



# **Monitoring of the implementation of principles of good practice in vertical relationship in the food supply chain**

Final report



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**MONITORING OF THE IMPLEMENTATION OF PRINCIPLES OF GOOD PRACTICES IN  
VERTICAL RELATIONSHIP IN THE FOOD SUPPLY CHAIN**

*Tender EASME/COSME/2014/06*

**Final Report**

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## **MONITORING OF THE IMPLEMENTATION OF PRINCIPLES OF GOOD PRACTICES IN VERTICAL RELATIONSHIP IN THE FOOD SUPPLY CHAIN**

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## List of acronyms

EEN	Enterprise Europe Network
EU28	European Union
GSCOP	UK Groceries Supply Code of Practice
NGOs	Non-Governmental Organisations
PGP	Principles of Good Practice in vertical relationships in the food supply chain
SCI	The Supply Chain Initiative
SMEs	Small and Medium-sized Enterprises
UTPs	Unfair Trading Practices

### Associations/organisations/NGOs

EU level	
AIM	European Brand Association
CELCAAA	European Agricultural and Agri-food Trading Association
COPA - COGECA	European Farmers and Agri-cooperatives Association
ERRT	European Retail Round Table
UEAPME	European SME organisation

Belgium	
AGROFRONT	Federation of Farmers' Organisations (ABS, Boerenbond, FWA)
BABM	Belgilux Association of Branded Products Manufacturers
BEMEFEA	Belgian Compound Feed Industry Association
COMEOS	Belgian Retailers Association
FEVIA	Belgian Food Processors Association
UCM	Walloon SMEs Association
UNIZO	Flemish SMEs Association

Finland	
ETL	Finnish Food and Drink Industries Federation
FCCA	Finnish Consumer Association
FGTA	Finnish Grocery Trade Association
MTK	Central Union of Agricultural Producers and Forest Owners

The Netherlands	
CBL	Dutch Retailers Association
FNLI	Dutch Manufacturer and Brands Association
LTO	Dutch Farmers Organisation
TISCO	Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems

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<b>Germany</b>	
BVE	Federation of German Food and Drink Industry
DBV	German Farmers' Union
HDE	German Retail Federation

<b>Others</b>	
ACCC	Australian Competition and Consumer Commission
CAS	Argentinian Chamber of Commerce for supermarkets
COPAL	Argentinian Association of Food and Drinks Manufacturers
HMA	Australian Horticulture Mediation Adviser



## **Executive Summary**

### ***Introduction: unfair trading practices in the food supply chain***

All EU consumers are in contact with the food supply chain on a daily basis. This delivers food and beverage products to them through a variable number of steps which include farming, processing and distribution. Interaction between operators is essential for the functioning of the supply chain: imbalances in bargaining power between actors can lead to the application of so-called unfair trading practices (UTPs) by the stronger actors on the weaker ones. UTPs can be defined as “practices that grossly deviate from good commercial conduct and are contrary to good faith and fair dealing”. The presence of UTPs can have negative implications for the competitiveness of the EU food supply chain which can indirectly affect final consumers. Besides legislation, voluntary/self-regulatory approaches involving operators and other stakeholders are also used to tackle UTPs in the EU food supply chain. Voluntary initiatives aimed at addressing UTPs have been implemented both at EU and Member State level, and more are being developed. Such initiatives, their operation and effectiveness constitute the object of this study.

### ***Objective and scope of the study***

The objective of this study was to evaluate retrospectively the effectiveness of the EU-level “Supply Chain Initiative” (SCI) and of three national voluntary initiatives set up in Belgium, Finland and the Netherlands in tackling UTPs. The study also called for a preliminary assessment of the national initiative set up in Germany, which is still in its inception phase. For each initiative, the study assessed the level of participation, internal governance and monitoring systems, effectiveness in tackling UTPs, transparency, confidentiality, awareness and trust, and implementation costs for SMEs. In relation to the national initiatives, the influence of the “Principles of Good Practice” (PGP) adopted in November 2011 as a result of the multi-stakeholder dialogue within the “High Level Forum for a better functioning food supply chain”, as well as the influence of the “Supply Chain Initiative”, were also assessed.

The study was carried out between January 2015 and January 2016; besides the case studies on the SCI and on the four national initiatives, it also featured an investigation on exposure to UTPs in the EU28 Member States. The assessment covered all the stages of the food supply chain: farming, food and beverage production, wholesaling and retailing.

### ***Methodology***

The objectives and complexity of the assessment required the use of a combination of different data collection tools (in order to source evidence from both primary and secondary sources) and the adoption of different assessment methods, namely sets of ad hoc criteria and indicators, SWOT analysis and critical factor analysis.

The **data collection strategy** included a *survey* which targeted operators at all stages of the food supply chain in all 28 Member States, as well as other stakeholders (mainly associations/NGOs). A total of 1,124 completed and valid responses were collected. The survey was especially important in collecting the views of stakeholders on the relevant aspects for the assessment of the initiatives.

*Literature review* played a relatively limited role being especially focused on investigating the occurrence and impact of UTPs in the EU. *Desk research* was mainly focused on the analysis of official documents and internal procedures of the initiatives to be assessed.

*Interviews with stakeholders and independent experts* were made in a way to have different perspectives on the SCI and on the national initiatives. Elements and insights drawn from interviews were extremely important in complementing evidence drawn from the survey and desk research.

The **methodology for the assessment** of the SCI and of the four national initiatives focused on some key aspects, and combined quantitative indicators and qualitative elements.

Some of the main **limitations** of the analysis, which were duly taken into account in the interpretation of the results of the study, are the following:

- A low response rate of farmers to the survey, which was addressed through the use of qualitative elements mainly drawn from interviews.
- Because the German platform is still in its development stage, most of the topics of interest for the evaluation could not be properly and fully assessed.
- Some of the dispute resolution options promoted by the SCI have not yet been used in practice; as a consequence, the assessment of their effectiveness has been based more on “theoretical” judgments rather than on empirical observation.

### **Overview of the Supply Chain Initiative**

On 16/09/2013, seven EU-level associations launched the voluntary framework *The Supply Chain Initiative* (SCI) with the aim of promoting fairer business relations along the food supply chain. The SCI is the result of a process started in 2009 with the European Commission Communication “A better functioning food supply chain in Europe”. A cornerstone of the process is the “Principles of Good Practice in vertical relationships in the food supply chain” (PGP), adopted on 29/11/2011, which provide a framework for conducting business that respects contractual freedom and ensures competitiveness.

The SCI pursues its objectives by asking its members to commit themselves to the PGP in daily negotiations with their business partners and, in case of UTP-related disputes, by encouraging the parties to find an agreed solution that will not interrupt the business relationship. The SCI promotes the use of self-regulation mechanisms for the resolution of UTP-related disputes. In case of *bilateral disputes*, a registered company which receives a complaint must explore alternative dispute resolution mechanisms in order to prevent the recourse to legal action and to facilitate an agreement between parties. In case of *aggregated disputes*, namely when several companies are similarly affected by UTPs, the complaint can be submitted directly to the *Governance Group* of the SCI, which can issue guidance and interpretation of the PGP. The Governance Group can also suspend or exclude a registered company if a *breach of process commitments* occurs (i.e. when it is proved that a registered company does not meet the obligations required to be a member of the initiative).

The SCI is open to companies operating at all stages of the food and beverage supply chain: farmers, producers, wholesalers and retailers. The focus on SMEs is a fundamental element of the SCI; nonetheless, the initiative is designed for companies of all size. In December 2015, 375 groups and companies had registered to the SCI, representing 1,202 operating companies (including subsidiaries) across all EU Member States. More than half of the registered companies are SMEs.

The Governance Group which manages the SCI is composed of official representatives of all the seven signatory associations, which represent the food and drink industry (FoodDrinkEurope), the branded goods manufacturers (AIM), the retail sector (the European Retail Round Table – ERRT; EuroCommerce; EuroCoop; Independent Retail Europe), and traders of agricultural products (CELCAA).

### **Overview of the voluntary initiatives and national stakeholders' platforms**

**Belgium:** the Belgian initiative (*Belgian code of conduct for fair relations between suppliers and purchasers in the food supply chain*) is part of the broader Belgian Agro-food chain Platform. The code was signed on 20/05/2010 and revised on 10/06/2014. Members of the initiative are federations and individual operators, which together represent the key actors of the food chain: farmers, producers and retailers; federations of Flemish and Walloon SMEs are also members. A governance group composed of official representatives appointed by the main sector federations oversees all the activities of the platform.

**Finland:** the Finnish initiative (*Board of Trading Practices in the Food Supply Chain*) was established in January 2014. The board is chaired by an independent party. It originally represented all the interest groups in the food supply chain, but in September 2015 the farmers' association resigned from the board, citing as a reason the board's limited powers and the absence of significant practical achievements in tackling UTPs.

**The Netherlands:** the *Dutch pilot initiative in the agro-food sector* was launched on 16/09/2013. The governance board consists of four members: one representative of the Ministry of Economic Affairs as a neutral party, and one representative for each of the three sector federations supporting the initiative: farmers, food and beverage producers, and retailers. The initiative is currently on hold and under evaluation by an independent party for the benefit of the Dutch parliament and of the three sector federations. Decisions on the future of the platform will be taken by stakeholders in the coming months, also in the light of the results of the evaluation.

**Germany:** the German national dialogue platform was launched in May 2013 in order to lay the foundation of an initiative similar to the SCI in Germany. The finalization of the initiative is planned for January 2016 and its functioning mechanisms are close to being finalised. National federations representing farmers, food and beverage producers, retailers and manufacturers of branded products are the founders of the platform.

### **Conclusions of the evaluation**

#### *Supply Chain Initiative*

**Participation** in the initiative increased remarkably in its first two years of existence, with the expansion of membership. The share of SMEs within the membership also increased but is still lower than their actual importance within the EU agro-food system (69% of the SCI members are SMEs). Another positive aspect is the involvement in the initiative of a good share of the EU top food and beverage producers and retailers. Some 58% of the current members of the SCI are food and beverage producers, while 38% are retailers or wholesalers. The main reasons for membership are given as the possibility to address disputes in a fair and transparent manner and the support of a voluntary approach as an alternative to legislation. On the negative side, farmers account for just 4% of total membership: under-representation of farmers, and the lack of support by their EU-level reference organisation COPA-COGECA, compromises the initiative, as the farming sector – due to its fragmented structure and to the specificities of production processes (seasonality, perishable products, etc.) – is generally considered to be more exposed to UTPs.

The **governance** structure of the initiative is generally considered adequate by its members. However, stakeholders outside the initiative and external observers highlighted two important weaknesses: the double role played by each member of the Governance Group, who also represents the respective EU-level stakeholder organisation (so-called “two-hats issue”), and the need to take unanimous decisions which could limit decisions on controversial issues. These limitations can be seen as more theoretical than practical, since the involvement of the Governance Group in the actual discussion of UTP cases has been very limited so far. However, such limited involvement might be related to the perceived partiality of the Governance Group,

with the risk of a “vicious circle” (no disputes are brought before the Governance Group because of these limitations and - as a consequence – the Governance Group is denied a chance to prove in practice the adequateness of its decisional mechanisms).

The internal **monitoring system** is mainly based on data collected through the SCI annual survey of its members, a tool which is considered to be a cost-effective solution. However, reliability of survey results might be limited, and there is no possibility to verify information on crucial aspects (actual implementation of process commitments, number of bilateral disputes treated and solved, ways of resolution, etc.). These weaknesses can have negative implications for the effectiveness of the SCI, particularly in relation to actual implementation of the process commitments by member companies. Analogous limitations also affect the level of **transparency** ensured by the initiative: while this is generally appreciated by operators for clarity of procedures and of the process to join the initiative, it is not perceived as adequate in the communication of information on disputes, ways of resolution and compliance to process commitments.

The robustness of conclusions on the **effectiveness of the SCI in tackling UTPs** is in part limited by the absence of practical experience of the initiative in dealing with UTP cases. Furthermore, stakeholders hold diverse views on this according to their status (members versus non-members) and on the level of the supply chain in which they operate. As a generalisation, retailers expressed a very positive judgement on the effectiveness of the SCI, while farmers expressed a more negative judgment. SCI members tended to express a more positive judgement than non-members while judgement of organisations emerged as being particularly negative.

The key *strengths* of the SCI in tackling UTPs were identified as its positive role in promoting procedures for tackling UTPs representing an alternative to costlier and lengthier legal solutions; a culture of fair business behaviour and dialogue among operators; a greater awareness and a better perception of the issue of UTPs.

The main *weaknesses* of the SCI in terms of effectiveness in tackling UTPs were identified as: the lack of effective deterrents against unfair behaviour; the still unclear practical relevance of the outcomes of some of its procedures, specifically in relation to aggregated disputes (for which no concrete cases have yet taken place); the perceived partiality of the Governance Group by external observers which could ultimately limit participation in the initiative and/or the recourse to the dispute resolution mechanisms that it promotes.

The safeguarding of **confidentiality** resulted to be of critical importance for the functioning of the SCI. Safeguarding the parties from the exposure to the risk of retaliation, emerged as an essential component of any dispute resolution process. The main strength of the SCI in this respect was found in its rules of procedure, which foresee a detailed process to guarantee the secrecy of any sensitive information and the protection of complainants in the aggregated disputes. It is important to reiterate that this process has never been tested in practice. Stakeholders representing the weakest operators in the food chain expressed concern about the capacity of the SCI governance structure to effectively address transparency and confidentiality-related issues, due to the absence of a third-party, independent body, and with reference to the current composition of the Governance Group.

As for the **awareness** of the initiative among operators, several efforts have been made to increase this. These efforts have achieved different results depending on the level of the supply chain and on the size of operators at which they were targeted. Retailers showed the highest awareness levels, whereas awareness of the SCI among farmers was found to be very low (the lack of support to the initiative by COPA-COGECA has probably not helped in this respect). Furthermore, awareness among SMEs was found to be much lower than among large-sized companies: this can be explained in terms of greater involvement of large-sized companies in their sector associations’ activities at national and EU level, and also by the fact that these companies are easier to reach via communication programs. These differences aside, the overall level of awareness of the initiative in the EU28 remains rather limited.

The level of **trust** in the SCI was found to be very high among member companies and retailers, especially when compared to non-member companies, farmers and organisations. External experts and organisations expressed serious concern for certain aspects of the organisation and functioning of the initiative which can undermine the level of trust in the SCI and, ultimately, prevent the participation of weaker categories: in particular, concern was expressed with reference to the actual effectiveness of the SCI in addressing UTPs, the impartiality of its governance structure and its capacity to ensure confidentiality.

The survey clearly showed that the direct **costs incurred by SMEs to join the SCI** are limited, and should not prevent their participation. Indirect costs are more important in this context (time, organisational efforts and resources for fulfilling the requirements for registration in the SCI), especially if these are measured against the perceived potential benefits. If benefits are seen as limited, indirect costs will almost certainly discourage participation by SMEs. In this respect, it must be noted that since most of the requirements were recently relaxed for micro and small enterprises, indirect costs should no longer represent an obstacle to this type of enterprises willing to “join the SCI just to see how it works”.

The following **conclusive remarks on the SCI** can be drawn from the assessment.

By admission of the Governance Group itself, and as confirmed by most external observers, the SCI has rather limited powers to directly enforce measures to address UTPs. The declared objective of the SCI is that of promoting and developing cooperation and fair dealing along the food supply chain, and of facilitating dispute resolution through collaborative approaches and without recourse to legal action. It should be noted that the initiative has been operational for a rather short period (two years): changes in business practices usually require time to spread, especially when the incentive for operators in applying such practices is important.

*The actual impact of the SCI can be deemed important in relation to the rather limited scope of the initiative:* the SCI has increased the attention on UTPs and has prompted a dialogue on this issue in the food supply chain; it has also encouraged the adoption by operators of a more collaborative approach to dealing with such issues. It is, however, worth noting that some evidence suggests that in any case UTPs have usually been managed by operators through informal approaches, mainly due to the length, cost and uncertain outcomes of court cases.

*On the contrary, the actual achievements of the SCI may seem very modest if measured against the actual or perceived magnitude and seriousness of the issue of UTPs in the food supply chain, and even more so if measured against the expectations of the stakeholders which are most seriously impacted by UTPs, and of policy makers.*

As for the **introduction of possible improvements** in the SCI, the findings of the assessment suggest that the need to guarantee transparency in procedures and the central role of confidentiality should be better matched with different **enforcement mechanisms**. Enforcement powers should ensure the *practical effectiveness of available tools for addressing disputes through the initiative*: in this context – also on the basis of findings of previous research on the study topics – the possibility to **involve an independent party with strong ex-officio powers** should at least be considered (in spite of the lack of support for this within the present governance structure). This option would also help to address criticism concerning the perceived partiality of the governance group (“two hats issue”), thus representing an improvement in the **governance structure** of the initiative, also fostering **trust** in the SCI by external observers.

More specifically, possible improvement of the enforcement mechanism of the SCI would imply considering:

1. the *possible recourse to a “third party / independent” body in charge of dealing with the entire process of tackling UTPs* (from receipt of complaints to imposition of sanctions, if foreseen and needed), and possibly also *of promoting ex-officio investigations and of considering individual confidential complaints*;
2. the *possible introduction of economic sanctions*.

In the light of the weaknesses of the current monitoring system, the creation within the initiative of a *body with ex-officio powers to start investigations on (alleged or even potential) breaches of the process commitments* could improve, *inter alia*, the **internal monitoring** of the SCI for this critical aspect.

Finally, with reference to the still rather limited **awareness** of the SCI among operators (especially SMEs), a potentially effective solution to address this serious weakness could be *promoting the greater involvement of current SCI members (especially large companies) in actively endorsing the initiative among their trading partners, and/or the involvement of other entities (for instance the Chambers of Commerce or the European Commission itself) in providing information* about the SCI. This would also help to address the problem that the promotion of the SCI is unlikely to be a priority for EU-level and national organisations not supporting the initiative (this is especially relevant for the farming sector).

### *National initiatives*

The **Belgian platform** has the longest track record among the five covered in the study, and is also the only one with practical experience in dealing with UTP cases, having handled 17 cases since 2010. Although the initiative pre-dates the SCI and the PGP, they both had a clear impact on the revision process of 2014. The supporting organisations represent the majority of operators in the related sectors in Belgium. The platform is generally considered effective and adequate, also thanks to specific features like sectorial working groups, which helped to promote the involvement of member companies and the participation in the governance structure of representatives of the farming sector and of SMEs. The initiative has an active dispute resolution mechanism and since 2014 it can deal both with individual and aggregated disputes. The initiative is generally considered to have a positive impact on trading environment, mainly deriving from better awareness of UTPs and from the possibility for operators at different levels of the chain to discuss UTP-related issues through the platform. Nonetheless, the initiative also presents some weaknesses. In particular, the overall level of awareness has remained fairly low, and not just in the wider agro-food chain, but also among the members of the initiative (in certain cases, individual companies were automatically registered when their reference associations became members of the initiative). The initiative has already taken action to address these weaknesses: the appointment of an independent chairperson is now envisaged, and efforts to increase the general visibility of the initiative are about to be undertaken.

The **Finnish platform** was slightly influenced by the PGP since similar principles were already familiar to food chain operators. The initiative has a governance structure which involves an independent figure with legal and economic expertise, a feature which should ensure impartiality and a high level of expertise. The board can issue guidance on the interpretation of PGP in case of aggregated disputes involving Finnish parties. However, no disputes have been brought before the board to date; it has hence focused on promoting good trading practices and the implementation of PGP in Finland, rather than on being a means for settling disputes. The limited practical results in tackling UTPs achieved by the initiative led to the recent withdrawal of the farmers' association from its constituency. Membership is now composed predominantly of retailers, with a minority of food and beverage producers. The lack of representation of the farming sector in the initiative, together with the rather limited enforcement powers of the board, constitute serious weaknesses, which can raise doubts about the overall effectiveness of the initiative. Possible improvements suggested by the assessment concern the implementation of a lighter registration system for SMEs, in order to increase their participation.

The **Dutch platform** was strongly influenced by the PGP and the SCI. Even if it has not dealt with UTP-related disputes so far, on three occasions the Dutch platform succeeded in promoting dialogue among parties, thus preventing potentially serious disputes between purchasers and suppliers. In these cases, the companies in alleged breach of the PGP decided to change practices without the need for discussion. In this context, a certain degree of practical effectiveness must be recognized. Furthermore, most interviewees confirmed that the initiative had benefits in terms of promoting a change of attitude of operators towards UTPs, and better



cooperation along the supply chain. On the negative side, the absence of farmers who have registered individually to the initiative constitutes a weakness. Another issue is the absence of submitted complaints, which can be a sign that the initiative is not working as expected. Finally, important decisions on the future of the initiative will be taken by the Dutch Ministry and by sector associations in the coming months; in this context, future developments, and in particular the continuing support by all the levels of the Dutch supply chain, will be extremely important to improve the effectiveness of this platform. Suggestions for improvements mainly concern the possibility for micro and small companies to submit complaints even if they are not registered in the initiative. Moreover, in order to address the fear factor and hence to promote an increase in the number of complaints submitted to the initiative, the idea of an independent commission dealing with complaints has been suggested on several occasions, as well as the possibility to delegate more responsibilities to the Ministry member, due to its neutral role in the platform.

The **German platform** is still in its inception phase. Since the initiative is not yet operational, and since some of its key features still have to be finalised, no conclusions can be drawn at this stage. The only elements to be highlighted are the current involvement of all the levels of the food supply chain (including farmers and SMEs) in the design of the initiative, and the declared objective to tailor the PGP and the functioning mechanisms of the SCI in order to adequately reflect the specificities of the German situation. Individual registration of companies to the platform is not foreseen, and the envisaged dispute resolution mechanisms will be made available to all operators. A campaign to advertise the initiative has been planned with the aim of raising awareness among German operators.

#### *Perceived exposure to UTPs among operators of the food chain in the EU*

The analysis of evidence from both desk research and the survey results allowed the study team to conclude that **UTPs seem to occur across all Member States and at all stages of the food supply chain**. The survey showed that the perceived exposure to UTPs of retailers is significantly lower than those of operators in the upstream stages of the chain. Differences among Member States do exist (in particular, the survey showed a higher perceived exposure to UTPs in New Member States than in former EU15 countries), but the problem is present in each Member State, and is perceived as serious by most stakeholders. That said, **UTPs are still surrounded by a degree of uncertainty**, due to the fact that they are far from being clear-cut issues; a limited number of cases has actually been addressed through “soft” tools (such as the ones promoted by the initiatives under study) or legal proceedings, despite the increasing emergence of UTP legislation and independent enforcement bodies.

With the exception of commercial retaliation, the most common UTPs are rather “generic” in nature (e.g. the unfair transfer of a commercial risk, or ambiguous contract terms). The survey results also lead to the conclusion that the problem of UTPs is fundamentally domestic (UTP cases with cross-border relevance were found to be rather uncommon).

As for the **most effective approaches to tackle UTPs**, the survey highlighted a clear preference among stakeholders for two approaches: “specific legislation at EU level” and “combination of voluntary/self-regulatory initiatives and public enforcement”. The survey also highlighted a clear preference for EU-level legislation over national legislation, and for the “mixed” approach (“soft” tools and public enforcement) over the “purely voluntary approach”. However, *average data were found to hide significant differences, mainly linked to the typology of stakeholders and to geographical factors*. EU-level and/or national legislation, or a combination of voluntary/self-regulatory initiatives and public enforcement, are viewed favourably especially by food and beverage producers, farmers, wholesalers and sector associations; all these categories tend to judge the sole recourse to voluntary initiatives as an ineffective solution. Retailers, on the other hand, expressed a clear preference for the sole recourse to voluntary initiatives (at EU or Member State level). A clear preference for “legislation” (be it at national or EU level) emerged in most New Member States, whereas

the preference for a “combination of voluntary/self-regulatory initiatives and public enforcement” was found to be significantly higher in the former EU15 member States. The survey also revealed the presence of a *significant linkage between the preference for voluntary/self-regulatory initiatives and the operation/planned launch of stakeholders’ platforms aimed at addressing UTPs*.

The survey showed that the positions of stakeholders with respect to **specific remedies to contrast UTPs** are mixed; retailers expressed a clear preference for a “preventive” remedy (i.e. the publication of names of companies which are self-committed to fair B2B trading relationships). The other categories preferred instead “punitive” remedies, with special reference to “naming and shaming” and monetary penalties.

Elements from the reviewed literature, insights from interviewed stakeholders and independent experts, and the clear preference expressed by survey respondents for “specific legislation at EU level” or for a “combination of voluntary/self-regulatory initiatives and public enforcement”, lead the study team to conclude that a *mixed system, envisaging self-regulatory schemes enforced by an independent authority with wide powers* (e.g. the possibility to promote investigations ex officio and to consider also confidential complaints), *within a general regulatory framework provided by EU-level specific guidelines or provisions*, would constitute an *approach which combines effectiveness with the acceptance of stakeholders*.



## 1 Introduction: study context and objectives

Imbalances in bargaining power between economic actors can result - albeit not necessarily – in the application of the so-called unfair trading practices (UTPs) by the stronger actors on the weaker ones. According to the *Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe* (COM/2013/037 final), “UTPs are practices that grossly deviate from good commercial conduct and are contrary to good faith and fair dealing. UTPs are typically imposed in a situation of imbalance by a stronger party on a weaker one and can exist from any side of the B2B relationship and at any stage in the supply chain”. UTPs in the food supply chain have received the attention of policy makers and of stakeholders in the agro-food system at both EU and national level; a number of initiatives have been undertaken to address such issue, in the wider framework of EU policies aimed at promoting sustainable and market-based relationships between stakeholders in the food supply chain.

Among such initiatives, the “Supply Chain Initiative” (SCI) is an EU-level voluntary framework set up by business organisations from the processing industry, wholesale and retail sectors, in order to implement the “Principles of Good Practice” (PGP) agreed in November 2011 by stakeholders in the framework of the “High Level Forum for a better functioning food supply chain”. Other voluntary initiatives aimed at addressing UTPs have been undertaken at Member State level.

The launch of the SCI was welcomed by both the Council of the EU and the European Parliament, which called on the Commission to report on its practical effects within one year of its entry into force, and then in 2015. In this framework, the Executive Agency for Small and Medium-sized Enterprises (EASME), acting under powers delegated by the European Commission, launched an invitation to tender for monitoring the implementation of the PGP in vertical relationships in the food supply chain. The present report illustrates the results of the related investigations, which were aimed at evaluating the effectiveness of the SCI and of four notable examples of national voluntary initiatives / stakeholders’ platforms set up in Belgium, Finland, The Netherlands and Germany, in order to address the phenomenon of UTPs. In other terms, the objective of the study was that of assessing whether and to what extent the SCI and the aforementioned national initiatives are capable of providing remedies against UTPs and of minimising their negative effects. Another goal of the study was to contribute to identify the characteristics that a voluntary framework should have in order to reduce UTPs in the food supply chain. With specific reference to the national voluntary initiatives, the study was also aimed at assessing the influence which the adopted PGP and/ or the SCI might have had on their creation, rules, design, comprehensiveness (involvement of operators representing the whole food supply chain) and working methods.

## 2 Study methodology

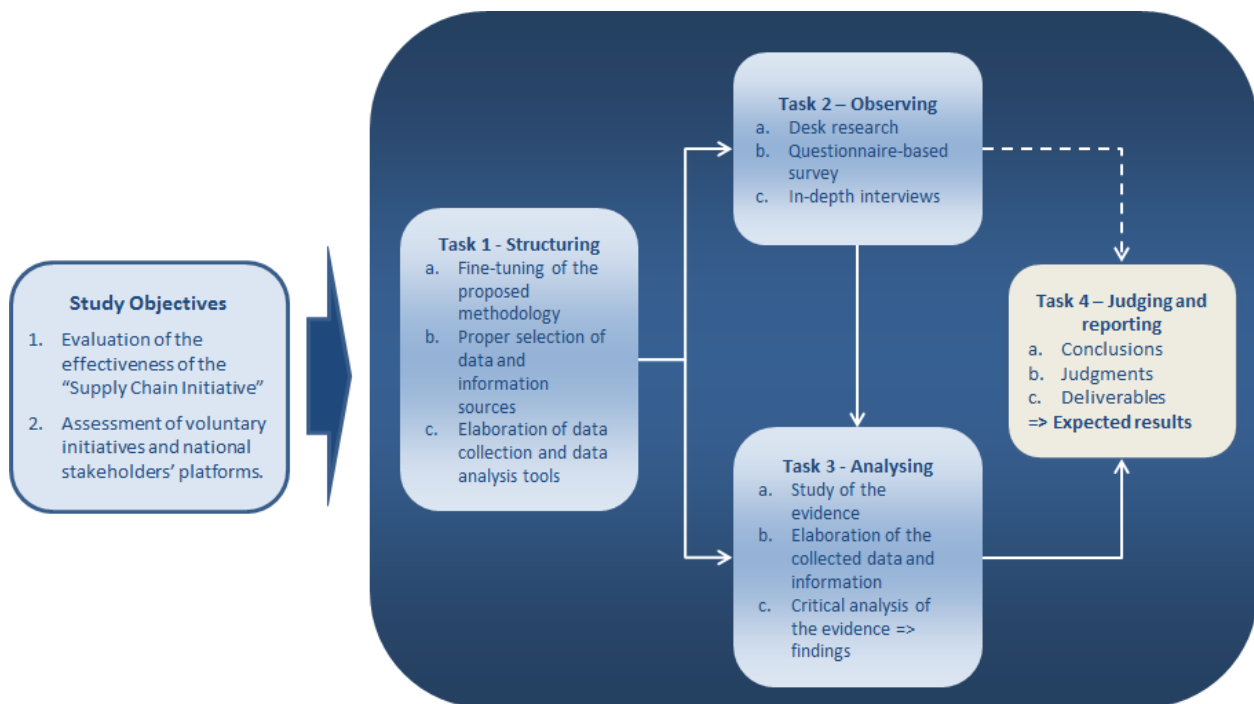
This chapter provides an overview of the key elements of the study methodology: overall approach (linking the four study tasks to the study objectives) and data collection strategy; methodology for the assessment of the SCI and of the national stakeholders’ platforms. It briefly outlines (§ 2.1) the role played by each method (desk research, in-depth interviews and questionnaire-based survey) in the data collection strategy, providing a detailed explanation of the survey methodology (due to its importance in the study). It describes (§ 2.2) the methodology for the assessment of the SCI, which focused on the level of participation, governance and internal monitoring, effectiveness, transparency, confidentiality, awareness, trust and implementation costs for SMEs. It highlights the role played by each data collection method and listing the key criteria and indicators used in the assessment. It finally provides a similar description (§ 2.3) for the methodology for the assessment of national stakeholders’ platforms. Additional details on the study methodology are provided in Annexes 1 and 2.

## 2.1 Overall approach and data collection strategy

The complexity and specificity of the assessment, together with the recent launch of most of the initiatives under study (which limited the availability of relevant bibliography), suggested the use of a **combination of different data collection tools** (in order to source evidence from both primary and secondary sources) and the adoption of **different assessment methods**.

The **overall approach to the study** is outlined in Figure 2.1, which links the activities carried out under the **four main tasks** (1 “structuring”; 2 “observing”; 3 “analysing”; 4 “judging and reporting”) to the **final output** of the study.

Figure 2.1 – Overall approach to the study



The **data collection strategy** for the study was based on a combination of methods and tools:

1. **Desk research**, including:

- a. Collection of the relevant documentation.
- b. Review of the available literature (of both general and specialist nature).
- c. Collection of the relevant datasets and mining of the available databases.

Desk research played an important role in collecting evidence on all the relevant topics, but was especially focused on investigating on the occurrence and impact of UTPs in the EU as a whole and in individual Member States.

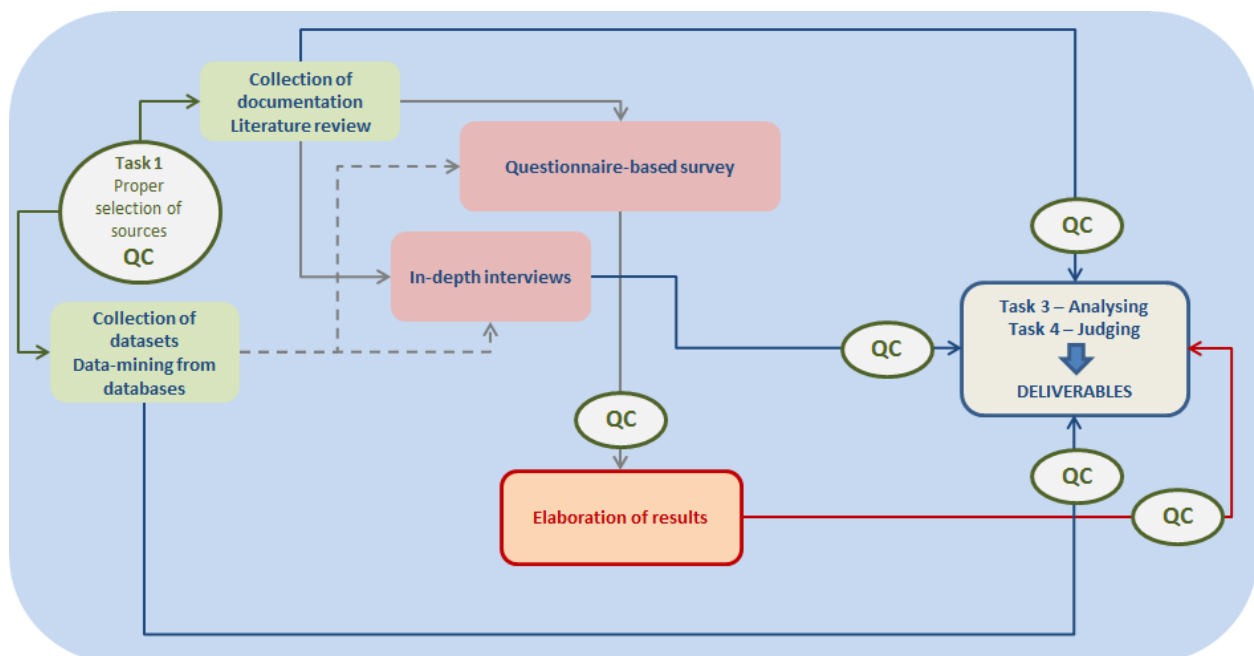
2. **In-depth interviews**, which were mainly aimed at collecting elements and insights to:

- a. complement the quantitative and qualitative evidence collected via desk research and the survey (see points 1 and 3);

- b. cross-check the validity and reliability of evidence collected via desk research and the survey.
3. **Questionnaire-based survey**, targeted at operators in all stages of the food supply chains in the 28 Member States, as well as at other stakeholders (associations/NGOs, also called, more in general, organisations), and focusing on a number of aspects specifically concerning the SCI and the national initiatives under study. The survey also included some questions on the occurrence of and exposure to UTPs. The survey constituted an element of key importance in the framework of the overall data collection strategy: for this reason, a detailed description of the survey methodology is provided at § 2.1.1.

The overall data collection strategy is outlined in Figure 2.2, which also highlights the linkages between data collection and the other study tasks, as well as the critical points where quality checks were performed.

*Figure 2.2 – Data collection strategy*



**QC = quality checks**

In the framework of the overall approach to the study, **case studies on the SCI and on the four national initiatives** constituted another element of key importance. These case studies allowed the study team to:

1. achieve an in-depth, focused understanding of the functioning and effects of the SCI and of the national initiatives implemented or emerging in Belgium, Finland, the Netherlands and Germany;
2. collect evidence for the evaluation work, in order to draw relevant conclusions and robust judgments.

