

In cooperation with

S&P Global
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part of the Consortium



**EVALUATION OF THE EU DIRECTIVE 2019/633 ON UNFAIR TRADING
PRACTICES IN BUSINESS-TO-BUSINESS RELATIONSHIPS IN THE
AGRICULTURAL AND FOOD SUPPLY CHAIN**

AGRI/2023/OP/0001

Questionnaire for the survey of retailers and wholesalers

NOTE:

Only online answers will be considered for the study. The pdf version of the questionnaire is for informational purposes only.

The survey self-adapts on the grounds of previous replies. This file is the full version of the questionnaire: in your case, the survey may be shorter.

June 12, 2024

SURVEY QUESTIONNAIRE

The parts highlighted by a grey background are **instructions to survey respondents** and are hence part of the layout of the questionnaire.

The parts highlighted by a yellow background are **explanations about the structure of the questionnaire and/or the process towards its completion**. They are NOT part of the layout of the questionnaire.

- “Closed” (multiple choice) questions are in black characters.
- “Open” questions which can be skipped (optional reply) are highlighted by blue characters.
- “Open” questions which cannot be skipped (compulsory reply) are highlighted by red characters.

INTRODUCTION TO THE STUDY AND PURPOSE OF THIS SURVEY

The European Commission’s Directorate-General for Agriculture and Rural Development (DG AGRI) has commissioned an “**Evaluation of the EU Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain**” to a consortium led by COGEA and with Areté leading the specific contract, in collaboration with S&P Global CI Consulting and Wageningen University & Research (WUR).

Asymmetry in bargaining power may lead to the imposition of UTPs on suppliers in the agri-food supply chain. Due to their weaker position, suppliers are often *de facto* forced to accept unfair practices in order to continue to sell their products and maintain commercial relations with buyers in the supply chain. The Directive provides for the protection of weaker suppliers against stronger buyers. The general objective of the study is to provide a rigorous, sound and comprehensive assessment of Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. The main evaluation criteria are: *i*) effectiveness of the policy measure; *ii*) efficiency; *iii*) relevance; *iv*) coherence; *v*) EU added value.

A **one-pager** with additional information on the study can be downloaded here: [\[One pager\]](#)

An extensive stakeholder consultation is planned in the context of this assignment.

This survey, in particular, aims at collecting data, views and experiences of **business operators in the wholesale and retail** distribution stages of the agri-food supply chain.

Among others, the survey will be used to collect information on costs and benefits related to the implementation and enforcement of the Directive. These elements will be used in the planned assessments for the study.

The information that you will provide in the survey will be treated on a **strictly confidential basis**. All the information collected will be used in an aggregated form for the purposes of the study only.

We follow the EC privacy statement: [\[privacy statement\]](#)

Definition of key terms used in the survey

In the context of the study and of this survey, the following key terms are used, as defined in this section.

The Directive: EU Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2019.111.01.0059.01.ENG

Black Unfair Trading Practices (UTPs): Ten UTPs, as defined in the Directive, that are always prohibited:

1. *Payments later than 30 days for perishable agricultural and food products*
2. *Payments later than 60 days for other agri-food products*
3. *Short-notice cancellations of orders of perishable agri-food products*
4. *Unilateral contract changes by the buyer*
5. *Payments not related to a specific transaction*
6. *Risk of loss and deterioration transferred to the supplier*
7. *Refusal of a written confirmation of a supply agreement by the buyer, despite request from the supplier*
8. *Misuse of trade secrets by the buyer*
9. *Commercial retaliation by the buyer*
10. *Transferring the costs of examining customer complaints to the supplier*

Grey UTPs: Six UTPs, as defined in the Directive, that may be allowed if the supplier and the buyer agree on them beforehand in a clear and unambiguous manner:

1. *Return of unsold products*
2. *Payment of the supplier for stocking, display and listing*
3. *Payment of the supplier for promotion*
4. *Payment of the supplier for marketing*
5. *Payment of the supplier for advertising*
6. *Payment of the supplier for staff of the buyer, fitting out premises*

Instructions on how to answer to the survey

The **full text of the survey questionnaire** can be downloaded here: [[pdf survey questionnaire](#)].

