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**FAIRNESS:**

**What it means. How it has been  
embedded in EU Regulation**

**BAAE-SALV joint symposium**  
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# FAIRNESS:

## What it means

- 1) From an economic point of view, Fairness (therefore unfairness) is associated to:
  - **contractual relations** (and hazards)
  - **governance structure** (and its flaws ... or biases)
- 2) Hence two dimensions of fairness:
  - **symmetry** of power among partners
  - credible (ex ante) and actual (ex post) **commitment**

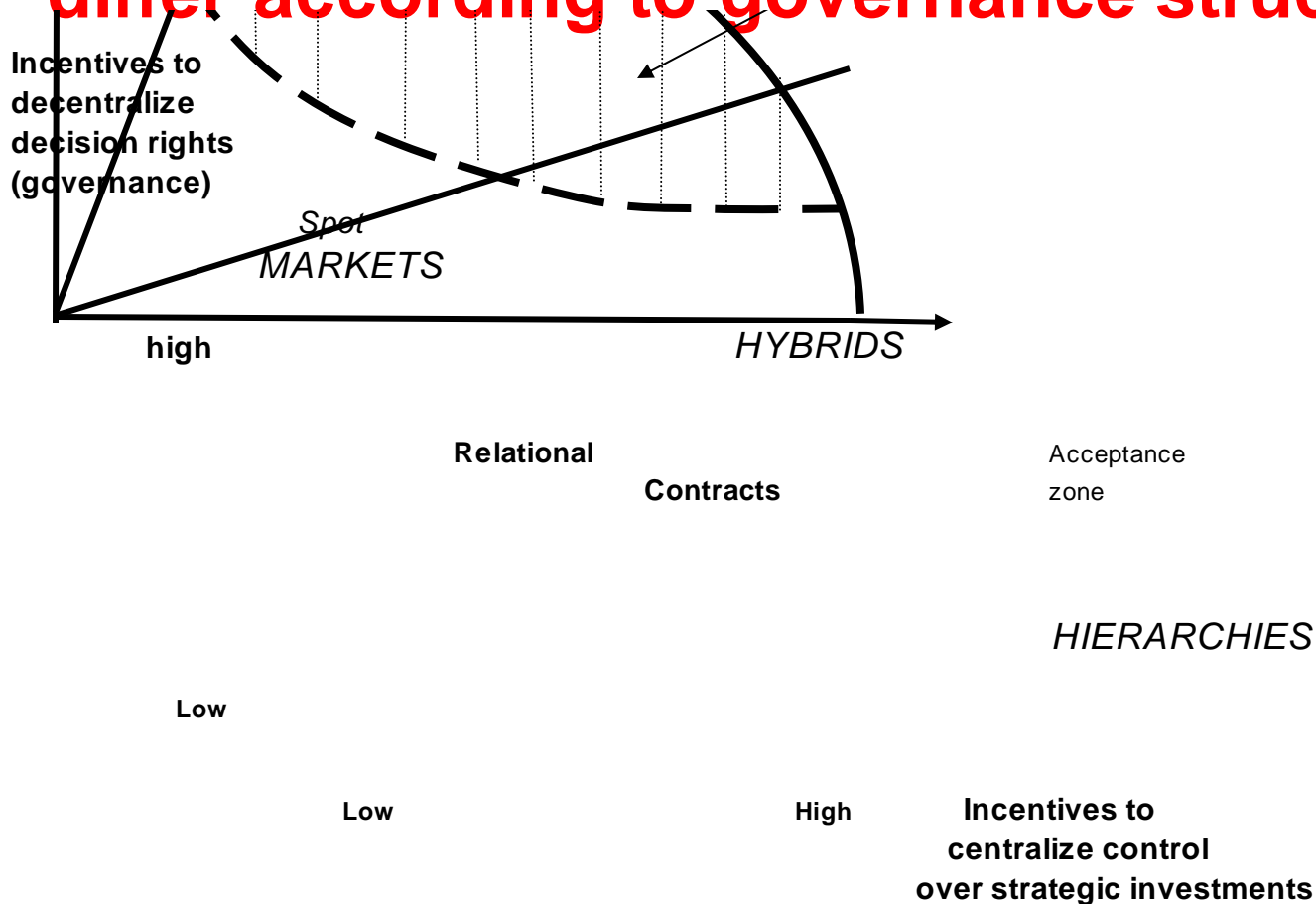
# FAIRNESS: What it means

3) As such securing fairness and reducing unfairness raise issues of **collective action** (of which regulation is only one aspect)

# FAIRNESS: What it means

Characteristics of Fairness/unfairness

**differ according to governance structure.**



# FAIRNESS: What it means

Characteristics of Fairness/unfairness differ according to governance structure => **different consequences.**

- **Markets**: main focus of competition policies  
(key concepts: market power, collusion)
- **Integrated organizations** (firms):  
(B2B contracts; labor contracts; stakeholders)
- **Hybrids** (supply chains, networks):  
(entering an even more complex world:  
my focus from now on)

# FAIRNESS: Its embeddedness in EU regulation



JRC TECHNICAL REPORTS

## Unfair trading practices in the food supply chain

A literature review on methodologies, impacts and regulatory aspects

**Authors** (in alphabetical order): Jan Fałkowski, Claude Ménard,  
Richard J. Sexton, Johan Swinnen and Senne Vandevelde

**Editors:** Federica Di Marcantonio and Pavel Ciaian

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## **DIRECTIVES**

### **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

Official Journal of the European Union, L 111/59 (25-04-2019)