The selection of voluntary initiatives set up in Belgium, Finland and the Netherlands as case study objects was suggested by the fact that these are the only Member States where voluntary initiatives with some inherent connection to the SCI exist; the German case was included in the selection in the light of the interesting recent developments concerning the emergence of a voluntary initiative to address UTPs in the food supply chain.

Case studies were investigated in the local language: this guaranteed full understanding and fostered co-operation by the concerned stakeholders, and also ensured that secondary data and literature produced in the local language were accessible to the study team.

The methodology applied in the assessment of the SCI and of the national initiatives in the framework of case studies is described at § 2.2 and 2.3, respectively.

### 2.1.1 Survey methodology

A **questionnaire-based survey** was used to collect evidence from primary sources (operators in the EU agro-food system and other stakeholders) on a number of **relevant aspects** for the assessment, and specifically:

1. Occurrence of UTPs in the EU.
2. Possible solutions to address UTPs.
3. Participation in the Supply Chain Initiative (SCI) and motivations to join (or not) the initiative.
4. Effectiveness of the SCI in tackling UTPs, and reasons behind it.
5. Capacity of the SCI to ensure transparency and confidentiality, and reasons behind it.
6. Trust in the SCI and other national platforms by stakeholders.
7. Costs incurred by SMEs to participate in the SCI.
8. Participation in the voluntary initiatives at national level, and motivations to join (or not) such initiatives.
9. Effectiveness of the voluntary initiatives at national level in tackling UTPs, and reasons behind it.

The following paragraphs provide a detailed description of the survey sample definition and of the survey methodology, together with some considerations on the final number of survey responses.

The **relevant universe for the survey**, composed of both companies and associations/NGOs, was defined according to the following criteria:

1. For companies: inclusion of operators at various stages of the food supply chain (according to the NACE Rev.2 – 4-digit classification), as reported in Table 2.1.
2. For associations/NGOs: *ad hoc* inclusion of organisations representing the different stages of the supply chain in the EU28.

On this basis, starting from a database of 22,339 food companies operating at all stages of the supply chain in the EU28 (see § 2.1.1.2), the objective was to get a balanced sample of 1,400 total respondents; at the closing of the survey, the actual number of valid and completed responses was 1,124 (see § 2.1.1.4).

Even if the actual number of responses was lower than the planned target, the overall size of the survey sample can be anyway considered fully adequate to get a deeper understanding of UTPs in the food chain across the EU. The present survey is the most extensive one focusing on such topic to date, in terms of both geographical scope (28 Member States) and stages of the supply chain covered (five different categories of operators). Despite the lower-than-expected response rate and difficulties in involving specific categories of operators (as explained at § 2.1.1.3), the survey provided extremely useful indications on the perceived exposure to UTPs in the food supply chain and allowed to get valuable information on a wide set of aspects concerning the initiatives under study. If needed, further investigations covering a higher number of operators can be made in the future, with the availability of additional resources and time.

**Table 2.1 – Detail of the categories of operators forming the relevant universe for the survey**

Nace code	
<b>Farmers</b>	
01.11	Growing of cereals (except rice), leguminous crops and oil seeds
01.12	Growing of rice
01.13	Growing of vegetables and melons, roots and tubers
01.14	Growing of sugar cane
01.21	Growing of grapes
01.22	Growing of tropical and subtropical fruits
01.23	Growing of citrus fruits
01.24	Growing of pome fruits and stonefruits
01.25	Growing of other tree and bush fruits and nuts
01.26	Growing of oleaginous fruits
01.27	Growing of beverage crops
01.41	Raising of dairy cattle
01.42	Raising of other cattle and buffaloes
01.43	Raising of horses and other equines
01.45	Raising of sheep and goats
01.46	Raising of swine/pigs
01.47	Raising of poultry
01.5	Mixed farming
<b>Food &amp; Beverages Producers</b>	
10	Manufacture of food products
11	Manufacture of beverages
<b>Wholesalers</b>	
46.17	Agents involved in the sale of food, beverages and tobacco
46.21	Wholesale of grain, unmanufactured tobacco, seeds and animal feeds
46.3	Wholesale of food, beverages and tobacco
<b>Retailers</b>	
47.11	Retail sale in non-specialised stores with food, beverages or tobacco specialised stores with food, beverages or tobacco predominating
47.2	Retail sale of food, beverages and tobacco in specialised stores
47.81	Retail sale via stalls and markets of food, beverages and tobacco products
<b>Ho.Re.Ca</b>	
56.1	Restaurants and mobile food service activities
56.2	Event catering and other food service activities

#### 2.1.1.1 Definition of the survey sample

The study team initially targeted a sample size of 1,400 surveyed subjects at EU28 level (to be intended as “subjects who had completed the questionnaire”). This figure was deemed to be an acceptable compromise between the necessity to ensure an adequate coverage of the heterogeneity of the relevant universe and the time and budget constraints given by the assignment.

The sample design took into account the following criteria:

1. Surveyed subjects were allocated **across all EU Member States** taking into account the **total number of operators** in the food supply chain (all stages combined) and the **relative value** (in terms of total annual turnover of the food sector) of individual Member States with respect to EU28 total<sup>1</sup>. Member States with the highest numbers of food operators and the greatest shares of EU total turnover of the food industry were assigned the highest targets in terms of surveyed subjects. *Ad hoc* adjustments were applied not to overestimate specific categories (e.g. farmers, for which the number of micro-businesses lacking actual economic relevance is likely to be high) and also to keep a reasonable minimum of surveyed subjects in Member States like Malta, Cyprus, and Luxembourg.
2. For the allocation of surveyed subjects **across the different categories within each Member State**, the number of actors in each category was considered, applying *ad hoc* reductions for specific categories, to take into due account, among others: i) the very high number of small and micro

<sup>1</sup> The number of operators across Member States and the annual turnover of the food sector were estimated on the basis of Eurostat data.

businesses in certain stages of the supply chain (farming, wholesaling, restaurant/catering), and ii) the high market concentration in retailing (which reduces the number of non-SMEs among potential respondents). These reductions were compensated through an increase in the number of food and beverage producers and through the inclusion in the sample of sector organisations and non-governmental organisations (NGOs).

3. **Ad hoc adjustments** were made in order to take into account the low number of operators (and hence of potential respondents) for specific country/sector combinations.
4. As for the **split between SMEs and non-SMEs** in the sample, a satisfactory level of representativeness of SMEs across the different Member States and stages of the supply chain was sought, taking into account the perceived differences in concentration / fragmentation of each category of operators<sup>2</sup>.

No specific action was taken in order to influence/modify the number of respondents on the basis of their size; the final number of SMEs and non-SMEs in the sample is the result of the actual response rate for each category in each Member State; similarly, for what concerns the inclusion of large companies in the sample, it was only verified that the major players at each level of the food supply chain and for each Member State were included in the database of potential respondents.

5. As for the **associations/NGOs**, it was envisaged to have at least 2 of them in the Member States with the highest number of allocated surveys (France, Germany, Italy, Spain, UK, Poland and Belgium). Special attention was paid to farmers' organisations<sup>3</sup> (members of Copa-Cogeca and national-level organisations for those Member States<sup>4</sup> with no Copa-Cogeca member organisation).

#### 2.1.1.2 Methodology for the carrying out of the survey

Prior to the launch of the actual survey, a test version of the questionnaire was used for a **pilot survey** in 3 Member States: United Kingdom and Italy were selected among the five Member States with the highest number of expected completed surveys, while Slovenia was selected to run a pilot survey in a "New Member State". No specific issues were identified by respondents of the pilot survey and therefore no amendment was made to the questionnaire.

Together with the pilot testing, **additional pre-survey activities** were carried out to ensure the highest possible response rate. The most important ones can be summarized as follows:

1. Efforts to sensitize potential respondents about the importance of the study:
  - a. Sector organisations for each Member State were contacted in order to explain the objectives of the study and to call for support in sensitizing their member companies about the importance of the study and of participation in the survey; this approach was particularly focused on categories with the highest targets in terms of responses (farmers and food and beverage producers).
  - b. Support from reference organisations / governance structures of the initiatives under study was also sought whenever the study team was unable to identify and/or contact a sufficient

<sup>2</sup> By way of example, a higher number of SMEs in the farming stage and a higher number of large companies in the retailing stage.

<sup>3</sup> The necessity to guarantee the cooperation of the farmers' organisations in disseminating the survey among their member companies resulted in a much higher participation of farmers' organisations in the survey than the one envisaged in the sample design.

<sup>4</sup> Bulgaria and Romania.

number of potential respondents: in such cases, organisations / structures were asked to indicate a number of potential respondents in the survey and the related contact details.

- c. Additional sensitization efforts were also performed by Enterprise Europe Network (EEN), through its reference organisations at Member State level.
2. Use of appropriate contact methods (identification of the proper contact persons/potential respondents in the surveyed entities) and implementation of follow-up actions (reminders to potential respondents which failed to complete the questionnaire within a set deadline).

The survey was carried out via Computer Assisted Web Interview (CAWI); the questionnaire was translated in the official language for each Member State, and made available through the dedicated platform *Limesurvey*<sup>5</sup>, which is the most used open source software for online surveys at global level.

Potential respondents were identified and contacted starting from *Amadeus – Bureau van Dijk*, a **database** of company information covering all 28 Member States. Amadeus was chosen as the reference database for the identification of potential respondents since it is widely recognized as the most comprehensive provider of company information in Europe. It covers around 14 million companies by combining data from over 35 sources; it is widely used in universities, financial and research companies and for market studies, and allows to research individual companies' information, as well as lists of companies with specific profiles and in specific sectors. The relatively low presence of farming companies in Amadeus (if compared to the presence of operators in downstream stages of the supply chain) is a consequence of the specific structure of the farming sector in Europe, where individual companies are extremely difficult to map<sup>6</sup>.

Among the many information items featured in the database, the following were of key importance for the construction of the final database of potential respondents:

- Company information for both Western and Eastern Europe, with a focus on private company information (in particular: description of business activity, sector and sub-sector codes, website, email, telephone number and other contact details);
- Company financials (with special reference to data on turnover, total assets and number of employees, important to understand whether the company is a SME or not);
- Directors (name of executives and roles within the company).

The research for potential respondents was carried out through specific queries in the 28 Member States, on the basis of the sector codes reported in Table 2.1 and by refining the results in order to ensure the consistency of the list with the required criteria (as specified at § 2.1.1.1).

The **final database of potential respondents** – for a total of 22,339 companies – was created through adjustments and additional research for food and beverage producers through the Food World ([www.thefoodworld.com](http://www.thefoodworld.com)), a German public portal with a worldwide coverage. For each covered country, the Food World provides lists of companies operating in food and beverage production, compiled through voluntary self-registration and on the basis of lists provided by national sector associations and chambers of commerce.

The composition of the final database of potential respondents is illustrated in Table 2.2.

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<sup>5</sup> <http://www.limesurvey.org/>.

<sup>6</sup> By way of example, other important databases of company information such as OneSource or S&P provide an even smaller coverage of the farming sector.



**Table 2.2 – Composition of the final database of potential respondents, by Member State and level of the supply chain**

	Farmers	Food & Bev. producers	Wholesalers	Retailers	Ho.Re.Ca.	Total
Austria	9	175	173	24	42	423
Belgium	10	253	275	31	16	585
Bulgaria	29	188	166	32	16	431
Croatia	29	82	32	33	4	180
Cyprus	10	64	35	18	2	129
Czech Republic	252	533	343	141	71	1,340
Denmark	19	110	99	42	17	287
Estonia	6	60	59	24	2	151
Finland	3	104	79	116	28	330
France	78	1,231	1,497	1,461	92	4,359
Germany	93	1,112	1,019	294	196	2,714
Greece	8	251	146	54	14	473
Hungary	110	356	293	66	17	842
Ireland	6	80	31	13	11	141
Italy	62	768	462	119	42	1,453
Latvia	11	74	58	21	13	177
Lithuania	30	237	205	61	32	565
Luxembourg	-	5	10	5	4	24
Malta	-	12	11	8	3	34
Netherlands	22	370	161	5	6	564
Poland	75	1,050	582	243	61	2,011
Portugal	12	197	108	15	10	342
Romania	179	680	398	65	29	1,351
Slovakia	33	130	143	58	14	378
Slovenia	17	66	33	18	9	143
Spain	58	526	684	59	37	1,364
Sweden	8	116	149	69	19	361
United Kingdom	67	480	439	69	132	1,187
<b>Total</b>	<b>1,236</b>	<b>9,310</b>	<b>7,690</b>	<b>3,164</b>	<b>939</b>	<b>22,339</b>

Once the database was finalised, the web-based survey was carried out by applying the following **contact procedures**:

1. All 22,339 companies in the database were contacted by email. The invitation provided an introduction to the study and an invitation to participate in the survey via a **direct/restricted link**<sup>7</sup>.
2. In parallel, EU-level trade associations at each stage of the supply chain (Copa-Cogeca for farming, FoodDrinkEurope for processing, CELCAA for wholesaling and EuroCommerce and Independent Retail Europe for retailing) were contacted by phone or by email and invited to forward a web-link to the survey to their members. In this context, due to the fact that there was no possibility to get direct contacts of companies (and therefore to add them to the database at point 1), **generic links**<sup>8</sup> to the web-based survey were used.

<sup>7</sup> "Direct/restricted link" means that the link provided in each email was unique and could be used just once; this procedure allowed the study team to monitor which companies had already completed the questionnaire and which not, and consequently to exclude from reminders all the companies which had already completed the questionnaire.

<sup>8</sup> "Generic link" means that each link could be used more than once and that neither the respondent nor the association which originally circulated the link could be monitored. This implies that there was no way for the study team to check whether the respondent or the association had completed the questionnaire or not.



3. All national associations of Copa-Cogeca were also contacted twice (in June 2015 and between August and September 2015), again with an invitation to forward a web-link to the survey to their members. For the same reasons reported at point 2, also in this case **generic links** were used. Similarly, all national associations of FoodDrinkEurope received a **generic link** by email (in June 2015).
4. Finally, to increase the response rate among farmers, a number of additional invitations - also containing **generic links** - were sent to over 300 farming companies and regional associations of farmers throughout the whole period in which the survey was kept open.

#### 2.1.1.3 Challenges, limitations and considerations on the survey methodology

Challenges emerged in carrying out the survey. They mainly derived from the complexity of the contact procedure and from the limited willingness to participate of some operators. More specifically, the main challenges to overcome were the following:

1. Limited interest of companies for some of the survey topics, perceived as too theoretical and not related to daily business: this especially refers to the assessment of different aspects of the voluntary initiatives under study.
2. Survey topics perceived by many potential respondents as complex and highly specific.
3. Being the core of the questionnaire rather technical, the involvement of high-profile executives (head of legal department, CEO, etc.) was deemed necessary: these persons can be difficult to contact, especially in large companies.
4. Farming companies were in most cases extremely difficult to identify and contact, mainly because many of them have no website and/or public email address.
5. In most Member States the period May-July is a very busy one for many farmers (due to harvest operations): it is hence likely that some of the contacted farmers were simply unable to dedicate time to the completion of the questionnaire.
6. Also the fear-factor was mentioned by some associations of the farming sector as a possible explanation for low participation. One national association refused to circulate the survey because of the limited number of its members, pointing out that it would have been relatively easy to identify them.

The methodology described at § 2.1.1.2, and in particular the combined use of direct/restricted and generic links, was aimed at collecting the highest possible number of answers across the 28 Member States and the different stages of the supply chain. The particular nature of this approach implied some specific checks to be performed by the study team and the adoption of ad-hoc approaches which are synthetically described below.

Since generic links can be – in theory at least – used more than once, a check on the IP addresses of respondents was performed in the final analysis of the survey results, in order to limit the risk of accidental multiple answers coming from the same company. In addition, a statement in the survey introduction had been included to clarify that the survey was targeted at operators in the EU food supply chain only, thus reducing the risk of participation through generic links of companies operating in non-relevant sectors.

Taking into account the technical nature of the questionnaire, phone and email contacts to request support from the study team in questionnaire completion were provided to potential respondents: the study team experts provided in-depth explanations on specific questions whenever contacted by potential respondents. The study team also encouraged the completion of the survey and stressed to representatives of sector associations the importance of involving as much as possible their member companies.

A challenge to overcome in the carrying out of the survey was represented by the difficulty in receiving prompt collaboration (or even feedback) by most national associations of farmers and of food and beverage producers in circulating the survey among their members and in sensitizing them. These associations actually tended to favour their own direct participation in the survey, rather than the involvement of their membership base in it. In spite of the full collaboration provided by EU-level associations Copa-Cogeca and FoodDrinkEurope since the launch of the survey, repeated phone calls and emails were needed to obtain a clear feedback from their national member associations<sup>9</sup> about their availability in supporting the survey (or lack thereof).

Support from national associations was particularly difficult to monitor, mainly because:

- It was not possible to get evidence on actual efforts from associations in forwarding the survey link and in sensitizing their members to participate in the survey (e.g. whether they contacted their members and how, how many companies were contacted, which kind of information about the survey was provided, how much the importance of participating was stressed, etc.);
- The only way to evaluate the results of sensitization efforts by national associations was to monitor the number of answers from companies in the related Member States and inform these associations where participation in the survey was still low.

Despite the above difficulties, the numerous one-to-one contacts with national farmers' associations very likely resulted in a substantial (direct) participation to the survey of these associations (within the general category of organisations). The structure of the questionnaire did not allow to map the reference sector of respondents within the "organisation" category: however, the very high number of contacts between the study team and national farmers' associations (actually much higher than the number of contacts with national associations of food and beverage producers) and the fact that many of their representatives, when contacted by phone, at least assured that they would have directly responded to the questionnaire, would suggest that the majority of respondents within the "organisation" category are represented by national farmers' associations.

#### 2.1.1.4 Elaboration and illustration of survey results and key features of the actual survey sample

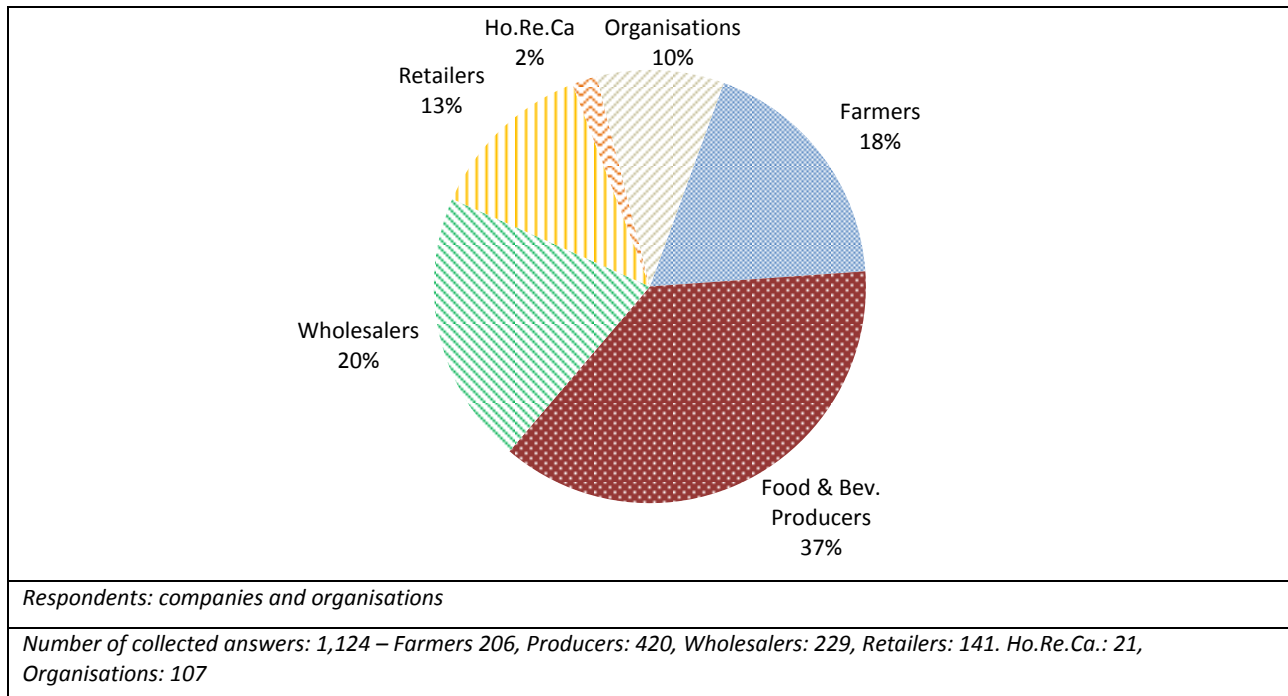
At the closing of the survey (on September 16<sup>th</sup>, 2015), a total of **1,124 completed and valid responses** were collected (Figure 2.3).

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<sup>9</sup> With special reference to national farmers' associations, out of a total of 65 associations contacted with the request to disseminate the survey invitation among their members:

- 44 associations never replied;
- Three associations refused to cooperate;
- One association said it had no direct contacts with farming companies;
- One association proposed to provide a position paper instead of involving its member companies in the survey.

Figure 2.3 – Breakdown of survey respondents by level of the supply chain



**The size of the survey sample**, if measured against the relevant universe (i.e. the total number of operators in the EU agro-food system), **does not ensure strict statistical representativeness**. The survey sample was built to ensure an **adequate coverage of the heterogeneity of the relevant universe within the constraints of the assignment**. This implies that **prudence should always be applied when extending survey results to the relevant universe**.

Nevertheless, **the overall number of collected responses can be definitely considered a valuable result. No other survey or dataset offering a comparable coverage of Member States and levels of the food supply chain is currently available on these topics. Information collected through the survey was indeed extremely useful to assess such a complex theme as UTPs in the food supply chain.**

The specific structure of the survey sample – covering five stages of the food supply chain plus organisations in 28 Member States – together with the relatively high number of options for some questions (up to 8) resulted in fewer replies for some specific subgroups of respondents (e.g. farmers in a specific country knowing/not knowing the SCI, companies in a specific country knowing the SCI but with no intention to join, etc.). In the light of such limitations, specific solutions were applied in the illustration of survey results, in order to inform the reader about their robustness (basically given by the number of replies on which the results were based) and to highlight the survey results which were based on fewer replies (due to the aforementioned intersections in cross-analyses).

When considering the possible implications of the above issues for the robustness of the assessment, **whenever survey results for a specific question were based on a low number of replies, a qualitative assessment** - mainly based on evidence collected through interviews and desk research – **was also performed to fill in the gaps left by the survey.**

The **elaboration of the survey results** made for the purposes of the assessment is based on the overall survey sample (1,124 respondents) or – whenever the number of replies allowed further segmentation – on specific subgroups of respondents (e.g. by level of the supply chain, by Member State, by company size, etc.).

The criteria for the definition of subgroups of respondents for the purposes of cross-analysis respond to two key principles:

1. Importance of the cross-analysis (i.e. how significant are the different subgroups in relation to each question).
2. Feasibility of the cross-analysis (i.e. if the total number of replies for each subgroup and for each option within every subgroup allowed meaningful considerations).

When cross-analysis concerned intersections of particular importance for the assessment which were based on relatively few replies, survey results were systematically reported in absolute value rather than in percentage, in order to highlight that they were based on a limited number of replies.

Elaboration of survey results at Member State level was performed:

- where at least 60 replies were available (namely for France, Germany, Italy, Spain and Lithuania);
- for the purposes of assessing national initiatives implemented in Belgium, Finland, the Netherlands, and Germany, regardless of the number of replies available for each of these Member States.

Safe remaining the previous considerations on the statistical representativeness of the survey sample, the following solutions were adopted for the **illustration of survey results**, with the objective of providing the greatest amount of useful evidence, on one side, and of informing the reader about the level of robustness of each specific result, on the other side:

1. Results are presented in percentage (share) with indication of confidence intervals<sup>10</sup> for the most important themes under analysis; confidence intervals are reported only where they are not too wide, i.e. where survey results are based on a very high number of replies.
2. Results are presented in both percentage and absolute value (without indication of confidence intervals) wherever they are based on a lower number of replies.
3. In all the remaining cases, where the very low number of replies<sup>11</sup> suggested not reporting percentages, results are presented in absolute value only.

The **key features of the survey sample** are illustrated in the following set of graphs and tables; considerations on the most important aspects are also provided.

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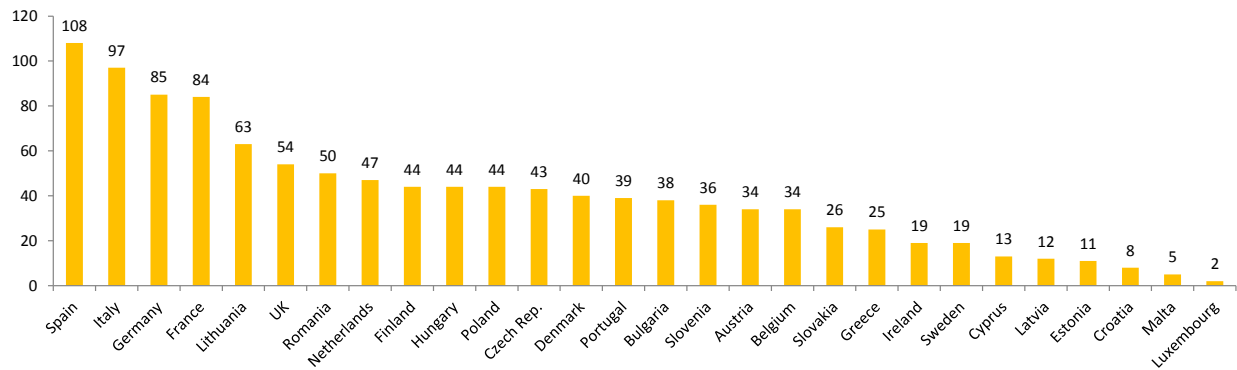
<sup>10</sup> A confidence interval gives an estimated range of values which is likely to include the true value of a parameter that one is trying to estimate. The range is calculated from a set of data obtained from a sample of the whole population. In this study, the population is the total number of economic operators in the EU agro-food system, of which a sample was surveyed for the purposes of the assessment. More specifically, the confidence level is the probability that the confidence interval includes the true value of the parameter in a so-called normal distribution. For example, with a 95% confidence level, the probability that the actual value of the parameter is outside the confidence interval is 5%. However, as the survey sample for the assessment was not built to ensure statistical representativeness of the relevant universe in a strict sense, confidence intervals reported in the illustration of survey results should not be seen as a measure of the reliability of the inference to the relevant universe of specific survey results; they should instead be seen as an indication of the superior reliability of those survey results which are based on a higher number of replies. Source: adapted from <http://www.stat.yale.edu/Courses/1997-98/101/confint.htm>

<sup>11</sup> In general terms, results for subgroups with 50 replies or less are presented in absolute value only.

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Question n.1 – “In which EU Member State is your company/organisation based?”

Figure 2.4 – Number of completed questionnaires by Member State

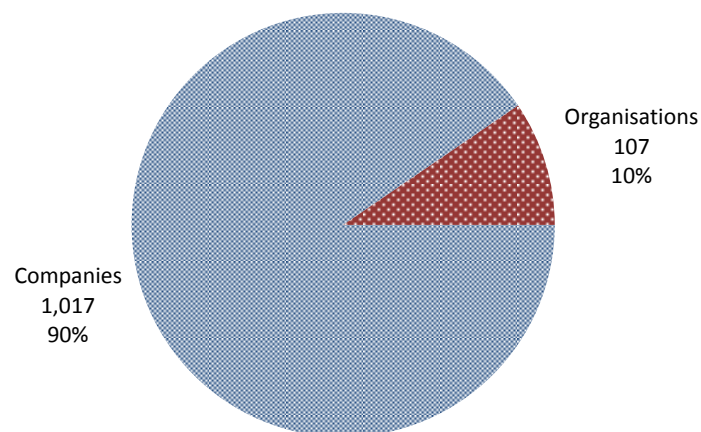


Respondents: companies and organisations

Number of collected answers: 1,124

Question n.2 – “On behalf of which type of entity are you answering this questionnaire?”

Figure 2.5 – Breakdown of respondents between companies and organisations

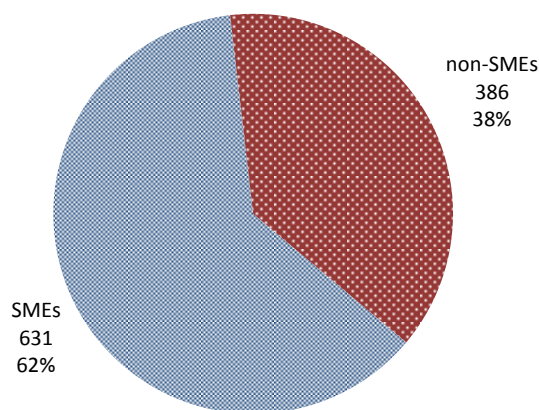


Respondents: companies and organisations

Number of collected answers: 1,124

Question n.3 – “Is your company a micro, small or medium sized enterprise (SME)?”

Figure 2.6 – Breakdown of companies between SMEs and non-SMEs (% and absolute value)



Respondents: companies

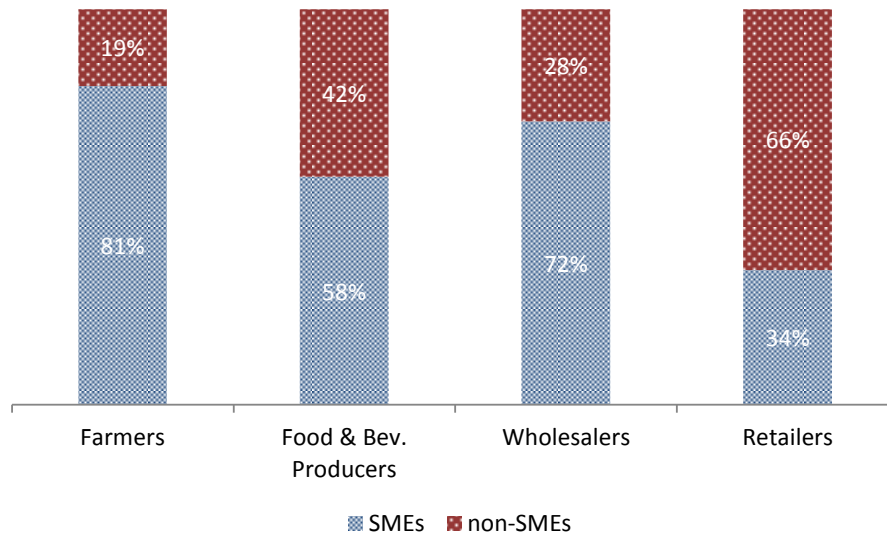
Number of collected answers: 1,017

The relative weight of SMEs and large companies in the survey sample (Figure 2.6) does not reflect the actual presence of SMEs and large companies in the EU agro-food system. There is indeed an oversampling of large companies with respect to SMEs for all the four stages of the chain in the survey sample. The reasons behind such oversampling can be summarised as follows:

1. While carrying out the survey, particular attention was paid to SCI members, in order to ensure the highest response rate from a category of operators which could provide elements for the assessment of the initiative from an internal perspective; this choice resulted in a higher weight of SCI members on total respondents with respect to the weight of SCI members on the total number of subjects invited to the survey. Since the composition of the SCI membership base is to some extent unbalanced towards large companies, this “distortion” also affects the composition of the survey sample.
2. Generally speaking, it is likely that a survey focused on rather complex and technical topics is better managed by a large company rather than by a SME. Large companies can have one or more staff members mainly dealing with UTPs; they tend to be more familiar with the topic and are in general more interested in providing their feedback. This is exemplified by the very high response rate from retailers (most of whom are also large-sized companies).
3. Finally, although it was clearly stated that the survey was focused on both UTPs and the SCI, and that it was important to participate even if the respondent was not aware of the SCI, it is highly likely that a number of SMEs approaching the questionnaire was discouraged to complete it by the fact that they were not familiar with the initiative.

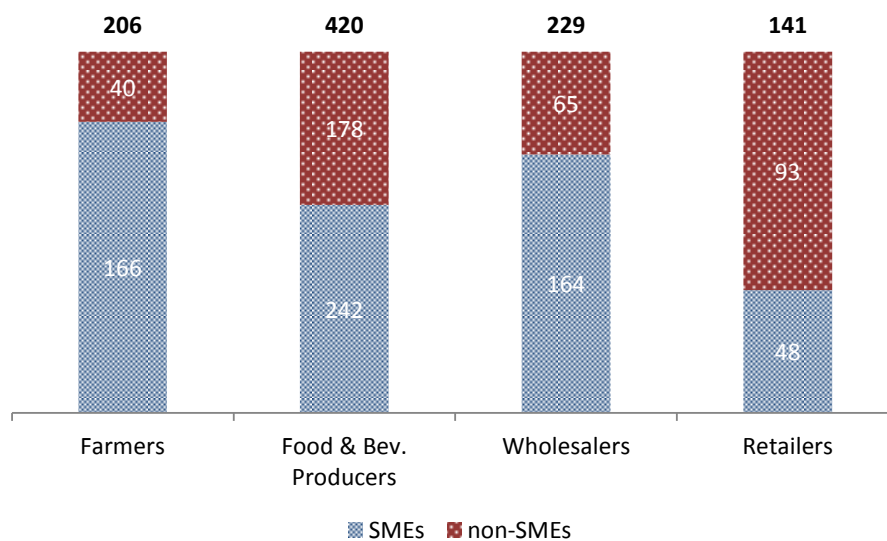
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Figure 2.7 – Breakdown of companies between SMEs and non-SMEs across levels of the chain (% and absolute value)



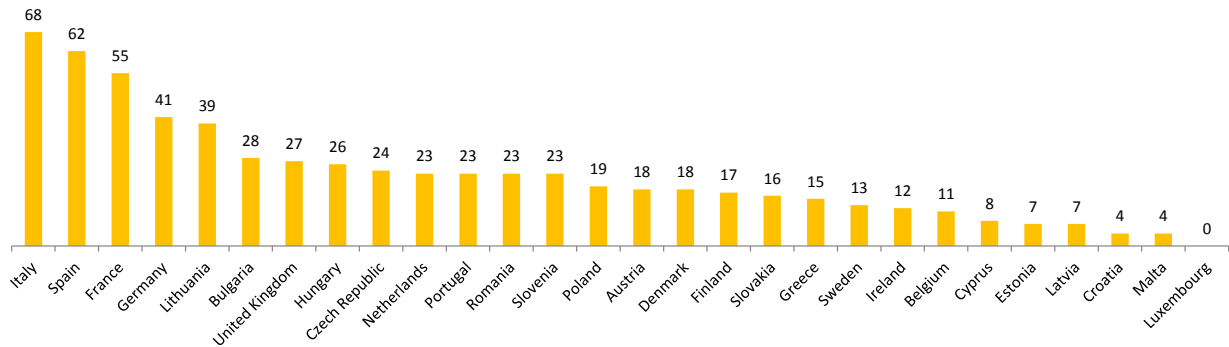
Respondents: companies

Number of collected answers: 996 – Farmers: 206, Producers: 420, Wholesalers: 229, Retailers: 141. Ho.Re.Ca.: 21 (not included)



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Figure 2.8 – Number of questionnaires completed by SMEs, by Member State

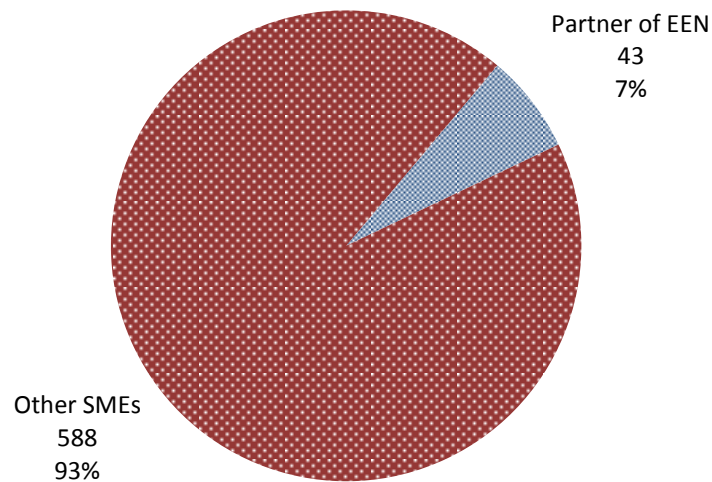


Respondents: SMEs

Number of collected answers: 631

Question n.4 – “Is your company a partner of the Enterprise Europe Network?”

