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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS**

**on the state of the transposition and implementation of 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**

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Member State abbreviations:

Belgium	BE
Bulgaria	BG
Czechia	CZ
Denmark	DK
Germany	DE
Estonia	EE
Ireland	IE
Greece	EL
Spain	ES
France	FR
Croatia	HR
Italy	IT
Cyprus	CY
Latvia	LV
Lithuania	LT
Luxembourg	LU
Hungary	HU
Malta	MT
Netherlands	NL
Austria	AT
Poland	PL
Portugal	PT
Romania	RO
Slovenia	SI
Slovakia	SK
Finland	FI
Sweden	SE

1. INTRODUCTION

1.1. Background and objectives of the Directive

Following a long negotiation¹, on 17 April 2019 the European Parliament and the Council adopted Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (hereinafter ‘the Directive’). The Directive was introduced under Article 43 of the Treaty on the Functioning of the European Union to prohibit a list of unfair trading practices (UTPs) – mostly linked to significant imbalances in bargaining power between suppliers and buyers – that grossly deviate from good commercial conduct².

The Directive takes into account the negative impact of UTPs for farmers both as direct victims of these practices and as indirect victims of the cascading effects of these practices when they occur at the downstream stages of the chain³. Whereas most Member States (MS) had adopted national legislation or promoted various forms of private-sector rules well before the Directive, the fragmentation of this legal framework highlighted the potential benefit of adopting rules at the EU level⁴.

The Directive is binding on all 27 MS. It provides for a minimum level of harmonisation by establishing a list of prohibited UTPs between buyers and suppliers in the agricultural and food supply chain. It also lays down minimum rules on the scope of its application and the main definitions as well as on the enforcement of those prohibitions and the coordination between enforcement authorities of the different MS. MS may adopt or maintain national rules that go beyond the UTPs listed in the Directive provided that such national rules are compatible with the rules on the functioning of the internal market.

1.2. Objective and scope of this Report

Article 13 of the Directive stipulates that MS must adopt and publish by 1 May 2021, the laws, regulations and administrative provisions needed to comply with this Directive. They must immediately communicate the measures to the Commission and apply them no later than 1 November 2021.

¹ See High Level Forum for a Better Functioning Food Supply Chain (2011), led by the European Commission, which endorsed a set of [principles of good practice in vertical relations in the food supply chain](#), agreed by organisations representing most operators in the food supply chain. This led to the launch of the Supply Chain Initiative in 2013. The following are some recent interventions: by the European Parliament: [Resolution of 7 June 2016 on unfair trading practices in the food supply chain](#); by the Council: [Conclusions of 12 December 2016 on Strengthening farmers' position in the food supply chain and tackling unfair trading practices](#); by the Commission: [Communication of the Commission of 28 October 2009 on a better functioning of the food supply chain in Europe](#); [Communication of the Commission of 15 July 2014 on tackling unfair trading practices in the business-to-business food supply chain](#); and [Report of the Commission of 29 January 2016 on unfair business-to-business trading practices in the food supply chain](#).

² Proposal for a Directive on unfair trading practices in business-to-business relationships in the food supply chain, Brussels, 12.4.2018, COM(2018) 173 final, 2018/0082 (COD), par. 2.

³ See Directive, recital (7).

⁴ See Directive, recital (8). See also [Cafaggi, F. and Iamiceli, P., Unfair trading practices in the business-to-business retail supply chain \(JRC112654\)](#).

This report records the state of play regarding the transposition of the Directive by the 27 MS (Article 12(4)) and takes into account all notifications received by the Commission by 31 July 2021. The report however does not provide an assessment of the transposition measures.

1.3. Transposition process

In the 2 years between the Directive's adoption in April 2019 and the expiry of the transposition deadline in May 2021, the Commission closely accompanied MS in their respective transposition processes. The Commission organised four dedicated meetings discussing implementation requests from MS, replied to around 50 individual written implementation requests and shared them with other MS via a dedicated website. In addition, a number of bilateral meetings and exchanges of information took place and there was a further meeting with MS shortly after the transposition deadline to take stock of the transposition and its state of play.

