

ANNUAL REPORT  
ON UNFAIR TRADING PRACTICES  
IN BUSINESS-TO-BUSINESS RELATIONSHIPS  
IN THE AGRICULTURAL AND FOOD SUPPLY CHAIN  
2021





FPS Economy, S.M.E.s, Self-employed and Energy

Rue du Progrès 50 – 1210 Brussels

Enterprise no: 0314.595.348



○ 0800 120 33 (free number)



○ SPFEco



○ @spfeconomie



○ [linkedin.com/company/fod-economie](https://www.linkedin.com/company/fod-economie) (bilingual page)



○ [instagram.com/spfecocom](https://www.instagram.com/spfecocom)



○ [youtube.com/user/SPFEconomie](https://www.youtube.com/user/SPFEconomie)



○ [economie.fgov.be](http://economie.fgov.be)

**Responsible publisher:**

Séverine Waterbley

Chair of the Board of Directors

Rue du Progrès 50 – 1210 Brussels

Internet version

097-22

Pursuant to Article 10(1) and (2) of the 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 (hereinafter 'UTP Directive'), the national enforcement authorities of the directive publish an annual report about their activities and send a report to the European Commission by 15 March of each year on the application and enforcement during the previous year.

## 1. Context

As laid out in Recital 1 of the UTP Directive, "within the agricultural and food supply chain, significant imbalances in bargaining power between suppliers and buyers of agricultural and food products are a common occurrence. Those imbalances in bargaining power are likely to lead to unfair trading practices when larger and more powerful trading partners seek to impose certain practices or contractual arrangements which are to their advantage in relation to a sales transaction". The aim of the UTP Directive is to introduce a minimum standard of protection against these unfair trading practices.

Pursuant to Article 13 of the UTP Directive, the latter was supposed to be transposed into national legislation by 1 May 2021 and its measures were supposed to be applied by 1 November 2021 at the latest.

With some delay, the UTP Directive has been transposed into Belgian law by the Law of 28 November 2021 (the 'UTP Law'). It was published on 15 December 2021, and entered into force on 25 December 2021. Agreements that were concluded before the UTP Law's publication on 15 December 2021 benefit from a transitional period of 12 months to comply with the new rules.

The Belgian legislator chose to transpose the UTP Directive's provisions into Book VI of the Code of Economic Law, in which specific provisions relating to unfair business-to-business practices and unfair contract terms were already inserted.

The minimum harmonisation approach in the UTP Directive allows member states to adopt or maintain national rules which go beyond the unfair trading practices listed in this Directive. The lists of prohibited "black" and "grey" practices in the UTP Law largely correspond to those set out in the UTP Directive. However, the Belgian legislator has decided to go further in several areas.

## 2. Broader scope

First of all, the Belgian legislator chose to broaden the scope of the new rules. The UTP Directive offers protection along the agri-food supply chain depending on the relative size of operators. Moreover, it uses a "step approach" based on turnover figures as a proxy that reflects the different bargaining powers of suppliers and buyers. However, the UTP Law's scope of application is broader and does not include the various thresholds set out in the UTP Directive.

On the one hand, the Belgian legislator thought it would be impractical for the parties involved to have to check the other party's turnover. On the other hand, this figure is likely to change on an annual basis and therefore a lawful practice could be prohibited the following year.

For the above reasons, it was decided to protect all suppliers regardless of their size, as long as their annual turnover does not exceed EUR 350 million. This threshold is calculated on the basis of the consolidated worldwide annual turnover. According to the Belgian legislator, suppliers with a turnover exceeding EUR 350 million are not to be considered as weak parties and therefore do not need to be explicitly protected.

This exclusion does not apply, however, if the supplier is a recognised producer organisation. Since these organisations are also in a vulnerable position due to the market situation, the Belgian legislator decided to grant them the same level of protection.

The UTP Law is applicable as soon as the supplier and/or the buyer is/are established in Belgium. Protection is thus also offered to companies outside Belgium and even outside the European Union when selling to Belgian purchasers.

Furthermore, the Belgian UTP Law does not include the distinction provided for in the UTP Directive between products intended for human consumption and products intended for animal consumption, nor between perishable and non-perishable agri-food products. The protection against unfair trading practices applies to all suppliers of any of these products in the same way.

Indeed, as it is not always clear at the time of delivery what the destination of agri-food products will be, the scope has been extended to all agri-food products intended for human or animal use (food and feed). In order to avoid enforcement difficulties, the prohibition of unfair practices in the agricultural and food chain applies as soon as the product supplied is intended for food in the general sense. An example would be cereals for biscuits which can also be processed into dog biscuits.

Finally, as the concept of perishable products is difficult to delimit and in order to avoid discussions between the parties as to whether or not a product should be considered as perishable (i.e. unfit for sale or not within 30 days after harvest, production or processing), the Belgian legislator chose to abandon this distinction. The unfair practices prohibited in all circumstances therefore cover both perishable and non-perishable products, thus ensuring a better protection for suppliers.