Figure 2.9 – Breakdown of SMEs between partners of EEN and other SMEs



Respondents: SMEs

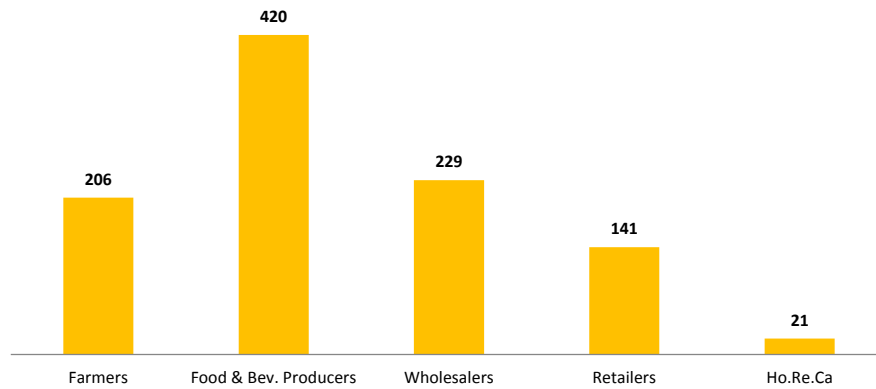
Number of collected answers: 631



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Question n.5 – “At which level of the food supply chain does your company mainly operate?”

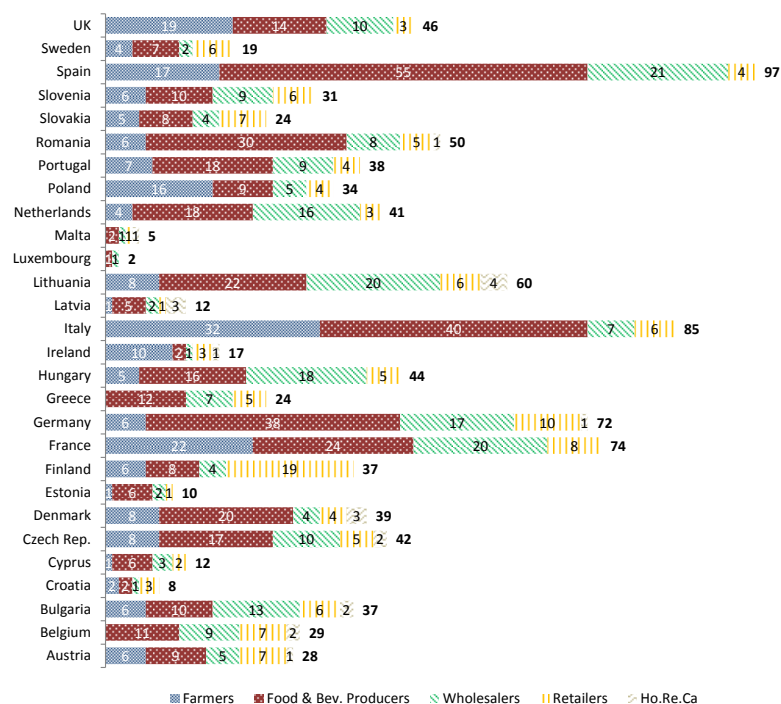
Figure 2.10 – Breakdown of companies across levels of the chain



Respondents: companies

Number of collected answers: 1,017

Figure 2.11 – Breakdown of companies across levels of the chain, by Member State

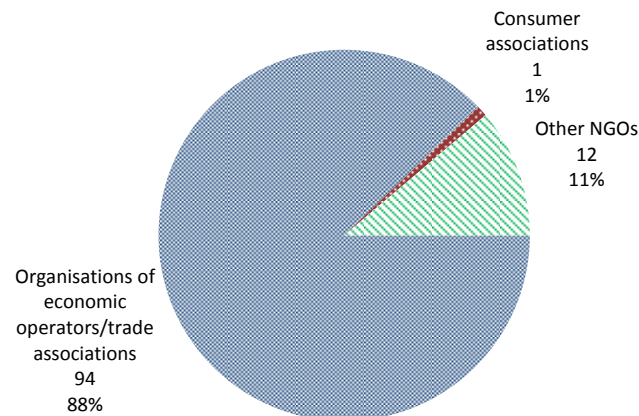


Respondents: companies

Number of collected answers: 1,017

Question n.6 – “Which kind of organisation are you?”

Figure 2.12 – Breakdown of organisations by nature

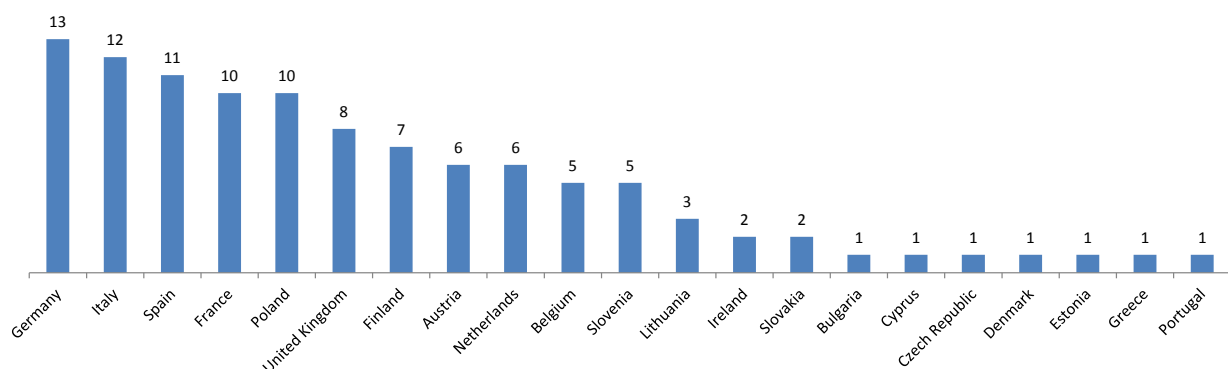


Respondents: organisations

Number of collected answers: 107

The high number of respondents among organisations can be explained by the role that organisations of economic operators and trade associations played in spreading the survey among their member companies and in sensitizing their participation (see § 2.1.1.2 and 2.1.1.3). Organisations of economic operators and trade associations indeed account for the majority of respondents within this specific category.

Figure 2.13 – Breakdown of participating organisations by Member State



Respondents: organisations

Number of collected answers: 107

## **2.2 Methodology for the evaluation of the effectiveness of the “Supply Chain Initiative”**

The evaluation moved from the results of a **preliminary investigation on the exposure of operators in the food chain to UTPs**. This aspect was treated in a section of the **survey questionnaire** (illustrated by means of descriptive statistics) aimed at investigating on the perception of stakeholders on the occurrence of different types of UTPs and on the possible consequences of UTPs for the food operators involved. The survey also investigated on stakeholder views on the most effective ways to tackle UTPs and on the most effective remedies against UTPs. **Structured in-depth interviews** complemented the survey results to add qualitative elements to the investigation on the exposure to UTPs.

The evaluation of the SCI itself was based on the assessment of a number of different aspects; the key elements of the methodology applied for each aspect are illustrated in the following paragraphs.

### **2.2.1 Investigation on the level of participation**

The investigation was focused on two main aspects of participation:

1. The **status of the operators in relation to their participation to the SCI**, to differentiate between: full membership; application process on-going (letters of intent sent, but full membership not yet achieved); intention to apply for membership, but application process not yet started; no intention to apply for membership; no awareness of the existence of the SCI.
2. **Motivations behind the status of operators**, i.e. the reasons why they have become members of the SCI, or intend to apply for membership, or have no intention to do so, or are even unaware of the very existence of the initiative.

The results of the Annual Survey of the SCI and its monthly progress reports, as well as the results of the survey, provided most of the relevant evidence base for the assessment.

A set of indicators was used to assess the level of participation in the SCI, and to describe a number of relevant aspects (status of the operators, features of the operators in relation to their status, motivations related with the status).

A precise quantification of the **aggregated economic importance of SCI member companies** was found to present a number of challenges, of which the most serious were:

- The unavailability of data on turnover of many SCI member companies (especially SMEs).
- The frequent unavailability of disaggregated turnover figures for a number of multinational players which are members of the SCI, which resulted in the difficulty to obtain a reliable estimate of the turnover which could be referred to their EU operations.

The above challenges suggested the application of a quanti-qualitative approach aimed at assessing:

1. the relative economic importance of the SCI in terms of aggregated turnover of its member companies with respect to the total value of the EU agro-food system, and
2. the relative importance of the SCI in terms of number of member companies with respect to the total number of operators in the EU agro-food system.

### 2.2.2 *Investigation on governance and internal monitoring*

The SCI's governance structure and internal monitoring system were described and assessed through a set of criteria and also through comparison with similar entities set up in third countries (benchmarking).

The investigations focused on:

- a. organisation, roles and responsibilities;
- b. functioning mechanism;
- c. legal implications;

of the SCI governance structure and internal monitoring system.

The evidence base for the assessment was mainly provided by:

- a. documentation concerning the SCI governance and internal monitoring;
- b. elements drawn from in-depth interviews with the SCI Governance Group, with SCI member companies, with officers of the Commission and with independent experts.

For the purposes of the assessment, an identification of the main strengths and weaknesses of the governance structure and internal monitoring system, and a critical factors analysis on these aspects were also performed, also with a view to get insights on the room for possible improvement (for a synthetic overview on the SWOT analysis, see Box 1; for a synthetic overview on the critical factors analysis, see Box 2).

#### **Box 1 – SWOT analysis**

The SWOT analysis permits to identify the strong and weak aspects (strengths / weaknesses) which define a certain study object (which can be a production system, an industrial sector, an organisation etc.) in relation to the features of the surrounding environment, and/or with reference to the features of comparable objects assumed as benchmarks. The identification of strengths and weaknesses allows for the subsequent identification of opportunities (probable and favourable events) and of threats (probable and adverse events) which the study object might have to face, in light of its strengths and weaknesses. The identification of strengths, weaknesses, opportunities and threats is extremely useful to define the room for improvement in specific aspects of the study object, including the effectiveness in pursuing defined objectives and in achieving certain results.

#### **Box 2 – Critical factors analysis**

The critical factors analysis is used in the framework of the system approach (which considers all the individual elements of a study object as a single, integrated entity, i.e. a “system”) to investigate on the factors exerting an influence on the functioning of a certain system (or on specific aspects of it). All the factors which are able to exert a positive or negative influence in this respect are identified as critical factors. Critical factors can facilitate (promoting factors) or hinder (limiting factors) the functioning of the system (or specific aspects of it).

### 2.2.3 *Assessment of the effectiveness in tackling unfair practices*

A set of criteria (and – where opportune – of related quantitative indicators) was used to assess the effectiveness of the SCI in tackling UTPs, under a number of relevant aspects, namely:

1. Importance of the SCI in promoting a greater awareness and a better perception of the issue of UTPs.
2. Extent and frequency of the recourse to the SCI by operators for tackling UTPs.
3. Rate of success of the SCI in resolving complaints and in providing remedy against them.
4. Level of satisfaction of operators for the solutions to address UTPs provided by the SCI.

5. Strengths and weaknesses of the SCI in tackling UTPs, and room for improvement of its effectiveness in doing so.

The evidence base for the assessment was provided by:

- a. The analysis of the procedures for tackling UTPs set up by the SCI (as described in the SCI website and in additional documentation provided by the SCI Governance Group, which also provided additional elements in the course of two in-depth interviews).
- b. The results of the Annual Survey of the SCI and its monthly progress reports.
- c. The experience and the level of satisfaction of operators (both SCI member companies and non-member companies which had sufficient knowledge of the investigated aspects) with respect to the aspects under investigation, as they emerged from the survey results and from in-depth interviews. The **existence and, where relevant, features of the regulatory framework addressing UTPs in the different Member States** were also considered to get a better understanding of the reasons behind the replies to specific survey questions, and possible national specificities highlighted by the survey results.
- d. Elements drawn from in-depth interviews with Commission officers, other stakeholders and independent experts.

**The assessment was performed with a special focus on SMEs** (i.e. the undertakings which are most likely to be affected by the negative effects of UTPs), through:

- The inclusion of an adequate number of SMEs in the survey sample (see § 2.1.1)
- In-depth interviews with representatives of UEAPME (EU-level organisation representing SMEs) and with individual SMEs (both members and non-members of the initiative).

For the purposes of the assessment, a SWOT analysis and a critical factors analysis were also performed, to identify the elements which could be improved.

#### *2.2.4 Investigation on transparency and on confidentiality issues*

The solutions implemented by the SCI to ensure transparency and confidentiality were described (focusing on their organisation and functioning mechanism); their effectiveness was then assessed through a set of criteria, and also through benchmarking with similar initiatives in third countries.

The survey allowed the study team to assess the level of satisfaction of the operators (both SCI member companies and non-member companies which had sufficient knowledge of the investigated aspects) with respect to the level of transparency and confidentiality granted by the SCI, and the related motivations.

Additional elements for the assessment were drawn from in-depth interviews with the SCI Governance Group, with individual companies (both members and non-members of the initiative), with officers of the Commission and with independent experts.

For the purposes of the assessment, a SWOT (strengths, weaknesses, opportunities, threats) analysis and a critical factors analysis were also performed, in order to understand where possible improvements could be introduced.

#### *2.2.5 Assessment of the level of awareness of and trust in the initiative*

The assessment was mostly based on evidence sourced through the questionnaire-based survey, which played a critical role in allowing:

1. to understand the level of awareness about the SCI among the operators of the food supply chain, with special respect to SMEs;
2. to assess the degree of trust which the operators of the food supply chain have in the SCI as a way to successfully tackle UTP-related issues;
3. to understand the reasons behind the judgments expressed by the surveyed operators.

In-depth interviews with the SCI Governance Group, with Commission officers, and with independent experts played a complementary role, mainly by providing additional qualitative elements.

The assessment was mainly based on a set of quantitative indicators fed by the survey results, integrated by qualitative considerations.

#### *2.2.6 Assessment of the implementation costs for SMEs*

In order to circumvent possible obstacles<sup>12</sup>, the approach for the assessment of the implementation costs for SMEs in obtaining fairer trading relationships along the food supply chain through participation to the SCI was based on a combination of the following elements:

1. Avoiding to ask for an exact figure.
2. Reasoning in relative terms (cost item “X” as a share of total cost “Y”).
3. Reasoning in terms of indicative ranges (e.g. additional cost of +5-10% with respect to total cost “Y”).
4. Collecting more “neutral” elements (usually of technical or organisational nature) which could help in estimating the concerned cost.

Desk research, the questionnaire-based survey and in-depth interviews all played an important role in collecting the necessary evidence for the assessment.

The **implementation cost was estimated in relative terms**, i.e. as an indicative range in % of total annual costs incurred by operators. Qualitative considerations on the available evidence completed the assessment.

### ***2.3 Methodology for the assessment of voluntary initiatives and national stakeholders’ platforms***

The assessment of voluntary initiatives and national stakeholders’ platforms covered a number of aspects: the key elements of the assessment methodology are outlined in the following paragraphs.

#### *2.3.1 Investigation on the influence of the Principles of Good Practice and of the Supply Chain Initiative on voluntary initiatives and national stakeholders’ platforms*

The investigations made were aimed at:

1. Assessing the influence of the PGP and of the SCI on the basis of an **ex-post comparison with the national initiatives under study**. The elements for such comparison were sourced mainly through desk research, but in-depth interviews with officers of the national competent authorities, representatives of the initiatives under study, and other stakeholders involved in their creation or

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<sup>12</sup> The quantification of whichever type of costs is often an extremely challenging task, both because the topic is considered extremely sensitive by economic operators (which are often unwilling to provide any data or information on the topic, mainly for reasons concerning safeguard of business secret) and because a reliable and exact enough estimate of particular typologies of costs (especially those of immaterial and/or implicit/non-monetary nature) is often very difficult / outright impossible to make even for the operators themselves.

anyway having an interest in such initiatives also provided relevant elements. The comparison was aimed at identifying the main similarities (which might highlight the presence of an influence by the SCI) and differences between the SCI and each national initiative.

2. Understanding the **influence exerted by the PGP and the SCI during the process which led to the creation** of the national initiatives under study. Desk research and in-depth interviews with subjects which were involved in the process allowed to reconstruct the different stages of the process, in order to identify the aspects where the influence was exerted.

### *2.3.2 Investigation on the level of participation*

Similarly to what was foreseen for the SCI, an investigation on the level of participation of operators in the food supply chain was carried out also for voluntary initiatives and stakeholders' platforms implemented at Member State level. Participation was considered in both absolute (e.g. all economic operators in the food supply chain concerned) and relative terms (e.g. SMEs versus non-SMEs). Within the limits of the available information, the number of commitments was also considered, and a distinction was made between operators that were in the process of joining the initiatives, and operators that were already full members of the initiatives.

The approach to the investigation and the data collection strategy were the same applied for the SCI (see § 2.2.1), and hence focused on two main aspects of participation:

1. The **status of the operators in relation to their participation to the voluntary initiatives**.
2. The **reasons behind the status of operators**.

Desk research and the questionnaire-based survey both played an important role in providing the relevant evidence base; in-depth interviews (especially targeted at subjects within the governance structure of the initiatives and at independent experts) also provided complementary qualitative information and useful considerations (especially about the reasons behind participation or non-participation).

A set of indicators was used to assess the level of participation in the initiatives under study, and to describe the relevant aspects: status of the operators, features of the operators in relation to their status, motivations related with the status.

### *2.3.3 Assessment of the functioning mechanisms*

The functioning mechanisms of the voluntary initiatives and stakeholders' platforms implemented at Member State level were investigated and assessed with a focus on the same aspects considered for the assessment of the SCI, namely:

1. **governance** and **internal monitoring**;
2. **transparency** of procedures and results;
3. capacity to address **confidentiality** issues;
4. **awareness** of and **trust** in the initiative among operators.

A combination of desk research and in-depth interviews provided the necessary evidence base.

Desk research allowed to retrieve the documents defining the organisation and functioning of the systems / solutions under study, as well as to collect information on similar initiatives set up in third countries, for the purposes of a comparative assessment (benchmarking).

In-depth interviews were mainly targeted at:

- a. Subjects who held roles and responsibilities concerning the aspects under investigation within the voluntary initiatives, who explained specific aspects of the organisation and functioning of the systems / solutions under study.
- b. Representatives of the main organisations of stakeholders at national level, who expressed their degree of satisfaction for the systems / solutions implemented by the national initiatives.
- c. Independent experts, which expressed their judgments on the effectiveness of the systems / solutions under investigation, also with a view to identifying their main strengths and weaknesses, and to suggest possible improvements.

Sets of criteria were used to assess the effectiveness of the systems and solutions put in place in achieving the expected results; a SWOT analysis and a critical factors analysis were also performed, in order to define the room for possible improvements.

#### *2.3.4 Assessment of the effectiveness in tackling unfair practices*

The assessment of the effectiveness of the national voluntary initiatives in tackling unfair practices focused on the same aspects which were considered in the assessment for the SCI; the data collection strategy and the assessment methodology applied were hence similar (see § 2.2.3).

The evidence for the assessment was sourced through a combination of:

1. Desk research, which allowed to collect the relevant documentation.
2. Questionnaire-based survey, which provided relevant evidence about the operators' experience in tackling UTPs through the initiatives under study, about their degree of satisfaction in this respect, and about the reasons behind their judgment.
3. In-depth interviews (targeted at officers of the national competent authorities, at subjects within the governance structure of the initiatives, at individual operators, at other stakeholders and at independent experts), which provided additional qualitative evidence and critical considerations on the relevant topics.

A set of criteria (and – where opportune – of related quantitative indicators) allowed to assess the effectiveness of the national initiatives under study in tackling UTPs in terms of:

- a. Importance of the initiatives in promoting a greater awareness and a better perception of the issue of UTPs.
- b. Extent and frequency of the recourse to the initiatives by operators for tackling UTPs.
- c. Rate of success of the initiatives in resolving complaints and in providing remedy against them.
- d. Strengths and weaknesses of the initiatives in tackling UTPs, and room for improvement of their effectiveness in this respect.

Similarly to what foreseen for the SCI (see § 2.2.3), **the assessment was performed with a special focus on SMEs**. This goal was mainly achieved through:

1. The inclusion of an adequate number of SMEs in the survey sample.
2. In-depth interview(s) with officer(s) of national organisation(s) representing SMEs, and with individual SMEs.

A SWOT analysis allowed to identify the main strengths and weaknesses of the initiatives in tackling UTPs; in combination with the critical factors analysis, the SWOT analysis allowed to identify possible ways to improve such effectiveness.



### **2.3.5 Assessment of the implementation costs for SMEs**

Implementation costs for SMEs depend on the specific functioning mechanisms of each national initiative under study, and on the commitments requested to SMEs in order to join the initiative.

In-depth interviews with representatives of organisations of operators, with individual SMEs and with independent experts allowed to source relevant quantitative and qualitative information for assessing the implementation costs for SMEs, whereas desk research could only provide very few (if any) useful elements in this respect.

Within the limits allowed by the available information, an estimation of the implementation costs - expressed as % of total annual costs incurred by SMEs - was also attempted.

### 3 Overview of the Supply Chain Initiative

This chapter provides a description of the main characteristics of the SCI. After outlining the steps of the process that led to the launch of the initiative in 2013 (§ 3.1), the chapter provides a detailed description of the objectives of the initiative, of its organisation – with special respect to the Governance Group (i.e. the governance body of the initiative) – and of the stakeholders involved (§ 3.2). The functioning mechanisms of the initiative are illustrated in detail, with special respect to: the procedure for the registration of companies to the initiative; the obligations to be met by member companies; the mechanisms for dispute resolution set up by the SCI (bilateral disputes, aggregated disputes and breaches of process commitments) and the decisions taken so far by the Governance Group.

#### 3.1 Genesis and evolution

The Supply Chain Initiative was launched on September 16, 2013 with the main objective of promoting good practices between business partners along the food supply chain. The Initiative has an EU-level dimension and is open to the participation of all companies in the chain which are based in the EU. The launch of the SCI took place after a number of steps which have led to the implementation of the initiative itself.

The food supply chain connects three important sectors of the European economy: agriculture, food and beverage industry and distribution. The food and beverage industry is the EU's biggest manufacturing sector in terms of jobs and value added. Furthermore, the food supply chain is considered essential for the economic, social and environmental development of the EU. Nevertheless, lack of transparency, sub-optimal business-to-business relationships, a lack of attractiveness for skilled workers, and a lack of market integration across EU countries constitute challenges for the sectors concerned, and can lead to a reduction of its competitiveness<sup>13</sup>. In this framework, given the importance of the food supply chain for the European economy, the Commission identified a number of issues to be addressed to improve the competitiveness of the food chain, as well as some concrete policies to be implemented to enhance its functioning. Table 3.1 shows the process undertaken by the European Institutions since 2009, which finally led to the implementation of the SCI.

*Table 3.1 – The Supply Chain Initiative: overview of the EU policy context*

2008 - 2010	<b><i>High Level Group on the competitiveness of the agro-food industry</i></b>	<p>In 2008 the European Commission set up a <b>High Level Group on the Competitiveness of the agro-food industry</b>. The Group was composed of representatives of selected Member States, of the European agro-food industry, of professional associations and of civil society, and chaired by the European Commission. The Group analysed the factors that influence the competitive environment of the European agro-food industry.</p> <p>In March 2009 the Group issued 30 recommendations “to enhance the sustainable development and competitive position of the sector”. Among these, the group recommended the establishment of an EU wide code of conduct to address the relationships among the players in the food chain<sup>14</sup>.</p>
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<sup>13</sup> European Commission – DG Growth ( [http://ec.europa.eu/growth/sectors/food/index\\_en.htm](http://ec.europa.eu/growth/sectors/food/index_en.htm) )

<sup>14</sup> <http://ec.europa.eu/DocsRoom/documents/2666/attachments/1/translations/en/renditions/native> (Recommendation n. 15)

2009	<b>European Commission Communication “A better functioning food supply chain in Europe”</b>	The 2009 EC Communication “ <b>A better functioning food supply chain in Europe</b> ” stated that “ <i>lack of market transparency, inequalities in bargaining power and anti-competitive practices have led to market distortions with negative effects on the competitiveness of the food supply chain as a whole</i> ”. In order to remove such market distortions, the Commission saw the need for action to eliminate unfair practices in business-to-business agreements and to promote sustainable and market-based relationships between stakeholders in the food supply chain.
2010	<b>High Level Forum for a better functioning food supply chain</b>	<p>In 2010 the European Commission closed the mandate of the High Level Group and, with the Decision 2010/C210/03, established the <b>High Level Forum for a better functioning food supply chain</b>. The aim of the Forum was to assist the Commission to follow the implementation of the Communication on “<b>A better functioning food supply chain in Europe</b>” and of the <b>Recommendations</b> of the High Level Group on the Competitiveness of the Agro-Food Industry. The Forum, whose mandate has recently been renewed, is composed by Member State national authorities responsible for the food sector and by representatives of the agro-food sector. On June 01, 2015 the European Commission set up a new High Level Forum to help develop policy in the food and beverage sector and contribute to a better functioning food supply chain.</p> <p>Identified priority issues for the first Forum were B2B contractual practices, competitiveness and the European Food Prices Monitoring Tool. For what concerns B2B contractual practices, the main objective of the first Forum was to identify a list of unfair practices and of relevant best practices. The Expert Platform was composed of associations and federations that represented different interests of the food supply chain: this notwithstanding, they decided to start a dialogue to find a common definition of the meaning of fairness in B2B practices.</p>
2011	<b>Multi-stakeholders dialogue in the High Level Forum</b>	Upon request of the European Commission, a <b>multi-stakeholder dialogue</b> was created in the B2B Expert Platform of the High Level Forum, to discuss fair and unfair practices. The multi-stakeholder dialogue saw the participation of eleven business organisations, which were invited to propose a definition of the problem of UTPs in the food chain.
2011	<b>Principles of Good Practice in vertical relationships in the food supply chain</b>	<p>On November 29, 2011, 11 members of the EU-level multi-stakeholder dialogue adopted a set of <b>Principles of Good Practice in Vertical Relationship in the Food Supply Chain</b>. The 11 signatory organisations were AIM, CEJA, CELCAA, CLITRAVI, Copa-Cogeca, ERRT, EuroCommerce, Euro Coop, FoodDrinkEurope, UEAPME and Independent Retail Europe (formerly UGAL).</p> <p>The Principles provide a framework for conducting business that respects contractual freedom and ensures competitiveness. The document also contains a list of examples of fair and unfair practices in vertical trading relationships. In particular, the document lists the set of PGP grouped as: general principles of good practices; specific principles of good practices; and example of good and bad practice. According to the Forum, the PGP could provide a basis to develop a voluntary code of conduct on B2B practices in the food sector and, on such basis, the core group of signatory associations was asked to agree on a solution to implement them.</p>

2013	<b><i>Framework and Launch of the Supply Chain Initiative (SCI)</i></b>	<p>On January 25, 2013, after a period of intense discussions, 8 out of the 11 associations which had adopted the PGP, agreed on a <b>Framework for the implementation and enforcement of the Principles</b>. The 8 signatory organisations were AIM, CELCAA, ERRT, EuroCommerce, Euro Coop, FoodDrinkEurope, UEAPME and Independent Retail Europe (formerly UGAL).</p> <p>On September 2013 the voluntary framework was launched as “<b>The Supply Chain Initiative. Together for good practices</b>”. The Initiative was launched by 7 out of the 8 signatory associations: UEAMPE is an Observer and participates with this role to the meetings of the Governance Group.</p>
2013	<b><i>Green Paper on Unfair Trading Practices in the B2B Food and non-food supply chain in Europe</i></b>	<p>On January 31, 2013 the Commission published a Green Paper providing further elements and a more comprehensive definition of UTPs and of the functioning of the food and non-food supply chains in Europe.</p> <p>UTPs were defined “as practices that grossly deviate from good commercial conduct and are contrary to good faith and fair dealing [...] typically imposed in a situation of imbalance by a stronger party on a weaker one and can exist from any side of the B2B relationship and at any stage in the supply chain”. In the same paper it is also recognized that [...] “SMEs are generally in a weaker position compared to larger counterparts, as they may lack the specialist knowledge required to appreciate all the implications of the terms agreed”. Finally, the paper provides a list of seven UTPs identified by the Commission: ambiguous contract terms, lack of written contracts, retroactive contract changes, unfair transfer of commercial risk, unfair use of information, unfair termination of a commercial relationship and territorial supply constraints.</p>

In December 2015, more than two years after the launch of the initiative, 375 retail, wholesale and manufacturing groups and companies had registered to the SCI, representing 1,202 operating companies across all EU Member States. More than half of the registered companies are SMEs (see also § 8.1.2).

### **3.2 Organisation and functioning mechanisms**

#### **Objective of the initiative**

The Supply Chain Initiative was launched with the main aim of promoting good practices between business partners along the food supply chain. The initiative pursues this objective by asking to its company members to commit to the Principles of Good Practice in the daily negotiations with the business partners and, in case of disputes, by stimulating the parties to find an agreed solution that will not interrupt the business relationship.

The SCI is open to companies operating at all stages of the food supply chain - farmers, producers, wholesalers and retailers - but not to companies operating in support services (e.g. suppliers of logistic services). The focus on SMEs is a fundamental part of the SCI; nonetheless, the initiative is designed for companies of all size.

The initiative covers all the EU Member States; registered companies are requested to implement the PGP throughout their organisations, and irrespective of the geographical origin of their business counterpart, provided that the obligations under the contract are to be performed in the EU. SMEs which are based outside the EU may resort to the dispute resolution options offered by the SCI in their relationships with

counterparts that have registered to the initiative, again provided that the obligations under the contract are to be performed in the EU.

The SCI also encourages the establishment of multi-stakeholder dialogues at national level. Where a national scheme is already in place, it can be requested to the SCI Governance Group to assess its conformity with the SCI (see also Table 3.2). Where a national dialogue does not exist, it can be implemented, also with the help of the tools “Guidelines on how to set up a Platform dialogue”, available on the SCI website, and with the support of the Governance Group of the SCI.

### **Governance structure and stakeholders involved**

The 7 EU-level associations involved in the initiative represent the food and beverage industry (FoodDrinkEurope), the branded goods manufacturers (AIM), the retail sector (the European Retail Round Table (ERRT), EuroCommerce, EuroCoop and Independent Retail Europe), and traders of agricultural products (CELCAA).

The SCI is managed by a Governance Group composed of official representatives of all the 7 aforementioned signatory associations. EU-level SMEs association UEAPME is an Observer. The Governance Group of the SCI came into being on April 01, 2013, as a result of an agreement by the signatory associations to endorse and implement the PGP and the Framework. The Governance Group is co-chaired by two Governance Group Members, one from the supply side and one from the distribution side, chosen for one year and renewable for a second year. At the moment, the two co-Chairs are the official representatives of Food and Drink Europe for the supply side, and Euro Commerce for the distribution side.

The Governance Group holds at least four meetings per year and decisions are normally based on consensus; abstention is anyway accepted. A Secretariat has been set up in order to provide the administrative support to the Governance Group.

### **Rules and procedures**

The Rules of Procedure have entered into force with the implementation of the SCI and are accessible from the SCI website.

The SCI is based on the voluntary registration of companies. Companies can register online to the initiative via its website, and have to comply with certain requirements before being entitled to register. In fact, the registration procedure includes “*process commitments*”, which means that all the registered companies have to comply with the following obligations:

1. Compliance with the PGP.
2. Undertaking of the self-assessment.
3. Agreement on the dispute resolution options proposed in the Framework.
4. Provision of training to employees to ensure that the company’s practices are compliant with PGP at all levels. The process of training of the staff can be also implemented through the online training programme developed by SAI Global and endorsed by the Governance Group.
5. Informing suppliers/customers of the membership to the SCI.
6. Identification of contact person(s) for internal dispute resolution and for process-related issues.

Some of the above activities can also be not concluded by the time the registration takes place. In particular, before registration companies must carry out the self-assessment and ensure appropriate compliance with the PGP and design a process contact person. Training of the employees and information of the membership to business partners can take place subsequently. However, the formal registration to the SCI can be considered complete only when all the steps of this process commitment are totally fulfilled. During the

process of implementation of the PGP, companies can signal their intention to apply to the initiative through a letter of intention, with a voluntary commitment to conclude this process preferably within six months. Companies which comply with the PGP and fulfil the process commitments can directly register with no prior letter of intent.

In order to facilitate the process of compliance with these obligations, registering companies carry out a self-assessment, reviewing their internal procedures. A self-assessment tool and a simplified check-list for the SMEs have been developed by the Governance Group for such purposes.

An annual monitoring is conducted in the form of a survey of all registered companies. The Governance Group usually sends a communication to all registered companies to inform them about the survey; participation in the survey is mandatory for all member companies.

A simplified procedure for the registration of micro and small enterprises was decided by the Governance Group and made effective from September 01, 2015. According to the new procedure:

- Micro and small enterprises will only have to register to show their commitment to the initiative and the PGP: preliminary self-assessment, appointment of an independent contact point to deal with complaints and carrying out of the training will no longer be requested. An invitation to participate to the annual survey will be sent, but it will not be compulsory;
- Medium-sized companies will continue to benefit of the simplified procedure previously applied to all SMEs; in addition, no independent contact person will be necessary where resources justify this, while participation to the annual survey will still be compulsory.

### **Dispute resolution and legal implications**

The SCI provides a self-regulation mechanism for dispute resolution, intended to offer a complement to the already existing regulations and solutions. In fact, where national rules and regulations are in force, they take precedence over the SCI mechanism.

Before registration, companies are required to make sure that they are prepared to engage in all of the dispute resolution options provided for in the framework. A company cannot formally register to the SCI when this process commitment is not fulfilled. Registered companies must review and, if necessary, modify their contracts to make sure that they are compatible with the current framework.

The disputes and the related procedures can be classified as follows:

1. **Bilateral disputes** are disputes arising between two companies when one of them is alleged to have breached the PGP. According to the Framework, companies have different options for dispute resolution:
  - *Commercial track*: the complainant can take the issue to a higher level within the commercial hierarchy of the alleged company.
  - *Contracts options*: the complainant can use other resolution mechanisms foreseen in the contract.
  - *Internal dispute resolution*: the complainant can resort to the internal dispute resolution body of the alleged company.
  - *Jurisdictional methods*: the complaint can resort to the ordinary methods, on the basis of national legislation.