Under Article 8(3), the Commission has set up a public website⁵ providing contact details for the designated national enforcement authorities and links to their respective websites. Furthermore, the Commission has set up a non-public website to enable exchange of information among the enforcement authorities and the Commission.

2. GENERAL OVERVIEW

Under Article 13 of the Directive, MS had to transpose the Directive into their national law by 1 May 2021.

Some 15 of the 27 MS notified their national implementing measures to the Commission by 31 July 2021, whereby the Directive had been completely transposed (BG, DK, EL, FI, IE, LV, NL, HR, HU, LU, DE, LT, MT, SE and SK)⁶. While FR notified the Commission that the Directive had only been partially transposed by that date, it is also included in this report's analysis. This report focuses on the transposition by these 16 MS; therefore, references to 'MS' hereinafter relate to these 16 MS.

On 23 July 2021, the Commission launched infringement procedures by way of letters of formal notice against the 12 MS⁷ that failed to notify complete transposition⁸.

Eight MS transposed the Directive by means of introducing new and separate legislation⁹. Except for IE, these MS did not have national UTP rules beforehand. The other eight MS have transposed

⁵ https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/market-measures/agri-food-supply-chain/unfair-trading-practices_en.

⁶ By 1 May 2021, 4 of the 27 MS claimed they completed the transposition of the Directive (BG, DK, EL and NL), another four claimed they partially transposed it (EE, FR, FI and LV). By 31 July EE had notified a sole correlation table.

⁷ BE, CZ, EE, ES, FR, IT, CY, AT, PO, PT, RO and SI.

⁸ https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3903.

⁹ DK, EL, IE, LT, LU, MT, NL and SE. The Lithuanian instrument, however, partially overlaps with an existing piece of legislation, namely the Law on the Prohibition of Unfair Practices of Retailers of 22 December 2009, no. XI-626, which applies to retailers with significant market power and which, in the case of conflict, prevails over the transposition instrument. In Sweden, before transposition, UTPs were only addressed by means of extending consumer protection to business-to-business relationships.

it by means of using pre-existing legislation, amending it or incorporating it into a wider legislative instrument.

Some 12 of the 16 MS have formally qualified the transposition measure as legislation on UTPs, without any reference (within this formal qualification) to market or competition law¹⁰. FI formally qualified the statutory instrument as a Market Act (providing additional rules on market regulation, such as those on agreements under Regulation (EU) No 1308/2013¹¹). BG introduced a new chapter (on UTPs in the agricultural and food supply chain) in its Competition Protection Act. FR supplemented provisions of the Commercial Code, whereas DE has added a new section in the Agricultural Market Structure Act (now known as the ‘Act on strengthening agricultural organisations and supply chains’). Except for LV, whose provisions also include prohibitions applicable to non-food product retailers, and FR, whose transposition is partially based on pre-existing provisions that have a general (as opposed to an agri-food sector) scope, all other MS have adopted sector-specific legislation that exclusively applies to the agricultural and food sector.

3. SPECIFIC POINTS OF ANALYSIS

3.1. Scope of application and main definitions (Articles 1 and 2)

Three aspects are particularly relevant when examining the scope of application:

- the type of operators in the agri-food supply chain covered and the type of relationships affected by the legislative measures;
- the relevance of business size as a reference for the scope of application;
- the territorial scope for applying the implementing measures.

3.1.1. Chain operators and supply relationships

Some 14 MS have determined the scope for applying the implementing measure, taking into account the relationship between suppliers and buyers of agricultural and food products, as defined in the Directive¹². Such relationships can occur at any stage of the supply chain and involve any type of buyer of agri-food products, be it a processor or a retailer.

In one case (HU), the notified legislation seemingly limits its scope of application to traders ‘acting as a reseller of agricultural and food products purchased from suppliers directly or indirectly within the framework of gainful business activities unaltered and *without processing*’ (emphasis added). Therefore, those buyers of agricultural products that engage in processing before reselling the products are excluded from the scope of application.

¹⁰ DK, EL, IE, LV, NL, HR, HU, LU, LT, MT, SE and SK; SK has formally qualified this piece of legislation as referring to unfair terms, in fact covering or including unfair practices within the concept of unfair terms.