# FAIRNESS:

## Its embeddedness in EU regulation

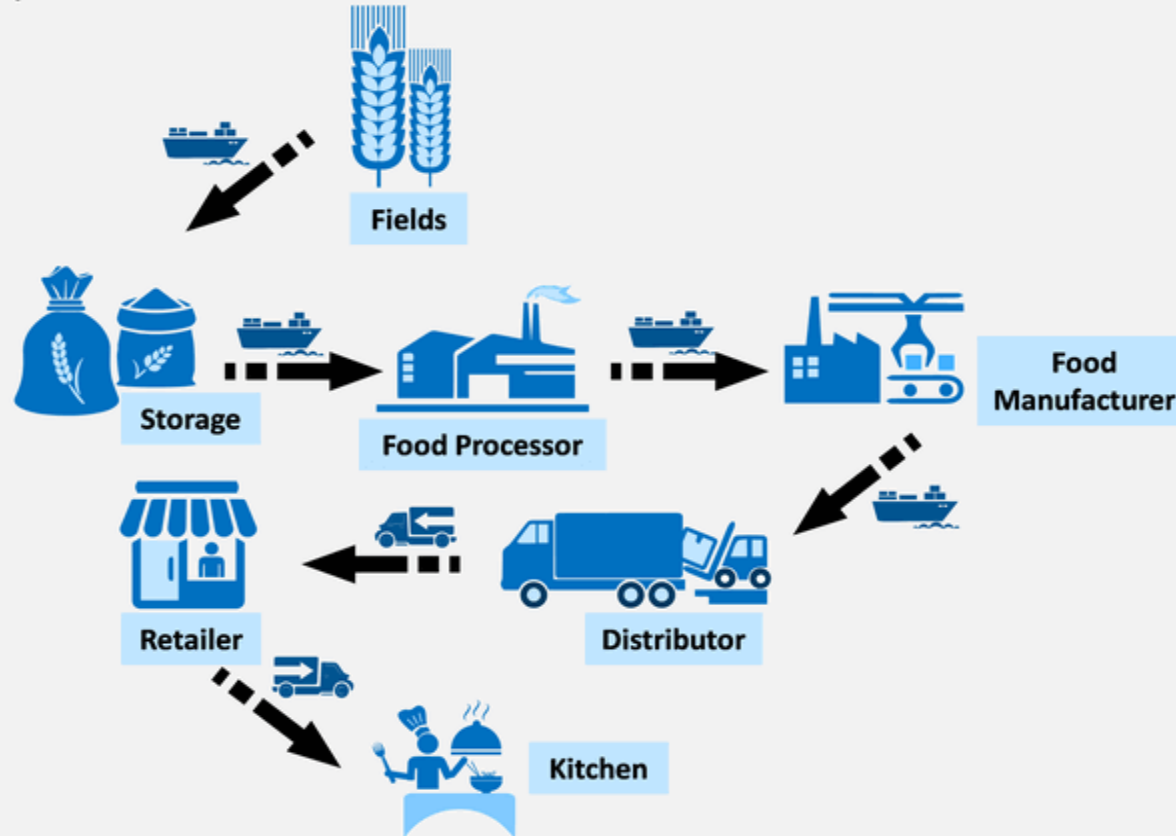
### CONCEPT

- «significant imbalances in bargaining power between suppliers and buyers of agricultural and food products» (Al. 1)
- UTP (**symptoms of imbalances**) (Al. 1)
  - “\* grossly deviate from good commercial conduct,
  - \* contrary to good faith and fair dealing and
  - \* unilaterally imposed by one trading partner on the other;
  - \* unjustified and disproportionate transfer of economic risk or
  - \* significant imbalance of rights and obligations on one trading partner.”

# FAIRNESS: Its embeddedness in EU regulation

## FOOD SUPPLY CHAIN

Enter your sub headline here



# **FAIRNESS:** **Its embeddedness in EU regulation**

## MAIN OBSTACLES:

**KEY PROBLEM** specific to supply chains:  
**MULTIPLE NODES**

- 1) Identification of UTP
- 2) Definition of appropriate sanctions
- 3) Issue of enforcement

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## MAIN OBSTACLES:

### ADDITIONAL **PROBLEMS** specific to supply chains in agrifood:

- 1) Perishability (at least for numerous products)
- 2) Seasonality on supply side, but also on demand side
- 3) Safety (and quality) raising specific problems of observability

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## EMBEDDEDNESS IN DIRECTIVE

### The **GOOD NEWS**:

- 1) Protection against UTP provided to « **producer organizations and associations of producer organizations include cooperatives.** » (Al. 10)