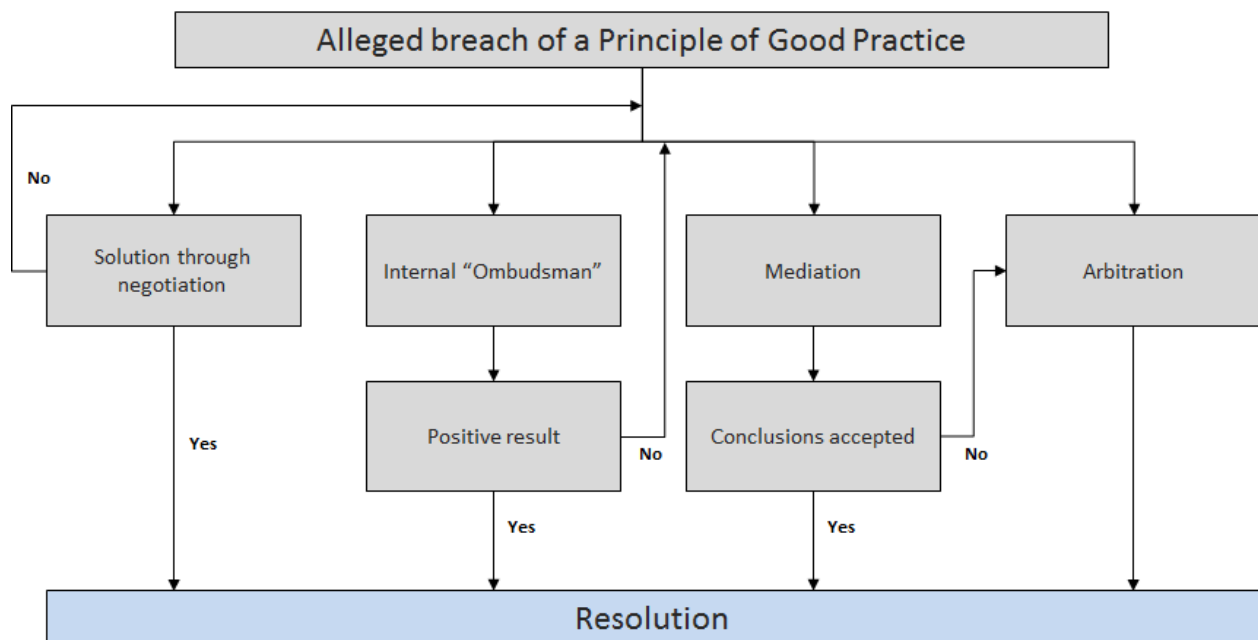
- *Mediation or arbitration*: only with mutual agreement of the parties, the dispute can be solved through an independent third party.

The registered company who receives a complaint under the Framework must make available all these dispute resolution alternatives.

The scheme reported in Figure 3.1 illustrates the resolution process with reference to bilateral disputes.

Figure 3.1 – Bilateral disputes resolution process

Bilateral disputes resolution process



*Possibility to go to court in accordance with national law if willing so*

Source: SCl Governance Group

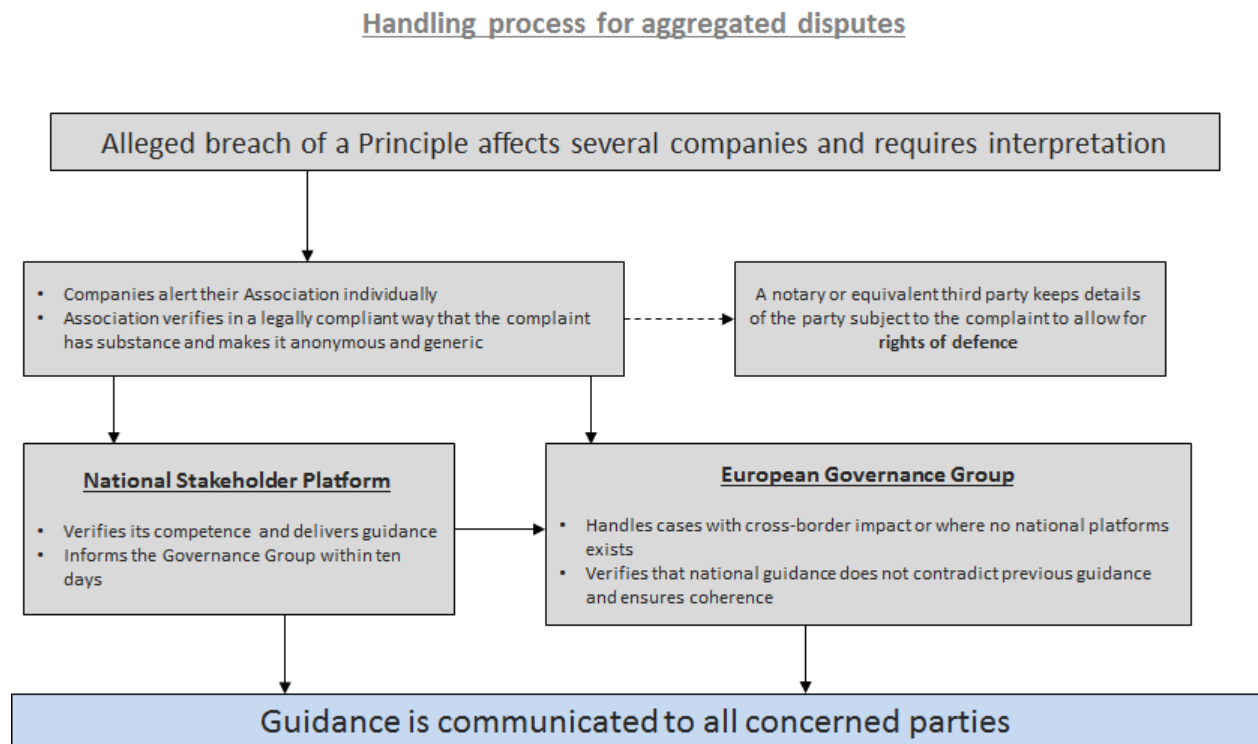
2. **Aggregated disputes** are the disputes regarding an alleged serious breach of a Principle put forward by several companies similarly affected. Reference associations which aggregate the complaints should collect the relevant information and make sure that interpretation or guidance by the Governance Group is needed. Subsequently, the complaint is submitted to the Co-Chair or to the member of the Governance Group representing the sector from which the complaint originates – which ensures the confidentiality of the parties – and is then submitted to the Governance Group. The field of action of the Governance Group is limited by these two characteristics of the aggregated dispute:

- The EU-level Governance Group will only examine cases having a cross-border dimension, or cases for which there is no national stakeholder platform in place.
- Interpretation or guidance regarding a Principle of Good Practice is required.

The anonymity of the parties and the confidentiality of the information should be ensured at each step of the process. To date, the SCI Governance Group has not treated aggregated disputes yet.

Figure 3.2 provides a summary scheme of the process for handling aggregated disputes.

*Figure 3.2 – Handling process for aggregated disputes*



Source: SCI Governance Group

3. A **breach of process commitments** occurs when a registered company is alleged not to meet its obligations provided in the framework for implementation and enforcement of the PGP. When a breach of process commitment occurs, upon receipt of a complaint, the Governance Group, if the breach is confirmed and after that gradual steps are taken, can, at the end, impose two sanctions:

- Suspension is applied after two warnings without action from the company, and foresees that the company cannot benefit from the Framework but continues to be bound by its obligations. The suspension is revoked after the rectification of the breach.
- Exclusion is the ultimate sanction, applied in case the suspension has not achieved any effect and the breach is persistent, intentional and unexplained. The exclusion is not revocable and the excluded company needs to re-apply to the initiative.

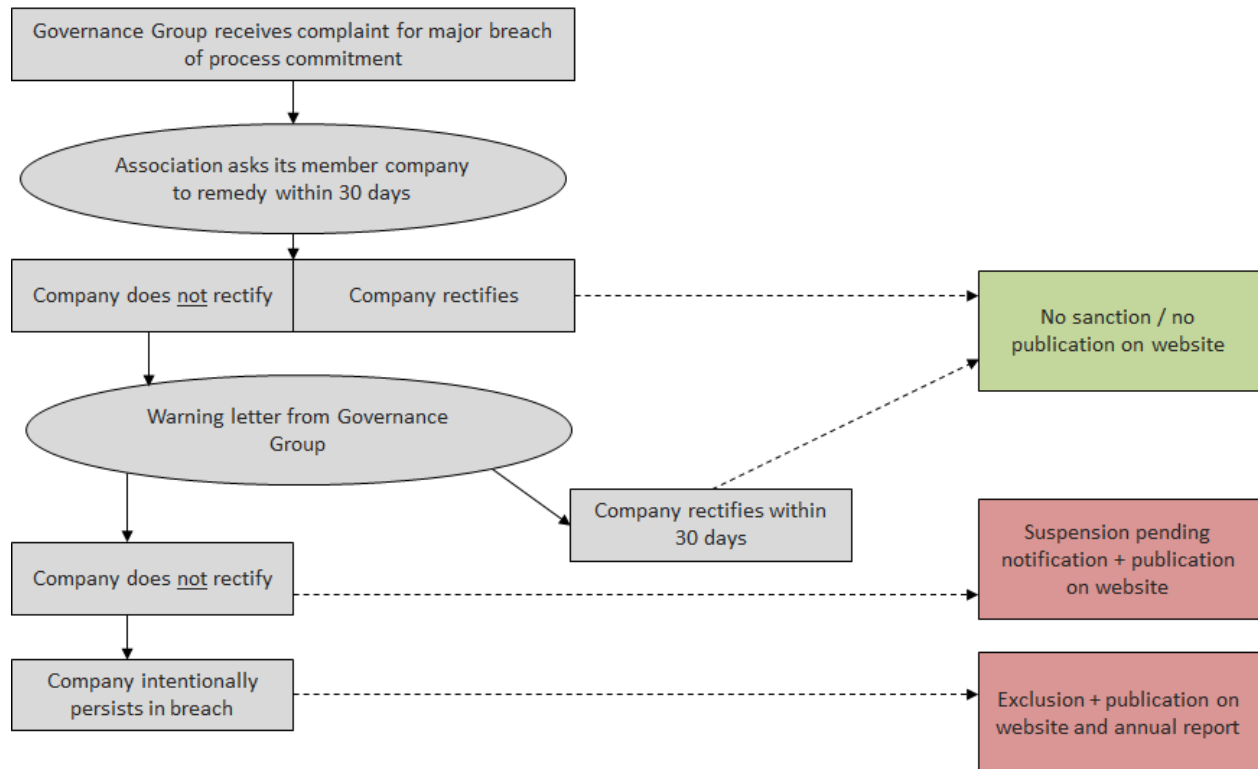
At the moment, neither suspensions nor exclusions have been imposed.

Figure 3.3 provides a scheme illustrating sanctions for breaches of process commitments.



Figure 3.3 – Sanctions for breaches of process commitments

How sanctions work



Source: SCI Governance Group

The Governance Group can approve decisions that reflect the Governance Group's internal discussions on a particular question. The purpose of these decisions is to clarify a specific point of the Framework; such decisions have no legal value. So far, five decisions have been taken: their contents are illustrated in Table 3.2.

**Table 3.2 - Governance Group decisions**

Date	Title	Description
May 2013	Governance Group decision 01/2013: UK and double jeopardy	The British Retail Consortium requested a clarification asking if a complaint raised and dealt under the GSCOP could not be raised also through the Supply Chain Initiative.  The Governance Group decided that a specific complaint that is raised and dealt under GSCOP cannot be raised either in parallel or subsequently through the voluntary initiative.
June 2013	Governance Group decision 02/2013: UK and compatibility of The Supply Chain Initiative with GSCOP	The British Retail Consortium requested to the Governance Group to recognise the equivalence of the GSCOP with the EU level voluntary initiative. Governance Group hereby recognised the equivalence of the GSCOP with the voluntary agreement.
February 2014	Governance Group decision 03/2014: The dispute resolution options foreseen in contracts	On behalf of their associates, member organisations raised two questions to the Governance Group about the interpretation of the Framework regarding the dispute resolution options. With its decision the Governance Group confirmed that: i) all the dispute mechanisms foreseen for individual disputes in the Framework should be made available by the registered companies, and not only some of them; ii) national laws prevail over the dispute resolution options.
June 2014	Governance Group decision 04/2014: Compatibility of the Belgian Code of Conduct with The Supply Chain Initiative	With this decision, the Governance Group recognised the equivalence of the Belgian code of conduct with the EU-level Supply Chain Initiative.
September 2015	Governance Group decision 05/2015: Simplified registration procedure for micro and small enterprises	With this decision, the Governance Group simplified the procedures required for micro and small enterprises to register to the initiative: it excluded the obligation to conduct a preliminary self-assessment, to appoint an independent contact point and to carry out training.
November 2015	Governance Group decision 06/2015: Compatibility of the Italian legislation with the Supply Chain Initiative	With this decision, the Governance Group recognised the compatibility and the equivalence of the Italian legislation addressing UTPs (Art. 62 - Decree Law 1/2012) with the Supply Chain Initiative.

## 4 Overview of the voluntary initiatives and national stakeholders' platforms

The chapter provides a description of the initiatives covered by the four national case studies: Belgium, Finland, the Netherlands and Germany.

For each initiative, the genesis and evolution over time of the platform is described, introducing the circumstances where the initiative originated and the steps which led to its establishment. The organisation and functioning mechanisms of each initiative are described in detail, with special respect to the objectives of the initiative, its governance structure, the involved stakeholders, and its rules and procedures.

### 4.1 National initiatives: Belgium

#### 4.1.1 Genesis and evolution

The *Belgian code of conduct for fair relations between suppliers and purchasers in the food supply chain* was signed on May 20, 2010. According to the code itself, the impetus for the creation of the code was volatile agricultural prices, which created pressure on the agricultural sector and tensions between parts of the chain. These issues have been present in the Belgian economic environment over a longer period; however, the 2008/2009 milk market crisis gave rise to a major debate about commercial relationships between farmers and retailers. According to farmers, the price received from retailers during the crisis was particularly low. This led to a negotiation between the two parties, mediated by the Federal Ministry of Economic Affairs. The outcome of the debate was an agreement which stated that retailers would pay farmers a fixed extra payment per litre of milk during a six month period<sup>15</sup>. Interviewees reported that these discussions and the subsequent agreement were initially considered as a one-of-a-kind process; however, having seen that discussions of this nature could lead to effective results, and in view of the trust which had developed as a result of these discussions, efforts were made to develop a permanent platform. The Belgian Agro-food chain platform was therefore established in 2009, and its first action was to publish the Code of Conduct, in 2010.

In view of achieving equivalence with the European Framework for implementation and enforceability of the PGP, the platform started a revision process, which ended in 2014. The revised version of the code was finally adopted on June 10, 2014. A summary of changes to the code following the 2014 revision is reported in paragraph § 4.1.2. No changes other than the 2014 revision have been made until recently.

Further changes to the platform were agreed in May 2015, and were formally announced on June 29, 2015. The main foreseen changes concern:

- the intention to appoint an independent chairman of the board;
- a reinforcement of the dispute resolution mechanism.

These changes have not been implemented yet; according to interviewees, their implementation is foreseen for the coming months.

Table 4.1 provides a summary of the main achievements of the platform from its launch in 2010 up to June 2014 (the end of the last reporting year). These cover a wide range of issues, not only UTP-related ones.

<sup>15</sup> It was explained by one interviewee that in order to be compatible with EU competition law, this payment could only be made during a time-limited period.

*Table 4.1 - Main achievements of the Belgian platform*

Year ending June	N° of reported disputes*	Other actions
2011	4	<p><b>Information exchange:</b> planning of an approach</p> <p><b>Sustainable development of supply chain:</b> pork sector crisis led to several meetings. Actors committed to the maintenance of pre-crisis price levels and unchanged procurement. Proposals for the stabilisation of price discussed.</p> <p><b>Promotion of local products:</b> retailers committed to promotion of Belgian agricultural products at POS in 2008.</p> <p><b>Use of consultative model:</b> pig breeders took actions against companies from the meat and trade sectors (though other farming sector organisations distanced themselves from this).</p>
2012	4	<p><b>Information exchange:</b> start of periodic meetings between retailers and the Flanders agricultural board in order to exchange figures.</p> <p><b>Sustainable development of supply chain:</b> discussions between farmers and retailers on: (1) price discounts and promotional practices; (2) the use of efficiency bonuses in a certain context; (3) the impacts of laying hens legislation on supply and prices.</p> <p><b>Accurate handling of food products:</b> mediation of a case of recalled potatoes by one retailer which led to damages for suppliers.</p> <p><b>Compliance with payment terms:</b> a survey of chain members to examine payment delays (results indicated considerable variation).</p> <p><b>Written agreements:</b> handling of a case relating to the charge of certain handling costs.</p> <p><b>Mediation:</b> discussions about the possible use of mediation.</p> <p><b>Consultative model:</b> organisations refrained from actions that would interfere with the consultative model.</p>
2013	6	<p><b>Information exchange:</b> periodic meetings between retailers and the Flanders agricultural board to exchange figures. Challenges for the food chain presented at one meeting.</p> <p><b>Sustainable development of supply chain (sales at a loss):</b> organisations took a united stand against government proposals to abolish the ban on sales at a loss; this resulted in the government upholding the ban.</p> <p><b>Horsemeat crisis:</b> a working group was set up to examine a framework for sampling, analysis and prevention of fraud. Recognition of the need to work towards holistic approach on meat issues.</p> <p><b>Sustainable development in market entry systems</b> and inventory sustainability requirements for commercial contracts defined; this is used to include generic requirements in contract documents for market entry.</p> <p><b>Transformation of the agro-food system:</b> a specific project in this area was launched in Flanders and proposed in Wallonia.</p> <p><b>Piglet castration:</b> an agreement was made to discontinue surgical castration in 2018 and a joint working group was set up to remove bottlenecks.</p> <p><b>Beef price index:</b> an agreement was reached about the charging of extreme feed price fluctuations in commercial negotiations.</p> <p><b>Generic contract documents for beef:</b> an agreement was reached following negotiations. Farmers can be certified for these generic contracts.</p> <p><b>Relationship with the government:</b> meeting with ministers and results of the chain meeting presented to them.</p>
2014	3	<p><b>Horsemeat crisis:</b> a study on how to prevent fraud and manage cross contamination in different horsemeat batches was set up.</p> <p><b>Sustainable development in market entry systems</b> and inventory sustainability requirements for commercial contracts defined; this is used to include generic requirements in contract documents for market entry.</p>

Year ending June	N° of reported disputes*	Other actions
		<p><b>Transformation of the agro-food system:</b> a specific project in this area was launched in Wallonia and continued in Flanders. A state of affairs of the Flemish project was presented.</p> <p><b>Piglet castration:</b> the joint working group was presented conclusions of scientists; other work continued.</p> <p><b>Beef price index:</b> an agreement was reached about the charging of extreme feed price fluctuations in commercial negotiations.</p> <p><b>Pork meat:</b> working group on pork was re-launched in February 2014. The group started studying the mechanism that rule price volatility in the chain and conditions issued by pork buyers.</p> <p><b>Relationship with the government:</b> a joint memorandum of the agro-food chain was sent to political parties in advance of elections.</p>

\* According to reports, disputes are assumed to be clarified / resolved.

Source: Annual reports

#### 4.1.2 Organisation and functioning mechanisms

The Code of Conduct is just an element of the agro-food chain platform (albeit a key one). In addition to the code itself, the platform comprises sector-specific working groups (whose work is often based on the Code of Conduct, according to interviewees). A governance group oversees all the activities of the platform, including - most importantly - the discussion and handling of disputes. It is worth noting that the wider agro-food chain platform is considered here; the terms “initiative” and “platform” are used interchangeably.

##### Objective of the initiative

According to the Code of Conduct, the aim of the initiative is to promote fair relationships between suppliers and purchasers. This is done through the involvement of operators and continual efforts to encourage the participation of any missing links in the supply chain.

##### Governance structure and stakeholders involved

The code has been endorsed by the following federations:

- BEMEFEA (feed producers)
- Boerenbond (largest Flemish farmers federation)
- ABS (Flemish farmers federation)
- FWA (Walloon farmers federation)
- UNIZO (Flemish SMEs)
- FEVIA (food and beverage producers)
- BABM (branded goods manufacturers)
- UCM (Francophone SMEs)
- COMEOS (retailers)

The platform is managed by a governance board composed of official representatives appointed by the aforementioned sector federations involved in the agro-food chain. The presidency of the board should rotate annually.

The Ministry of Economic Affairs is not directly involved in the platform and has the role of external observer. However, according to a Memorandum of Understanding (MoU) which was signed in May 2015, the Ministry of Economic Affairs can perform two roles in the platform:

- Act as a centre of knowledge; providing statistics on prices for various sectors and analysing sectors for sector-specific working groups (the Ministry was already performing these roles prior to the signing of the MoU)
- Mediate or perform economic inspection upon request of the governance board. This role is in the process of being implemented.

### Rules and procedures

The code governs relationships between, and applies to, all stages in the chain and all operators (i.e. both purchasers and suppliers). In the case of a dispute, the code foresees a dispute resolution mechanism. Voluntary and transparent compliance with the code is ensured by public declarations of fair relationships between suppliers and buyers with open reference to the code. Member organisations communicate with the companies which adhere to the code through their websites.

Table 4.2 sets out the original 2010 recommendations of the code, and shows how these were changed by the 2014 update to the Principles of Good Practice.

*Table 4.2 - 2010 recommendations and the 2014 Principles of Good Practice*

Area	Original 2010 recommendations	Updated 2014 PGP
Information exchange (general)	Purchasers and suppliers exchange general information on markets and consumer trends, to enable the supplier to match supply and demand, and - if necessary - to diversify or adapt.	<b><i>In strict compliance with competition and other applicable laws</i></b> , purchasers and suppliers exchange general information [...] to diversify or adapt.
Information exchange (laws / deception)	<b><i>No provisions</i></b>	<b><i>Purchasers and suppliers will only exchange information in strict compliance with competition and other applicable laws, and they should take reasonable care to ensure that the information supplied is correct and not misleading.</i></b>
Information exchange (confidentiality)	<b><i>No provisions</i></b>	<b><i>Purchasers and suppliers must respect confidentiality of information unless the information is already made public or has been independently obtained by the receiving party lawfully and in good faith. Confidential information shall be used by the recipient party only for the purpose for which it was communicated.</i></b>
Sustainable development	Purchasers and suppliers behave as partners towards a sustainable development of the whole agro-food chain. To this end, the three dimensions - 'Society' (a decent income for both the employee and employer) - 'Environment' (an activity that has minimal impact on the ecological system for future generations)	Purchasers and suppliers behave as partners towards a sustainable development of the whole agro-food chain. To this end, the three dimensions - 'Society' (a decent income for both the employee and employer) - 'Environment' (an activity that has minimal impact on the ecological system for future generations)

Area	Original 2010 recommendations	Updated 2014 PGP
	- 'Economy' (an economic return which allows to guarantee the continuity of all links of the chain) are considered together and approached in a balanced manner.	- 'Economy' ( <b><i>a sufficient economic return guaranteeing the continuity of all links of the chain</i></b> ) are considered together and approached in a balanced manner.
Product handling	Purchasers guarantee a careful handling of food products, to value to a maximum the efforts of suppliers.	Purchasers guarantee a careful handling of food products, to value to a maximum the efforts of suppliers. ( <b><i>unchanged</i></b> )
Local products	Purchasers source local products where these are competitively positioned (both in terms of price and quality) and where they fit the commercial strategy.	Purchasers source local products where these are competitively positioned (both in terms of price and quality) and where they fit the commercial strategy. ( <b><i>unchanged</i></b> )
Payment	Purchasers comply with the contractually agreed or legally binding payment delays, taking into account also the moment of transfer of property according to sector or product.	<b><i>Purchasers and suppliers and in particular the agreements they conclude, should comply with all contractually agreed clauses. They should agree with the payment delays parties agreed upon or, in the absence of such an agreement, the legal payment delay of thirty calendar days. The payment delay depends on the moment of transfer of the property which is specific to the sector or product.</i></b>
Written agreements	Purchasers and suppliers establish a written agreement with clear conditions (possibly with mode of compensation) of which both parties can take prior knowledge.	Purchasers and suppliers establish a written agreement with clear conditions (possibly with mode of compensation) of which both parties can take prior knowledge. ( <b><i>unchanged</i></b> )
Contract changes	Purchasers and suppliers do not impose unilateral changes to contract conditions.	Purchasers and suppliers do not impose unilateral changes to contract conditions. ( <b><i>unchanged</i></b> )
Mediation	Purchasers and suppliers recognise the possibility of using mediation, with consent of each party on the name of the mediator.	<b><i>No provisions</i></b>
Consultation	Purchasers and suppliers are resolutely dedicated to the consultation model as a strategy to resolve disputes in their relations.	<b><i>No provisions</i></b>
Entrepreneurial risk	<b><i>No provisions</i></b>	<b><i>All contracting parties in the supply chain will bear their own appropriate entrepreneurial risks.</i></b>
Threats	<b><i>No provisions</i></b>	<b><i>A contracting party shall not apply threats in order to obtain an unjustified advantage or to transfer an unjustified cost.</i></b>

Source: Code of Conduct 2010, 2014

### Types of UTPs

The Belgian initiative does not specify the types of UTPs which it addresses. According to interviewees, the decision was taken to base the Code of Conduct on positive aspects which should be included in the code,

rather than on a negative list of UTPs which should be avoided. This was further justified by the belief that a specific trading practice in isolation cannot necessarily be defined as fair or unfair; in fact, the context of trading practices is of key importance in deciding whether they are fair or unfair. In this light, interviewees noted that the “comply or explain” principle is a key part of the approach for deciding whether or not a specific practice in a specific context is unfair. On the basis of this principle, companies may either comply with the code or, if they do not comply, explain why they do not.

### **Dispute resolution and legal implications**

According to the updated Code of Conduct, provisions concerning dispute resolution mechanisms may apply when a dispute arises regarding an alleged breach of the PGP. Two types of disputes are identified by the code: individual/bilateral disputes and aggregated disputes

**Individual/bilateral disputes.** In the case of bilateral disputes, parties involved in the complaint are expected to engage in all reasonable efforts to resort first to the procedures that are easier, faster and at lower cost to resolve their disputes. The following modes, in ascending order of complexity, time requirements and cost, are envisaged:

- Commercial track
- Contract options
- Internal dispute resolution
- Mediation/arbitration requiring the consent of both parties
- "Jurisdictional" methods

According to the code, purchasers and suppliers are resolutely dedicated to the consultation model as a strategy to resolve disputes in their relationships.

**Aggregated disputes.** Members of the partner organisations who have signed the code of conduct can report disputes from their daily practice to the responsible of their professional federation. The responsible of each professional federation can request that the board analyses a dispute regarding a serious breach of the principles affecting several of its members. The board will use the basic principle "comply or explain" in its assessment. This principle means that both purchasers and suppliers can - in their "declaration of fair relationships between suppliers and purchasers" - provide for derogations to the recommendations of the code, as long as they clarify their policy on this.

## **4.2 National initiatives: Finland**

### **4.2.1 Genesis and evolution**

The Finnish initiative is named the *Board of Trading Practices in the Food Supply Chain* (hereinafter “the board”). The roots of its genesis can be found in the discussions about UTPs in the food supply chain which were held at EU level in 2010. By 2012 this discussion was also opened in Finland: the FCCA (Finnish Consumer Association) initiated research activities to investigate this matter and produced a report<sup>16</sup> which highlighted that retailers held the bargaining power in the food Finnish market and that retailers’ private labels acted as “gatekeepers” to the supermarket shelves.

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<sup>16</sup> Björkroth et al, 2012



The report proved that some practices applied in the food supply chain in Finland could be considered UTPs, but were not usually recognized as such, thus falling in a sort of “grey area”: in other terms, the definition of such practices was not clear-cut, and their univocal recognition as UTPs was not generally accepted by authorities and market players (see also § 9.2.4.1 for more details). At the same time, work had about UTPs in the food supply chain had progressed at EU level, and this resulted in the Commission’s Green Paper, for which stakeholders in the food supply chain were asked to provide input<sup>17</sup>. In response to the Green Paper, the ETL (Finnish Food and Drink Industries Federation) elaborated a statement about UTPs in the Finnish food supply chain, concluding that UTPs are an established part of the Finnish retailers’ practices but also that the *concept of UTPs was not recognized in Finland*<sup>18</sup>. This is in line with the findings in the report by the FCCA.

The ETL initiated the discussion about UTPs and the necessity to define them more clearly (to take them out of the so-called “grey area”) and proposed a voluntary code of conduct, especially for addressing practices connected with retailers’ auctions and private label production contracts. This proposition was turned down by the Grocery Trade Association (PTY / FGTA), which conceded that the practices in question were in some cases applied, but claimed no need for a code of conduct. At the same time (2013) the FCCA proposed a new law (an addition to the existing Competition Act) about abuse of dominant position in the market. In 2014 this section was adopted and became known as Section 4 a. It could be argued that the proposed amendment of the Competition Act and the establishment of the Finnish board were both introduced in response to the Commission’s encouragement to assess the national frameworks’ potential in tackling UTPs<sup>19</sup>, but this was not confirmed in interviews.

Following the proposed amendment of the Competition Act, the FGTA turned more positive towards a voluntary Finnish initiative for promoting fair trading practices in the food supply chain. In this framework, in 2013, the FGTA and the ETL started the process for launching a national platform to implement the SCI in Finland. The FGTA established an ad hoc group of lawyers from the retail companies for the purpose of promoting the creation of the board among retailers. This group may be an important reason behind the strong uptake of the board in the retail sector, compared to the other stages of the food chain (refer to § 9.2.2.2 for details). Later in 2013, the Central Union of Agricultural Producers and Forest Owners (MTK) joined the initiative. These three federations founded the board together. The board was formally established in January 2014: it is affiliated with the Finnish Chamber of Commerce, but it operates and reaches its decisions in total independence of the Chamber itself.

In September 2015, farmers’ association MTK resigned from the initiative, pointing out that no cases were brought to the board in the first year and a half of its existence. At the same time, the association underlined that UTP-related problems are very important for farmers in Finland, and expressed serious concerns in particular about the very limited powers of the board, which cannot declare the offending agreement null and void and cannot grant compensation.

It is worth noting that farmers are lobbying the Finnish government to impose regulations for making compliance with the PGP mandatory, and to establish an Ombudsman system. However, no concrete suggestions on the matter have been put forward to date.

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<sup>17</sup> COM(2013)/37)

<sup>18</sup> ETL, 2013

<sup>19</sup> EU Commission, 2014

#### 4.2.2 Organisation and functioning mechanisms

##### Objective of the initiative

The board operates as a national platform for implementing the Supply Chain Initiative and promoting fair business practices in the food supply chain in Finland. The board only deals with cases of aggregated disputes involving Finnish parties.

##### Governance structure and stakeholders involved

The board is chaired by a professor of law and has six members (situation as of June 2015). The Finland Chamber of Commerce appoints the chair, the vice-chair and other members of the board for three calendar years at a time. In its original design, the board should have been composed by delegates of different interest groups in the food supply chain (farmers, processors and retailers). However, after the recent withdrawal of MTK from the board, farmers are not represented anymore. Members of the board should have, as a whole, in-depth economic, technical and legal expertise, and the chair and the vice-chair should both have completed a Master of law degree. The Finnish Chamber of Commerce appoints one or more secretaries to perform administrative tasks and to assist with the preparation of the cases<sup>20</sup>. The organisation of the board is outlined in Figure 4.1, which represents the organisation of the board before the recent withdrawal of MTK (no update on the structure of the board after this event has been released to date).

Figure 4.1 - Organisation of the board



Source: elaboration based on <http://www.kkv.fi/> and interviews, July 2015

<sup>20</sup> The current serving secretary has been with the Chamber of Commerce for many years and has served on the Council for ethics in advertising and on the board of business practices; she has been a member of Market Court for 14 years. She holds a Master of law degree (source: <http://kauppakamari.fi/en/boards/board-trading-practices-food-supply-chain/>)

## **Rules and procedures**

The rules of the board have entered into force on January 29, 2014<sup>21</sup>.

The board has three main tasks:

- To promote fair business practices in the food supply chain in Finland.
- To interpret the PGP and the Framework for implementation and enforcement of the principles at national level.
- To produce guidance in aggregated disputes involving Finnish parties.

The board should try to reach consensus when making a decision on the guidance. If consensus cannot be reached, the board will issue its guidance by a 2/3 majority vote.

## **Types of UTPs and dispute resolution system**

It is not specified what type of UTPs the board can deal with. The board can **only take on cases of aggregated disputes** according to these rules:

- The dispute has to concern a serious breach of the PGP.
- It has to affect a minimum of two companies in similar vertical relationship (e.g. two food processors).
- It has to involve only Finnish parties.

If non-Finnish parties are involved, the aggregated dispute should be settled by the Supply Chain Initiative in Brussels; if only Finnish parties are involved, the board can deal with the dispute. However, parties involved in the case must have signed up to the SCI, thus committing themselves to compliance with the PGP. An exception to this process is foreseen for the Finnish farmers. In fact, farmers may launch an aggregated dispute without having registered to the SCI, differently from retailers and food producers. However, prior to launching a dispute, farmers have to sign a notification to the board on complying with the PGP. By signing the notification, the farmer acknowledges that the dispute is handled by the board and under the PGP. There are no special rules or requirements for SMEs by the Finnish board. In case of an aggregated dispute, the case must be submitted to the board no later than 6 months after the breach has occurred. A company's compliance with the PGP shall be evaluated from the moment when the defendant company has made a commitment to follow the principles (i.e. to sign up to the SCI), as stated in the rules of the board.

In case of an aggregated dispute, the offended parties (e.g. at least two food companies being subjected to the same UTP) will approach the relevant federation (in this example, the ETL), and the federation will present the case to the Secretary General.

Upon this, the Secretary General collects documentation and facts and prepares the case for presentation to the board. The names of the involved companies will only be known to the federation bringing the case forward (in this example, the ETL), to the Secretary General and to the independent experts. This step is meant to ensure confidentiality.

After reviewing the case, the board will decide upon it and issue its guidance on how to improve the trading practices and on how to implement the decision into the existing framework. A board member who could act as an applicant in an aggregated dispute (i.e. a member representing one of the sector organisations) has

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<sup>21</sup> The rules are accessible from the website of the Chamber of Commerce: <http://kauppakamari.fi/en/boards/board-trading-practices-food-supply-chain/>.

neither decision power nor the right to be present in aggregated dispute resolution procedures; this is symbolized with the line in Figure 4.1.

The board has 10 days to decide on a case. The decision is sent to the SCI in Brussels for a comment: this will be the final decision reported to the Finnish board and thereafter to the Finnish companies involved. The procedure for release of guidance to a wider target group is still unclear, as it has never been applied in practice<sup>22</sup>.

The board cannot issue any sanctions; only guidance, which is published on the websites of the Finnish Chamber of Commerce and of the SCI. After receiving notice of the board's decision, it is up to the companies involved in the dispute to take their own actions to follow the board's guidance, as the board has no legal power.

### **4.3 National initiatives: the Netherlands**

#### **4.3.1 Genesis and evolution**

Discussions on UTPs have been on-going in the Netherlands over the past years. The Dutch parliament called attention to the topic in a number of occasions, with special regard to the adverse effects experienced by small and medium-sized companies<sup>23</sup>. Furthermore, complaints on UTPs of farmers are increasing while, at the same time, price-oriented competition among retailers contributes to exacerbate business relationships in the food chain.

In 2009, the Ministry of Economic Affairs commissioned a research on the nature and the extent of imbalances in bargaining power in the market<sup>24</sup>. The investigation showed that suppliers are increasingly being confronted with unfair practices. According to the study, the diffusion of UTPs is a consequence of imbalances in bargaining power. In this context, suppliers (especially small-scale ones) fearing commercial retaliation by their customers (especially large-scale retailers or processors), often prefer not to look for remedies to UTPs.

At the end of 2010, the Ministry of Economic Affairs and the Parliament agreed on the intention to elaborate a code of conduct, which should be facilitated by the Minister<sup>25</sup>.