¹¹ [OJ L 347, 20.12.2013, p. 671.](#)

¹² Among these, LT has excluded from the buyer’s definition cooperatives or small communities and their members, whereas SK has included under the buyer’s and supplier’s definition, legal persons that are not entrepreneurs.

LV has expanded the scope to include relationships between suppliers and retailers (only) of non-food products; a separate list of unfair practices applies in respect of retailers.

None of the MS has explicitly expanded the scope of application to other types of supply relationships, such as those primarily concerning the supply of physical inputs which are not agri-food products under the Directive (e.g. fertilisers)¹³ or services beyond those covered by the Directive (e.g. digital services).

3.1.2. Scope of application and business size

Except for FR and SK, all MS refer, to some extent, to business size as a criterion for limiting the scope of application of the adopted legislation or parts of it. Among these, however, five (BG, IE, LU, MT and NL) have adopted the approach set out by the Directive, targeting relationships between suppliers whose annual turnover is lower than a given threshold, and buyers whose annual turnover is higher than the same threshold. The other nine MS have enlarged the scope of application to varying degrees.

EL has lowered the first threshold from EUR 2 million to EUR 500 000. HR, LV and SE have taken only the buyer's size into consideration and apply the legislation to all buyers whose turnover exceeds EUR 2 million¹⁴. FI has taken the same approach; however, its legislation does not apply if the supplier's turnover exceeds that of the buyer and, in any case, if it exceeds EUR 350 million. In DE, the Directive's thresholds apply, but a wider application has been temporarily introduced for the sales of some food and agricultural products¹⁵, whereas in LT the extension concerns only the provisions on late payments, which applies to all buyers and benefits suppliers whose turnover does not exceed EUR 350 000. Conversely, in DK and HU, the business size only affects certain UTP prohibitions, whereas all other rules apply regardless of business size.

3.1.3. Territorial scope of application

Most MS have followed the approach set out under Article 1(2) of the Directive, stipulating that the rules apply to sale transactions in which either the supplier or the buyer (or both) are established in the EU¹⁶. Four MS require that the rules apply to sale transactions in which either the supplier or the buyer (or both) are established in the respective MS itself (LU, LV, MT and SE) as opposed to throughout the entire EU.

All MS, except DE and HU, have laid down the definitions of supplier and buyer irrespective of their place of establishment, as provided for by Article 2(2) of the Directive. Article 2(2) also provides for Member States' transposing measures to apply to buyers that are public authorities,

¹³ One exception concerns a French measure on late payment provisions applying different terms than those provided for agricultural and food products, also to the sale of equipment and machinery used in agriculture.

¹⁴ In the case of LV, this limitation does not apply to non-food retailers.

¹⁵ Until 1 May 2025, the German transposing provisions also apply to the sale of milk and meat products and the sale of fruit, vegetable and horticultural products, including potatoes, by suppliers that have an annual turnover of up to EUR 4 billion in the respective sales segment in DE, provided the supplier's total annual turnover does not exceed 20% of the buyer's total annual turnover.

¹⁶ Expressly adopted in BG, DE, DK, EL, FI, HR, IE, LT and SK.

only to the extent that they are established in the EU. The transposition legislation of FR, HU and NL does not contain any reference to the operators' place of establishment.

3.2. Prohibition of UTPs (Article 3)

The Directive requires MS to prohibit a specific set of unfair practices, splitting them into two groups: (i) prohibitions per se or unconditional prohibitions ('black list') and (ii) conditional prohibitions ('grey list'), the latter list of practices that are prohibited unless agreed in clear and unambiguous terms upfront in the supply agreement or in a subsequent agreement between the supplier and the buyer (Article 3(2)). Each practice is specifically defined in the Directive. Exceptions or derogations may be included in specific instances. While conforming to the prescribed requirements, MS may:

- use general clauses to enlarge the scope of prohibitions to practices that are not specifically listed;
- add other practices to the lists;
- extend the scope of listed prohibitions or make them stricter;
- move practices from the 'grey list' to the 'black list'.

As long as they are in line with internal market rules, exceptions or derogations are possible under the 'minimum harmonisation' approach followed by the Directive which introduces a minimum common level of protection for all MS. Among the 16 MS examined here, five have transposed the Directive without any of the above extensions: both the 'black' and the 'grey lists' are those provided for by the Directive without any addition or relevant variation¹⁷. In two other MS (LT and SE) the lists mainly coincide but a few prohibitions are stricter than the Directive.

