



Options taken in the transposition of the UTP- Directive by the Belgian legislator

FPS Economy

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Transposition in Belgian law of the UTP- Directive

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 - Black list
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- Introduction:
 - UTP- Directive: minimum harmonisation
 - B2b-Act of 4th April 2019:
 - ✓ abuse of economic dependence,
 - ✓ unfair terms and
 - ✓ unfair practices (and misleading / aggressive market practices)
 - Integration UTP Food Chain in b2b-Act: interplay open concepts with specific prohibitions
 - Other options taken: wider scope, some larger prohibitions and possibility to adapt new prohibitions

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A. Scope

- 1. Supplier
 - Directive: relative turn over supplier vs. buyer
 - Belgium:
 - “supplier”: maximum turn over of 350 million
 - No maximum for recognised producer organisations (art. 152 Reg. 1308/2013)
- 2. ‘agricultural and food products’: food and feed
 - products listed in Annex I to the TFEU
 - products not listed in that Annex, but processed for use as food using products listed in that Annex
 - Destination not always known when supply => food and feed

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- 3. No distinction “perishable-non-perishable products”:
 - Definition
 - Implications:
 - Payment terms: maximum 30 days for both
 - Cancelling of orders less than 30 days before delivery also for non-perishable products

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B. Integration UTP-Directive in B2B-Law

- General norm of correct market behaviour b2b (art. VI.104 CEL)
- Interplay with general prohibition of “misleading” and “aggressive market practices”
- Correlation practices- terms => interplay with b2b-legislation unfair terms

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- C. Black and grey list:

- 1. black list: in any case unfair and prohibited

- Practices (cancelling of orders, to pay for costs accountable to buyer, threat of commercial retaliation) and terms (payment period, unilateral change of terms)
 - In two forbidden practices larger protection:
 - Maximal payment period 30 days
 - Cancelling of orders less than 30 days before delivery

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2. Grey list: presumed to be unfair, unless previously agreed in clear and unambiguous terms in the supply agreement
- charging supplier with financial risk of unsold products, financial contribution of supplier for costs accountable to buyer, as marketing, advertising, staff for fitting-out premises used for the sale of the supplier's products
 - Costs borne by supplier for promotion of food and agriculture products of supplier:
 - Written estimation of expected sales, period of promotion, contribution by supplier
 - + explicit agreement by supplier
- 3. Possibility to modify or complete the lists by Royal Decree “in order to ensure fairness in commercial relationships” (by the 2 Ministers: Economy and SME (self-employed))

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- D. Enforcement
 - DG Economic Inspection: enforcement authority of economic law
 - (not competition authority)
 - Fear factor: possibility to anonymize complaints
 - Monitoring of unfair market behaviour: feedback.b2b@economie.fgov.be
 - Alternative dispute resolution?
 - Action for injunction
- Quid international private law? Supplier outside of EU protected...

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Conclusion: Accents in Belgian transposition act

- Simpler and wider personal scope: supplier < 350 million + recognised PO's, no distinction (non)perishable, wide definition of agricultural/food products
- Integration in b2b-rules: interplay with open concepts misleading/aggressive market practices, unfair terms
- Possibility to modify/complete black/grey list
- Control by Economic Inspection, report abuses, but “fear factor”: will stay difficult to intervene
- B2b-protection: is a new item in Economic Law, needed learning process...



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Thank you for your
attention

Questions?

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