At the request of the Ministry of Economic Affairs, the Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems (TISCO) examined the possibility of creating a code of conduct, with self-regulation as a starting point<sup>26</sup>. TISCO consulted representatives of the supply chain into two sectors - agro-food; fashion, textiles and footwear - in the period from June to December 2011. Getting to a solution that was supported by all parties proved impossible. However, TISCO set a number of benchmarks that could be featured in a code of conduct. TISCO suggested that the code could consist of guidelines for fair business practice and could include specific standards on countering UTPs. In addition, TISCO advised to develop a system for dispute resolution, which might be easily accessible, e.g. by raising issues within the relevant trade associations. Finally, TISCO noted that it would be beneficial to involve a neutral expert in such system.

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<sup>22</sup> Koivisto, 2014

<sup>23</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Vervolg eerlijke handelspraktijken, 23/11/2012

<sup>24</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Vervolg eerlijke handelspraktijken, 23/11/2012

<sup>25</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Gedragscode eerlijke handelspraktijken, 14/02/2012

<sup>26</sup> Tilburg Institute for Interdisciplinary Studies of Civil Law, and Conflict Resolution Systems (TISCO), Eerlijk, scherp en betrouwbaar, 01/2012

Following the TISCO report, the Ministry discussed the issue further with representatives from the two pilot sectors in the period from May to July 2012<sup>27</sup>. All parties agreed to establish a dispute resolution system, if designed in accordance with the EU-level initiative which was being developed for the agro-food sector. Suppliers generally called for a more binding dispute resolution system. On the other side, customers deemed that UTPs hardly occur in practice. Finally, both suppliers and customers feared that setting up an over-regulated system might have negative impacts.

In September 2012 an incident occurred in the Dutch market, whereby retailer Albert Heijn requested all its suppliers a 2% discount on their products. Also supermarket chain Jumbo issued a written request to its suppliers asking to make a one-time payment of 1.25% on the joint invoice value of Jumbo and C1000<sup>28</sup>, the so called “Hallo-Jumbo contribution”. Interviewees pointed out that such actions caused a storm of protest, and strongly accelerated the process leading to the pilot project.

At the same time, parallel discussions on a possible initiative were being held at EU level. The Dutch Ministry preferred to wait for further developments at EU level, but, at the same time, communicated the first results of the discussions made up to that moment<sup>29</sup>:

- First of all, self-regulation was considered the most appropriate route, since the government believed that trade is a matter of commercial relationships between the individual supplier and the individual customer, i.e. a matter in which the government must restrict its involvement to the absolute minimum. Moreover, self-regulation was seen as an inexpensive, accessible, fast and effective solution.
- In the second place, contrary to the EU-level initiative, the Dutch initiative was to be launched in two sectors: the agro-food one and the fashion, textile and footwear one. These sectors were selected because both had experienced repeated UTP-related complaints over the years<sup>30</sup>.

The Ministry commissioned the research centre SEO Economic Research to examine whether legislation supplemented with self-regulation were sufficient to counter UTPs. The study<sup>31</sup> concluded that self-regulation, as a complement to the existing legislation, could be considered as an appropriate way to counter UTPs. Furthermore, a self-regulated initiative should be based on a code of conduct that translates into specific requirements the general rules provided by civil law, and should have a neutral body providing binding advice, arbitration or mediation.

In January 2013 the three main associations in the Dutch agro-food supply chain (LTO representing farmers, FNLI representing the food industry and CBL representing retailers) pledged their support to the establishment of a pilot project, using the SCI as a basis<sup>32</sup>. The PGP, the registration procedure and the dispute resolution system were taken over in their entirety from the SCI for the Dutch initiative. All interviewees indicated that the main reason for “copying” the European initiative was a lack of budget, since not all associations were willing to invest in the national initiative. Moreover, the SCI was seen as a well-designed initiative, and hence taking over its structure and rules ensured full coordination. Some interviewees also mentioned the reluctance of retailers to create a new, large-scale national initiative as a reason for adopting most of the SCI functioning mechanisms.

<sup>27</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Vervolg eerlijke handelspraktijken, 23/11/2012

<sup>28</sup> C1000 was an independent Dutch supermarket chain; it was taken over by competitor Jumbo at the end of 2011

<sup>29</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Vervolg eerlijke handelspraktijken, 23/11/2012

<sup>30</sup> EIM, De aard en omvang van inkoopmacht, 25/11/2009

<sup>31</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Rapport over oneerlijke handelspraktijken, 30/01/2013

<sup>32</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Rapport over oneerlijke handelspraktijken, 30/01/2013

The *Dutch pilot initiative in the agro-food sector* was officially launched on September 16, 2013, concurrently with the SCI, whereas the pilot for the fashion, textile and footwear sector was launched in November 2013<sup>33</sup>. According to several interviewees, the conclusion of the process which led to the launch of the initiative was strongly supported by the government: in fact the food chain actors had been unable to reach a full agreement on the need and on the form of the initiative.

The pilot was initially planned for a period of 1 year, but it was later extended for another year, to give the pilot more time to prove itself, and in the hope of assessing the initiative also in the light of the findings of the present evaluation of the SCI<sup>34</sup>.

The Dutch initiative is currently on hold, since an evaluation by an independent party is about to be completed; once the evaluation will be finalised, results will be communicated to the Parliament. The Ministry indicated that the evaluation will also consider the developments at EU level, and that it will be carried out on the basis of performance indicators, namely the number of participating enterprises, the clarity of the standards applied, the rate of dispute resolution, and the effectiveness of dispute resolution. Depending on those results, decisions will be taken on the future of the Dutch initiative, and sector federations will decide whether to keep on supporting the platform or not.

#### *4.3.2 Organisation and functioning mechanisms*

##### **Objectives of the initiative**

The initiative has been set up to make sure that every company, be it a supplier or a customer, large or small, can assume that its trading agreements are being respected<sup>35</sup>. Negotiations should be conducted fairly and with mutual respect. The initiative is a way to improve the partnership between agricultural producers, the food industry and retailers, and to make it more transparent<sup>36</sup>. The direct objective is to prevent UTPs and to promote a fairer business behaviour. The initiative also aims at addressing UTPs by offering an efficient and cost-effective alternative to bringing these issues to court.

##### **Governance structure and stakeholders involved**

All participating parties commit themselves voluntarily to the initiative. The whole food chain is involved in the pilot, as covered by the three national organisations: farmers represented by LTO, the food industry by FNLI (although it represents mainly large companies) and retailers by CBL. The Dutch consumer association never requested to be part of the initiative.

The governance board consists of four members: one Ministry member as a neutral party and one representative for each of the three supporting associations. The first meetings were chaired by the Ministry, which also set the agenda and organised the meetings. This has changed, and currently the associations take the lead. The board guides the initiative, maintains communication with the SCI Governance Group, and treats complaints. The board meets 4 times per year.

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<sup>33</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Eerste bevindingen pilots gedragscode eerlijke handelspraktijken, 06/06/2014

<sup>34</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Beantwoording vragen aangaande de oorzaken van het teleurstellend lage aantal deelnemende boeren en tuinders aan de pilot eerlijke handelspraktijken, 16/09/2014

<sup>35</sup> Ministerie van Economische Zaken, Brief aan FNLI, Gedragscode eerlijke handelspraktijken, 23/11/2012

<sup>36</sup> The Netherlands' response to the 'Green Paper on Unfair Trading Practices in the Business-to-Business Food and Non-food Supply Chain in Europe', 08/05/2013

The Ministry of Economic Affairs facilitates the management of the initiative. The Ministry reports about twice a year to the Parliament on the functioning and performance of the initiative; it has a voice in meetings, gives its opinions and brings suggestions or advices. The Dutch Ministry closely observes the European Commission's positions on the SCI, and usually aligns with them.

No funding has been allocated to the initiative, neither by the Ministry, nor by the associations.

### **Rules and procedures**

The Dutch initiative uses the SCI framework, the PGP and the SCI system of dispute resolution. The "Rules of procedure for the Governance Group" of the SCI also apply to the work of the Dutch governance board. This implies that the members of the governance board recognise that their primary role is not to defend their personal interests, but to effectively guide the implementation of the code of conduct and of the Framework. Moreover, the rules specify that the board members should act with collective responsibility, confidentiality, compliance with the applicable regulation, mutual support and respect. Decisions are taken at 75% majority. Because the governance board consists of three members voting (the Ministry cannot vote, it can only give advice), this means in practice that decisions are taken by consensus<sup>37</sup>.

### **Types of UTPs addressed**

The Dutch initiative does not specify the UTPs which it specifically targets. All interviewees referred to the difficulty of precisely defining UTPs, which tend to fall within a "grey area". Trading practices in isolation cannot be classified as fair or unfair; the context is of key importance for defining UTPs.

Research commissioned by the Ministry of Economic Affairs does sum up the most common types of conduct that are seen as problematic by suppliers - or in some cases by their customers - in the Netherlands<sup>38</sup>:

- Unilateral amendment of or withdrawal from agreements, terms and conditions, possibly with retrospective effect:
  - o Failure or refusal to pay the price originally agreed.
  - o Amounts deducted of invoices (e.g. a 5% surcharge for rebuilding work, a company anniversary, etc.).
  - o Extension of payment periods (e.g. from 60 to 90 days or from 90 to 120 days).
- Refusal to enter into a written contract.
- Imposition of unfair terms and conditions:
  - o A price which is extremely unfavourable to the supplier.
  - o A requirement whereby suppliers must offer a discount in respect of promotional costs, shop-fitting and displays, disappointing returns or wastage.
  - o A requirement whereby customers can unilaterally apply a longer payment period.

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<sup>37</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Eerste bevindingen pilots gedragscode eerlijke handelspraktijken, 06/06/2014

<sup>38</sup> Tilburg Institute for Interdisciplinary Studies of Civil Law, and Conflict Resolution Systems (TISCO), Eerlijk, scherp en betrouwbaar, 01/2012



- o A clause whereby customers can impose unreasonable performance demands, such as delivery at a precise time of day.
- o Unreasonably high penalties.
- o A requirement whereby the supplier must guarantee not to offer the same product or service to another customer at a lower price (without first offering that price to the original customer).
- o A clause prohibiting the use of accounts receivable as security on loans.
- Miscellaneous:
  - o Imposing obstacles to market entry.
  - o “Free riders”: companies which do not commit to the development of sustainable products.
  - o Imitation.

The above research was qualitative: it is not known how often these practices occur in the Netherlands.

### **Legal implications**

Self-regulation is used to complement existing legislation. The recommendations of the initiative in case of an UTP are not legally binding. If a misbehaving company does not make the necessary changes, it is removed from the registry. From interviews with operators, it emerged that there is a high level of interest from all stakeholders in the chain about the adoption of “naming and shaming” for companies which engage in UTPs.

## **4.4 National initiatives: Germany**

### **4.4.1 Genesis and evolution**

The German initiative has not been officially launched yet: although a national platform is in place since May 2013, its purpose was initially the exchange of information and opinions regarding the discussions held at EU level on UTPs, as well as the discussion of possible course of actions for the implementation of the SCI at national level. The process for reaching an agreement on the enforcement of the PGP accelerated only in the last months of 2015: its finalization is expected for the beginning of 2016. This paragraph provides an overview of the German business environment in the food chain, and of the discussions about the need of a voluntary platform to counter UTPs in Germany.

Power imbalances occur frequently within the German food supply chain. Most of the interviewees identified a concentration of bargaining power especially in the retail stage, and perceived retailers as dominant actors in the food supply chain. One interviewee pointed out that the Top-4 retail companies account for more than 80% of the sales of food products to final consumers in Germany.

As for the current measures to contrast the increasing concentration of the market, according to some interviewees the German Cartel Office<sup>39</sup> has limited opportunities to stop this trend. One interviewee argued that the Cartel Office regularly intervenes when companies want to grow through mergers or acquisitions. Especially in recent years, there have been some examples where the German Cartel Office did not allow market leaders to acquire one of their remaining medium-sized competitors, due to the threat of the

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<sup>39</sup> The German antitrust authority, *Bundeskartellamt*



emergence of excessive market power and decreasing competition in the industry<sup>40</sup>. Large-scale retailers have the chance to get lower purchasing prices from processors due to their bargaining power or to the use of new cost-saving technologies. On the basis of this cost advantage, large-scale retailers are able to acquire additional market shares and to outperform smaller and weaker competitors<sup>41</sup>. Opportunistic behaviour in asymmetric vertical relationships leads to power abuse and UTPs, but often in quite a subtle manner, that makes it difficult to tackle these practices through legislation or other measures. Prominent examples mentioned by one interviewee are the transfer of costs from retailers to processors for enlarging or building storage capacity, or the obligation to use specific services that retail companies offer (and for which processors have to pay). The “fear factor” can make existing mechanisms for controlling abusive behaviour by the stronger parties quite ineffective, especially when the imbalance in bargaining power is substantial: economically dependent and weaker parties are usually unwilling to start legal litigations on UTPs if they risk to lose their most important business partners (so called “horse and rider” phenomenon). This implies that - as all interviewees concluded - voluntary actions and measures like a commitment to PGP promise to be more effective than additional governmental or legislative action in a situation characterised by bargaining power asymmetries.

Taking this background into account, four main associations representing different sectors of the agro-food system and different stages of the German food supply chain took up the ideas coming from the SCI and initiated a national dialogue platform in May 2013. These associations are:

- The Federation of German Food and Drink Industry (*Bundesvereinigung der Deutschen Ernährungsindustrie – BVE*)
- The German Farmers’ Union (*Deutscher Bauernverband – DBV*)
- The German Retail Federation (*Handelsverband Deutschland – HDE*) and
- The German Brand Association (*Markenverband*)<sup>42</sup>.

In a concerted position paper<sup>43</sup> these organisations pointed out that the main objective of this dialogue platform is to promote an exchange of information and opinions about the SCI, and also about practical solutions to implement PGP in the German business reality. All the four initiators of the German initiative have met on a regular basis since May 2013 in order to discuss intensively about further steps and measures. They are convinced that actions which are independently decided by the German platform can guarantee the establishment and the implementation of PGP in Germany<sup>44</sup>. In this context, the four initiating associations emphasize that the objective of the German platform is explicitly not the development of new codes deviating from the PGP or the SCI procedures, but to support the diffusion of the SCI in Germany.

The motivation behind the German initiative is to reach a change in general attitudes, values and behaviour in business relationships within the food supply chain. All interviewees pointed out that there is sufficient legislation in place, but that mind-sets and operation procedures in day-to-day business can be changed more effectively through voluntary mechanisms.

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<sup>40</sup> See, for instance, the current case of EDEKA, i.e. the leader in the German retail market, which wants to acquire the medium-sized competitor Kaiser’s Tengelmann. The German Cartel Office has strictly denied its approval for this acquisition. See <http://www.bundeskartellamt.de/SharedDocs/Entscheidung/DE/Entscheidungen/Fusionskontrolle/2015/B2-96-14.html?nn=3591568>

<sup>41</sup> See Haucap, J. et al.: Wettbewerbsprobleme im Lebensmitteleinzelhandel. DICE Working Paper, September 2013, Dusseldorf.

<sup>42</sup> The German Trademark Association (Markenverband) is an industry association representing producers and manufacturers of branded fast moving consumer goods.

<sup>43</sup> BE, DBV, HDE, Markenverband – “Nationale Umsetzung der SCI”, July 2015

<sup>44</sup> BE, DBV, HDE, Markenverband – “Nationale Umsetzung der SCI”, July 2015

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The procedures of the national dialogue platform have now reached the stage of formal finalisation, after substantial preparatory work that the supporting organisations have carried out during the past two years. A cornerstone in the process was the agreement to focus on instruments of dispute resolution (e.g. mediation procedures) and on their institutionalisation in Germany. One interviewee pointed out that all procedures that are in progress target SMEs and large enterprises in the same way: in other terms, there will be no procedures specifically targeting SMEs. All procedures still need a final agreement, to be reached by all the relevant associations, before they can be tested and officially launched. Table 4.3 summarizes the planned steps in this process, and the related (indicative) deadlines.

*Table 4.3 - Finalisation and launch of the German national dialogue platform – planned steps*

<b>Working package</b>	<b>Indicative deadline</b>
Finalisation of alternative instruments for dispute resolution	By the end of July 2015
Fine-tuning of the instruments for dispute resolution by the committees representing the members of the initiating associations	August/September 2015
Preparation of the launch phase	September 2015
Achieving full operability for dispute resolution procedures and instruments	November 2015
Start of the phase of pre-testing and communication about the initiative	December 01, 2015
Official launch of the instruments for dispute resolution	January 01, 2016

Source: Own summary (English translation) from the concerted position paper (2015) of initiating organisations (in German)

#### *4.4.2 Organisation and functioning mechanisms*

Official documents with comprehensive information on specific elements of the initiative are not available yet: at this stage, the discussion process is still confidential and without participation of public groups. Despite this, some elements regarding the planned organisation of the platform, as well as the agreed dispute resolution mechanisms, were provided in the course of interviews.

The dialogue platform runs an office managed by one of the four member associations for one year. One meeting per year is planned: in case of request from 50% of the constituency (two members out of four), extra-ordinary meetings are also possible. The four associations are represented by the general manager, although replacements and mandates are possible.

Among its roles, the dialogue platform names the members of the arbitration board, which is in charge of supporting and implementing dispute resolution mechanisms. The board will be composed by four arbitrators (one chairman and three assessors) who must be independent, neutral and with expert knowledge. The chairman will have to be a lawyer with expertise in competition and economic law, while assessors will be suggested by sector associations representing the different stages of the supply chain (agriculture, processing, retail); in the concrete discussion of conflict cases, the chairman will be assisted only by two assessors representing the involved sectors.

Additional elements were provided in the interviews also with respect to the envisaged dispute resolution mechanisms.

- **Mediation:** for the purpose of conflict resolution by mediation, companies will receive a list with approved mediators with an expertise in economic issues of the food supply chain, who can be consulted by contractual partners in case of a conflict.

- Arbitration: for the purpose of possible arbitration procedures, the associations involved in the dialogue platform have drafted a sample arbitration agreement which will be provided to companies for individual amendments. The contractual partners will agree individually on the use of the sample agreement or any modifications thereof. For the practical implementation of the agreement, the associations involved in the dialogue platform are installing an arbitration board (see above), which will be staffed with external neutral experts. The costs for recourse to the arbitration procedure will be borne by the concerned parties (not by the platform).
- Expert opinions on anonymised disputes of general significance: the external arbitration board can also offer solutions for anonymised and general cases, should these be required. For anonymised disputes of general significance, the dialogue platform will act as a filter: it will forward cases to the arbitration board for an assessment only if the associations of the affected sectors agree to this step. The representatives of the sectors in the dialogue platform which are not affected have an advisory function in the process of deciding whether to pass on the case to the arbitration board. Every affected sector therefore has a veto right regarding the passing on of a case. Such veto right will be reviewed 24 months after the first meeting of the arbitration board, to decide whether it should be abolished, depending on whether the arbitration board will have gained sufficient practical experience regarding anonymised cases at that point. The arbitration board can freely decide whether a case can be solved or not; if no solution seems possible, it can also reject cases. The costs of the procedure in case of rejection by the arbitration board will be proportionately paid by the associations of the sectors which are involved in the dispute.

Although the German dialogue platform takes the SCI as a model (see § 9.4.1), it also aims at adapting it to specific conditions applying in Germany. As a consequence, the functioning mechanisms and governance structure of the German initiative might finally differ from the SCI's own. The only fact highlighted so far by one interviewee is that a main concern to all parties involved in the implementation of the platform is to keep procedures and structures as simple as possible.

## 5 Overview of the regulatory framework dealing with UTPs

This chapter provides a synthetic overview of the main legislation addressing UTPs in the EU; the most relevant provisions at EU level are reported, together with a scheme outlining the situation in the EU28 Member States.

Generally speaking, with the exception of the Milk Package of March 2012<sup>45</sup>, EU-level legislation specifically addressing the problem of UTPs in vertical B2B relationships in the food supply chain does not exist.

A number of studies prepared in the last ten years agree on the fact that the current legal framework at EU level only provides very general rules (mainly in relation to competition law) and that these rules are rarely applicable to the UTPs covered in the present study. The most relevant pieces of EU-level legislation which are commonly recognized as potentially addressing UTPs are:

- Articles 101 and 102 TFEU;
- Unfair Commercial Practices Directive 2005/29/EC;
- Directive on unfair terms in consumer contracts (93/13/EC);
- Regulation on consumer protection cooperation (2006/2004/EC).

Member States aiming at tackling UTP-related issues with specific provisions developed their own legislation, by applying the following approaches:

- Substituting the concept of abuse of dominant position of article 102 TFEU with the concept of economic dependence (i.e. when a stronger party imposes unfair conditions to an economically dependent party).
- Developing ad hoc legislation in the context of competition law, contract law or other types of regulation.
- Developing ad hoc legislation targeting specific B2B (vertical) relationships, or the retail stage of the supply chain or of the food/grocery sector.
- Promoting the development of self-regulation, often as a complement to national legislation rather than as a stand-alone instrument to tackle UTPs.

*Table 5.1 – Legislation covering UTPs in EU28 Member States*

Legislation on UTPs		No legislation on UTPs
Austria	Italy	Belgium
Bulgaria	Ireland	Denmark
Croatia	Latvia	Estonia
Cyprus	Lithuania	Luxembourg
Czech Republic	Portugal	Malta
Finland	Romania	Netherlands
France	Slovenia	Poland
Germany	Slovakia	Sweden
Greece	Spain	
Hungary	United Kingdom	
20 Member States		8 Member States

<sup>45</sup> Reg. No 1308/2013, art. 148-151, 152(3), 157 (3), which contains specific provisions aimed at addressing UTPs, such as the compulsory written contracts.

Approaches in legislation on UTPs greatly vary across the EU: nature of reference laws, extent of coverage of practices as well as enforcement mechanisms widely differ among Member States. This said, 20 Member States developed specific legislation or extended the scope of legislation already in force with the objective of tackling the key categories of UTPs covered in the present study. In the other 8 Member States, some general legal provisions which can play a role in addressing UTPs might be present, but no independent enforcement body beyond courts exists.

A number of Member States were selected among those with a legislation addressing UTPs, in order to give an overview of the different approaches on the matter, and to highlight with relevant examples the solutions adopted at national level.

**Czech Republic** approved in 2009 specific legislation to address some UTPs in the food supply chain: the Act on Significant Market Power in the Sale of Agricultural and Food Products and the abuse thereof (SMP Act). The SMP Act specifically covers B2B relationships and aims at preventing any abuse of significant market power by buyers (mainly large retail chains) towards their suppliers. The SMP Act basically extends the concept of dominant position to the one of economic dependence, presuming the existence of a significant market power for buyers whose annual turnover exceeds 5 billion CZK (but also envisaging the possibility of smaller players to be covered). The SMP Act also includes specific provisions on the contract conditions between suppliers and buyers; it is enforced by the Office for the Protection of Competition, which has wide powers (conducting ex-officio proceedings, accepting confidential complaints and imposing fines in case of breaches of the Act). In December 2013, the first large fine under the Act was imposed (around Euro 850 K, i.e. 0.45% of annual turnover) to a German retailer in relation to payment terms and conditions to its suppliers judged as unfair by the Czech Antitrust Office. In December 2015, the Lower Chamber of the Czech Parliament passed an amendment to the SMP Act which is currently under discussion in the second chamber. Specific provisions against UTPs were also introduced in the new Civil Code entered into force in January 2014, with the objective of tackling UTPs more effectively. The Code now covers all aspects of private law relations (including B2B obligations) providing a “fairness test” to assess business behaviour. The prohibition of abuse of economic dependence is also included in the new legislation (Art. 433), as well as special provisions to protect SMEs, to regulate business behaviour and contractual terms.

In **France**, a rather composite legal framework addressing UTPs exists. The regulation more directly covering UTPs is a specific B2B legislation, the *Droit de Pratiques Restrictives* (contained in the Commercial Code), which is expressly targeted at vertical relationships between suppliers and retailers. In particular, articles 441-6, 441-7 and 442-6 of the Commercial Code were modified twice in the last years, first by Law 17/3/2014 (“Loi Hamon”) n° 2014-344 and then by Law 6/8/2015 (“croissance, l’activité et l’égalité des chances économiques”) n° 2015-990, in order to provide clearer obligations for payment terms between suppliers and purchasers. New administrative sanctions were also introduced through Law 17/3/2014 in case of abusive late payments and imposed by the *Autorité de la Concurrence* (ADLC - French antitrust authority), whose investigation powers were substantially widened under the new regulation. Besides the Commercial Code, also French Competition Law deals with the issue of UTPs, with reference to the concepts of economic dependence and abuse of dominant position. All these regulations combined cover the vast majority of the UTPs treated in the present study. France represents a significant example also for what concerns the enforcement of the above regulations. The *Commission d’Examen des Pratiques Commerciales* (CEPC) is in charge of enforcement of the *Droit de Pratiques Restrictives*: it has no sanctioning powers, but provides advice and recommendations; it can investigate ex officio and receive confidential complaints. In addition, CEPC recommendations are generally taken in great consideration before courts. Another central enforcement authority is the *Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes* (DGCCRF). DGCCRF has the role of investigating for the benefit of CEPC, of ADLC and of the Ministry of Economy; DGCCRF also has sanctioning powers on behalf of the Ministry (imposition of monetary penalties and injunctions).

In **Spain** UTPs are mainly tackled through a combination of unfair competition law and food sector specific legislation. The Unfair Competition Act prohibits the exploitation of economic dependence situations as an unfair commercial practice; it provides actual examples of unfair practices and is specifically aimed at protecting small players against abuse by larger undertakings. In 2013, food sector specific law 12/2013 was approved, addressing practices such as unilateral contract changes and unanticipated commercial payments; the law foresees administrative sanctions for the prohibited practices spanning from Euro 3,000 to one million. The National Competition Authority is in charge of the enforcement of the Unfair Competition Act, although its powers are limited to cases of restrictive agreements, concerted practices or abuses of dominant position; law 12/2013 is instead enforced by the General State Administration, which has the power to conduct ex-officio investigations and to collect confidential complaints.

In the **United Kingdom** the legal system addressing UTPs in the food supply chain is based on the Grocery Code Adjudicator Act of 2013, establishing the Grocery Code Adjudicator as the subject in charge of the implementation and enforcement of the 2010 Grocery Supply Code of Practice (GSCOP). The GSCOP defines legally binding obligations for the ten largest supermarket chains in the country, with the objective of promoting fair dealing by such players and of limiting their possible abuse of buyer power. The Grocery Code Adjudicator Act is a food sector specific law covering B2B vertical relationships: it is enforced by the Adjudicator, which has the power to promote ex-officio investigations on designated retailers. The Adjudicator has the duty of arbitrating any dispute brought by a supplier, and to preserve confidentiality of complainants; the Adjudicator can also impose financial penalties, issue recommendations and require information to be published.

An ad hoc analysis of survey results was carried out to identify possible linkages between the presence or absence of specific legislation addressing UTPs in the different Member States, on one hand, and the level of perceived exposure to UTPs expressed by survey respondents, on the other hand. Similarly, survey results about the preferred approaches in tackling UTPs were analysed at Member State level in order to detect possible linkages between the presence/absence of specific legislation addressing UTPs, on one hand, and the preferences expressed by respondents, on the other hand. The results of these analyses are presented at § 7.1.

## **6 Overview on experiences in dealing with UTPs in third countries**

This chapter provides an overview of initiatives similar to the SCI set up in third countries. Some of these initiatives have a quite long track record and can be considered a good benchmark for comparison; in other cases they are still in the inception phase, and very limited information on them is hence available at present.

Regardless of the differences among countries, it is interesting to note that a growing number of voluntary initiatives are being established with special reference to the food sector and with the objective of complementing national legislation addressing UTPs.

### **Australia**

In Australia two codes exist: the Horticulture Code and the Food and Grocery Code.

#### Horticulture Code of Conduct

<https://www.accc.gov.au/business/industry-codes/horticulture-code-of-conduct>

The Horticulture Code is a mandatory industry code prescribed under the Competition and Consumer Act of 2010. Growers and traders in horticultural produce must comply with the Code, which does not apply to nursery products, retailers, exporters and processors.

The Code sets out what needs to be included in any agreement between parties, which has to be written and signed before any transaction takes place. The Code also regulates the change of ownership of horticultural produce among growers, agents and merchants.

The Code has a dispute resolution procedure which involves the following steps: the complainant must inform the other party in writing and try to resolve the dispute; if no solution is found within three weeks, the Horticulture Mediation Adviser (HMA) can provide mediation; it is mandatory for both parties to attend the mediation. When an agreement between the parties has been reached, the mediator will assist them in putting it in writing, normally in the form of a binding contract.

The Australian Competition and Consumer Commission (ACCC) is in charge of the enforcement of the Code: it investigates on any alleged breach, and can take actions where appropriate; it cannot however provide legal advice or dispute resolution services.

#### Food and Grocery Code of Conduct

<http://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct>

The Food and Grocery Code of Conduct is a voluntary code prescribed under the Competition and Consumer Act of 2010 as a complementary framework for existing legislation.

The Code governs specific types of conduct by grocery retailers and wholesalers in dealing with suppliers: it contains provisions relating to grocery supply agreements, payments, termination of agreements, dispute resolution and a variety of other matters. More specifically, the Code:

- sets out minimum obligations for retailers and wholesalers relating to the making of grocery supply agreements;
- requires retailers and wholesalers to act lawfully and in good faith;



- prohibits retailers from threatening suppliers with business disruption or termination without reasonable grounds;
- establishes minimum standards of conduct by a retailer when dealing with suppliers, such as payment, de-listing, standards and specifications for fresh produce, and the allocation of shelf space;
- requires retailers and wholesalers to provide annual training on the requirements of the Code to employees whose role includes direct involvement in buying grocery products, and to their managers.

A retailer or wholesaler can sign up to the Code by giving written notice to the ACCC. Suppliers are not required to sign up to the Code and are always covered by the Code when dealing with a retailer or wholesaler that has agreed to comply with the Code. When signing up, retailers and wholesalers must elect a Code compliance manager and make his/her contact details available to suppliers.

The Code also sets out a dispute resolution mechanism. A supplier can choose the dispute resolution option that meets its needs, raise the complaint with a retailer's Code compliance manager, request the immediate elevation of the complaint to senior management, or take the complaint directly to mediation or arbitration.

The ACCC is responsible for regulating compliance with the Code and conducts audits of retailers and wholesalers. The ACCC is also responsible for investigating alleged breaches of the Code and for taking enforcement action where appropriate: while there are no financial penalties for a breach of the Code, other remedies are available (including court-ordered injunctions, compensation to subjects who have suffered loss or damage caused by the conduct, and contract variations).

## **Argentina**

In 2000, the Argentinian government devised to establish legislation and severe penalties for UTPs in the food supply chain; however, there was concern that the imposition of fines would not be proportionate to the damage caused and that these issues might be better dealt with by the food sector itself. Most trade associations preferred that a private method of conflict resolution would be implemented, and the development of the proposed legislation was therefore interrupted.

A code of fair trade practices was instead adopted by the main players in the food sector, with the support of the Argentinian government; the code was agreed upon by the two major associations, CAS (Chamber of Commerce for supermarkets) and COPAL (Association of food and drinks manufacturers, which also covers perishable goods). Although the code is voluntary, its establishment was subject to the signature by all supermarket chains with annual sales of over 100 million US dollars. CAS and COPAL are responsible for the promotion of the code, and for the creation of a commission to verify and update the code as needed.

The purpose of the code is to ensure free and fair trade; it provides obligations with regards to:

- Written agreements.
- The creation of a company procedure for direct debits, credits and rejection of goods.
- Protection of intellectual property, such as graphics.
- Maintaining the current market conditions.
- Conditions for the unjustified interruption of business relationships.

The Code also contains provisions applying in the event of a dispute. For disputes that have not led to significant economic or financial loss, mediation is used. The mediator is a member of one of the two major associations, CAS or COPAL, and varies on a monthly basis. The mediator gives a non-binding recommendation: if a party does not agree with this recommendation, arbitration can be asked for. The arbitrator is a specialist lawyer, which can be chosen from a shortlist compiled by COPAL and CAS. The maximum amount that the winning party may be entitled to, is set at 50,000 US dollars: this is to encourage



companies that suffered more than 50,000 euros in damages, to address the dispute to a civil court. The Office of Fair Trade is seen as the last resort to appeal, if mediation or arbitration does not lead to results.

### **Russian Federation**

In December 2012 seven leading industry unions and associations of consumers<sup>46</sup>, together with the Committee on consumer market of the Chamber of Commerce and Industry and the Consumers Union of the Russian Federation signed the Code of Good Practice for the relationship between retail chains and suppliers of consumer goods. The Code elaborates on the Law on Trade and is intended to help companies solve conflicts without governmental interference; it gives guidance about some aspects of the relationship between retail chains and their partners for negotiating amended terms and conditions and for conducting marketing campaigns.

Although the Code was established around three years ago, very limited information is available on its activities and achievements; only in July 2015 a series of meetings and consultations were organised between the Deputy Prime Minister, the Ministry of Industry and Trade and some of the above mentioned organisations with the objective to accelerate the preparation of proposals of industry regulation mechanisms and the introduction of self-regulation activities in the consumer market.

### **Comparative analysis**

Among the identified initiatives in third countries, the Australian Food and Grocery Code of Conduct seems the most similar to the SCI in terms of scope, organisation and procedures; despite this, some important differences have been found between the two initiatives. The following scheme provides a summary of the comparative analysis carried out for the study:

*Table 6.1 – Comparison between the SCI and the Australian Food and Grocery Code of Conduct*

	<b>Supply Chain Initiative</b>	<b>Food and Grocery Code of Conduct</b>
Scope	Vertical relationship along the food supply chain	Conduct of retailers/ wholesalers towards suppliers in the food supply chain
Stakeholders involved	Farmers, producers, wholesalers and retailers	Mainly wholesalers and retailers (specifying minimum obligations from their side)
Annual training of personnel	Yes, for all professionals within member companies in charge of sale/purchase	Yes, only for wholesalers' and retailers' employees and managers with direct involvement in buying grocery products
Rules	General Principles of Good Practice in dealing with counterparts; only commercial retaliation expressly prohibited as a	<ul style="list-style-type: none"> <li>• Minimum obligations for retailers and wholesalers in supply agreements.</li> <li>• Minimum standards of conduct for retailers for what concerns payment, de-listing, standards and specifications for fresh produce, allocation of shelf space.</li> </ul>

<sup>4646</sup> ACORT (Retail Companies Association), Rusbrand (Association of Branded Goods Manufacturers in Russia), Soyuzmoloko (National Dairy Producers Union), Rusprodsoyuz (Food Manufacturers and Suppliers Association), National Meat Association, Fish Union, Association of producers and consumers of oils and fats.

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	<b>Supply Chain Initiative</b>	<b>Food and Grocery Code of Conduct</b>
	serious breach of principles	<ul style="list-style-type: none"> <li>The code also covers supplier-funded promotions, labelling requirements, supply chain changes, product ranges, intellectual property and confidential information, threatening business disruption or termination.</li> </ul>
Dispute resolution mechanism	Similar for the two initiatives, envisaging the possibility to raise the complaint with a retailer or wholesaler's compliance manager, to make escalation to senior management or to request mediation or arbitration	
Enforcement	No enforcement envisaged (only verification of breaches of process commitments)	Code is enforced through a public body - ACCC - which has the power to conduct investigations and audits of retailers and wholesalers on the basis of the code
Envisaged sanctions / deterrents	No explicit sanction envisaged, in case of serious breach of process commitments the Governance Group can exclude members from the initiative	Court-ordered injunctions and compensations are envisaged; no financial penalties are foreseen

## 7 Perceived exposure to UTPs among operators of the food chain in the EU28

This chapter provides information on the EU operators' perceived exposure to UTPs which was mainly collected through the survey,; additional information was sourced through interviews and desk research.

