

Annual report on unfair trading practices in business-to-business relations in the agricultural and food supply chain 2023





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Under 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 authority of the directive publishes an annual report about their activities and sends a report to the European Commission by 15 March of each year on the application and enforcement during the previous year.

1. Legal framework

The UTP Directive has been transposed into Belgian law by the Law of 28 November 2021 (the “UTP Law”) in Book VI of the Code of Economic Law (articles VI.109/4-VI.109/8). The Directorate-General for Economic Inspection of the FPS Economy was appointed as the Belgian national UTP enforcement authority.

In this annual report, the Directorate-General for Economic Inspection presents its activities under the UTP Directive, including the number of complaints received and the number of investigations opened or closed during the previous year. For each investigation closed, the report contains a brief description of the subject and outcome of the investigation and, where appropriate, the decision taken, subject to confidentiality requirements.

The Directorate-General for Economic Inspection of the FPS Economy refers to its [previous reports](#) on unfair trading practices in business-to-business relationships in the agricultural and food supply chain for more details on the transposition of the Directive into Belgian law, among other topics.

2. Activities

In early 2023, the Directorate-General for Economic Inspection had several exploratory talks with various sector federations and stakeholders to analyse the market situation and identify possible points of attention for investigations.

The Directorate-General for Economic Inspection also attended the third UTP Roundtable at the Katholieke Universiteit Leuven. Here, the national transposition of the directive in the various European member states was critically scrutinised, discussing both similarities and differences.

As a member of the European UTP Enforcement Network, the Directorate-General for Economic Inspection has participated in several European meetings:

- On 23 March 2023, the Directorate-General for Economic Inspection presented its experience with cross-border cooperation and law enforcement.
- On 20 April 2023, the calculation of turnover and the turnover threshold for unfair commercial practices were discussed in detail.
- On 4 May 2023, an expert meeting was held in Brussels with all the UTP enforcement authorities. A brief overview of the enforcement activities already carried out was given, comments from suppliers were reviewed and certain agriculture and food sectors were discussed in more detail.
- On 15 September 2023, the focus was on alliances in the retail sector. Different interpretations of the definition and national legislation were explained.
- On 5 October 2023, the 23 March meeting on cross-border issues continued. A working document on the cross-border application of the UTP Directive was drafted.
- On 7 November 2023, the meeting with the heads of department of the national UTP enforcement authorities took place. The aim of this meeting was to strengthen cooperation between the various enforcement authorities and to discuss cooperation strategies.

The Directorate-General for Economic Inspection also answered several requests for information from other member states (e.g. on the interpretation of legislation). Furthermore, the Directorate-General for Economic Inspection received several emails and informal requests for information from Belgian suppliers and buyers (and their sector federations). The Directorate-General for Economic Inspection answered those questions and informed suppliers and buyers about their rights and the possibility of filing a complaint.

3. Complaints and investigations

In 2023, the Directorate-General for Economic Inspection did not receive any formal complaints about unfair trade practices in the agricultural and food supply chain.

Given the limited number of complaints (presumably due to the "fear factor" for filing complaints) and the transitional period until 15 December 2022 to bring existing agreements into compliance, it was decided by the Directorate-General for Economic Inspection to focus on own-initiative investigations in 2023. Based on information from the press and consultation with sector federations, it was decided to focus on the meat sector in this regard.

In 2023, ten new own-initiative investigations were started, nine of which in the meat sector and one in the sugar beet sector. The investigations were conducted in the different parts of the food chain, ranging from retailer up to the producer. The contracts concluded and corresponding annexes were hereby checked for the presence of prohibited practices and, in addition, effective compliance with the 30-day payment period, the request for additional payments not related to the sale of the food products and any unilateral contract amendments were also checked.

In the case of six companies, no infringements could be found and, consequently, these cases were closed with no further action. These included a retailer, three meat processors/slaughterhouses, a feed trade company and a company in the sugar beet sector.

Four investigations are still ongoing: In one investigation, a retailer already received a warning for not respecting the 30-day payment term (in the formal contract, while in practice the company did pay within 30 days) and using a manifestly disproportionate compensation clause (which is not a violation of the UTP Law, but of the grey list of the Belgian B2B Law that was also included in the inspection). In two other cases, two meat processors were also found to have breached the legal 30-day payment term (where, in practice, payments were not made within the 30 days) and enforcement is ongoing. In the last open case, investigations are ongoing.

The case initiated in 2022 on its own initiative in the retail sector was closed in 2023 with no further action following consultation with the foreign UTP enforcement authorities of the member state where the suppliers concerned were located. At the time of the investigation, only two agreements were potentially within the scope of the UTP Directive and there was still the transitional period for existing agreements. Further investigation with the help of the foreign UTP enforcement authorities ultimately found that those agreements did not fall within the material scope of the UTP Directive because the supplier's turnover was found to exceed the 350 million euro threshold or because they did not involve sales of "agricultural and food products".

4. Evaluation

The Directorate-General for Economic Inspection is well aware that unfair trading practices occur throughout the food supply chain. However, it seems that suppliers of agricultural and food products are hesitant to file a complaint with the Directorate-General for Economic Inspection because they fear some form of retaliation from the buyer and they do not want to jeopardise their long-lasting and future relationship ("fear factor").

For this reason, the Directorate-General for Economic Inspection will continue and intensify own-initiative investigations for the UTP Law in 2024.

To date, the Directorate-General for Economic Inspection is also not aware of any case law related to the UTP Law.

By 1 December 2024, the ministers responsible for Economy, the Self-Employed and Agriculture will evaluate the application of the Belgian UTP Law. An evaluation report will be submitted to the Chamber of Representatives. The UTP Directive will also be evaluated at European level in 2025.

In response to the current crisis in the agricultural sector, legislative changes are currently being examined for the shorter term.

The Directorate-General for Economic Inspection therefore welcomes any input on the subject at the email address utp.agrifoodchain@economie.fgov.be, both in terms of investigations and the evaluation of the UTP legislation.



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