



Commercial practices regulation in the food supply chain Dir. 2019/633 & applications

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1. The 2019/633 Directive

1. Scope
2. Unfair practices

2. Applications

1. Black list
2. Grey list

1. Presentation of the Directive

1.1. Scope

(...) Suppliers established outside the Union **should also enjoy protection against unfair trading practices (UTP) when they sell agricultural and food products into the Union.** Not only are such suppliers liable to be equally vulnerable to unfair trading practices, but a broader scope could also avoid the unintended diversion of trade towards non-protected suppliers, which would undermine the protection of suppliers in the Union.



Dir. 2019/633
Consid. N°12

1. Presentation of the Directive

1.1. Scope

Régl. 593/2008 on law applicable to contractual obligations

Article 9

Overriding mandatory provisions

1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

Régl. 593/2008: Contractors are free to choose which law applies to an international contract.

It is not certain whether the UTP Directive supersedes other laws (selected in contracts). Having certainty about this prevalence would ensure that the UTP Directive applies to contracts with a partner outside the European Union.

Application of the Directive is currently a national decision (in France: complex question, cf. CA Paris, 29 Oct. 2024, n° 23/02368, DGCCRF, 16/2/2026 EURELEC, Product is to France = French law applies)

Dir. 2019/633
Consid. N°12

1. Presentation of the Directive

1.1. Scope

Dir. 2019/633 Consid. n°1

Unfair trading practices are when larger and more powerful trading partners seek to impose certain practices or contractual arrangements that are to their advantage in relation to a sales transaction. Significant imbalance can be a source of unfair practices.

Condition #1 : Significant imbalance, the European buyer is larger and more powerful than the partner.



**What is an unfair
commercial
practice ?**

1. Presentation of the Directive

1. Scope

Dir. 2019/633 art. 13

- Transposition: European states were obligated to adapt their law before May 2021 (today: transposition should be complete).
- Harmonisation is **minimal** : European States may adopt or retain more protective rules or more precise definitions, but they must at least prohibit the practices covered by the directive.



1. Presentation of the Directive

1.1. Scope

Sector regulation: only the food supply chain: from farmer to consumer

Scope: Sales in the food supply chain

Sellers and buyers of agricultural and food products with a significant difference in size:

E.g. Buyers with €2 million+ annual turnover and sellers with a turnover not exceeding €2 million

NB: Buyers with less than €2 million annual turnover are not in the scope of Directive.

NB: This is a minimum harmonisation directive, meaning that European states cannot provide less protection (but the majority of them provide more protection than the Directive).

France: Cass. Com., 7 janv. 2026, n°23-20.219: equality between partners does not prevent the application of the rule.



1. Presentation of the Directive

1.1. Scope

Method of Regulation:

1. Black list of unfair practices : always prohibit
2. Grey list of unfair practices: prohibit if not provided in a written agreement

This method is well-known in European business law, for example in consumer law

Aims to encourage written contracts in the food supply chain (not mandatory)

**Black and
grey list**

1. Presentation of the Directive

1.2. Unfair practices

Directive provides for a black list of unfair practices that must be prohibited by states in transpositions acts (national laws that translate the Directive into the national legal system).



Targeted practice : Long payment terms

Maximum payment delay: 30 days, with adaptation decided by judges. The delay starts on the day of product delivery.

Possible to pay at 60 days for not-perishable food products

Unfair to pay more than one month after delivery for perishable food products, 2 months for other products



1. Presentation of the Directive

1.2. Unfair practices



Targeted practice : last-minute order cancellation

To avoid last-minute order cancellations by buyers, leaving sellers unable to market products, the maximum period for cancelling orders is 30 days before delivery

Unfair to cancel a food order at the last minute



1. Presentation of the Directive

1.2. Unfair practices



Targeted practice : unilateral changes in the contracts



This is to avoid the buyer making changes to the contract concerning the conditions of supply, the frequency, location or volume of deliveries, quality standards, payment terms, or prices.

Unfair to make changes without mutual consent

NB : practice in connection with the incentive to have a written supply contract (see below)

1. Presentation of the Directive

1.2. Unfair practices



Targeted practice : paid services not related to products

The practice is for the buyer to charge suppliers for services that do not relate to the marketing of food products.