The chapter illustrates the analysis of survey results for the following topics (§ 7.1):

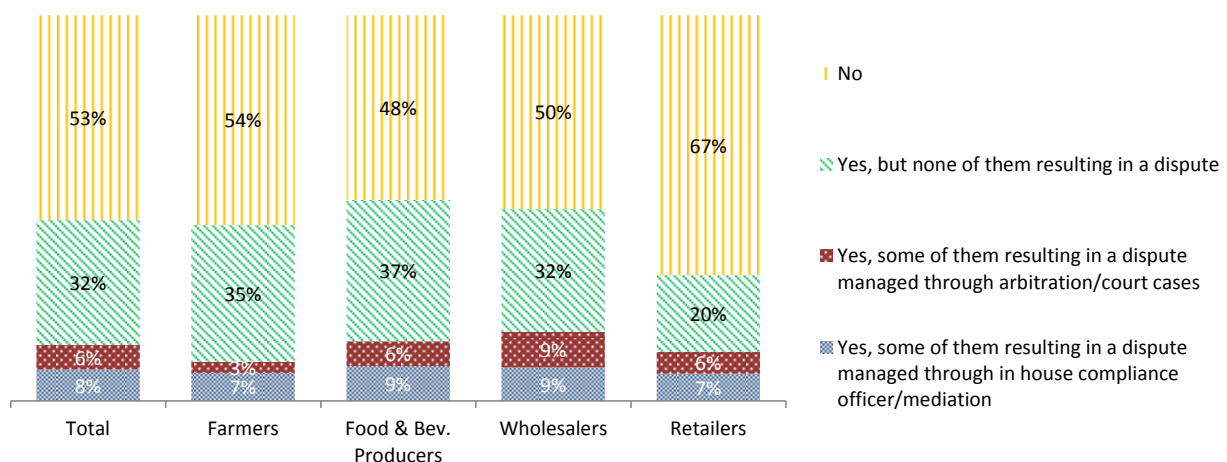
- perceived occurrence of UTPs in the EU;
- perceived occurrence of the different UTPs identified by the European Commission and listed in the 2013 Green Paper on UTPs;
- received complaints on UTPs in the EU;
- split of perceived exposure to UTPs between domestic and cross-border ones;
- preferred approaches in tackling UTPs;
- preferred remedies against UTPs.

The chapter also analyses additional evidence on perceived exposure to UTPs collected through interviews and desk research (§ 7.2), and presents the key findings of the analyses carried out on the available evidence (§ 7.3).

### 7.1 Overview of the survey results

*Question n.7 – “According to the above definition of Unfair Trading Practices (UTPs), would you say that your company has been exposed to UTPs over the last five years?”*

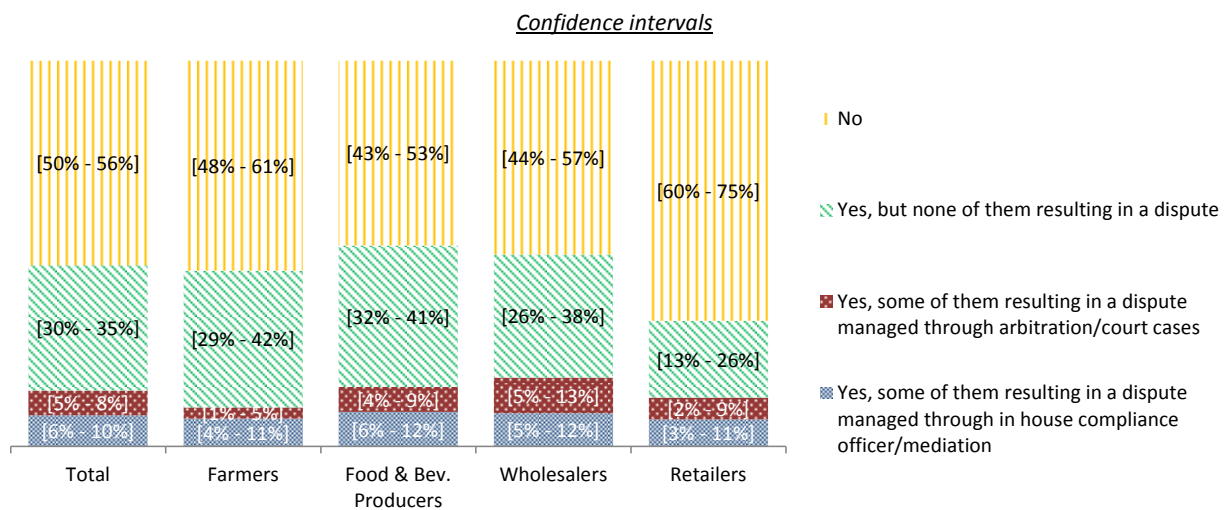
Figure 7.1 – Perceived occurrence of UTPs on total respondents and across levels of the chain



Respondents: companies

Number of collected answers: 1,017 – Farmers:206, Producers: 420, Wholesalers: 229, Retailers: 141. Ho.Re.Ca.: 21 (not detailed, only included in the total)

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Around 47% of survey respondents declared to have experienced UTPs at least once in the last five years, although only 14% of them decided to look for solutions through mediation or arbitration/court cases; more than two-thirds of UTP cases reported by survey respondents did not lead to disputes.

The analysis across the levels of the supply chain revealed that retailers are by far the category declaring to be less exposed to UTPs (33% of respondents); on the other side farmers, producers and wholesalers revealed a higher exposure, spanning from 46% to 52%.

The most active categories in looking for resolution through the different available tools are retailers and wholesalers, with 39% and 36% of cases resulting in disputes; conversely, a solution was sought for only 22% of UTP cases experienced by farmers.

The high number of answers (1,017 in total, with at least 141 respondents per each level of the supply chain) allows to consider the above figures as particularly robust, and to identify some main trends within the group of respondents.

- Around 47% of respondents in the EU28 stated that they have been exposed to UTPs at least once in the last five years.
- According to respondents, of all the cases of UTPs across the different levels of the supply chain, less than one-third resulted in a dispute.
- Retailers emerged as perceiving a lower exposure to UTPs with respect to farmers, producers and wholesalers.
- Farmers seem in general more reluctant to look for resolution when they are exposed to UTPs; on the contrary, retailers emerged as the category with the highest share of cases resulting in a dispute.

Figure 7.2 – Perceived occurrence of UTPs by Member State and across levels of the chain



Among the five Member States for which a full-fledged cross-analysis of survey results was deemed feasible<sup>47</sup>, Germany and Spain resulted to be the ones with the highest perceived occurrence of UTPs across the different levels of the chain (around 53% for both countries, 38 out of 72 respondents in Germany and 51 out of 95 respondents in Spain); conversely, Italy and France emerged as the Member States with the lowest perceived occurrence of UTPs (only 39% for both countries, 33 out of 85 respondents in Italy and 29 out of 74 respondents in France).

Lithuania is the Member State with the highest number of perceived UTP cases (both in absolute value and as % of total cases) which resulted in a dispute (with no particular prevalence between in-court and out-of-court settlements); it is also the only Member State among the five analysed where more than half of UTP cases resulted in a dispute. On the opposite extreme, in Italy only 4 cases out of 33 (around 12%) resulted in a dispute. France, Germany and Spain fall between these two extremes, generally showing quite a low incidence of perceived UTP cases resulting in disputes (from 20% in Spain to 31% in France).

<sup>47</sup> The requirement to meet for such purpose was the availability of more than 60 replies per Member State.

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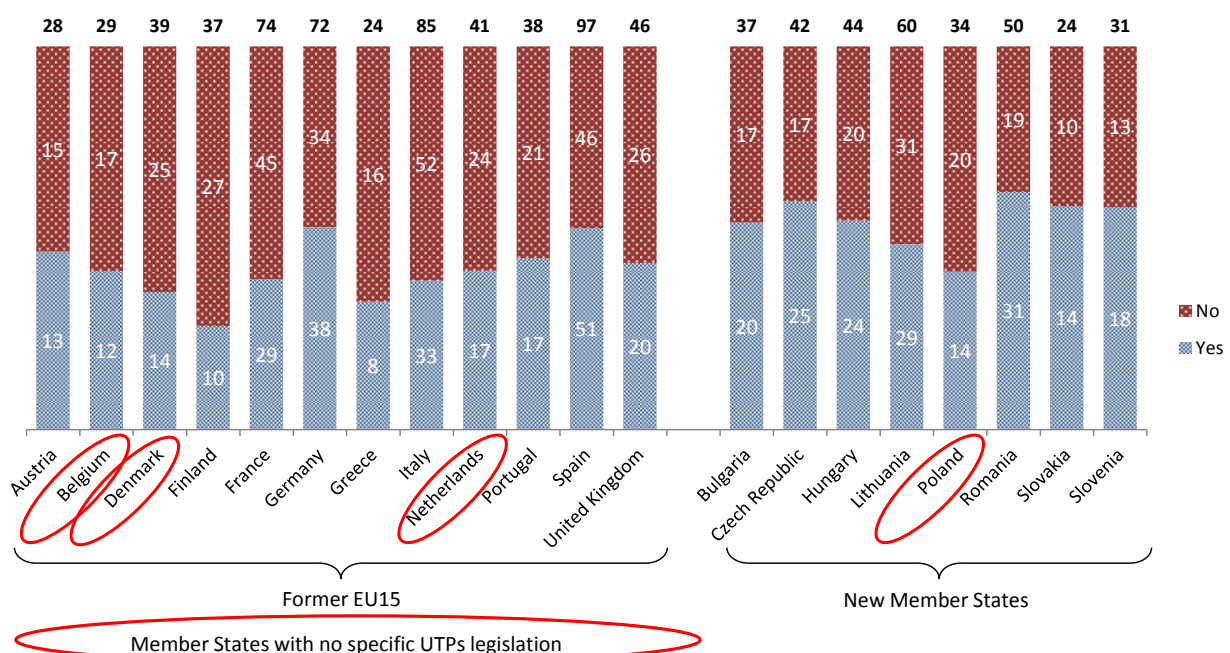
When read against the presence/absence of specific national legislation addressing UTPs (see § 5), survey results did not allow the study team to identify any evident correlation between the occurrence of UTPs and the level of specific protection offered by legislation to operators.

Although the cross-analysis per level of the supply chain is based on a relatively limited number of replies, two main trends can anyhow be recognizable in this context, and specifically:

- In all the Member States under analysis, retailers clearly result to be the category with the lowest perceived exposure to UTPs.
- On average, farmers and wholesalers emerge as the categories with the highest perceived exposure to UTPs.

A broader ad hoc analysis on the perceived exposure to UTPs was performed on all the Member States where more than 20 replies were collected (thus excluding Croatia, Cyprus, Estonia, Ireland, Latvia, Luxembourg, Malta and Sweden). With the objective of limiting the impact of the lower number of replies for this wider set of countries, the different options for question n.7 were aggregated, only distinguishing respondents who perceived to be exposed to UTPs, regardless of the fact that these UTPs resulted or not in disputes. The analysis also sought to identify possible linkages between perceived exposure to UTPs, on one hand, and the presence/absence of specific legislation addressing UTPs, on the other hand.

Figure 7.3 – Perceived occurrence of UTPs by Member State



Respondents: companies

Number of collected answers: spanning from 24 in Greece and Slovakia to 97 in Spain

No significant linkages were detected between the absence of specific legislation addressing UTPs - a situation applying for Belgium, Denmark, the Netherlands and Poland - and perceived exposure to UTPs (which in these

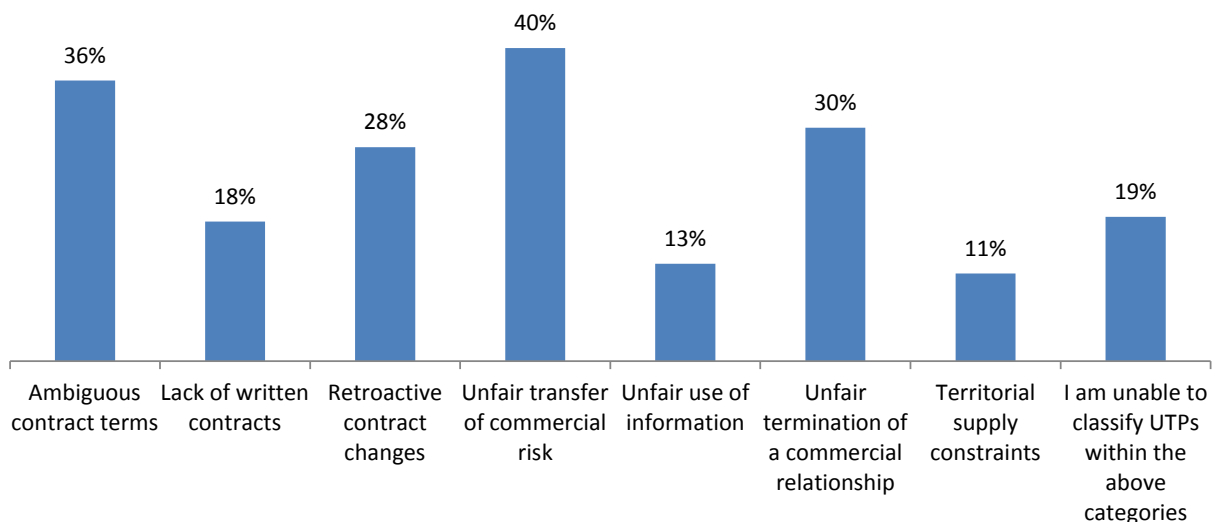
four Member States was found to be lower than the exposure recorded in a number of Member States with specific legislation).

A significant linkage was instead identified by comparing exposure to UTPs in two clusters of Member States: former EU15 and New Member States of Central and Eastern Europe. A higher perceived exposure to UTPs was recorded in the cluster of New Member States, where on average 55% of respondents declared to have been exposed to UTPs, versus an average perceived exposure of 41% recorded in the cluster of former EU15 countries. Within the two clusters, Member States with the highest perceived exposure are Germany and Spain (53%) in the former EU15 cluster, and Romania (62%) in the New Member States cluster; the lowest levels of perceived exposure were respectively recorded in Finland (27%) and in Poland (41%). It is interesting to note that the presence of operational or planned national stakeholders' platforms aimed at addressing UTPs is linked to lower than cluster average levels of perceived exposure in Finland, but not in Germany.

In reading the results of this ad hoc analysis, it is essential to keep in mind that the questionnaire did not foresee questions aimed at investigating the reasons behind the perceived exposure to UTPs of operators. This implies that no "cause-effect" relationships (e.g. "the lowest perceived exposure to UTPs in Finland derives from the presence of an operational national stakeholders' platform aimed at addressing UTPs") should be inferred from the above linkages.

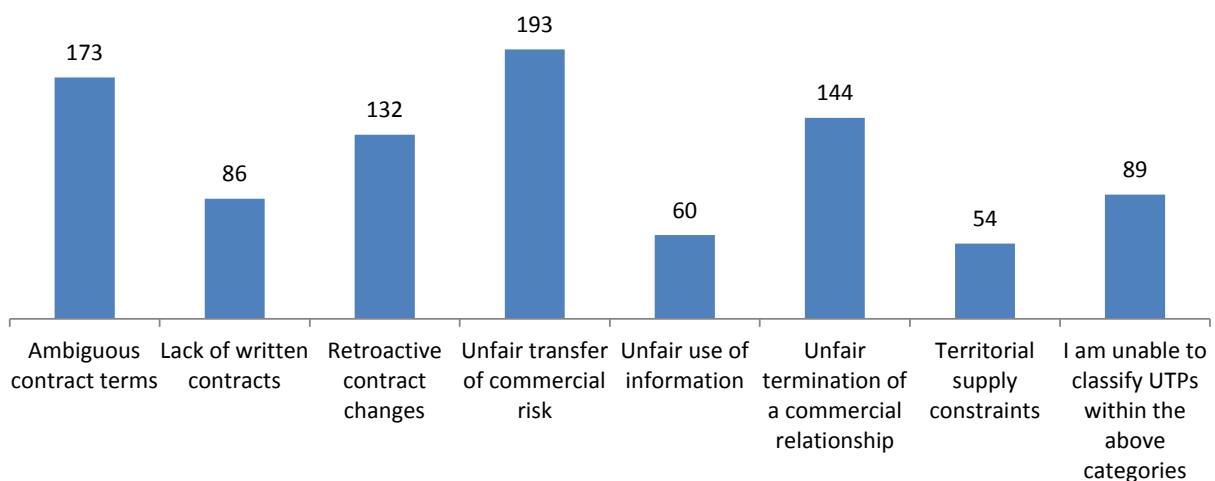
Question n.8 – “Which UTPs has your company been exposed to more frequently during the last five years?”

Figure 7.4 – Perceived occurrence of different UTPs on total respondents (% and abs. value)<sup>48</sup>



Respondents: companies previously exposed to UTPs

Number of collected answers: 478 companies, 931 total options (possibility of multiple answers)



Looking at the different typologies of UTPs, the *unfair transfer of a commercial risk* resulted to be the most common among respondents, followed by *ambiguous contract terms* and the *unfair termination of a*

<sup>48</sup> Question n. 8 was a multiple choice question in which respondents were invited to flag all the options they considered relevant. This is the reason why the number of responding companies (478) and the number of selected options (931) do not coincide. Please note that only the choice of the last option (“I am unable to classify UTPs within the above categories”), excluded the possibility to select one or more of the others.



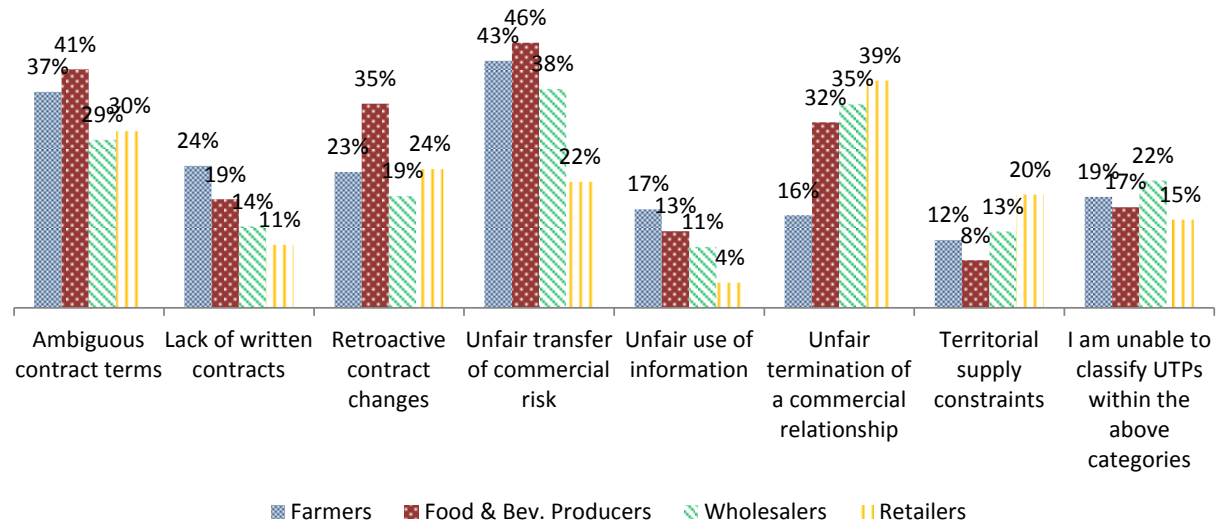
*commercial relationship*. It is also worth noting that 89 respondents (19% of total) declared not to be able to classify possible UTPs according to the proposed categories.

Significant differences across the different levels of the supply chain emerge from survey results: unfair transfer of commercial risks is experienced by retailers only in 22% of cases, while its occurrence seems to be much higher in the other three levels of the chain (43% of cases for farmers, 46% for producers and 38% for wholesalers).

On the other side, a higher occurrence of the unfair termination of a commercial relationship seems to emerge among retailers (39% of cases) than among the other levels of the chain (16% of cases for farmers, 32% for producers and 35% for wholesalers). This can be considered an unexpected result, taking into account that suppliers often claim to have less switching choice in their commercial relationships than retailers. In this context it could be more indicative to look at the absolute number of replies: 70 producers and 40 wholesalers indicated to have suffered from commercial retaliation, versus only 18 retailers.

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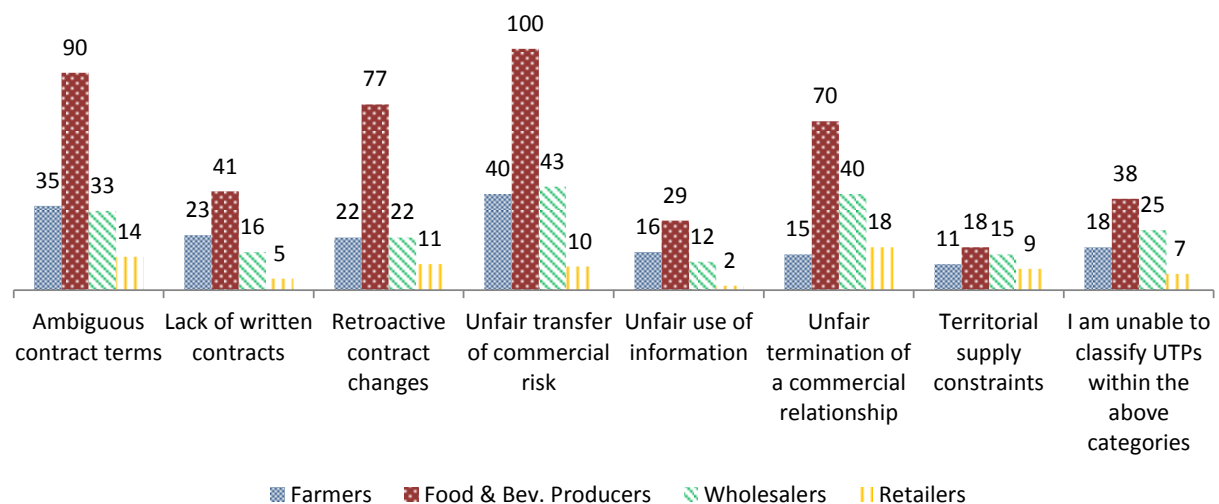
Figure 7.5 – Perceived occurrence of different UTPs across levels of the chain (% and abs. value)



Respondents: companies previously exposed to UTPs

Number of collected answers: 473 companies, 925 total options (possibility of multiple answers)

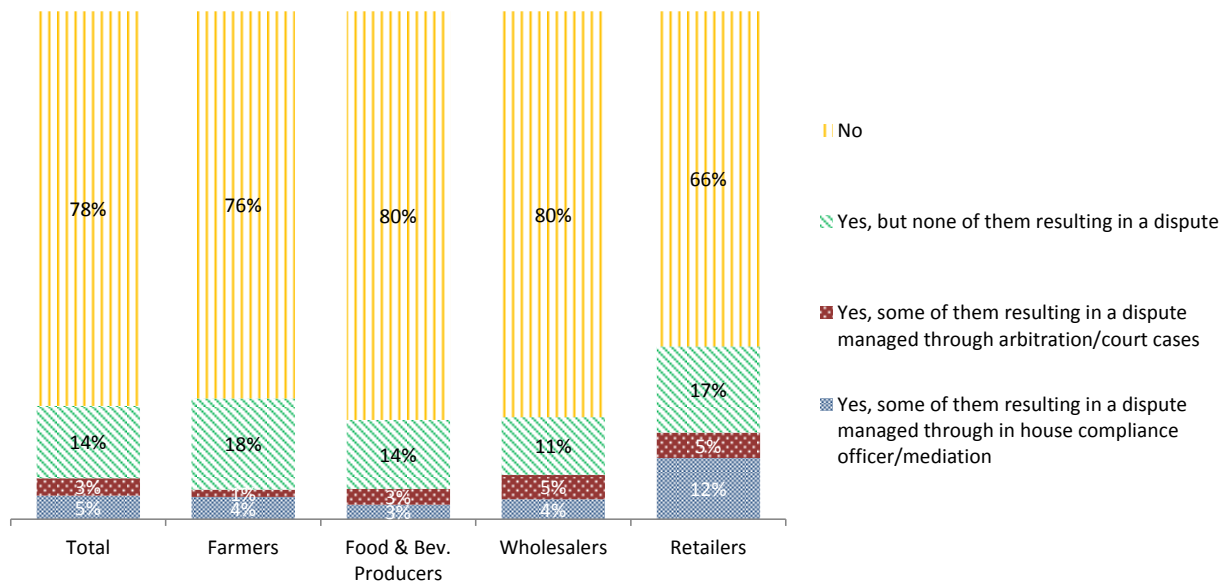
Farmers: 94 (180 options), Producers: 219 (463 options), Wholesalers: 114 (206 options), Retailers: 46 (76 options), Ho.Re.Ca. not included (5 companies, 6 options)



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Question n.9 – “According to the above definition of Unfair Trading Practices (UTPs), has your company received complaints by other companies (suppliers and/or customers) about UTPs over the last five years?”

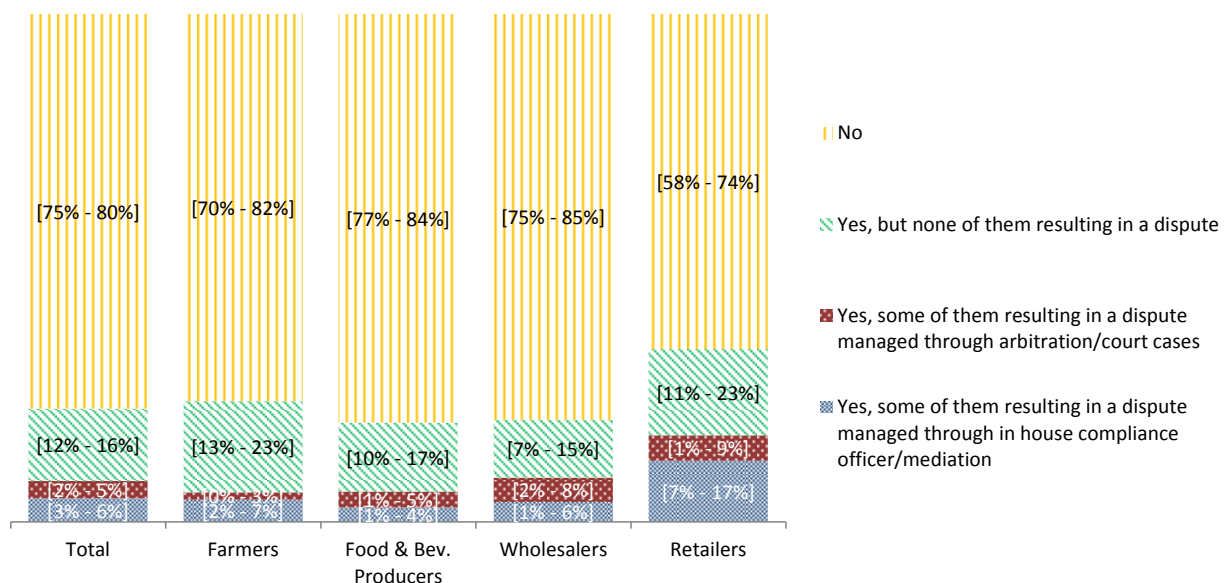
Figure 7.6 – Received complaints for UTPs on total respondents and across levels of the chain



Respondents: companies

Number of collected answers: 1,017 – Farmers: 206, Producers: 420, Wholesalers: 229, Retailers: 141. Ho.Re.Ca.: 21 (not detailed, only included in the total)

Confidence Intervals



The share of respondents declaring to have received complaints in relation to UTPs results to be much lower than the one measured in relation to their perceived exposure to UTPs; on average, only 22% of respondents

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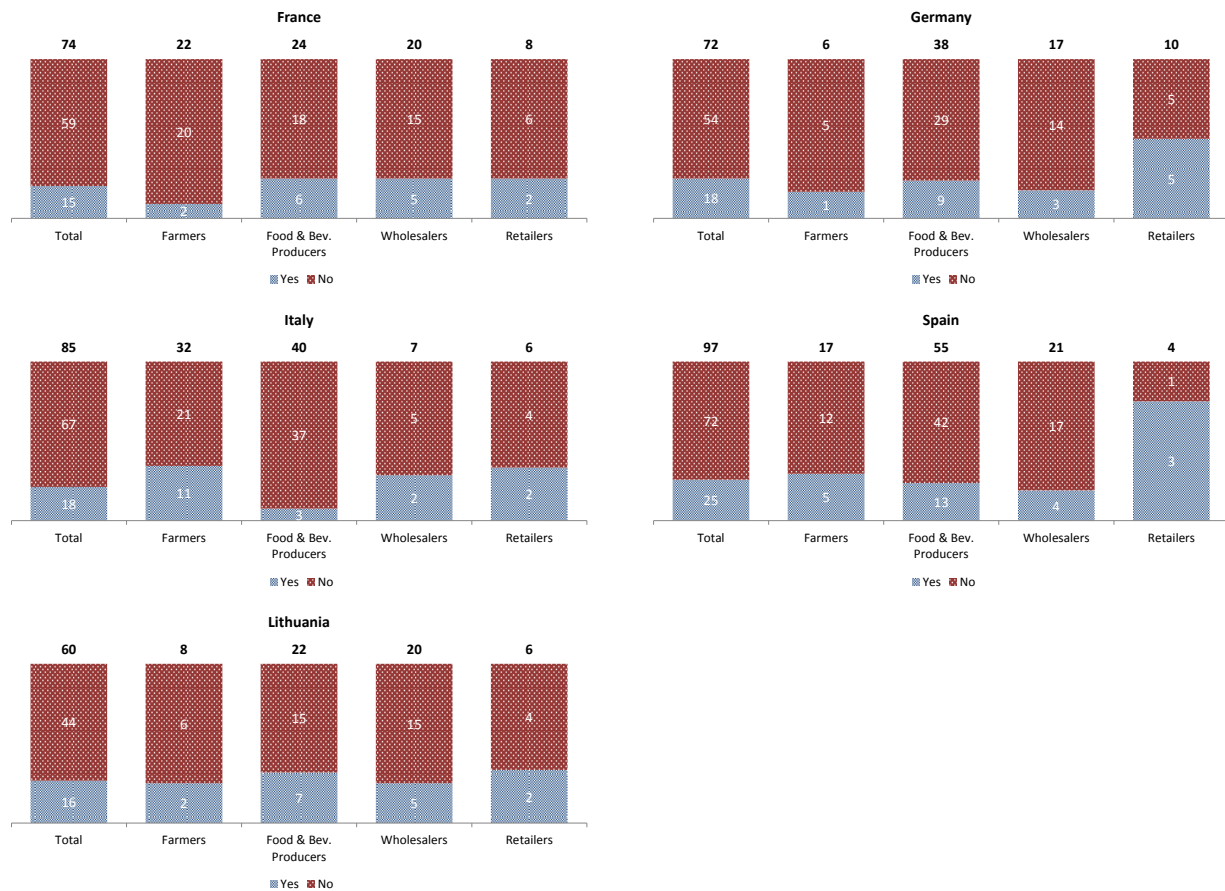
declared to have received complaints, with the highest incidence among retailers (34% of total). Also in this context the vast majority of complaints did not result in a dispute; the only exception concerns retailers, for which the complaint led to resolution through arbitration or mediation in almost 50% of cases.

On the basis of data presented in Figure 7.6, and considering the high number of replies from which these results are drawn (1,017 total respondents, with the smaller subgroup represented by 141 retailers), two main trends can be identified.

- On average, 22% of respondents declared to have received some complaints for UTPs during the last five years. Incidence rises to 34% in the case of retailers, and falls to 20% for producers and wholesalers and to 24% for farmers.
- Around one-third of total complaints resulted in a dispute, with no significant preference between in-court and out-of-court resolution. Incidence of complaints resulting in a dispute rises to 50% in the case of complaints received by retailers (often managed through in-house compliance office or mediation), and falls to 24% in the case of farmers.

Figure 7.7 illustrates a breakdown by Member State and level of the supply chain, for all those cases in which the number of available replies allowed a detailed analysis. Due to the limited number of answers available for each sub-option, only the distinction between the presence/absence of complaints is presented.

*Figure 7.7 – Received complaints for UTPs by Member State and across levels of the chain*



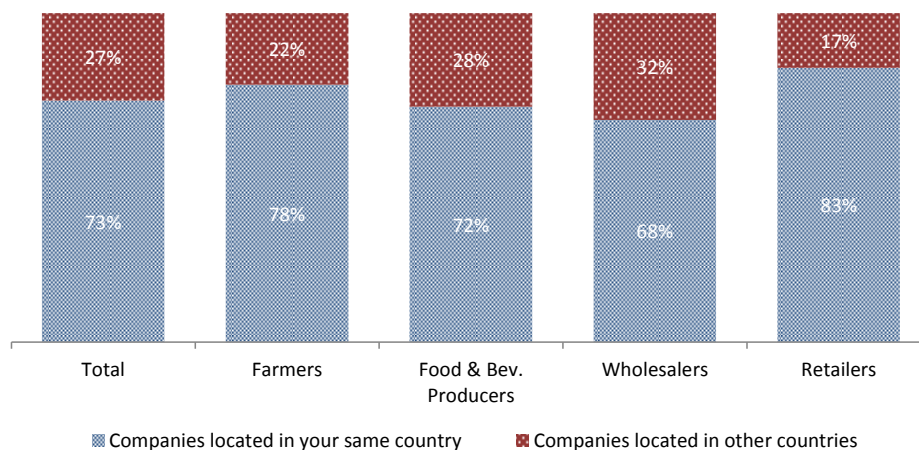
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No significant differences arise from the analysis across the five Member States: the overall occurrence of UTPs across different levels of the chain seems in general slightly lower than the one emerged for the EU28 as a whole, with the highest incidence of received complaints in Lithuania (27%, 16 respondents out of total 60) and the lowest in France (20%, 15 respondents out of total 74).

Generally speaking, it emerges rather clearly how retailers result to be the category with the highest incidence of received complaints, ranging from 25% in France (2 out of 8) to 75% in Spain (3 out of 4).

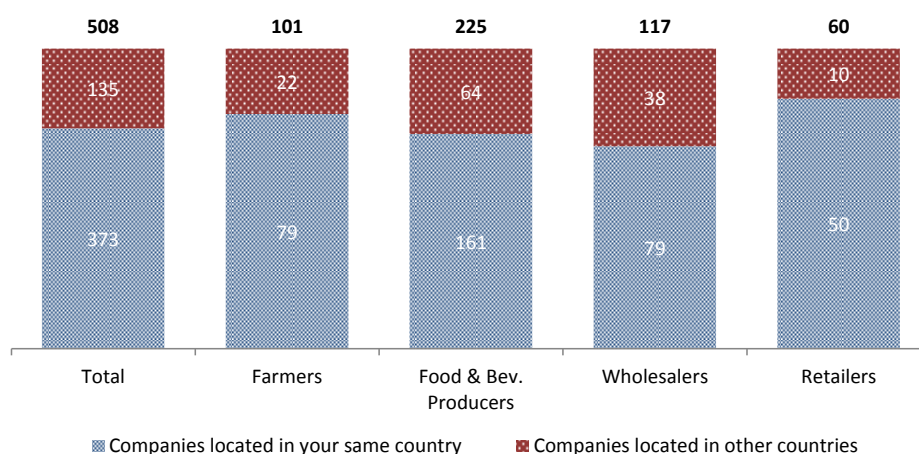
Question n.10 – “Out of all the actual or alleged UTPs that your company has dealt with over the last five years, the largest part involves...”