This file is meant for information purposes, only online answers will be considered for the study.

- Navigate through the questionnaire using the arrow buttons at the end of each page
- To change replies, it is sufficient to go back to the question and modify it
- In some questions, additional instructions can be provided in italics (e.g., tick the relevant option, select all that apply) – additional instructions will appear in case of errors in the answer (e.g., “Please enter a valid number.”)
- In case of missing mandatory replies, an error message in red is displayed on the relevant section of the question when the respondent moves forward in the questionnaire
- When an open text box is made available for written contributions, replies should be provided in English, it cannot be ensured that written contributions provided in other languages will be taken into account
- Please ensure to proceed until the very last page of the survey, until the message “*We thank you for your time spent taking this survey. Your response has been recorded.*” is displayed
- Please be aware that in the last page a summary of the replies is provided and can be downloaded in PDF.

A - IDENTIFICATION OF SURVEY RESPONDENTS

Questions from A.1 to A.6 are aimed at profiling and identifying respondents

A.1. You are completing the questionnaire on behalf of a company/organisation that operates: *please tick the relevant option*

- a. exclusively in the wholesale stage of the agri-food supply chain
- b. exclusively in the retail stage of the agri-food supply chain
- c. in both the wholesale and retail stages of the agri-food supply chain
- d. none of the above

Respondents who select option "d" are directed to an END OF SURVEY message.

Respondents who select options "b" or "c" in question A.1 (i.e., retailers) are asked question A.2.

A.2. You are completing the questionnaire on behalf of: *please tick the relevant option*

- a. an individual company/independent operator, a multinational group, or a group of independent retailers
- b. a consumer cooperative
- c. a national retail alliance
- d. a European retail alliance (with members in multiple countries)

Respondents who select options "a" or "b" in question A.2 are asked question A.3.

A.3. Does your company cooperate with other companies/groups of companies for the **procurement** of agri-food products (e.g., through a joint purchasing centre, a business alliance, etc.): *please tick the relevant option*

- a. Yes
- b. No

A.4. In which EU Member States is your company/group/entity actively operating? *Please tick all the relevant options*

Drop-down menu with all 27 Member States.

Respondents who select more than one EU MS in question A.4 are asked question A.5

A.5. According to your reply, your company/group/entity actively operates in *two or more EU Member States*. The survey questionnaire that follows includes questions on the impact of the UTP Directive, as well as questions related to its transposition at national level.

Please, clarify **in relation to which of the Member States previously selected you are in the position of replying**: *Please tick all the relevant options*

List of EU Member States selected in question A.4

A.6. **Respondent identification form**

Respondents are asked to provide the **name of the company** in order to proceed with the survey. Website, contact email and reference contact are optional fields (it is possible to skip them).

In any case, **the information provided will be kept confidential and will not be shared beyond the study team** (i.e., not even with the contracting authority, the European Commission).

Name of your company (exact denomination):

Website (link) - optional:

Contact email - optional:

Reference contact (name and surname) - optional:

SECTION ON THEME 1 - EFFECTIVENESS

The following questions focus on Theme 1 – Effectiveness, to evaluate to what extent the implementation and enforcement of the Directive has been effective for combating and reducing the occurrence of UTPs in the agricultural and food supply chain.

SQ1

Respondents who select only one EU MS in question A.4 (i.e., companies/entities operating in one country) OR in question A.5 are asked questions 1.1 and 1.2.