Of the other nine MS, HR and LV have included a general clause prohibiting unfair practices in the light of general principles. DE has stipulated a general prohibition on using UTPs to exploit asymmetrical economic relations, but has also applied this prohibition to the practices listed in the Directive. Some countries have general clauses in the field of unfair commercial practices or competition law. This is the case, e.g. for FR whose Commercial Code already contained general clauses applicable in the relevant field.

All MS have used lists of prohibited practices and most of them have followed the distinction between 'black' and 'grey' practices. Only HU provides for a single ('black') list and explicitly bans a supplier from validly consenting upfront to the covered trading practices. Where 'grey lists' are used, MS impose transparency requirements concerning the type of information to be provided to the supplier in order to justify a 'grey practice'.

¹⁷ DK, IE, LU, MT and NL.

While distinguishing between ‘black’ and ‘grey lists’, a few MS have moved one or more ‘grey list’ practices into the ‘black list’¹⁸. Relatively more common is adding practices to the ‘black’¹⁹ and ‘grey’²⁰ lists.

Unlike the general principle of the Directive, which is only applied to practices engaged in by buyers against suppliers, in SK some of the practices are prohibited for both contract parties (e.g. commercial retaliation).

HU relies on a previously adopted legislative instrument without any specific modifications being made in the course of the Directive’s transposition. Most practices included in the Directive are covered, though are, in part, defined differently; some of these are affected by wider or more stringent prohibitions but a few are seemingly not clearly transposed in the current legislative instrument. This partly applies to FR, where only some practices have been specifically regulated by the transposition legislation, whereas others may be covered by general clauses of wider application; a few practices are seemingly not specifically addressed in the notified legislation.

Two practices included in the ‘black list’ deserve special attention as it is possible for MS to provide variations within certain limits: payment delays and order cancellations.

- **Payment delays:** 11 of the 16 MS have distinguished between perishable and non-perishable product sales, establishing a 30-day term for the former and a 60-day term for the latter, as provided for in the Directive²¹. By contrast, BG and SE have introduced a single 30-day term for both perishable and non-perishable product sales. FI has followed the same approach but has made it possible, for non-perishable products, for a longer 60-day term to be agreed in the contract (otherwise the 30-day default rule applies). Neither HU nor SK distinguish between perishable and non-perishable products; in these cases, the rule is generally more stringent: a 15-day term applies from the date of the correctly-issued invoice. All MS, except HU and SK, have incorporated the Directive’s definition of perishable products into their transposition legislation. FR has different definitions for ‘perishable’ and ‘very perishable’ products. HR has added to its transposition legislation a list of perishable products, whereas LT has vested an institution, authorised by the Government, with the power to approve a list of perishable products. All MS, except HU, have incorporated the derogations provided for by Article 3(1), last indent, (or at least some of those²²) and no additional derogations have been introduced.
- **Cancelling orders at short notice:** All MS, except HU and SK, include the 30-day period as a minimum standard for cancellation. Under Article 3(1)(b), four of them (DK, FR, IE and SE) empower the responsible Ministry (or the Government in the case of SE) to set periods of less than 30 days for specific sectors in duly justified cases. FR has introduced two shorter periods with regard to wholesalers (24 hours) and for fresh fruits and vegetables (3 days, unless the products are sold under a private label in which case 6 days apply). The

¹⁸ DE, FR, HR, LV, SK: Return of unsold products (DE, FR, LV and SK), charges for fitting out premises (FR, HR and LV), and charges for stocking, displaying and listing (FR and LV).

¹⁹ BG, EL, FR, HR (up to 18 more practices), HU, LV and SK.

²⁰ BG, HR, LV and SK.

²¹ DE, DK, EL, FR, HR, IE, LT, LU, LV, MT and NL.

²² DE, LT and SK.

Hungarian provision has a different structure, literally referring to changes rather than cancellation; no reference is made to a specific period for the advance notice. In SK, all buyers are prohibited from not fulfilling contractual obligations without legal justification.