### 3. Extended (and extendable) list of prohibited unfair trading practices

The new article VI.109/5 of the Code of Economic Law contains the “**black list**” of market practices that are considered unfair and prohibited under all circumstances:

- Payment terms that are longer than 30 days (an exception is made for schools, public health institutions and grapes used in the process of wine production);
- Cancellation terms that are too short to find an alternative (less than 30 days before delivery is considered to be too short);
- The buyer unilaterally modifies the essential terms of the agreement;
- The buyer requires payments from the supplier that are not related to the sale of the products;
- The buyer requires payments from the supplier for deterioration or loss of the products on the buyer's premises or after transfer of the property rights, without any fault on the supplier's part;
- The buyer refuses to confirm in writing the terms of the supply agreement;
- The buyer unlawfully acquires, uses or discloses trade secrets;
- The buyer threatens or carries out commercial retaliation against the supplier for exercising its contractual or legal rights;
- The buyer requires compensation from the supplier for the cost of examining customer complaints despite the absence of negligence or fault on the supplier's part.

As the distinction between perishable and non-perishable food was not introduced in the transposition legislation, two of the prohibited practices set out in the black list of the UTP Directive are subject to broader protection in the Belgian UTP Law:

- The maximum payment period is of 30 days for both perishable and non-perishable agri-food products, whereas the maximum payment period set out in the UTP Directive is 60 days for non-perishable agri-food products.
- The principle that a buyer cannot cancel an order within 30 days applies not only to perishable agri-food products but also to non-perishable agri-food products.

The 30 days limit for the payment of agri-food products was chosen to reflect the standard payment period of 30 days as set out in the Law of 2 August 2002 transposing Directive 2011/7/EU of the

European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions

Furthermore, the new article VI.109/6 of the Code of Economic Law provides for the additional **list of “grey” practices** that are allowed if the supplier and the buyer agree on them beforehand in a clear and unambiguous manner:

- The buyer returns unsold agricultural and food products to the supplier without paying for the unsold products or without paying for the disposal of the products;
- The supplier is charged payment for its agricultural and food products to be stored, displayed or listed or made available on the market;
- The buyer requires the supplier to bear all or part of the costs associated with any discounts on agricultural and food products that are sold by the buyer as part of a promotion;
- The buyer requires the supplier to pay for the advertising by the buyer of agricultural and food products;
- The buyer requires the supplier to pay for the marketing by the buyer of agricultural and food products;
- The buyer charges the supplier for staff for fitting-out premises used for the sale of the supplier's products.

These black and grey lists largely correspond to the lists set out in the UTP Directive.

However, article VI.109/7 of the UTP Law gives the King the ability to amend or extend these lists by Royal Decree. Indeed, market practices can change rapidly. In order to be able to effectively combat certain unfair market practices, it was deemed appropriate that the King may – by decree deliberated in the Council of Ministers, on the joint proposal of the Ministers responsible for the Economy, the Self-Employed and Agriculture, and after obtaining the opinion of the High Council for the Self-Employed and SMEs and the Central Economic Council – amend or extend the black and grey lists.

## 4. Procedure and penalties

In Belgium, the Directorate-General for Economic Inspection of the FPS Economy has been appointed as the competent national enforcement authority to enforce the prohibitions. An overview of all EU national enforcement authorities is available on the website of the European Commission.<sup>1</sup>

The Directorate-General for Economic Inspection is competent to receive complaints, investigate, issue warnings to the buyer of agri-food products, propose a settlement or make infringement decisions, impose administrative fines and publication measures.

The FPS Economy published a page on the UTP Law on its website (in both Dutch<sup>2</sup> and French<sup>3</sup>) and created an official mailbox for this matter ([utp.agrifoodchain@economie.fgov.be](mailto:utp.agrifoodchain@economie.fgov.be)). A complaint form is available on this web page and can be sent by post or e-mail to the Directorate-General for Economic Inspection.

As the UTP Directive requires that complaints are dealt with within a reasonable period of time, the UTP Law provides for a period of 60 days for the enforcement authority to inform the complainant of how it

---

<sup>1</sup> [https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/market-measures/agri-food-supply-chain/unfair-trading-practices\\_en](https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/market-measures/agri-food-supply-chain/unfair-trading-practices_en)

<sup>2</sup> <https://economie.fgov.be/nl/themas/ondernemingen/bescherming-van-ondernemingen/oneerlijke-praktijken/oneerlijke-handelspraktijken>

<sup>3</sup> <https://economie.fgov.be/fr/themes/entreprises/protection-des-entreprises/pratiques-deloyales/pratiques-commerciales>

intends to follow up on the complaint. Additionally, the UTP Law provides for measures of confidentiality for the complainant.

## 5. Complaints and investigations

Given the date of entry into force and the transitional period of 12 months, no complaints regarding the UTP Law were addressed yet to the Directorate-General for Economic Inspection as enforcement authority in 2021. As a result, no investigations were conducted in 2021 either.



FPS Economy, S.M.E.s, Self-employed and Energy

Rue du Progrès 50  
1210 Brussels  
Enterprise no: 0314.595.348  
[economie.fgov.be](http://economie.fgov.be)