in an efficient and anonymous way to the relevant authority, the legal clarity of the directive and what changes might be needed in order to fulfil the aim of the directive, namely to combat unfair trading practices and to strengthen the bargaining power of farmers and SMEs in the food supply chain.

Suggestion 1: **The ongoing evaluation of the Commission should assess how effective the directive was in enabling operators, in particular small and medium sized enterprises, to fully benefit from the rules provided therein, aiming at strengthening their bargaining power in the food supply chain. It should also identify the main obstacles and other factors affecting the directive's functioning**

Description: Based on the experiences so far from implementing the directive, a number of suppliers refrain from using the possibility to complain when unfair trading practices occur, among other reasons due to fear of retaliation from the buyer, a belief that the relevant authority will not take action or because the unfair trading practice is believed to be uncommon. Furthermore, according to the 3rd JRC annual survey, as many as 60 % of the stakeholders participating in the study do not know which national authority they should turn to with their complaints.¹ The coming evaluation should assess the uptake of the rules and rights provided for in the directive together with any major factors affecting it, such as strengthening the possibility to lodge anonymous complaints, whether the level of sanctions is appropriate and what main factors affect access to information and awareness of the directive among the stakeholders, especially farmers and SME's. The frequency and efficiency of inspections across all Member States could also be evaluated. The forum for enforcement authorities could be used to exchange best practices in order to raise awareness, which could in turn be used to better inform farmers and suppliers.

Expected benefits: Many stakeholders consider it difficult to draw any major conclusions about the implementation of the directive since it has not been into force for very long. A solid evaluation on the uptake of the legislation and factors that affect it, can help identifying shortcomings and target any future revision of the legislation in view of increasing legal clarity, awareness of the legislation and enabling stakeholders to fully benefit from the rules as intended. It could also contribute to fulfilling the goals of the common agricultural policy, such as ensuring a fair income for farmers, to improve the position of farmers in the food chain and to vibrant rural areas. In turn, this could increase the resilience of the EU agricultural sector, in terms of increased robustness to tackle market fluctuations as well as possible effects of an increased geopolitical instability.

¹ [Food Supply Chain - UTPs - survey results \(3rd round\) \(europa.eu\)](#)

Suggestion 2: Under the assessment of effectiveness, coherence and EU added value, the evaluation should pay particular attention to the aspects of legal clarity of the directive and its scope and the level of harmonisation, examining whether they are most conducive to higher goal fulfilment. The evaluation should pay particular attention to whether a broader scope of the directive, in terms of including all stakeholders regardless of their turnover, could lead to a higher goal fulfilment. The evaluation should examine an optimal threshold for exempting the smallest stakeholders, in order to minimise their regulatory burden

Description: Article 9 in the directive allows Member States to go beyond the minimum requirements of the directive, on the premises that these rules are compatible with the internal market. This has led to different implementation in Member States, especially concerning the scope of the directive and which stakeholders are subject to the rules on a national level. This has led to difficulties in interpreting – and complying with - the rules, especially in cases when the supplier and buyer are based in different Member States. Furthermore, it can lead to higher costs for stakeholder to search for information on what rules are implemented in different Member States, for example on which trading practices are considered unfair.

Beyond the cross-border dimension, an increased harmonization could also lead to a higher goal fulfilment in terms of balancing out power in the food supply chain in a manner that ultimately benefits the primary producers in that chain. The current approach, where Member States can choose which stakeholders the directive should apply to depending on their annual turnover, makes it possible to exclude stakeholders from the scope of the legislation depending on their turnover. In some Member States, the largest suppliers in the food supply chain are not covered by the rules. In other Member States, the largest suppliers in the food supply chain are covered by the rules, irrespective of their greater bargaining power including against large buyers. In some cases, suppliers engaging in business with a buyer could potentially not be covered by the rules depending on the turnover of the actors in question, relating to the list in article 1(2) of the directive. Similarly, in some Member States the smallest buyers have been excluded from the scope of the directive for reasons of simplification and in order to avoid unnecessary administrative burden. Following the call for evidence conducted by the Commission, the scope of the directive and the varying ways of implementation have been subject to criticism. Looking at the aim of the legislation, it can be questioned whether unfair trading practices can be fully tackled and to what degree the bargaining power in the food supply chain can be balanced out if the directive does not apply to all. The assessment of effectiveness and coherence should therefore be based on a proper understanding of relationships in the supply chain.

However, increased harmonisation could also lead to less flexibility to adapt the rules on a national level, depending on the structure of the food supply chain in Member States. Hence, it is important that the Commission takes a holistic view in the coming evaluation of the directive. The evaluation should both focus on ensuring legal clarity of the directive, for example by looking at experiences from the implementation of the directive, and whether the current level of harmonisation of the directive is most relevant and pertinent to fulfil its aim. Such an analysis should also cover the cost-effectiveness in implementing the rules and the potential to reduce the regulatory burdens in order to increase, amongst other, the uptake of the rules and

opportunities of the directive. It is important to consider costs for SMEs in this regard, not least for primary producers. In some Member States buyers with an annual turnover below 2 million EUR have been exempted from the national transposition law of the UTP Directive. The evaluation should provide findings for optimal turnover thresholds and an exemption for the smallest stakeholders in order to minimise regulatory burden for the latter. The evaluation should also focus on whether the scope of the directive leads to distortions of competition at the disadvantage of smaller suppliers and impact on their competitiveness.