Figure 7.8 – Breakdown of perceived UTPs between domestic and cross-border (% and abs. value)



Respondents: companies previously exposed to / receiving complaints on UTPs

Number of collected answers: 508 – Farmers: 101, Producers: 225, Wholesalers: 117, Retailers: 60, Ho.Re.Ca: 5 (not detailed, only included in the total)



The analysis of the “geographical scope” of UTP-related cases shows that around 73% of perceived UTPs actually involve companies which are located in the same country, while the weight of cross-border UTPs

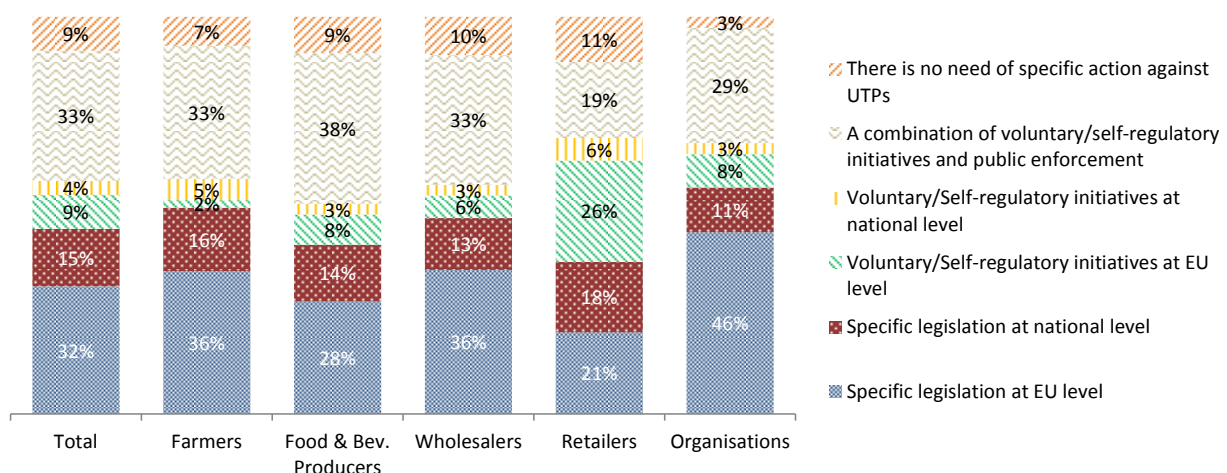
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results to be quite limited. Survey results confirm the information collected through interviews, all pointing out a prevalence of domestic cases of UTPs.

Looking at the different levels of the supply chain, wholesalers and producers seem to be the categories with the highest incidence of cross-border cases (with 32% and 28%, respectively); however the counterpart is a domestic company in most cases also for these operators.

Question n.11 – “In your view, which is the most effective way to tackle UTPs?”

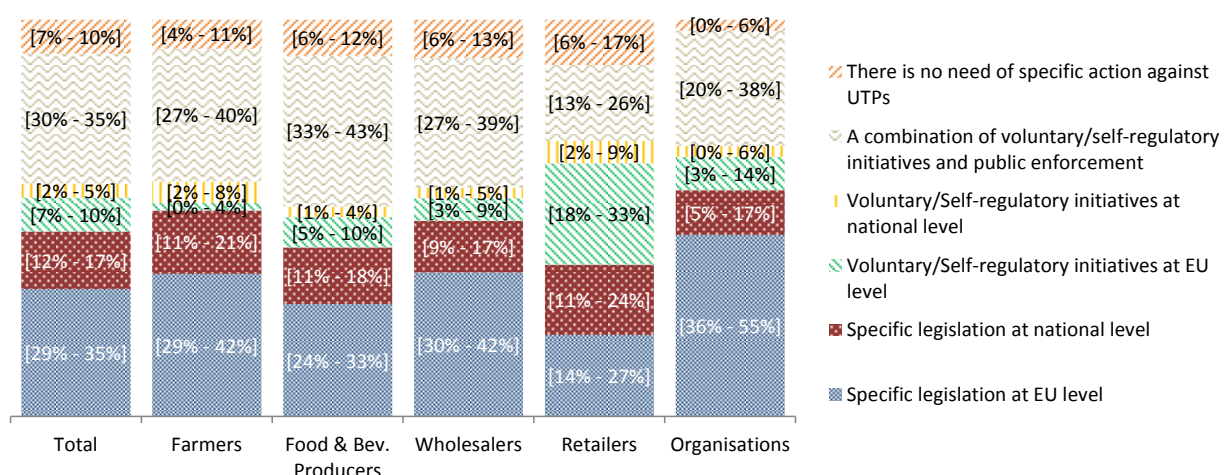
Figure 7.9 – Preferred approaches in tackling UTPs on total respondents and across levels of the chain



Respondents: companies and organisations

Number of collected answers: 1,124 – Farmers: 206, Producers: 420, Wholesalers: 229, Retailers: 141, Organisations: 107, Ho.Re.Ca.: 21 (not detailed, only included in the total)

Confidence Intervals



Results from question n. 11 should be interpreted taking into account that many respondents seem to have a limited knowledge of existing legislation at national level. In this respect, it is worth noting that cross-analysis by Member State provided in Figure 7.10 showed that even in Member States with specific legislation addressing UTPs, survey respondents did not show a particular awareness of these regulations; limited

knowledge of national legislation addressing UTPs (where it exists) seems a common feature throughout the EU28.

This said, survey respondents indicated as the most preferred approaches in tackling UTPs the *combination of voluntary initiatives and public enforcement* (33% of total answers) or *a specific legislation at EU level* (32%); on the other side, reliance on voluntary initiatives alone at national or EU level resulted to be the less preferred approach, with 4% and 9% of preferences, respectively.

Looking at the preference expressed by individual categories of operators, farmers, producers and wholesalers appear to be well-aligned with the overall trend observed on total respondents: the only main difference refers to the general preference of farmers and wholesalers for an EU-level legislation (36% for both categories), while producers seem to look with more interest to a combination of voluntary initiatives and public enforcement (38% of preferences).

Some relevant differences can instead be identified for retailers, which showed a clear preference for voluntary initiatives at EU level, a position which seems perfectly consistent with the very favourable feedback on the SCI provided by this category of operators, both in the survey and during interviews. On the contrary, the preference of retailers for EU-level legislation or for a combination of voluntary initiatives and public enforcement is clearly below the level expressed by operators in the upstream stages of the supply chain.

A peculiar position also emerged from organisations, in comparison with the overall position of companies. To start with, only 3% of organisations saw no need of specific actions against UTPs (a greater share of operators expressed such position, with an incidence ranging from 7% of farmers to 11% of retailers): judging from the survey results, organisations seem the most committed stakeholders in finding a solution to UTPs. Another interesting element refers to the clear preference among organisations for an EU-level legislation (expressed by 46% of respondents in this category), which is preferred to a combination of voluntary initiatives and public enforcement. As already explained at § 2.1.1.3, it is likely that most of the organisations participating in the survey are farmers associations; with all due caveats (the questionnaire did not allow to identify the type of organisations/NGOs participating in the survey), this might suggest that farmers' associations tend to be in favour of EU legislation even more than individual farmers (36% of respondents in the farming stage of the supply chain indicated as preferred approach the adoption of an EU-level legislation).

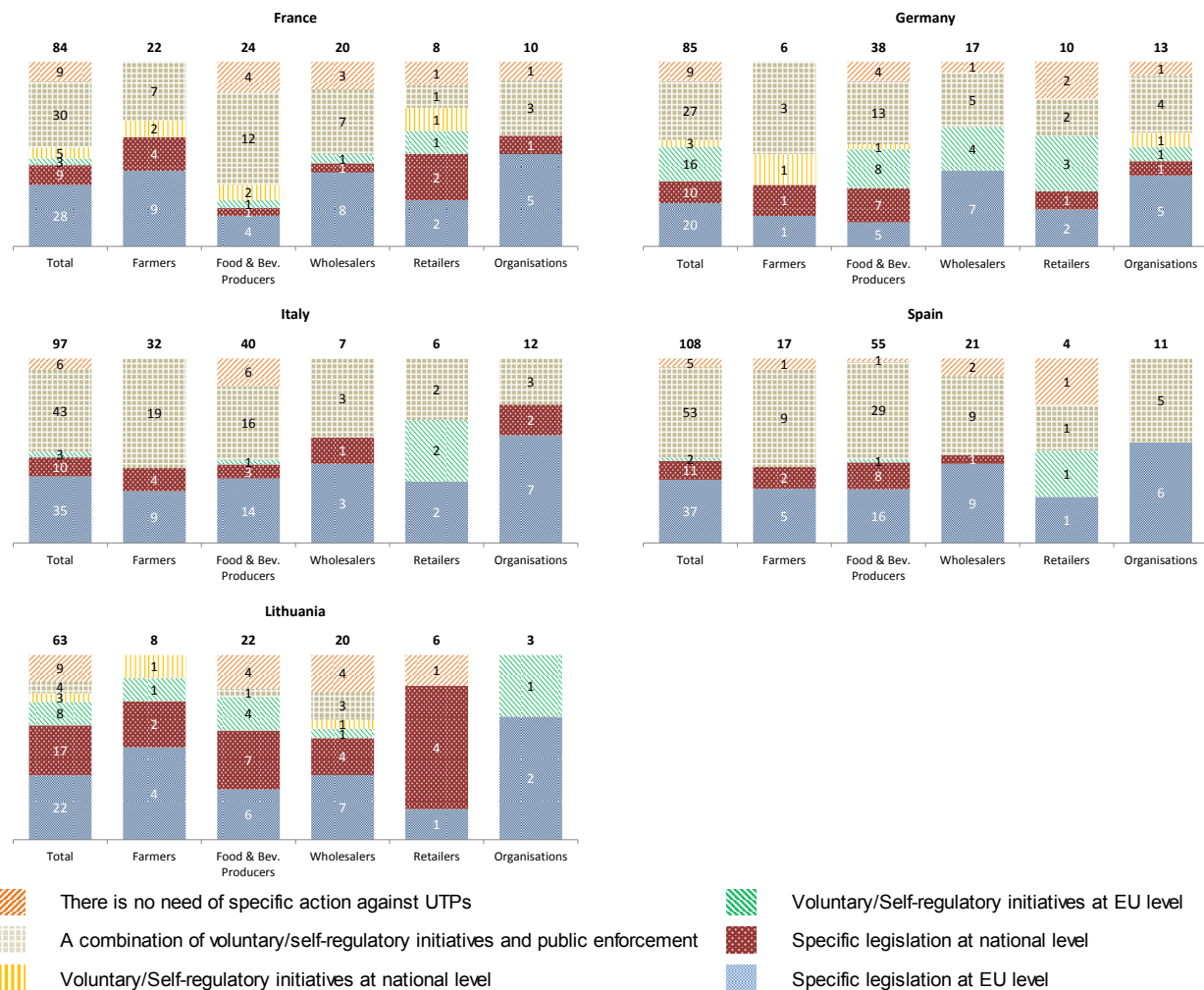
Generally speaking, and apart from the above mentioned specificities, the comparison between the preference for legislation at EU level and at national level shows that the former is clearly preferred by the vast majority of respondents; this seems in contrast with the prevalence of domestic perceived cases of UTPs with respect to the cross-border ones emerged from the survey (Figure 7.8). Similarly, when speaking about voluntary initiatives, most preferences fall on the EU level rather than on the national one, with the only exception of preferences expressed by farmers (which tend to favour the national level).

The high number of replies to question n. 11 (1,024 in total, with the smaller subgroup represented by 107 organisations) makes the survey results robust enough to draw some general indications.

- In terms of approaches for tackling UTPs, most respondents declared to prefer a combination of voluntary initiatives and public enforcement, or a specific legislation at EU level. These are also the preferred approaches indicated by farmers, producers and wholesalers.
- Retailers showed a clear preference for EU-level voluntary initiatives like the SCI, while their preferences for legislation or public enforcement are well below the average.
- Nearly half of respondents in the organisations category declared to prefer EU-level legislation to voluntary initiatives (be they at EU or national level).

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Figure 7.10 – Preferred approaches in tackling UTPs by Member State and across levels of the chain



Looking at the main differences among the five Member States for which a full-fledged cross-analysis was performed, Germany results to be the one with the lowest preference for specific legislation (both at EU and national level): the combined preferences for these options account for about 36% of the total, while for the other Member States they vary between 44% in France and Spain and 62% in Lithuania.

Voluntary initiatives (at EU or national level) were not deemed an effective approach in France, Italy and Spain, while a greater favour for this option emerged in Germany and Lithuania.

Even with the prudence suggested by the rather low number of replies, some overall trends across the different levels of the supply chain can be highlighted for the five Member States considered.

- Only one farmer among respondents in all the five Member States indicated that there is no need of specific actions against UTPs; the two most preferred approaches for farmers were specific legislation at EU level or a combination of voluntary initiatives and public enforcement; on the other side, limited preferences were expressed for reliance on voluntary initiatives alone, with exceptions in Germany and Lithuania.



- Food and beverage producers as well as wholesalers follow the general trends identified at the EU level, with most answers converging on legislation or the combination of voluntary initiatives and public enforcement.
- As observed at EU level, retailers clearly favour voluntary initiatives rather than legislative approaches.

It seems instead difficult to read these results in the light of the legislation in force in these five Member States.

- In Italy, France and Spain, where specific legislation addressing UTPs already exists, there is neither a lower preference for more specific legislation nor a higher preference for voluntary initiatives (both at national and EU level) with respect to the average recorded in the rest of the EU. The only element to be pointed out is the higher share of respondents indicating no need of specific actions against UTPs in France.
- In Germany, where more generic legislation addressing UTPs exists, a very low number of respondents expressed a preference for more specific legislation (both at national and EU level). On the contrary, Germany is the country where the development of voluntary initiatives is seen as the most effective approach against UTPs. This should be seen as a positive element with respect to the envisaged official launch of the national platform.
- Finally in Lithuania – a country with specific legislation addressing UTPs – the highest preference for (more) specific laws emerged from the survey, together with the highest preference for voluntary initiatives. Survey results for Lithuania are significantly different from those of the other four Member States analysed, both for the very low preference expressed for a combination of voluntary initiatives and public enforcement (just 4 out of 63 total respondents), and for the significant number of respondents indicating no need of specific actions (9 respondents, about 17% of total).

In the light of the above difficulties, a wider group of Member States<sup>49</sup> was analysed, with a view to detecting possible linkages between the presence of specific national legislation addressing UTPs, on one hand, and the preferred approaches emerged from the survey, on the other hand. This analysis was also aimed at detecting the possible presence of general trends linked to the geographical position of individual Member States, which can be related – at least in broad terms – to specific features of the business environment.

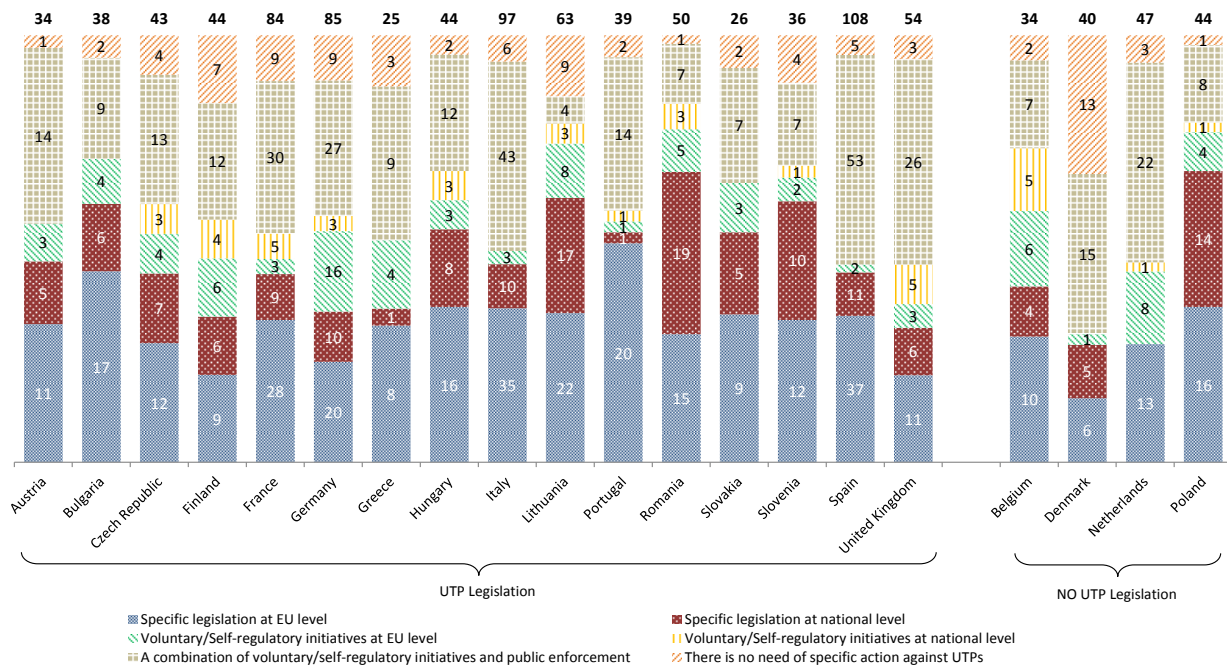
Although some general indications stemming from the analysis are outlined in the following section, these should be read with extreme prudence, because of the high variability of the number of replies across Member States, and because of the differences in the composition of the groups of respondents (presence of farmers, producers, retailers, wholesalers, organisations) among the same Member States.

In reading the results of this ad hoc analysis, it is also essential to keep in mind that the questionnaire did not foresee questions aimed at investigating the reasons behind the preference for a specific approach. This implies that no “cause-effect” relationships (e.g. “the preference for approach “X” in country “Y” derives from the presence/absence of specific legislation addressing UTPs”) should be inferred from the detected linkages.

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<sup>49</sup> Member States with less than 20 replies were again excluded from the analysis: Croatia, Cyprus, Estonia, Ireland, Latvia, Luxembourg, Malta and Sweden

Figure 7.11 – Preferred approaches in tackling UTPs by Member State vs. national legislation



Respondents: companies and organisations

Number of collected answers: spanning from 25 in Greece to 108 in Spain

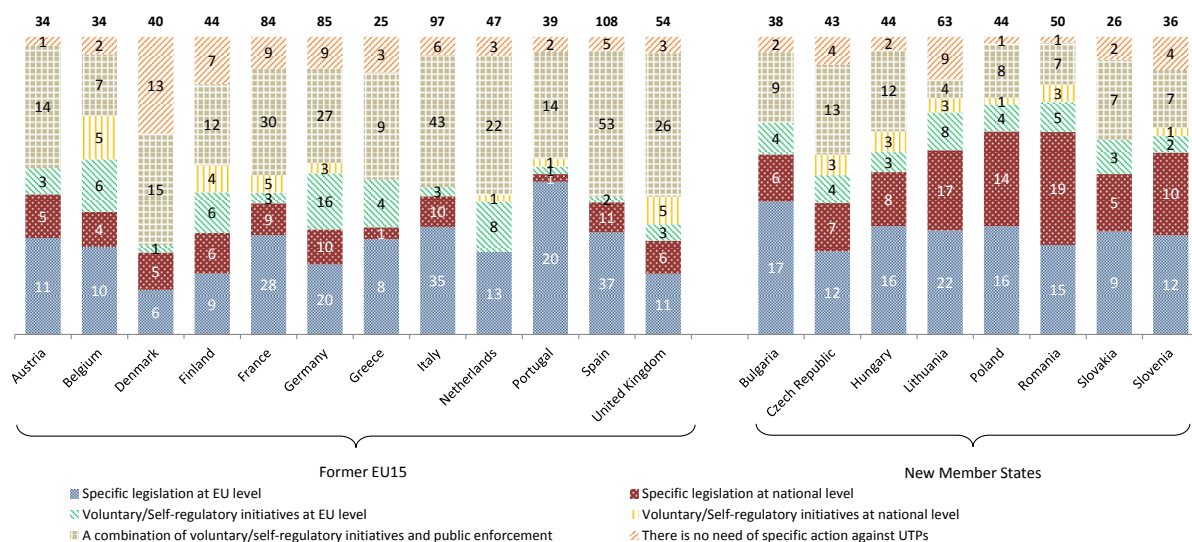
Similarly to what observed in the five Member States with the highest number of replies (see Figure 7.10), also the extension of the analysis to a larger number of countries (Figure 7.11) did not allow to detect a clear linkage between the presence/absence of national legislation specifically addressing UTPs, on one hand, and the preferred approaches expressed by respondents, on the other hand. The only linkages of some interest were detected in the UK, Finland and (to a lesser extent) Germany, where the presence of national legislation specifically addressing UTPs was clearly combined with a lower than average preference for EU-level legislation (20% in the UK and Finland, and 23% in Germany, versus an EU28 average of 32%). However, it should also be noted that the lowest preference levels for EU legislation were recorded in Denmark (15%), where no specific national legislation exists. Elements emerging from the analysis are hence contradictory.

Preferences for voluntary/self-regulatory initiatives seem to be more related to the operation/planned launch of stakeholders' platforms aimed at addressing UTPs in some Member States: the four countries with the highest incidence of preferences for voluntary initiatives (EU and national level combined) are those where national platforms are in operation or about to be launched: Belgium (11 respondents, about 32% of total), Finland (10 respondents, about 23% of total), Germany (19 respondents, about 22% of total) and the Netherlands (9 respondents, about 19% of total). It is also worth noting that in these four Member States a higher number of respondents expressed a preference for EU-level initiatives rather than for national ones (1 more respondent in Belgium, 2 more in Finland, 13 more in Germany and 7 more in the Netherlands).

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The distinction of Member States in two clusters - former EU15 Member States and New Member States - allowed to detect other linkages of some interest (Figure 7.12).

Figure 7.12 – Preferred approaches in tackling UTPs by Member State – former EU15 vs. New Member States



Respondents: companies and organisations

Number of collected answers: spanning from 25 in Greece to 108 in Spain

The significant linkages which were detected through such clustering (which basically corresponds to a distinction between Western and Eastern EU countries) are the following:

- Respondents in New Member States manifested a higher preference for an approach based on national legislation (rather than on EU-level legislation) with respect to respondents in the former EU15 Member States: the average preference for this option is 24% in the cluster of New Member States, versus just 9% in the former EU15 cluster.
- Combining the two options for legislation (EU-level and national) in a single one, 59% of respondents in New Member States declared to prefer “legislation”, while in the former EU15 cluster the average preference for “legislation” falls to 39%.
- The preference for a combination of voluntary/self-regulatory initiatives and public enforcement is on average higher in the former EU15 cluster (38% of respondents, versus 21% in the New Member States cluster).
- Finally, very few respondents in the Member States of the Mediterranean area – especially in Italy, Portugal and Spain – expressed a preference for voluntary/self-regulatory initiatives (both at EU and national level). These three Member States expressed the highest preference for legislation (be it at EU or national level) within the former EU15 cluster.

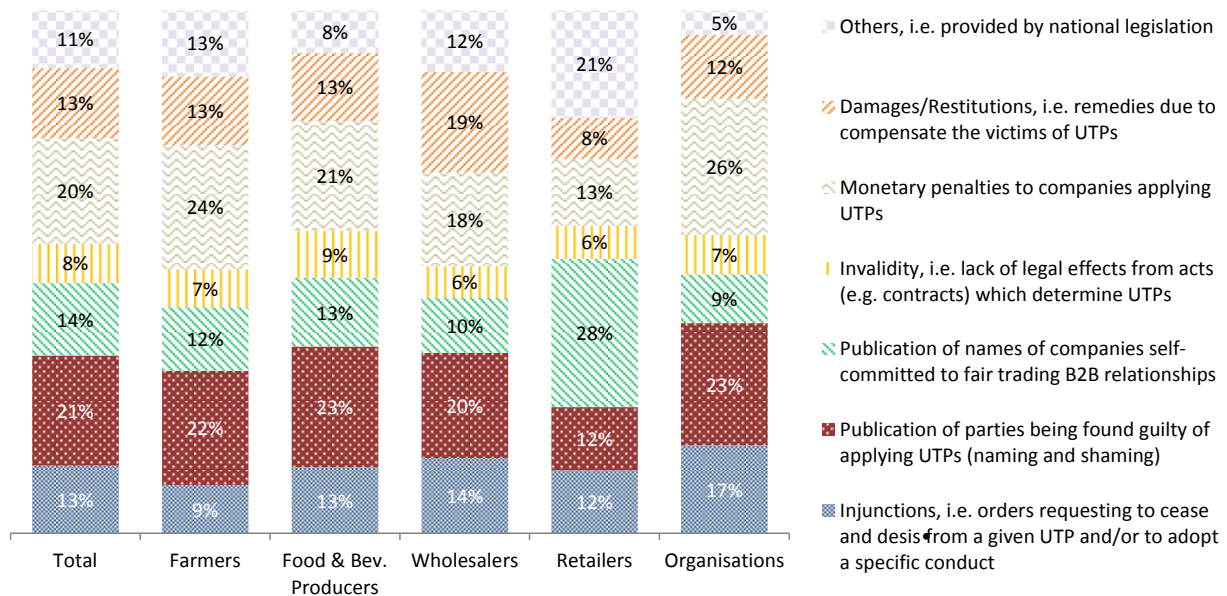
A tentative explanation for the rather mixed and somewhat erratic survey results on preferred approaches to tackle UTPs might be the general low awareness of national legislation among respondents in the different Member States. In particular, the lack of a clear linkage between the actual legal framework and the answers provided by respondents seems to indicate that, even in Member States where specific legislation addressing UTPs exists, operators do not show a higher knowledge of these legal instruments. This said, it is worth

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underlining again the fact that the questionnaire did not foresee questions aimed at understanding the reasons behind the preference expressed for a specific approach.

Question n.12 – “Which of these remedies against UTPs do you deem as the most effective?”

Figure 7.13 – Preferred remedies against UTPs on total respondents and across levels of the chain

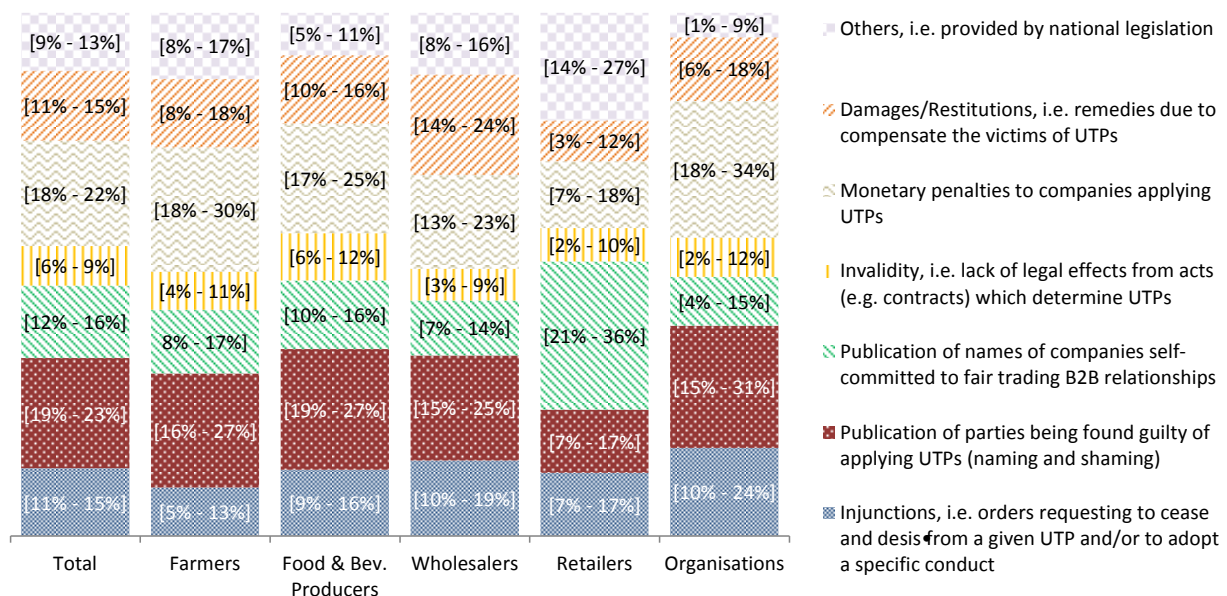


Respondents: companies and organisations

Number of collected answers: 1,124 – Farmers: 206, Producers: 420, Wholesalers: 229, Retailers: 141, Organisations: 107,

Ho.Re.Ca.: 21 (not detailed, only included in the total)

Confidence Intervals



Preferences about possible remedies against UTPs (Figure 7.13) appear to be very well distributed among the different options, and specific trends are quite difficult to identify: generally speaking, respondents tended to converge on “naming and shaming” (21%) or monetary penalties (20%), while the lowest preference was recorded for invalidity of contracts determining UTPs (8%).

Answers provided by stakeholders at different levels of the supply chain show that, also in this case, preferences among farmers, producers and wholesalers tend to converge on similar positions: with minor differences – mainly regarding the preference towards monetary penalties versus damages/restitutions – these operators seem to be rather aligned in their judgment of the most effective remedies against UTPs.

Retailers expressed different positions also on this topic. The preferred remedy for this category resulted to be the publication of companies self-committed to fair trading (showing an incidence which is more than double than those emerged for the other levels of the supply chain). Also this result appears in line with the very good judgment of the SCI and of its main features expressed by retailers in the survey (see § 8.3.1). Remedies like naming and shaming, damages/restitutions and monetary penalties recorded very few preferences among retailers with respect to the average of total respondents, while other generic remedies provided by national legislation received greater favour among retailers than among the other operators.

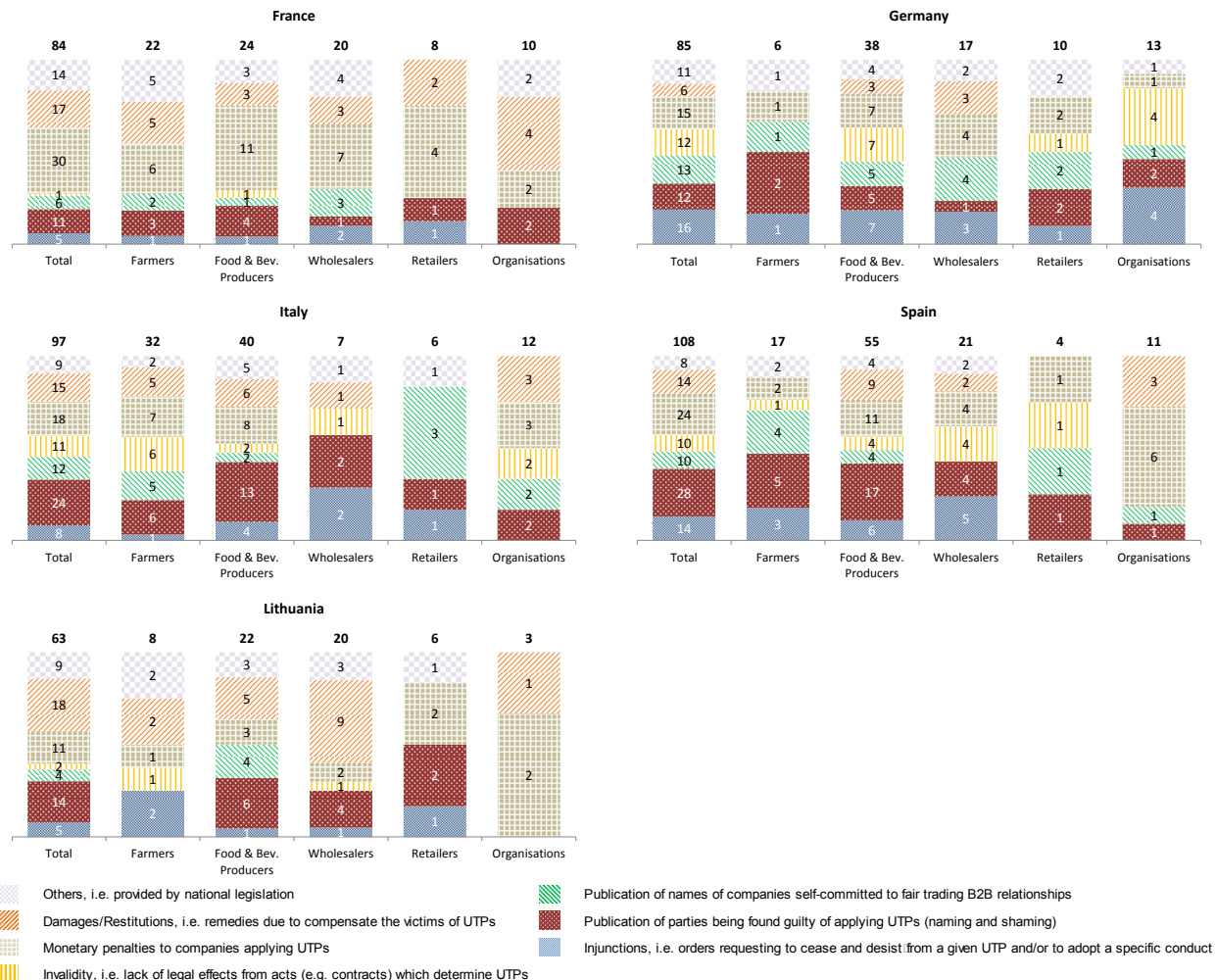
Answers from organisations are rather well aligned with the ones from the farming/production/wholesaling stages of the supply chain; the two most relevant differences concern the very limited preference (well below the average) regarding the publication of companies self-committed to fair trading, and other generic remedies provided by national legislation.

Also for question n. 12, the high number of replies allows to deem the survey results as robust enough to identify some general trends.

- The remedies deemed most effective against UTPs across all respondents are naming and shaming or monetary penalties to companies applying UTPs.
- Invalidity of contracts determining UTPs or other generic remedies provided by national legislation are deemed the least effective solutions for tackling UTPs across all respondents.
- Farmers, producers and wholesalers are in general well aligned in terms of preferences, with the remedies deemed most effective being naming and shaming, monetary penalties or damages/restitutions.
- Retailers expressed different positions: the remedy deemed most effective for the category is the publication of companies self-committed to fair trading.
- The overall composition of replies shows that the remedies currently offered by the SCI (i.e. publication of self-committed companies and no real threat of naming and shaming<sup>50</sup>) is near to the ideal scenario for retailers; this seems also consistent with the very positive judgments provided by this category on the initiative. On the contrary, operators in the upstream stages of the supply chain and organisations seem to be more interested in remedies currently not envisaged by the SCI.

<sup>50</sup> Proper “naming and shaming” is not among the remedies currently offered by the SCI. In fact, no formal communication accompanies decisions on actual UTP cases: the SCI apparently does not foresee the publication of information on the outcomes of aggregated disputes. A “soft” version of “naming and shaming” seems only to be applicable in the context of suspension/exclusion of a company from the SCI. This circumstance can only be envisaged in case of serious breach of process commitments. The possibility to re-apply is also foreseen, and publication of the names of the excluded companies will only be made on the initiative’s website and in the annual report; in this context the sole suspension or exclusion, even if communicated through different channels, cannot be identified as proper “naming and shaming” unless it is accompanied by an explanation of the reasons behind the exclusion/suspension. It is also worth noting that no suspension or exclusion has been imposed so far on SCI member companies.

Figure 7.14 – Preferred remedies against UTPs by Member State and across levels of the chain



Looking at differences among the five Member States for which a full-fledged cross-analysis was performed (Figure 7.14), it can be noted that the most preferred remedy in France is by far monetary penalties (38% of total replies), while in Italy and Spain most preferences fell on “naming and shaming” (29% and 27%, respectively), and in Lithuania on damages/restitutions to compensate victims (27%). No specific preference is distinguishable in Germany.

The low number of replies per stage of the supply chain, together with the high number of possible options envisaged for this question, did not allow to draw any specific conclusion on further subgroups of respondents at Member State level.