Unfair to charge for a service without justifying its link to marketing

NB: practice in connection with the incentive to have a written supply contract that includes services linked to marketing of food products



Marketing service
Promotion service
Referencing service



1. Presentation of the Directive

1.2. Unfair practices



Targeted practice: paid-for products damaged on buyer's premises

The practice is the buyer requiring the supplier to pay for spoilage or loss of agricultural and food products, or for spoilage and loss occurring on the buyer's premises

Unfair to make the seller pay for any deterioration of the products after transfer of ownership



1. Presentation of the Directive

1.2. Unfair practices



Targeted practice : non-written contracts



Without requiring the contract to be in writing, the seller must be able to obtain written confirmation of the agreement

Unfair to refuse such a confirmation

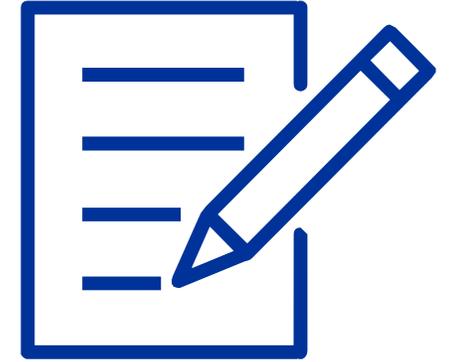
1st rule to protect sellers: they can ask for or propose a written contract



1. Presentation of the Directive

1.2. Unfair practices

Grey list : Practices are only permitted if they are provided for in writing in a contract; otherwise they are unfair.



The idea is to reduce relationships within the food supply chain (in Europe) without a written contract, and to prohibit services rendered by the buyer in connection with the marketing of products (space in the store, staff, promotions, etc.) unless they are in writing.



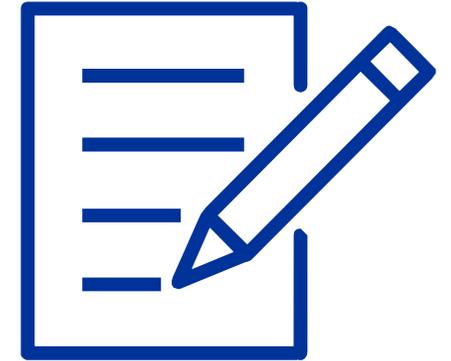
1. Presentation of the Directive

1.2. Unfair practices

What are those practices in the grey list ?

Send back unsold products to the seller without paying for them

- Asking for payment by the seller for products' storage, product listing, displaying in the shop
- Ask the seller to pay for discounts the buyer offers to the consumers
- Ask the seller to pay for advertising made by the buyer
- Ask the seller to pay for listing the products
- Ask the seller to pay the employees who arrange product displays at retail premises
- Ask the seller for paying the employees who arranges sales premises

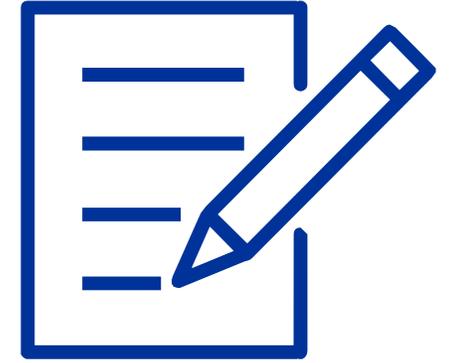


1. Presentation of the Directive

1.2. Unfair practices

What are those practices in the grey list ?

- Main idea of the grey list: every payment requested from a seller of food or agricultural products must be provided for in a written agreement
 - Impact #1: this agreement is prior to the paid operation
 - Impact #2: this meets rules about contracts, e.g. loyalty (e.g. France: no unbalanced engagement)
 - Impact #3: the seller is informed in advance of the buyer pays for



1. Presentation of the Directive

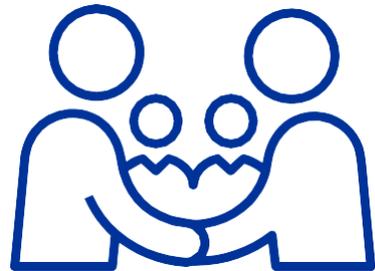
1.2. Unfair practices



What are the enforcement measures in the directive?

Public enforcement: The member state must have a national authority that can receive complaints and conduct investigations, and can also impose sanctions, such as fines.

Spain: Agencia de Información y Control Alimentarios (AICA), seems the most active authority in UTP control. Germany, Netherland, Belgium, Spain: anonymous complaint possible. France: impossible.