1.1. To your knowledge, has any of the following **ex-ante or guidance measures** (i.e., actions or initiatives introduced before the UTPs actually take place) been established and/or applied in the Member State where you operate in order to reduce the occurrence of UTPs? *If any, please indicate how effective they have been in fighting UTPs.*

Measures	Highly effective	Medium effective	Low effective	Not effective	I am not aware of such measure in my MS
Public campaigns, events, workshops, and documentation around UTPs made publicly available to increase awareness amongst agri-food operators about the problem.					
For “large buyers”, creation of an internal UTP compliance officer that dialogues with the UTP Competent Authority to verify and remove UTPs in their businesses.					
Use of a business checklist by buyers to verify, monitor, and promptly act to remove UTPs.					
Deterrent effect of introducing a “confidential tip-off” mechanism to anonymously share relevant information to fight UTPs.					

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Obligation for written sales contracts.					
Inclusion of specific clauses against UTPs in contracts and agreements amongst agri-food operators.					

1.2. To your knowledge, has any of the following **corrective measures** (i.e., *ex-post* remedies meant to tackle UTPs after their occurrence) been established in the Member State where you operate in order to reduce the seriousness of the effects of UTPs? *If any, please indicate how effective they have been in fighting UTPs.*

Measures	Highly effective	Medium effective	Low effective	Not effective	I am not aware of such measure in my MS
Creation of a “confidential tip-off” mechanism to anonymously share relevant information to fight UTPs.					
Creation of an Ombudsman to help mediation between parties, and/or to help in the preparation of inquiries/complaints before the Enforcement Authority.					
Flexibility to allow complainants to decide what information needs to be kept confidential.					
Injunctions for UTPs offenders to comply.					
Financial sanctions/fines for UTPs offenders.					
Incarceration for UTPs offenders.					
Restrictions, suspension, cancellation of business licences for UTPs offenders.					
Reputational sanctions by publishing the administrative decision of UTP enforcement with the offender’s name (“naming and shaming”).					
Nullity of contract/contract terms.					
Restitutionary measures (e.g., restitution of undue charges).					
Compensatory measures (e.g., compensation of damages and losses suffered by suppliers).					

Respondents who select more than one Member States in question A.5 (i.e., companies/groups operating in multiple EU MS) are asked questions 1.3 and 1.4.

1.3. To your knowledge, has any of the following **ex-ante or guidance measures** (i.e., actions or initiatives introduced before the UTPs actually take place) been established and/or applied in the Member States where you operate, in order to reduce the occurrence of UTPs? *If any, please indicate how effective they have been in fighting UTPs.*

Measures	Highly effective	Medium effective	Low effective	Not effective	I am not aware of such measure in the MSs where I operate
Public campaigns, events, workshops, and documentation around UTPs made publicly available to increase awareness amongst agri-food operators about the problem.					
For “large buyers”, creation of an internal UTP compliance officer that dialogues with the UTP Competent Authority to verify and remove UTPs in their businesses.					
Use of a business checklist by buyers to verify, monitor, and promptly act to remove UTPs.					
Deterrent effect of introducing a “confidential tip-off” mechanism to anonymously share relevant information to fight UTPs.					
Obligation for written sales contracts.					
Inclusion of specific clauses against UTPs in contracts and agreements amongst agri-food operators.					

1.4. To your knowledge, has any of the following **corrective measures** (i.e., *ex-post* remedies meant to tackle UTPs after their occurrence) been established in the Member States where you operate, in order to reduce the seriousness of the effects of UTPs? *If any, please indicate how effective they have been in fighting UTPs.*

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Measures	Highly effective	Medium effective	Low effective	Not effective	I am not aware of such measure in the MSs where I operate
Creation of a “confidential tip-off” mechanism to anonymously share relevant information to fight UTPs.					
Creation of an Ombudsman to help mediation between parties, and/or to help in the preparation of inquiries/complaints before the Enforcement Authority.					
Flexibility to allow complainants to decide what information needs to be kept confidential.					
Injunctions for UTPs offenders to comply.					
Financial sanctions/fines for UTPs offenders.					
Incarceration for UTPs offenders.					
Restrictions, suspension, cancellation of business licences for UTPs offenders.					
Reputational sanctions by publishing the administrative decision of UTP enforcement with the offender’s name (“naming and shaming”).					
Nullity of contract/contract terms.					
Restitutory measures (e.g., restitution of undue charges).					
Compensatory measures (e.g., compensation of damages and losses suffered by suppliers).					