Expected benefits: An evaluation of the experiences, including an assessment of costs and benefits for different types of companies, from implementing the directive so far and to what extent legal clarity has been achieved, can provide the necessary evidence to any future revision of the directive aiming to tackle market fragmentation, risks and costs incurred due to legal uncertainty and possible sanctions related to it. Examining the level of harmonisation would in turn, provide evidence as to whether a more harmonised approach in the legislation could contribute to a fairer legislation in terms of a more similar implementation and equal rights to suppliers across the EU, which in turn also could contribute to increased legal clarity especially in cases involving actors from different Member States. It could also contribute to optimise costs and balance out power in the food supply chain for all actors. Legal clarity stemming, amongst others, from a more harmonised approach could also contribute to fulfilling the goals of the common agricultural policy, such as ensuring a fair income for farmers, strengthening the position of farmers in the food chain and to vibrant rural areas. In turn, this could increase the resilience of the EU agricultural sector, in terms of increased robustness to tackle market fluctuations as well as possible effects of an increased geopolitical instability.

Suggestion 3: **The grey and black lists should be periodically reviewed and if necessary updated, to enhance the lists' effectiveness, to prevent actors from exploiting their position of strength to bypass the legislation and in case of new unfair trading practices**

Description: The ongoing evaluation by the Commission should investigate whether, and to what extent, new practices are being implemented to circumvent legislation. The evaluation should further identify the main methods used for such circumventions and explore the best ways to prevent them. The lists of grey and black unfair trading practices in article 3(1) and 3(2) should be evaluated, and if necessary, updated and complemented based on the experiences in implementing the directive so far, particularly if there is evidence that new practices are being used broadly to circumvent the legislation.

Evidence suggests that the black list in general has been more effective in terms of providing protection to actors from the practices defined therein than the grey list. The grey list only provides protection in so far as that the practice is considered unfair if the supplier and buyer have not previously agreed in clear and unambiguous terms in the supply agreement or in a subsequent agreement. In practice, this means that the buyer can still be in a position of strength and can use their position to negotiate new terms that could be considered unfair to the seller but that are still in line with the directive. The grey and black lists should therefore be periodically reviewed and if necessary updated based on the evidence collected from stakeholders, their consulting professions as well as the feedback received. Such periodical

reviews and possible updates should focus on whether certain practices should be transferred from the grey list to the black list, whether additional practices should be added to or removed from the grey or black list and what changes could be made in order to decrease the occurrence of the practices defined in the grey list. It is however important that such practice does not cause legal uncertainty or create disproportional additional administrative burden.

Expected benefits: An evaluation of the extent to which new practices are being implemented to circumvent legislation could serve as a basis for determining the necessity of updating the black and grey lists. Periodically reviewed and, if appropriate, updated black and grey lists could contribute to a better fulfilment of the aim of the directive, i.e. increased protection to SME's and decrease the occurrence of unfair trading practices in the food supply chain. This could in turn contribute to fulfilling the goals of the common agricultural policy, such as ensuring a fair income for farmers, strengthening the position of farmers in the food chain and to vibrant rural areas. In turn, this could increase the resilience of the EU agricultural sector, in terms of increased robustness to tackle market fluctuations as well as possible effects of an increased geopolitical instability.

Suggestion 4: During the ongoing evaluation, the Commission should assess whether there is a need to establish a legal framework and clearer obligations at EU level in cases with cross-border dimension

Description: Article 5 of the directive prescribes that suppliers may address complaints either to the enforcement authority of the Member State in which the supplier is established or to the enforcement authority of the Member State in which the buyer that is suspected to have engaged in a prohibited trading practice is established. In such cases, Article 5 (1) of the directive states that the enforcement authority to which the complaint is addressed shall be competent to enforce the prohibitions from the directive. By prescribing a general obligation on cooperation and mutual assistance, necessary between enforcement authorities of Member States in cross-border investigations, the directive does not provide a sufficient legal basis to ensure effective cooperation of enforcement authorities in such cases. Without an appropriate legal framework that applies to all Member States, each of them may decide to take a different approach to dealing with complaints and may condition the actions of its enforcement authority by several factors, which can lead to legal uncertainty and can deter the supplier from submitting the complaint. There are also other challenges in this regard, for example the fact that not all Member States have the same trading practices prescribed as unfair and therefore prohibited, the impossibility of sanctioning the buyers from other country who refuse to cooperate and the issue of the data protection. The upcoming evaluation of the Commission should therefore assess how effective the directive has been in cases when the supplier and the buyer are based in different Member States and if the lack of a clear legal framework acts as a deterrent for suppliers to file complaints when their business has a cross-border dimension. While increased harmonisation could indeed lead to less flexibility to adapt the rules on a national level, as mentioned in the Suggestion 2, the numerous challenges that arise in dealing with cases with a cross-border dimension create the need to enact legal rules and procedures that will apply to all Member States in dealing with proceedings with a cross-border dimension.

Expected benefits: Establishing clear rules about allocation of competence, about the way of dealing with a complaint, the actions that the competent authority can take, would contribute to the standardization of procedures and to the better protection of suppliers in terms of what kind of protection they can expect from the Member States to which the supplier submits the complaint.

ANNEX I – INPUTS RECEIVED VIA HAVE YOUR SAY: SIMPLIFY! PORTAL



[FTAO.pdf](#)