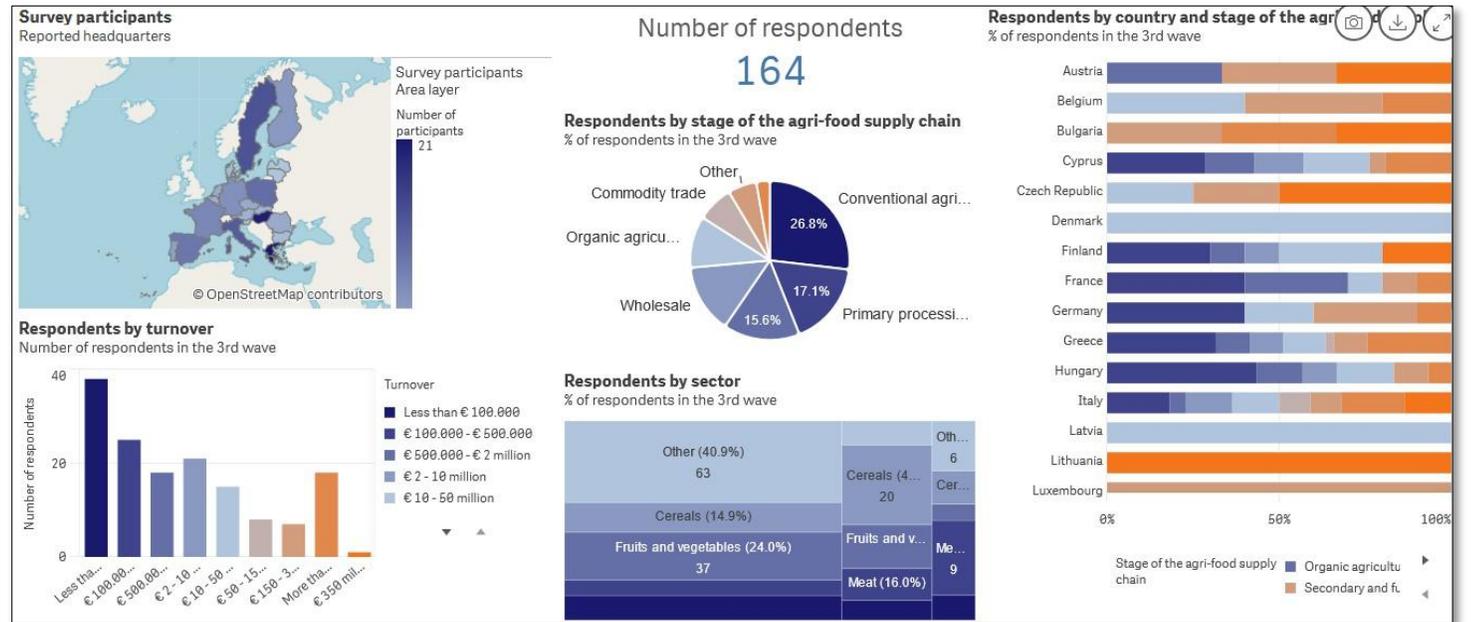
Private enforcement: Suppliers must be able to turn to an amicable dispute resolution, such as mediation after an unfair commercial practice.

E.g. Autoriteit Consument & Markt (Netherlands) and Agricultural Ministry (France) can propose such a mediation

1. Presentation of the Directive

1.2. Unfair practices

What are the communication measures in the directive?
National Report & annual survey



Annual survey by the European Commission:
<https://datam.jrc.ec.europa.eu/datam/topic/UTP/index.html>

2. Applications of the Directive



2.1. Unilateral changes

**Price fixation system :
price fixed unilaterally
by the buyer**

ACM (NL), 2024/9/4
ACM/22/179466

Link (in Dutch) :

<https://www.acm.nl/nl/publicaties/last-onder-dwangsom-lactalis-leerdammer>

French company LACTALIS is the buyer, it markets a cheese called "Leerdammer", produced by farmers in the Netherlands

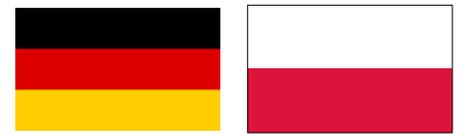
Serval farmers claimed that Lacatalis' retrospective and unilateral determination of the monthly remuneration based on fat and protein content qualified as a UTP.

Assessment: Unilateral changes concerning the remuneration without a transparent system agreed with the farmer in advance. The price is also non-negotiable.