1.5. Please use the box below to provide additional information or details on other *ex-ante*/guidance or corrective measures not listed in the previous questions. Use your own words to describe their effectiveness to fight UTPs. *If your replies refer to multiple Member States, you can use this box to clarify possible differences among them. Optional [open text field → can be skipped]*

SQ2

- 1.6. According to your perception, have there been any major **unintended effects** of the Directive and of its transposition in your Member State/in the Member States where you operate (including stricter provisions and obligations at national level that go beyond what was explicitly envisaged in the Directive)? *Please tick the relevant option*
- Yes, there have been mostly unintended **positive** effects.
 - Yes, there have been mostly unintended **negative** effects.
 - Yes, there have been **both positive and negative** unintended effects.
 - No, there have not been any unintended effects.

Respondents who select options “a” or “c” in question 1.6 are asked question 1.7.

- 1.7. Please describe the main **unintended positive effects and their cause**. *[open text field → cannot be skipped]*

Respondents who select options “b” or “c” in question 1.6 are asked questions 1.8 and 1.9.

- 1.8. Which of the following **unintended negative effects have occurred in your Member State/in the MS where you operate?** *please select all that apply*
- Imbalances in power suffered by SME buyers.
 - Unilateral protection given also to large suppliers with considerable market power in some MS, due to the removal of turnover thresholds in national transposition measures.
 - Excessive burdens for farmers/small suppliers (e.g. due to the obligation of written contracts, to shorter invoice periods, more complex contracts to be managed).
 - Increase in food waste for some products (e.g., related to the stricter provisions concerning the return of perishable food products).
 - Increased uncertainties regarding legal requirements for intra-EU cross-border supplies of agri-food products, due to differences in the transposition of the Directive.
 - Inconsistent enforcement of the Directive in intra-EU cross-border UTP cases.
 - Other (please, specify) *[open text field → cannot be skipped]*
- 1.9. Please use the text box below to provide more details on the main **unintended negative effects and their cause**, if you so wish. *Optional [open text field → can be skipped]*

SECTION ON THEME 2 - EFFICIENCY

The following questions focus on Theme 2 – Efficiency, to collect data useful to assess/estimate the direct and indirect costs and benefits of the Directive.

SQ5

- 2.1. To your knowledge, what has been the **general impact** of the Directive’s implementation **on the operating costs** of your company?
- The impact on operating costs has been positive overall → costs are now lower
 - The impact on operating costs has been negative overall → costs are now higher
 - The overall impact on operating costs can vary significantly from year to year

- d. No sizable impact was detected
- e. I don't know / I am not in a position to reply

2.2. In terms of **direct monetary costs linked to the implementation of the Directive**, what is the impact of the following **compliance costs** on the overall operating costs of your company? Please provide your assessment for each of the following cost items. [*“High impact”: this cost item entails an impactful increase in operating costs; “No impact”: this cost item has no relevant impact on operating costs*]

Cost items	High impact	Medium impact	Low impact	No impact/not relevant	I don't know
Checks and modification of existing contracts/ contractual clauses to comply with the Directive.					
Drafting and agreement of new contracts/contractual clauses where none were required before.					
Creation of an internal system for UTP compliance controls.					
Introduction of new invoicing practices / increased number of invoices.					
Handling UTP-related requests or complaints from contractual counterparts					
Training on UTPs					
Handling UTP cases brought to the attention of the national Enforcement Authority					
Other (please specify)					

2.3. Please use the box below to provide information on **other cost items** linked to the implementation of the Directive that are impactful for your company. *If your replies refer to multiple Member States, you can use this box to clarify possible differences among them. Optional [open text field → can be skipped]*

Respondents who select options “a” or “c” in question A.1 (i.e., wholesalers) are asked question 2.4.