3.3. Enforcement mechanisms (Articles 4-8)

3.3.1. Designation of enforcement authorities (Article 4)

All 16 MS informed the Commission that they designated one or more authorities to enforce the prohibitions laid down in Article 3 at national level ('enforcement authority'). These authorities' contact details and websites are available on a dedicated Commission website²³.

While most MS have opted for a single authority, four MS (DE²⁴, EL, FI and LT²⁵) have designated two authorities.

In general terms, the choice is between administrative and judicial authorities, and, within administrative authorities, between independent administrative authorities and those that are part of the executive (i.e. ministries). Among independent administrative authorities, there is a choice between market, competition or sector-specific authorities.

All MS have chosen administrative authorities. Most have opted to assign the main enforcement powers to an independent administrative authority: six to a competition authority²⁶; four to a food market authority²⁷; two to their Ministry of Agriculture²⁸; two to an authority in charge of combating unfair commercial practices in the agri-food sector²⁹; one to a government body within the Ministry of Economy and Finance³⁰; and one to an authority for consumers and markets³¹.

In MS where a second authority is designated, this is the competition authority (for DE, EL and LT) or the food authority (for FI). Some MS provide for cooperation duties among national authorities and bodies that may help enforce the relevant legislation³². Additional cooperation duties with foreign enforcement authorities and the European Commission are specifically laid down in some national transposing measures as provided for under Article 8³³.

²³ https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/market-measures/agri-food-supply-chain/unfair-trading-practices_en.

²⁴ One enforcement authority is designated but some of its decisions will be shared with the Competition Authority.

²⁵ The second enforcement authority has only competence on practices engaged by retailers with significant market power.

²⁶ BG, DK, HR, LU, LV and SE.

²⁷ DE (Federal Office for Agriculture and Food, designated by the Federal Ministry), FI (Food Market Ombudsman), HU (Food Chain Safety Office, designated by the Government), and LT (Rural Business and Markets Development Agency).

²⁸ IE and SK.

²⁹ EL and MT.

³⁰ FR and DGCCRF (General Directorate for Competition policy, Consumer Affairs and Fraud Control).

³¹ NL.

³² BG, DE, EL, FI, LT and MT.

³³ BG, DE, DK, EL, FI, HR, IE, LT, LV, MT, NL, SE and SK.

3.3.2. Complaints and confidentiality (Article 5)

Under all transposition instruments notified to the Commission, not only single suppliers, but also producer organisations or other organisations of suppliers and associations of such organisations have the right to submit a complaint to the designated enforcement authority.

A vast majority of Member States' transposition instruments have provided for means to safeguard the confidentiality of the complainant's identity, the disclosure of which could be harmful to their interests or those of their members or suppliers. These safeguards should normally be adopted upon the supplier's request³⁴; however, some national transposition measures also provide for an authority's initiative in this regard³⁵. In most cases, the complainant is requested to identify any information for which it requests confidentiality³⁶. In some MS, the transposing instruments include the possibility to discontinue the proceedings where this would cause confidential information to be disclosed³⁷. In LT, the enforcement authority may reject a confidentiality request if the specific information has an evidentiary value in establishing the infringement³⁸.

3.3.3. Designated authorities' powers (Article 6)

Most MS vest the designated authorities with the powers prescribed by Article 6, namely:

- investigatory and monitoring powers³⁹;
- the power to take decisions when an infringement of the prohibitions laid down in Article 3 has occurred⁴⁰;
- the power to require the buyer to end the prohibited trading practice⁴¹;
- the power to impose, or initiate proceedings to impose fines and other equally effective penalties⁴² and interim measures addressed to the author of the infringement, in line with national rules and procedures⁴³ and
- the power to publish the decisions taken⁴⁴.

³⁴ BG, DE, DK, EL, HR, HU, IE, LT, LU, MT, NL and SK. Among these, BG law sets out that the complainant's identity must always remain confidential.

³⁵ e.g. HU.

³⁶ BG, DK, EL, IE, LU and NL.

³⁷ DE, DK, FI and MT.

³⁸ However, anonymous complaints are explicitly addressed in Lithuanian legislation.