Prohibition as black list: unilateral changes need to be specified in contracts: Lactalis was given a few month to comply.

2. Applications of the Directive

2.1. Unilateral changes



Price fixation system : price fixed unilaterally by the buyer

UOKiK (PL), 2024/7/17
BLE (D) 2022/6/21

Links (in English) :

<https://uokik.gov.pl/en/president-of-uokik-obliged-osm-kolo-to-change-practices>

https://www.ble.de/SharedDocs/Downloads/EN/Market-Organisation/Case-report-Arla.pdf?__blob=publicationFile&v=1

Milk cooperative reserves the unilateral right to change the price of the milk

The cooperative is granting itself the unilateral ability to change the list price for delivered milk. The cooperative was free to set the price, without having to get approval from the supplier. At the same time, the farmer did not have the opportunity to react to unfavourable price changes, but still had to perform the contract throughout its term.

Assessment: Obligated buyers to change the questioned practices. Suppliers that do not agree to the list price change will be able to terminate the contract with notice. Until the end of the contract, the existing price will apply.

2. Applications of the Directive

2.1. Unilateral changes



**Price fixation system :
retroactive discount
without respecting the
contract**

UOKiK (PL), 2023/12/18, SCA Polska

Link (in English) :

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://uokik.gov.pl/en/Download/405&ved=2ahUKEwiukOzbyNiSAxW0VKQEHczpJlkQFnoECBoQAO&usq=AOvVh1ZAH3eJPm5PebnVkstNd-h>

Buyer included discounts into the contract, but – without respecting the conditions – applies them unilaterally to due payments.

The buyer applies discounts even if the projected sales volume required to qualify was not reached, in the context of contractual renewal for the following year. Discounts were requested after the food products had been sold.

Assessment: Contractual modifying and sellers refunds.

2. Applications of the Directive

2.2. Payment delays



Payment delay : more than 30 days

DGCCRF (F), 18 dec. 2025

DGIE (B): Annual report 2024 about unfair commercial practices

AICA (E): publicidad Q4 2025

Many examples about payment delays (more than 30 days) in various relationships.

France: Central Bank publishes an annual survey about payment delays and notes that those delays in France are longer than the European average, with a difference of 10 days compared with the Netherland and Germany.

Over 220 companies were fined in 2025 in France (€47 million). This is the most-applied UTP rule in France (food supply chain and other sectors).

Spain: majority of UTPs concern payment delays (different volumes per year).

2. Applications of the Directive



2.3. Paid-for services not related with the product

Obtaining a discount without justifying the link with the product

Court of Appeal, Paris (FR),
2024/4/24, n°22/11109

Decision (in French) :

<https://www.courdecassation.fr/decision/6629f36adc6faf000958893b>

A buyer uses an annual discount to pay for services such as sales staff training and in-store promotion.

Problem: Although visible on the invoice, these services were not included in a written contract.

Judge added that these services do not correspond to specific services.

Discounts (granted by the seller) not linked to a separate and clearly identified service are benefits (perceived by the buyer) without the buyer granting a counterpart.

2. Applications of the Directive



2.4. Payment without written contractual provision

Obtaining a discount without justifying by a written contractual provision

Grey list

Court of Appeal, Paris (FR),
2023/5/10, n°21/04967

Also: CA Paris, 2022/2/23, n°21/07731

Decision (in French) :

<https://www.courdecassation.fr/decision/645c88c49925b3d0f8f8f4ed>

A buyer benefits from an annual discount offered by the seller without a written provision in the contract justifying it

Problem: Although visible on the invoice, these services were not included in a written contract.

Judge added that the buyer must provide the reason why the seller must pay.

It is not discounts themselves that are prohibited, but the lack of justification through a written contract.

Assessment: reimburse the seller of food products.

2. Applications of the Directive

2.5. Payment for services not provided



Obtaining a payment without providing the planned service

Grey list

UOKiK (PL), 2021/11/30,

Decision (in Polish) :

https://archiwum.uokik.gov.pl/aktualnosci.php?news_id=18059

Buyer can include paid-for services for sellers. These services must be provided to justify payment.

Eurocash's suppliers are required to pay additional and unjustified fees, for example, for personal training, certain sales support services (e.g. ensuring the maintenance of products in the commercial offer or supervising and coordinating product orders). Some of these services were not provided as indicated in the contract.

Assessment: €16.5 million fine.



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*Thank you for your
attention*

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