2.4. To your knowledge, how much does it cost for your company, or more generally for a company that operates in the wholesale stage of the agri-food supply chain, to be involved in a UTP-related **complaint/investigation and related infringement procedure** before the national Enforcement Authority, *as the victim of an unfair trading practice*? Please, provide an indicative cost range in Euros.

Optional

Min: [open field – only numbers allowed → can be skipped]

Max: [open field – only numbers allowed → can be skipped]

2.5. To your knowledge, how much does it cost for your company, or more generally for a company that operates in the wholesale and/or retail stage of the agri-food supply chain, to be involved in a UTP-related **complaint/investigation and related infringement procedure** before the national Enforcement Authority, as the **alleged perpetrator** of an unfair trading practice? Please, provide an indicative cost range in Euros. *Optional*

Min: [open field – only numbers allowed → can be skipped]

Max: [open field – only numbers allowed → can be skipped]

2.6. To your knowledge, is your company incurring **indirect and/or non-monetary** costs associated with the implementation of the Directive? *Such costs may include, for example, foregone benefits, costs deriving from unintended effects of the Directive, reduction in the number of buyers/suppliers on the market, longer times needed to sign/execute a contract, etc.*

- a. Yes
- b. No
- c. I don't know

Respondents who select option “a” in question 2.6 are asked question 2.7.

2.7. Could you please provide your assessment of the impact on your company's business for each of the following **indirect/ non-monetary cost items**? [*“High impact”*: this item entails a significant complication/cost on the business; *“No impact”*: this item has no relevant impact on the business]

Cost items	High impact	Medium impact	Low impact	No impact	I don't know
Foregone benefits available prior to the implementation of the Directive					
More complex procedures in dealing with buyers and/or suppliers					
<i>[for wholesalers only]</i> Less buyers available to purchase products					
Less suppliers available to sell products					
More frequent/in-depth inspections and investigations by Enforcement Authorities					
Other indirect/non-monetary costs related to unintended effects of the Directive (please specify)					
Other (please specify)					

2.8. In your opinion, what are the **main monetary benefits** for your company, or more generally for a company that operates in the wholesale and/or retail stage of the agri-food supply chain, resulting from the implementation of the UTP Directive? *please select all that apply and rank them in order of relevance.*

- a. Terms of the supply contracts less prone to ambiguous and unilateral interpretations
- b. Reduction of the number of unilateral and retrospective changes to contract terms
- c. Lower number of litigations linked to contracts
- d. Fairer prices for suppliers *[option displayed to wholesalers only]*
- e. More transparent price conditions
- f. Other monetary benefits (please, specify) *[open text field → cannot be skipped]*

2.9. In your opinion, what are the **main non-monetary benefits** for your company, or more generally for a company that operates in the wholesale and/or retail stage of the agri-food supply chain, resulting from the implementation of the UTP Directive? *please select all that apply and rank them in order of relevance.*

- a. Increase in the number of written supply contracts
- b. Strengthened protection in case of UTPs in domestic transactions
- c. Establishing a level playing field for operators involved in cross-border intra-EU transactions
- d. Establishing a level playing field for operators involved in transactions with non-EU operators
- e. Incentive for SMEs to innovate
- f. Improved market transparency
- g. Promoting shorter supply chains
- h. Improved trust between suppliers and buyers
- i. Other non-monetary benefits (please, specify) *[open text field → cannot be skipped]*

SECTION ON THEME 3 - RELEVANCE

The following questions focus on Theme 3 – Relevance of the objectives and implementation choices for protecting suppliers in the agri-food supply chain.

SQ6

Respondents who select only one EU MS in question A.4 (i.e., companies/entities operating in one country) OR in question A.5 are asked question 3.1.