³⁹ BG, DE, DK, EL, FI, FR, HR, HU, IE, LT, LU, LV, MT, NL, SE and SK.

⁴⁰ BG, DE, DK, EL, HR, HU, IE, LT, LU, LV, MT, NL and SE.

⁴¹ BG, DE, DK, EL, FI, FR, HR, IE, LT, LU, LV, MT, NL, SE and SK.

⁴² BG, DE, DK, EL, FI, FR, HR, HU, IE, LT, LU, LV, MT, NL, SE and SK.

⁴³ Specifically foreseen in the national transposition measures in: BG, DK, EL, FI, FR, IE, LT, LU, LV and NL.

⁴⁴ BG, DE, DK, EL, FI, FR, HR, HU, IE, LT, LU, MT, SE and SK.

In six MS, the enforcing authority also has the power to approve commitments undertaken by the infringer⁴⁵, or to issue warnings⁴⁶ or recommendations if an infringement occurs⁴⁷.

3.3.4. Enforcement measures and sanctions (Article 6)

Enforcement measures encompass a wide range of instruments, including sanctions, remedies, and commitments.

The most common measures available to national enforcement authorities are financial sanctions, which are provided for in all 16 MS. While the Directive does not stipulate minimum and maximum thresholds for financial sanctions, some MS do. Where determined, minimum and maximum amounts differ across MS⁴⁸. In some cases the maximum amount is determined on the basis of the infringing party's turnover⁴⁹; in other cases it is calculated as a percentage of one of the following: (i) the purchase price⁵⁰; (ii) the charges imposed on the supplier⁵¹; or (iii) the profit made by the infringing party in the transaction affected by the unfair practice⁵². Some 10 MS do not provide minimum thresholds⁵³ and 3 do not provide a maximum ceiling⁵⁴. Six MS specify the criteria and factors involved in determining the amount of the sanction in specific circumstances, including the nature of the violation, its duration, and the extent to which the consequences were harmful⁵⁵.

Only LU and LT have explicitly incorporated the principle according to which penalties must be effective, proportionate and dissuasive.

Greek legislation refers to proportionality and deterrence, but not to effectiveness, when regulating the administrative authority's power to identify the applicable measures, whereas Finnish legislation refers to the need for reasonableness in determining financial sanctions but not to the other principles. FI also applies proportionality to injunctive measures but only on trade secret infringements⁵⁶.

In addition to financial sanctions there are remedies.

Regarding the injunctions used to end an unfair practice, MS have often used some type of penalty to deter non-compliance⁵⁷.

⁴⁵ HR and HU.

⁴⁶ FI and LV.

⁴⁷ EL.

⁴⁸ Minimum amounts range from EUR 70 (LV) to the equivalent of approximately EUR 2 550 (BG); maximum amounts range from EUR 2 329.37 (MT) to EUR 2 million (FR).

⁴⁹ Also in these cases percentages differ, going from 0.2% (LV) to 10% (HU and NL).

⁵⁰ SK.

⁵¹ SK.

⁵² MT.

⁵³ DE, DK, EL, FI, FR, HR, IE, MT, NL and SE.

⁵⁴ DK, FI and HR.

⁵⁵ Criteria vary: EL, FI, HR, LV, SE and SK.

⁵⁶ The information on the French law is currently unavailable.

⁵⁷ BG, DE, DK, FI, FR, LT, LV, MT, NL, SE and SK.

Similar to injunctions, national laws transposing the Directive have introduced other measures:

- the ‘compliance notices’ under Irish law;
- the ‘precautionary measures’ under Luxembourgish law;
- the Hungarian measures, enabling the administrative authority to prohibit the trader from applying the provisions of the standard service agreement if (i) it is not clearly worded, (ii) the service or consideration is not specified, or (iii) the fee charged is not proportionate to the costs.

While civil remedies are rarely mentioned in transposing acts, there are some exceptions. Some MS provide for contract terms to be nullified⁵⁸; others provide for restitutionary⁵⁹ or compensatory⁶⁰ measures.

Commitments are clearly regulated in HR and HU. Their approval by the enforcing authority normally excludes a finding of an infringement and a penalty, unless the commitment is not fulfilled.

