

Unfair Trading Practices

A historic opportunity to bring fairness and predictability to all in the food supply chain!



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FoodDrinkEurope represents Europe's food and drink industry, Europe's largest manufacturing sector in terms of turnover, employment and value added. FoodDrinkEurope works with European and international institutions, in order to contribute to the development of a legislative and economic framework addressing the competitiveness of industry, food quality and safety, consumer protection and respect for the environment. FoodDrinkEurope's membership consists of 26 national federations, including 2 observers, 27 European sector associations and 21 major food and drink companies.

Food and drink companies are inherently part of Europe’s culture and economy. Our 293,000 small, medium-sized and large companies together employ more than 4 million people and constitute the 1st manufacturing sector in Europe.

A fair food chain for all is our goal: our sector works hand in hand with the farmers; we cannot be successful without a prosperous farming sector and vice-versa. Our industry connects Europe’s rural areas with 500 million consumers in Europe and many more outside.

Fairness is a right of all players in the food chain; in order for the chain to operate successfully in the future, we must ensure that all players are granted this right.

With the Unfair Trading Practices (UTPs) Directive, policymakers now have a unique chance to act and to finally eradicate unfair dealings.

Fairness for all: protecting everyone from the direct and indirect effects of UTPs

The proposed EU Directive has a duty to protect all players in the food supply chain.

The supply chain is an interdependent and complex system – inefficiencies or challenges in one part of that chain have a **domino effect** on the whole chain, notably the farmers.

UTPs do not discriminate by size of the supplier: an unfair trading practice is always unfair and affects all, small and large companies, farmers, co-operatives and family owned businesses.

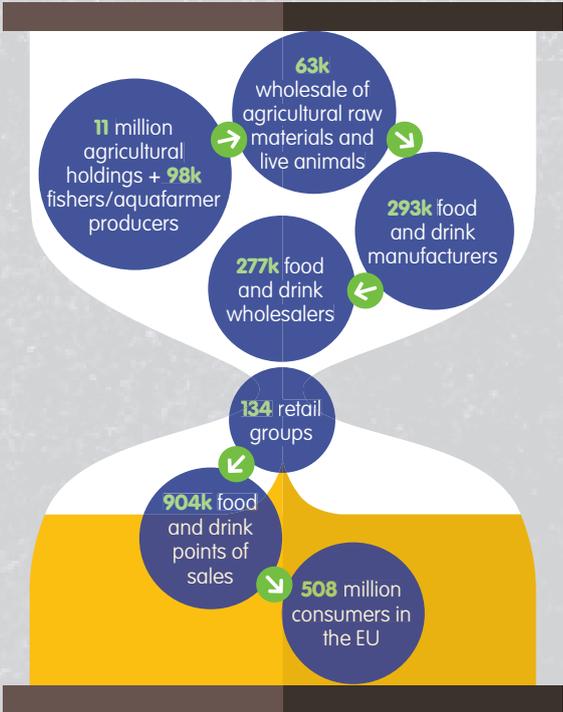
Respecting contracts, being paid on time and sticking to confirmed orders should be common practice. This however is not the case.



Fact

By extending the scope, the new proposal can also protect **2,500 more companies from unfair trading practices**. These companies account for **2 million jobs** and deal with **11 million farmers**.

The European food supply chain



Sources: Eurostat; Planet Retail

Minimum harmonisation approach at EU level

20 Member States already have well-functioning UTP legislation. The EU Directive can further strengthen this situation by addressing the fear factor, increasing business certainty and providing balance in the food supply chain.

Supplier-buyer dealings are increasingly transnational and national laws cannot cope with this international dimension.



Fact

75% of EU food and drink exports are destined for the Single Market.

The main retailers, already leaders in some EU Member States, are joining **international/European retail alliances to strengthen their position in the market**. These alliances increase the buying power of the retailers, thus putting the manufacturing industry, and its suppliers, under increasing pressure. Many European retail alliances are headquartered in 3rd countries or in Member States with lower protection against unfair trading practices.

Addressing the reality

1. Is the balance of power in favour of manufacturers? Evidence shows the opposite.

The bargaining power is firmly in the hands of retailers.

Purchasing volumes, and even more importantly shelf access, have a decisive impact on the negotiated conditions.

The leading retailers use their strong market positions to their advantage. As a consequence they are in a stronger bargaining position than the manufacturers.

For a manufacturer, a contract to supply a retailer may represent a large proportion of its business, whilst one contract for a retailer, even with a larger food manufacturer, will represent only a small fraction of its overall business, creating a very one sided relationship.



Fact

On average the top 3 retailers represent more than half of the supplier's business at European level.

2. Are retailers' margins lower than margins of food manufacturers? NO

European retailers' **gross margins** (between 11% and 36%) have increased over the past ten years whilst their market shares also increased, to the detriment of smaller retailers and independent shops.

Margins in the food and drink industry are **in line** with those of other manufacturing industries. The level of margins reflects the high capital intensity of manufacturing and the need to finance investments in order to secure future production capacity.

Despite inflation, retailers have imposed price reduction on suppliers, clearly demonstrating their increased bargaining and negotiation power.



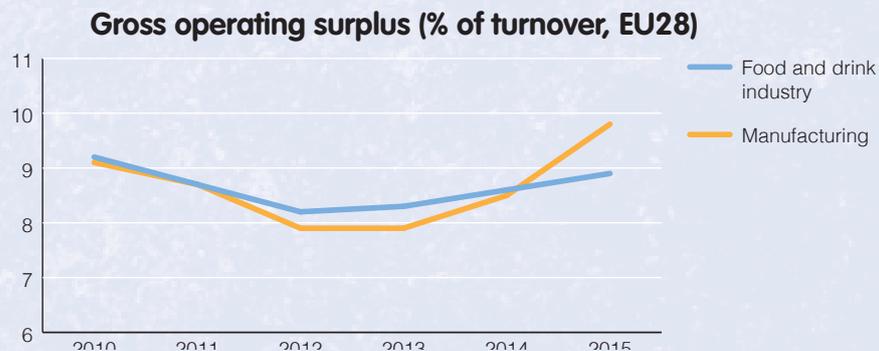
Fact



Sources: Amadeus; Orbis Financial database; Eurostat



Fact



Source: Eurostat

3. Will UTPs legislation lead to higher prices for consumers? **NO**

Based on econometric analysis run on Member States data, the Impact Assessment of the Commission's proposal on UTPs states that "Member States with more stringent rules seem to enjoy lower food price increases than Member States with less stringent UTP rules." These results are built on two sets of data, 2005-2016 and 2010-2016. Analyses carried out on the 2 sets of data provided similar results.

Many factors other than rules on UTPs determine the evolution of food consumer prices (commodity costs, weather, demands, etc.).

4. Does the legal basis allow for the extension of the scope? **YES**

Based on case law, ECJ judgements and EU legislation, Articles 43(2) and 39 of the TFEU do not restrict the scope of the Directive only to some actors. Not covering all actors in the supply chain will expose many of the suppliers and producers to the direct or indirect effects of UTPs.

The EU has already adopted agricultural policy measures regulating non-SMEs based on Article 43(2) of the TFEU and aimed to achieve a fair standard of living for the agricultural community.



Fact

Regulation 1308/2013 establishing a Common Organisation of the Markets in agricultural products provides rules for public intervention for the agricultural sector: the scope of this Regulation does not contain any limitations based on the size of the operator.