3.1 In your opinion, how relevant has the national implementation been (in terms of scope and objectives) in addressing the **original needs**¹ behind the Directive? *please tick the relevant option*

- a. Relevant
- b. Somewhat relevant
- c. Neither relevant nor irrelevant
- d. Somewhat irrelevant
- e. Irrelevant

Respondents who select more than one Member States in question A.5 (i.e., companies/groups operating in multiple EU MS) are asked questions 3.2.

¹ Original needs include: strengthening the position of primary producers in the food supply chain; improving the protection of farmers and SME suppliers against stronger buyers; combating practices that grossly deviate from good commercial conduct, that are contrary to good faith and fair dealing and that are unilaterally imposed by one trading partner on another.

3.2 In your opinion, how relevant has the national implementation been (in terms of scope and objectives) in addressing the **original needs**² behind the Directive? *please tick the relevant option for each EU Member State you operate in*

[Only MS selected in question A.5 are displayed to the respondent]

Member States	Relevant	Somewhat relevant	Neither relevant nor irrelevant	Somewhat irrelevant	Irrelevant	I don't know / I am not in the position to reply
Austria						
Belgium						
Bulgaria						
...						

3.3 In your opinion, are there any mismatches between the **original objectives** of the Directive and the **current needs** to fight UTPs? *please tick the relevant option*

- a. Yes
- b. No
- c. I don't know

Respondents who select options "a" or "b" in question 3.3 are asked question 3.4.

3.4 Please use the text box below to elaborate on your reply, if you so wish (possible mismatches between the original objectives of the Directive and the current needs to fight UTPs). *Optional* [[open text field](#) → *can be skipped*]

3.5 In your opinion, how relevant has the national implementation of the Directive been in addressing any **new needs** to fight UTPs in agri-food that have emerged after its entry into force? *please tick the relevant option*

- a. Relevant
- b. Somewhat relevant
- c. Neither relevant nor irrelevant
- d. Somewhat irrelevant
- e. Irrelevant
- f. I don't know

Respondents who select options "a" to "e" in question 3.5 are asked question 3.6.

3.6 Please use the text box below to elaborate on your reply, if you so wish (relevance of the Directive in addressing any new needs to fight UTPs). *Optional* [[open text field](#) → *can be skipped*]

² Original needs include: strengthening the position of primary producers in the food supply chain; improving the protection of farmers and SME suppliers against stronger buyers; combating practices that grossly deviate from good commercial conduct, that are contrary to good faith and fair dealing and that are unilaterally imposed by one trading partner on another.

SECTION ON THEME 4 – COHERENCE

No questions will be asked for Theme 4 – Coherence, to retailers and wholesalers

SECTION ON THEME 5 – EU ADDED VALUE

The following questions focus on Theme 5 – EU added value, investigating whether the Directive’s harmonised minimum requirements created EU added value for the targeted stakeholders versus a non-harmonised status quo before the Directive.

SQ8

5.1 In your view, what is the importance of the differential **benefits stemming from the harmonised minimum requirements in the UTP Directive**, compared to the previous, non-harmonised regulatory framework? *please provide your assessment for each of the following benefits.*

	Very important	Important	Somewhat important	Not important at all	I don't know
Improved definition of UTPs at both national and EU level					
Improvement of pre-existing national legislation (if any) dealing with UTPs (i.e., simplification/streamlining of legislation)					
Reduction of differences in the legislation addressing UTPs across EU MSs (<i>improved EU-level harmonisation</i>)					
Strengthened protection for victims of UTPs in domestic transactions					
Establishing a level playing field for operators of different MSs in cross-border intra-EU transactions					
Establishing a level playing field for operators of different countries in transactions with non-EU operators					
Strengthened protection for non-EU operators that are victims of UTPs by EU operators					

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Other benefits, please specify	[open text field → can be skipped]
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UPLOAD

Please, use this question to upload any files you deem relevant to substantiate your replies.