3.3.5. Administrative, judicial enforcement and alternative dispute resolution

Most measures and enforcement mechanisms referred to above can be deemed administrative enforcement.

Some Member States’ transposition acts explicitly refer to both administrative and judicial enforcement. More specifically, eight MS provide for the administrative authorities’ decisions to be appealed in court⁶¹. Moreover, the Finnish legislation sets out that certain powers (e.g. to issue penalties) are only assigned to the court, whereas other measures (such as injunctions) may be adopted by both the administrative and the judicial authority. The Bulgarian legislation sets out that the institution responsible for specific proceedings under the transposing legislation must not prevent a party to a supply agreement from seeking redress by means of another established procedure, implicitly acknowledging the role of other enforcers, including courts. The Latvian legislation stipulates that, concurrently with the Competition Council, under procedures laid down in the law on civil procedure, a court can also establish whether or not an infringement of the transposition law took place.

Clearly, these MS use a system of parallel remedies without, however, providing for specific rules of coordination between administrative and judicial authorities.

As regards Article 7 of the Directive, seven MS provide for the possibility to resort to alternative dispute resolution mechanisms⁶². Among these, the Dutch legislation grants the Minister concerned the power to designate a dispute resolution committee and then to ‘affiliate’ a buyer to

⁵⁸ DE, FR and HU.

⁵⁹ FI (only in case of infringement of trade secrets) and IE (restitution of undue charges).

⁶⁰ FI (only in case of infringement of trade secrets), FR, LV and MT (where damages are liquidated by the Administrative Review Tribunal).

⁶¹ BG, DE, DK, EL, FI, MT, NL and SE.

⁶² BG, DE, EL, FI, LT, MT and NL.

the appointed committee. The committee's decision is binding upon the parties unless either party submits the dispute to the civil court within 3 months of its adoption. Under Maltese legislation, the enforcement authority may invite parties to a mediation procedure addressing the quantification of damages. No coordination mechanisms with administrative and judicial enforcement are explicitly regulated.

None of the transposing legislation addresses the issue of extraterritorial power of administrative authorities. Some MS specify that the enforcing authority is only competent with regard to practices occurring in relationships where the supplier or buyer, or both, is or are established in the authority's MS⁶³.

In the specific case of transborder infringements, currently only the German transposing legislation seems to regulate forms of cooperation with administrative authorities of other MS.

4. CONCLUSIONS

Most of the 16 MS analysed in the context of this report have made efforts to transpose the Directive in a timely manner. A large majority of these MS went beyond the minimum protection level established by the Directive. Stricter rules are in principle compatible with the Directive provided they respect the EU's internal market rules. MS generally follow the sectoral approach of this legislation and apply the provisions in the agri-food chain. Over half of the MS analysed in this report either depart from the turnover categories as defined in the Directive or even apply the rules regardless of the turnover of the operators concerned. Most MS have enlarged the Directive's list of UTPs by adding prohibitions or making the prohibitions under the Directive more stringent. By contrast, the (few) MS that did not have legislation in place before the Directive's transposition did generally align themselves with the Directive's scope. While in most cases Member States' transposition choices seem identical or equivalent to the rules set out in the Directive, there are some divergences. They will be analysed further.

As regards the authorities entrusted with the enforcement of the UTP rules, MS focused on the role of administrative authorities, whereas judicial enforcement is provided for only to a limited extent. Generally speaking, little or no coordination between administrative and judicial enforcement authorities is provided for. While MS provide for the ability of producer organisations to submit collective complaints, other collective redress mechanisms remain largely unexplored. Alternative dispute resolution mechanisms are occasionally referred to.

As regards the enforcement measures, the main focus is put on financial sanctions and injunctive relief, with some MS introducing the possibility for parties to offer commitments. A few MS plan to use also civil remedies. Very limited specifications exist regarding the effectiveness, proportionality and dissuasiveness of penalties and other sanctions.

⁶³ DE.

A more comprehensive picture will emerge once all MS will have completed the transposition process.⁶⁴ The first evaluation of the Directive at the EU level and a report on the main findings of that evaluation will be presented by 1 November 2025.

⁶⁴ Further information will be made available under the following link: https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/market-measures/agri-food-supply-chain/unfair-trading-practices_en.