

Unfair trading practices in the agricultural and food supply chain

New rules in force from 1 November 2021



New rules to tackle unfair trading practices

New legislation in Sweden from 1 November 2021 (similar rules also to be applied throughout the EU)

- **Challenge:** The issue of a significant imbalance in bargaining power between suppliers and buyers of agricultural and food products has long been on the agenda in the EU – in particular, for Sweden, as regards the food retail sector's market influence and practices.
- **Solution:** In 2019, the EU adopted a [Directive](#) that prohibits unfair trading practices between buyers and suppliers in the agricultural and food supply chain (UTP-Directive 2019/633). The Directive puts an end to ten years of legislative work within the EU and aims, in part, to address problems that have proven difficult to tackle with traditional competition and marketing law.
- **Swedish proposal:** In Sweden, the Directive is to be implemented through a new law on buyers' unfair trading practices against suppliers in the agricultural and food supply chain. [The Swedish legislation](#), which will enter into force on 1 November 2021, extends beyond the minimum requirements set out in the UTP-Directive in several respects.

The Swedish rules apply to buyers of agricultural and food products with an annual turnover of at least 2 mEUR

- **Parties:** The rules apply to all commercial purchases and aim to prevent certain unfair trading practices that buyers (e.g. food retailers) of agricultural and food products may impose upon their suppliers (e.g. farmers, distributors, food producers, and producer organisations).
- **Unfair trading practices:** There are nine prohibited practices, see the "black list" on the next page. There are six other trading methods, the so-called "grey list", that are prohibited *unless* there is a clear and unambiguous agreement between the parties to apply them.
- **Scope:** All companies in the agricultural and food supply chain are covered by the scope of the Swedish rules, provided that at least one of the parties is established within Sweden and provided that the buyer has an annual turnover exceeding 2 mEUR or is a government body established in the EU.
- **Agricultural and food products:** The rules covers a very wide range of products, e.g. food, cut flowers and animal feed.

The Swedish Competition Authority is to be the relevant enforcement authority

- **Enforcement authority:** The Swedish Competition Authority (SCA) is to be the [enforcement authority](#), using powers like those relied on under competition law – it can receive tips, complaints, and has the power to conduct investigations on its own initiative.
- **Far-reaching investigative powers:** The SCA will have the scope to require a buyer, supplier or other person to provide necessary information and documents, and call individuals in for questioning. Such measures can also be implemented on the premises of companies (in some cases without the company being informed in advance, known in competition law terms as a "dawn raid").
- **Sanctions:** The SCA will also be able to impose a fine amounting to a maximum of one percent of the turnover of the company concerned, and the possibility to require companies to bring the prohibited trading practice to an end, coupled with a penalty.

Knowledge about the rules is both sword and shield

- Many companies are both suppliers and buyers, as defined by the legislation (e.g. food producers that both buy and sell products covered by the rules). This gives rise to particularly strong reasons to learn more about the new rules – especially in light of the fact that the legislation will enter into force during the contract period of many agreements that are already being negotiated.
- [Mannheimer Swartling's EU and Competition Practice Group](#) is available to discuss any questions about the new legislation.

Unfair trading practices covered by the new rules

Black list

Prohibited trading practices

1. The buyer pays the supplier for agricultural and food products later than 30 days after the supplier's payment request
2. The buyer cancels orders of agricultural and food products with notice of less than 30 days
3. The buyer unilaterally changes the terms of a supply agreement that concern the frequency, method, place, timing, volume, quality standards, terms of payment or prices
4. The buyer unilaterally changes the terms of the supply agreement that concern the provision of certain specified services
5. The buyer requires payments from the supplier that are not related to the sale of the agricultural and food products of the supplier
6. The buyer requires the supplier to pay for deterioration or loss that occurs on the buyer's premises or after ownership has been transferred to the buyer, where such deterioration or loss is not caused by the negligence or fault of the supplier
7. The buyer refuses to confirm in writing the terms of a supply agreement (with certain exceptions regarding producer organisations)
8. The buyer threatens to carry out, or carries out, acts of commercial retaliation against the supplier if the supplier exercises its contractual or legal rights
9. The buyer requires compensation from the supplier for the cost of examining customers' complaints relating to the sale of the supplier's products, despite the absence of negligence or fault on the part of the supplier

Grey list

Prohibited unless agreed in clear and unambiguous terms

10. The buyer returns unsold products to the supplier without paying for those products.
11. The buyer returns unsold products without paying for the disposal of those products.
12. The buyer requires payments as a condition for stocking, displaying or listing its agricultural and food products, or of making such products available on the market
13. The buyer requires the supplier to pay for the advertising or marketing by the buyer of agricultural and food products
14. The buyer charges the supplier for staff for fitting-out premises used for the sale of the supplier's products
15. The buyer requires the supplier to bear all or part of the cost of any discounts on agricultural and food products that are sold by the buyer as part of a promotion. Regardless of the agreement, the buyer must prior to its requirement specify the period of the promotion and the expected quantity of the agricultural and food products to be ordered at the discounted price

Right to request estimate of cost in writing

- If the buyer requires payment for the situations referred to in p. 12-15, the supplier always has the right to request that the buyer provides an estimate in writing of the payments per unit or the overall payments
- In the situations referred to in p. 12-14, the supplier also has the right to an estimate of the cost to the supplier and the basis for that estimate in writing