- 2) Concerns buyers established in Member states but also « established **outside the Union.** » (Al.12)

# FAIRNESS: Its embeddedness in EU regulation

## EMBEDDEDNESS IN DIRECTIVE

### The **GOOD NEWS**:

- 3) UTP **before** (at time transaction is decided –e.g., poorly designed contracts without adequate guarantee) and **after** (at time transaction is implemented –e.g. short notice cancellation of orders of perishable products –al. 17)

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## THE **BAD NEWS**: 4 UNSOLVED PROBLEMS

### Problem # 1: **B to B: is it that simple?**

Specificity of supply chain in agrifood (but not only!):  
multi-lateral agreements among uneven partners along  
extended supply chains: strong asymmetry

### Problem # 2: **How to coordinate** (key issue in supply chains)?

Risks of one party taking over coordination tasks and  
abusing of its central position (ex.: retailers)

(**who is the bad guy**)

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## THE **BAD NEWS**: 4 UNSOLVED PROBLEMS

Problem # 3: **How to restore relative symmetry**  
among so diversified partners?

Problem # 4: **Enforcement: which meso- institutions?**  
**What responsibilities? What resources?**

« ...the burden of proof and the definition of supply agreement are those laid down by the national law of Member States » (al. 24)

« Member States should designate enforcement authorities ... » (Al. 28)



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CONCLUSION:

SHOULD WE AND CAN WE GO FURTHER?

**Part of answers is in your hands!**