## 7.2 Additional evidence

Very little actual evidence on exposure to UTPs was collected in the course of interviews: apart from providing feedback on the initiatives under study and useful insights on the impact that they could have in addressing the problem of UTPs, no interviewed company reported actual examples of its experience with UTPs.



On one side, all independent experts confirmed that the problem does exist and that it can be considered serious throughout the EU, although with significant differences across Member States, deriving from their specific business “habits” (even more than from their legal framework). Independent experts also confirmed the difficulty in analysing the problem of UTPs in-depth, as well as in collecting a wide evidence base on the topic, mainly because of the already mentioned “fear factor”.

On the other side, no company provided concrete evidence on actual cases of UTPs, often denying to have been exposed to/accused of UTPs, and also explicitly refusing to answer questions on such topic. The only exception is represented by a SME which declared to be exposed to UTPs in its relationship with large food distributors and suppliers, but also to have been accused of UTPs by other SMEs (mainly suppliers complaining about lack of clarity of some contract terms). However, the representative of the company explained that these cases were never brought to court, and that they were all solved through bilateral negotiations with the counterpart.

Finally, in the framework of the interviews made with EU-level associations and with representatives from the European Commission, a series of notable cases of UTPs were named, which involved mainly retailers; no specific information was however provided in relation to this past cases, which were mainly cited as examples of the diffusion of UTPs in the EU.

For what concerns instead the possible approaches for tackling UTPs, useful insights were collected both in the course of interviews and through desk research. It is first of all essential to underline that neither previous studies and articles on the subject, nor interviewees were able to identify a “golden bullet” for effectively addressing the issue of UTPs. This said, a number of elements seemed to suggest the need of a more composite approach than the simple alternative between legislation and voluntary codes as stand-alone solutions.

Two interviewed external experts underlined the weaknesses of purely voluntary approaches, basing their judgment both on past failures of similar initiatives and on the very low utilisation of the existing platforms by their participants (mainly due to the lack of effective deterrents against UTPs). In the view of these experts, an approach entirely based on the willingness of the stronger party not to abuse of the weaker one is not sufficient, even in presence of potential image damages for the company adopting unfair behaviour. However, the serious limitations of voluntary initiatives do not automatically result in a preference for a legislative approach<sup>51</sup>. Interviewed experts agreed that at least some of the UTPs treated in the present study are already covered by contract law in almost all EU28 Member States: on paper, many UTPs should not exist if contract law was strictly enforced. However, the “fear factor” as well as the length and the cost of legal procedures prevent the vast majority of victims of UTPs to seek for protection through ordinary courts.

To some extent, similar limitations of self-regulatory approaches and practical limited effectiveness of legislation alone (where present) also emerged in interviews with some Commission officers. The two categories of interviewees therefore somehow agreed that neither legislation nor purely voluntary initiatives can be identified as successful approaches, when adopted as stand-alone solutions.

Although no clear alternatives were indicated by interviewees, an even wider category of stakeholders (external experts, EC officers and two EU-level associations) agreed on the fact that enforcement is the key to an effective approach, as it is of crucial importance to effectively apply provisions (be they at EU or national level) and to overcome the reluctance of victims to complain, or even discuss about, UTPs. Many interviewees

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<sup>51</sup> In one interview, examples referred to the Spanish and the French situation were provided: in spite of the existence of a specific legislation addressing UTPs in these countries, operators often refused to provide the competent authorities with evidence concerning the UTPs they had suffered, and more in general to cooperate with the competent authorities, for fear of retaliation by their customers.

identified in an independent authority with wide investigation powers and capable of protecting the confidentiality of the weaker party the ideal body for the enforcement of UTP-related provisions. An external expert suggested that the power to investigate ex-officio should be ideally intended in the broadest sense, i.e. as a supervisory authority carrying out also general investigations (i.e. without the necessity of specific requests from operators), with the obligation for all market players to provide information and relevant evidence upon request. Another interviewee cited the UK GSCOP and the Grocery Code Adjudicator Act as one of the most effective solutions currently in place in the EU28, and as an effective tool to be replicated in other countries. Similar considerations on the perceived effectiveness of the UK approach were confirmed by *literature review*<sup>52</sup>.

Desk research on this aspect was mainly based on a number of studies published between 2012 and 2014 on the legal frameworks covering UTPs across the EU and their relative enforcement mechanisms, strengths and weaknesses<sup>53</sup>. As anticipated above, none of these studies identified a single solution applicable throughout the EU and with almost certain chances of effectively contrasting UTPs; this said, common points emerged from these studies on more general considerations for developing an effective approach to address the issue of UTPs. It is also important to highlight that some of these considerations appear consistent with the heterogeneity of the views in the different Member States highlighted in § 7.1, as well as with the most common views emerged from interviews and reported above.

The reviewed studies converge on a mix of “hard” and “soft” laws in the identification of a potentially effective alternative to more “absolute” approaches (based on legislation only or on voluntary codes only). In addition, experts seem to agree on the fact that contract law, as well as the general principle of Freedom of Contract, might pose serious limitations both to legislation and to self-regulatory tools (like the SCI) due to the ability of stronger parties to effectively coerce weaker ones into signing contracts containing unfair terms. The need to find alternative solutions to ordinary courts for the enforcement is a direct consequence of the “fear factor”; however, alternative solutions (e.g. arbitration or mediation) seem not to adequately protect weaker parties, thus resulting in an ineffective and very rarely used tool.

All in all, the reviewed studies seem to converge:

- on the need to establish at least EU-level common approaches/guidelines to address the fragmentation of national legislation<sup>54</sup>;
- on the opportunity to consider the potential benefits of a combination of hard law and voluntary codes<sup>55</sup> (rather than relying on “absolute” approaches), under the prerequisite that the enforcement

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<sup>52</sup> “[...] the first months of operations of the UK Grocery Code Adjudicator seem to be bringing important benefits in terms of the business environment and possibility for small suppliers to engage in a dialogue on practices that are potentially violating the GSCOP. This, in turn, seems to be exerting a disciplining effect on designated retailers.” – CEPS, “Study on the Legal Framework covering business-to-business unfair trading practices in the retail supply chain”, 2014

“(Available options include) guidelines urging national authorities to develop and enforce codes of conduct, the UK GSCOP being a useful precedent for at least some of the practices complained of.” BIICL – “Models of Enforcement in Europe for Relations in the Food Supply Chain”, 2012

<sup>53</sup> British Institute of International and Comparative Law - “Enforcing Good Practice in Vertical Relationships in the Food Supply Chain”, 2012

British Institute of International and Comparative Law - “Models of Enforcement in Europe for Relations in the Food Supply Chain”, 2012

British Institute of International and Comparative Law - “Fair Relations in the Food Supply Chain”, 2014

CEPS, European University Institute, College of Europe - “Study on the Legal Framework covering business-to-business unfair trading practices in the retail supply chain”, 2014

<sup>54</sup> “[...] EU should give the Member States primary responsibility for enforcement against UTPs, according to principles and minimum procedures established at the EU level and under a framework managed at EU level.” – BIICL, “Fair Relations in the Food Supply Chain”, 2014



is demanded to a third, independent party, empowered by national authorities and with wide investigation powers combined with the possibility to impose penalties and fines in case of proved unfair practices.

### **7.3 Main findings**

Results from the survey confirm a common finding in the relevant literature - also emerged from the interviews made - namely that UTPs are a concrete problem in the EU food supply chain across all 28 Member States. The analysis of survey results allowed to detect a higher perceived exposure to UTPs in the cluster of New Member States, in comparison to the cluster of former EU15 countries. No clear linkages emerged instead between perceived exposure to UTPs and the presence/absence of national legislation specifically addressing UTPs.

General perceived exposure to at least one case of UTPs in the last five years is on average slightly below 50% in the EU28, and no significant differences are recognizable among operators in the different stages of the supply chain, with the only exception of retailers, which clearly seem to experience a lower exposure. Survey results suggest that there are very few cases in which an unfair practice actually results in a dispute. The reasons behind this situation can be found, among others, in the fear of retaliation or of long and costly legal procedures, and in the uncertainty of success of legal actions.

All the UTPs listed in the Green Paper seem to occur throughout the EU, with the most frequently applied ones being the unfair transfer of a commercial risk, ambiguous contract terms and the unfair termination of a commercial relationship. Although UTPs occur all across the EU, they mainly seem to be a “domestic problem”, with very limited cases regarding cross-border vertical relationships.

Although with significant differences among the different stakeholders, the approaches deemed most effective to address the problem of UTPs resulted to be a “combination of voluntary initiatives and public enforcement” and “specific legislation at EU level” (each with around 1/3 of total preferences). The perceived effectiveness of voluntary initiatives alone was found to be quite low among survey respondents, and the preference for this solution was mostly limited to a specific category of operators (retailers).

The rather contradictory elements emerged from the analysis of survey results did not allow to detect any clear linkage between the presence/absence of national legislation specifically addressing UTPs, on one hand, and the preferred approaches to tackle UTPs in individual Member States, on the other hand. A significant linkage was instead detected between the preference for voluntary/self-regulatory initiatives and the operation/planned launch of stakeholders’ platforms aimed at addressing UTPs (the highest preference levels for voluntary initiatives at EU or national level were actually recorded in Belgium, Finland, Germany and the Netherlands).

Other linkages of some interest were detected by grouping Member States in two clusters: “former EU15” and “New Member States”. In particular, a clear preference for “legislation” (be it at national or EU level)

<sup>55</sup> “[...] the role of private regulation is and should increasingly be significant: however, following the current trend in a number of countries as well as the evolving literature on private regulation, co-regulation instead of pure self-regulation seems to be most appropriate especially in the food sector [...] Administrative authorities should police the compliance with codes and sanction violations. Similarly national judges should police breach of codes and sanction them.” – CEPS, “Study on the Legal Framework covering business-to-business unfair trading practices in the retail supply chain”, 2014

“[...] a mix of hard law and soft law solutions may be the most effective. In that regard, the European Union could also take into account the possible difficulties of producing only hard law mechanisms to regulate these issues and, at least in the short term, give serious thought to the creation of European Union-level standards or a code of practice that can be enforced either at the EU level or at the national level.” BIICL – “Models of Enforcement in Europe for Relations in the Food Supply Chain”, 2012

emerged in the New Member States cluster, whereas the preference for a “combination of voluntary/self-regulatory initiatives and public enforcement” was found to be significantly higher in the former EU15 cluster.

Great prudence should be applied in the interpretation of results of cross-analyses aimed at detecting possible linkages between perceived exposure to UTPs or preferred approaches to tackle UTPs, on one hand, and the presence/absence of legislation and/or voluntary initiatives specifically addressing UTPs, on the other hand. It is in fact essential to keep in mind that the questionnaire did not foresee questions aimed at investigating the reasons behind the perceived exposure to UTPs of operators, or the stakeholders’ preferred approaches to tackle UTPs. In particular, any detected linkages should not be read as “cause-effect” relationships (e.g. “the lowest perceived exposure to UTPs in country “X” derives from the presence of legislation / voluntary initiatives aimed at addressing UTPs”).

Elements collected through interviews and desk research confirmed that, for the time being, no “golden bullet” has been identified in order to effectively address UTPs. Serious limitations were highlighted both for approaches based on “hard law” alone (in many cases these provide theoretical protection from UTPs, but limited practical deterrent to their application) and for purely voluntary approaches (whose main limitations derive from reliance on the goodwill of companies to behave fairly, and on the lack of effective enforcement and deterrents). In this sense, a number of studies and interviewed experts underlined the possible benefits of a “mixed approach”, based on the compresence of regulation and voluntary codes of practices, combined with an independent authority capable of ensuring an effective enforcement (UK GSCOP was often cited as an example).

Finally, the remedies against UTPs deemed most effective by respondents have to be identified in “naming and shaming” or monetary penalties to companies applying UTPs. Also in this case, different positions emerged among retailers, who indicated as the most effective remedy the publication of companies self-committed to fair trading.

## **8 Assessment of the effectiveness of the “Supply Chain Initiative”**

This chapter presents the results of the assessment of the effectiveness of the SCI. The overall effectiveness of the initiative has been assessed through the analysis of the following aspects:

- Participation in the initiative (§ 8.1).
- Governance structure and internal monitoring system (§ 8.2).
- Effectiveness of the initiative in tackling UTPs (§ 8.3).
- Capacity to ensure transparency and confidentiality (§ 8.4).
- Awareness and trust in the initiative (§ 8.5).
- Implementation costs for SMEs joining the initiative (§ 8.6).

Each of the above aspects has been assessed on the basis of survey results – through sets of adequate criteria and indicators – as well as of additional, mainly qualitative elements collected through desk research and interviews.

For each of the above aspects, the key findings of the assessment are highlighted.

### **8.1 Participation in the initiative**

This section illustrates figures with respect to:

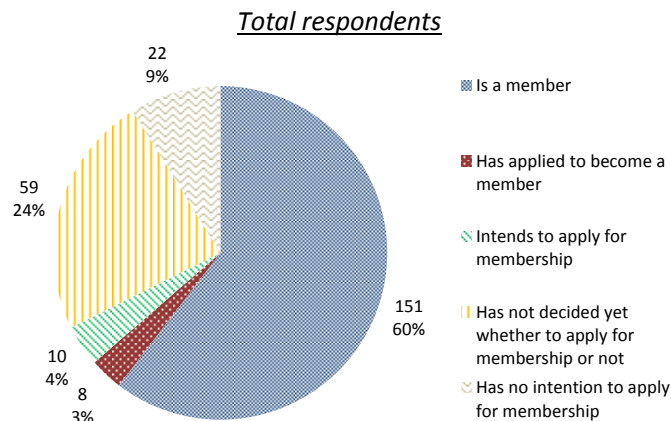
- a. Participation in the SCI
- b. The reasons behind the decision to join (or not) the initiative.

More specifically, § 8.1.1 illustrates the results emerging from the survey, while § 8.1.2 reports about additional evidence (mainly official data included in the SCI reports and website, or elements collected during dedicated interviews).

### 8.1.1 Overview of the survey results

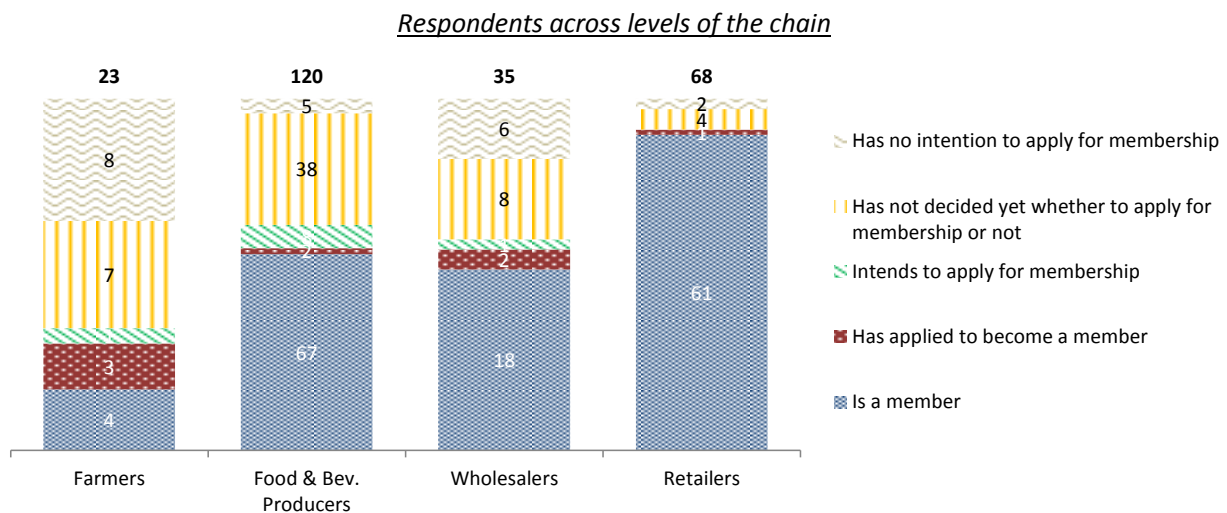
Question n.14 – “You have stated that you know “The Supply Chain Initiative” (SCI). In relation to the SCI, your company”

Figure 8.1 – Breakdown of companies aware of the SCI on total respondents and across levels of the chain



Respondents: companies aware of the SCI

Number of collected answers: 250 – Farmers: 23, Producers: 120, Wholesalers: 35, Retailers: 68, Ho.Re.Ca.: 4 (not detailed, only included in the total)



Out of a total of 250 companies which declared to be aware of the SCI, 151 (approximately 60%) are already members of the initiative, and 18 have the intention to join or have started the procedure to become members. It hence seems that companies which know the initiative have also decided to become members, thus suggesting a positive implicit assessment of the SCI; on the other hand, it is obvious that companies which are already members of the initiative, or anyway “reasoning about membership”, are those which are

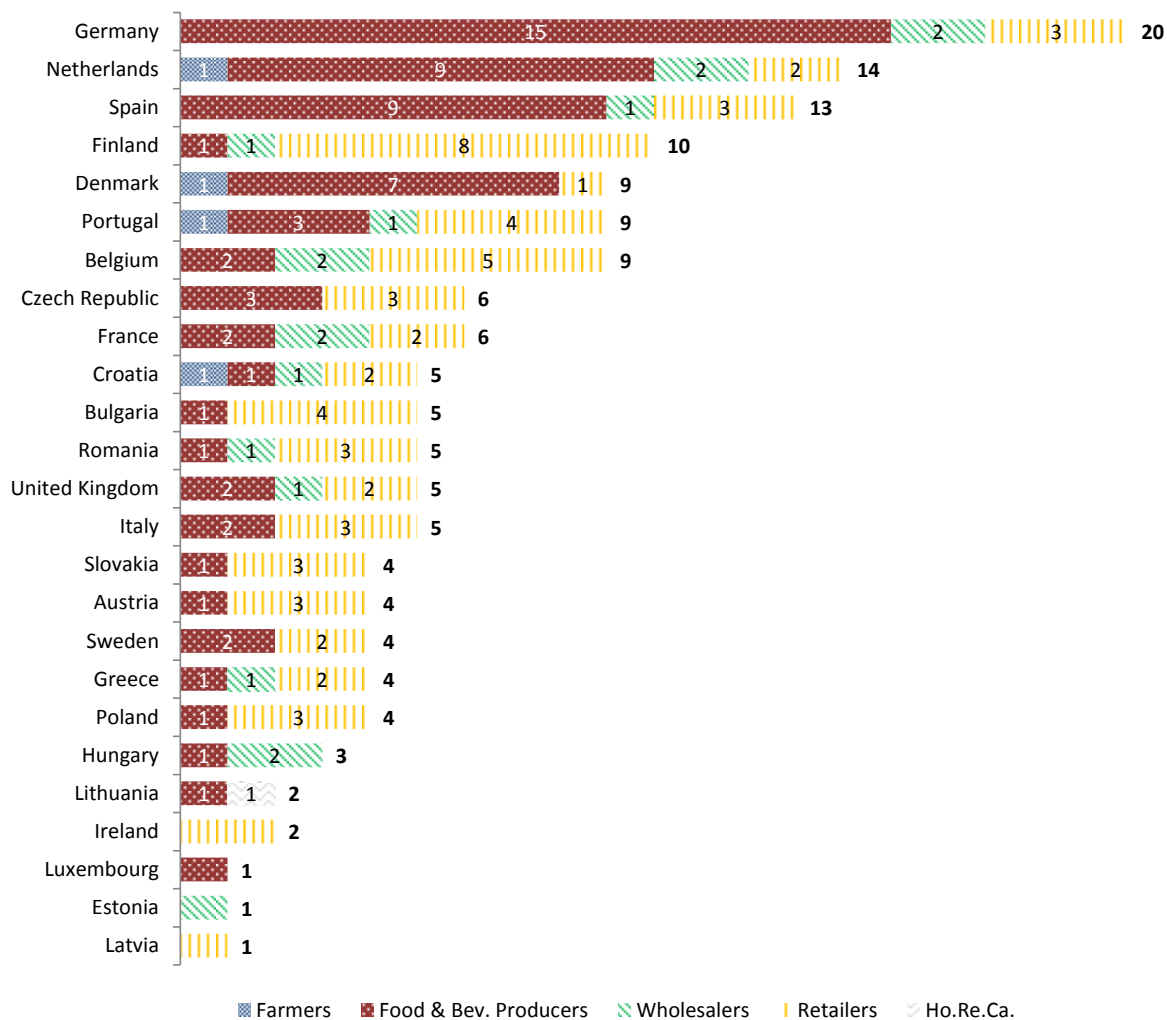
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most likely to be aware of it. In other words “since I am a member, I am also (obviously) aware of the SCI” and, on the other side, “since I know the SCI, I have decided to become a member”.

Replies for some stages of the supply chain (farmers, wholesalers) are rather limited in number, and do not allow to draw clear and strong conclusions. Survey results clearly indicate that a vast majority of retailers is already part of the initiative (approximately 90% of the 68 ones aware of the SCI), while on the other side only four farmers out of 23 respondents are members. These results are consistent with the current composition of the SCI membership base, which includes only 17 farming companies out of 375 total members<sup>56</sup>.

Figure 8.2 shows the breakdown of respondents which declared to be members of the SCI. The breakdown is illustrated by Member State and, for each Member State, by level of the supply chain.

*Figure 8.2 – Breakdown of SCI members by Member State and across levels of the chain*



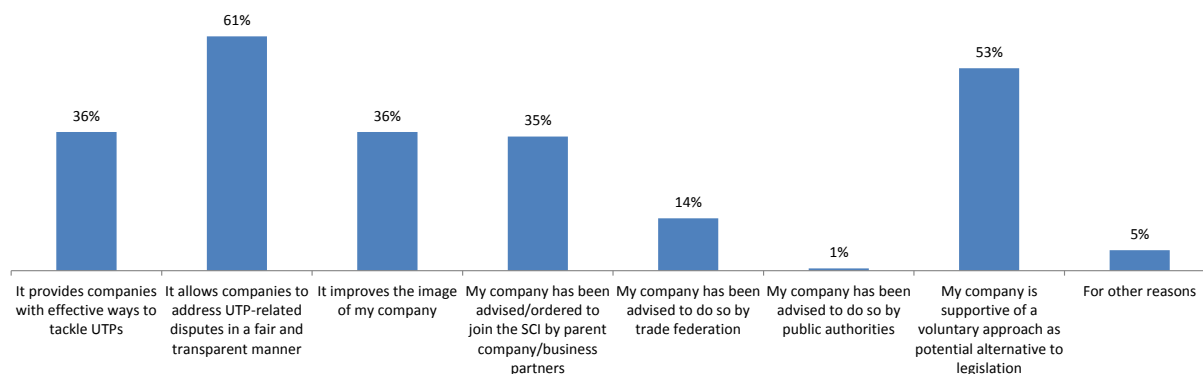
*Respondents: companies member of the SCI*

*Number of collected answers: 151 – Farmers: 4, Producers: 67, Wholesalers: 18, Retailers: 61, Ho.Re.Ca.: 1*

<sup>56</sup> As of December 2015.

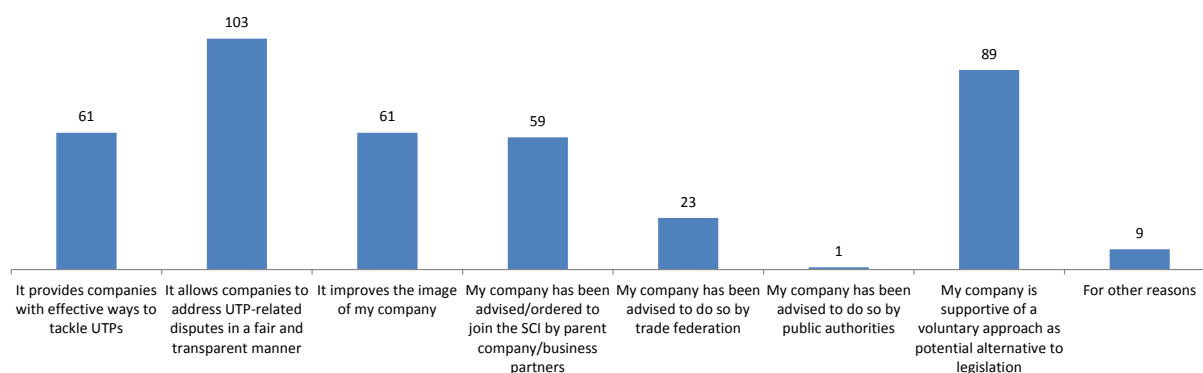
**Question n.15 – “Your company joined/is joining “The Supply Chain Initiative” (SCI) because:”**

**Figure 8.3 – Reasons behind membership on total respondents (% and absolute value)**



*Respondents: companies member of / applying to / with intention to apply to the SCI*

*Number of collected answers: 169 companies, 406 total options (possibility of multiple answers)*

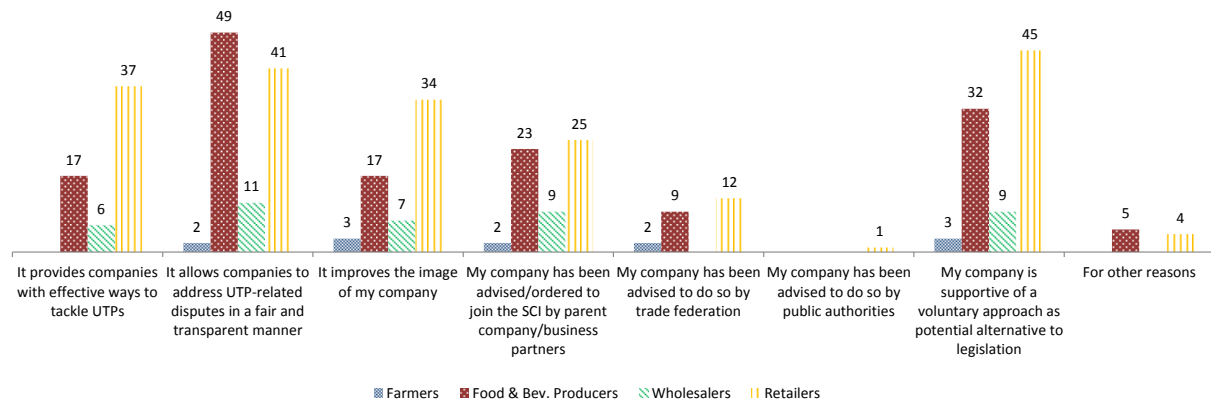


The two most important reasons behind the decision to join the SCI result to be the possibility to address disputes in a fair and transparent manner (61% of respondents) and the support of a voluntary approach as alternative to legislation (53%). Following these two options, other reasons are related to the perceived effectiveness of the initiative in tackling UTPs (36%), the impact of membership on the image of the company (36%) and also inputs by parent companies and business partners (35%); on the contrary, the role played by trade federations and public authorities in promoting the initiative appears to be very limited (14% and 1%, respectively).

The limited number of answers for individual subgroups of respondents did not allow to draw further conclusions; the only aspect to be pointed out is that around 60% of retailers (37 out of 62) indicated the SCI as providing effective ways to tackle UTPs, against only 29% of wholesalers (6 out of 21), 22% of producers (17 out of 77) and 0% of farmers.

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Figure 8.4 – Reasons behind membership across levels of the chain (abs value)



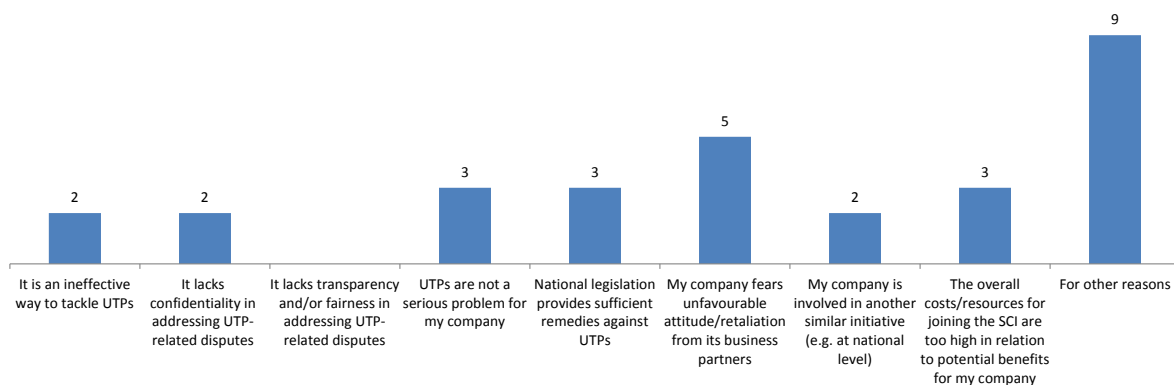
Respondents: companies member of / applying to / with intention to apply to the SCI

Number of collected answers: 169 companies, 406 total options (possibility of multiple answers)

Farmers: 8 (12 options), Producers: 77 (152 options), Wholesalers: 21 (42 options), Retailers: 62 (199 options), Ho.Re.Ca.: 1 (1 option, not included)

Question n.16 – “Your company has no intention to join “The Supply Chain Initiative” (SCI) because:”

Figure 8.5 – Reasons behind non-membership on total respondents



Respondents: companies with no intention to apply to the SCI

Number of collected answers: 22 companies, 29 total options (possibility of multiple answers)

Information was also collected about the reasons why companies which declared to be aware of the SCI do not intend to join it. A relatively limited number of answers (5 respondents out of 22) converged on the fear of retaliation. In more cases respondents were not able to identify any specific reason among those suggested (9 respondents out of 22).

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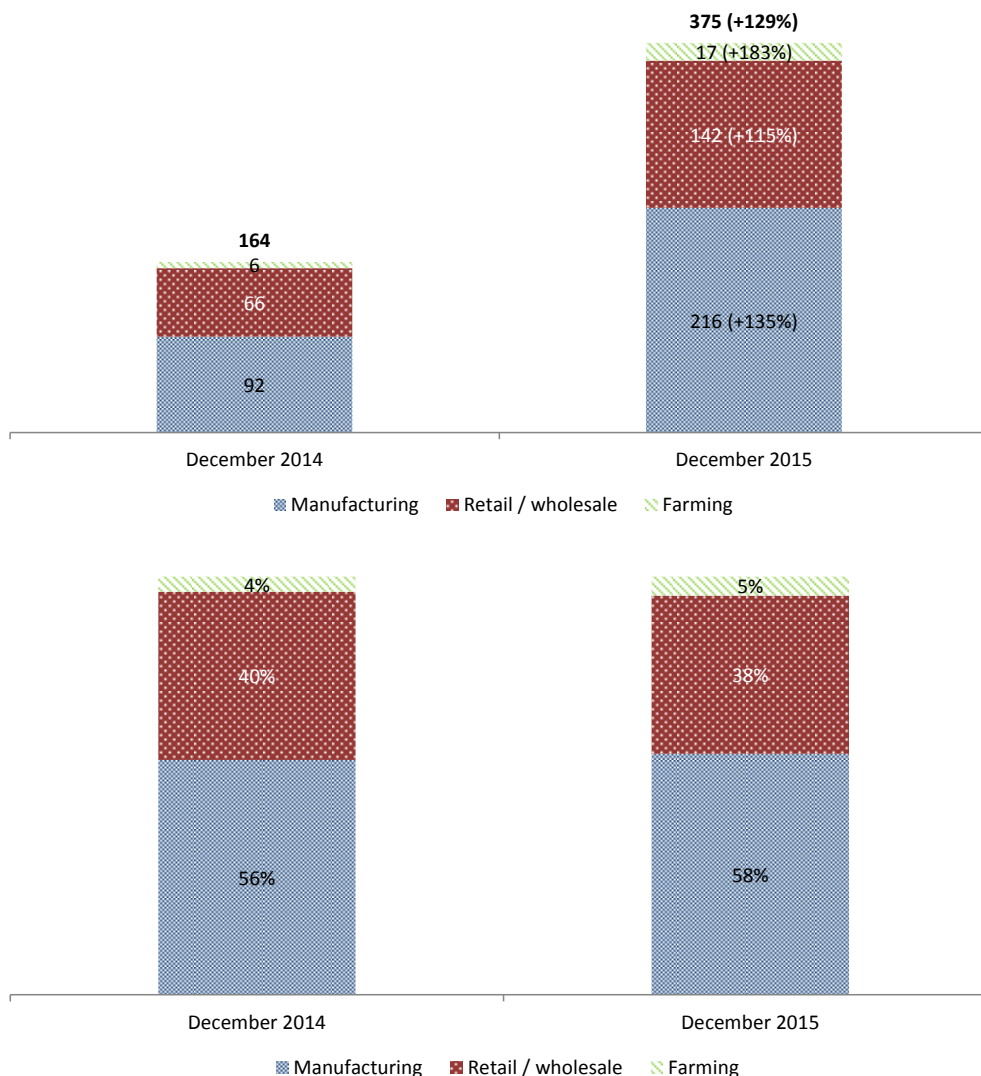
### 8.1.2 Additional evidence

#### 8.1.2.1 Participation in the SCI

As already seen at § 3.1, all companies operating at the retailing/wholesaling, food and beverage production, and farming levels of the food supply chain can become members of the SCI.

In Figure 8.6, the composition of the initiative in December 2015 is compared with the one applying in December 2014, with a breakdown by supply chain stage.

*Figure 8.6 - Composition of the SCI membership, by level of the supply chain – December 2014 vs. December 2015*



Source: SCI monthly progress reports

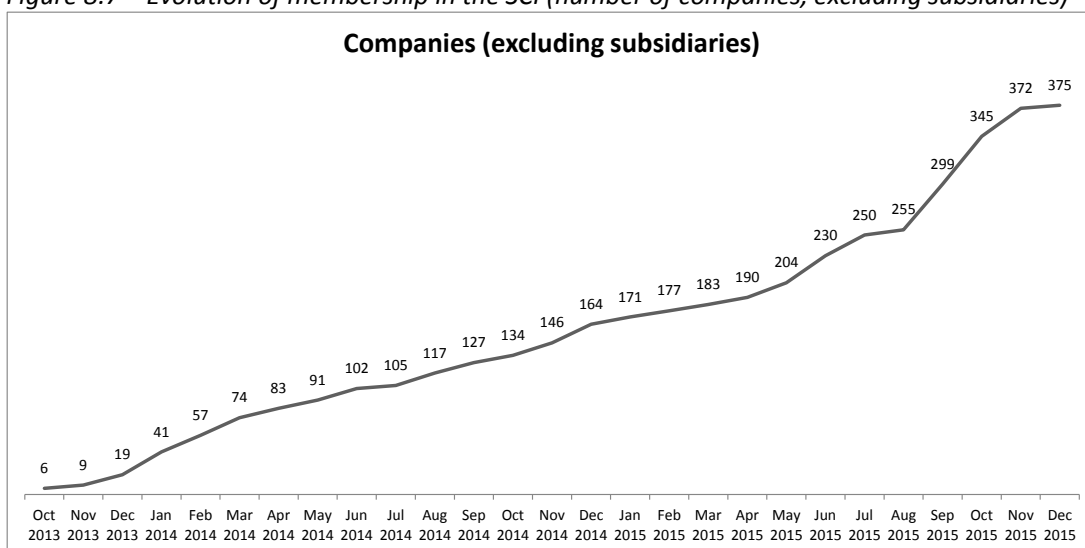


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The relative importance of the different stages of the supply chain in the membership base has not particularly changed over twelve months, and the composition of the membership base remained basically stable. Food and beverage producers account for the majority of member companies, with a slight increase in their relative weight between December 2014 and December 2015 (from 56% to 58%); on the other side, the relative weight of retailers and wholesalers slightly decreased (-2%). Farmers are strongly under-represented: even if their number more than doubled over the observed period, their share is still around 4%-5% of the total membership base. The overall number of members has more than doubled over the observed period, passing from 164 to 375.

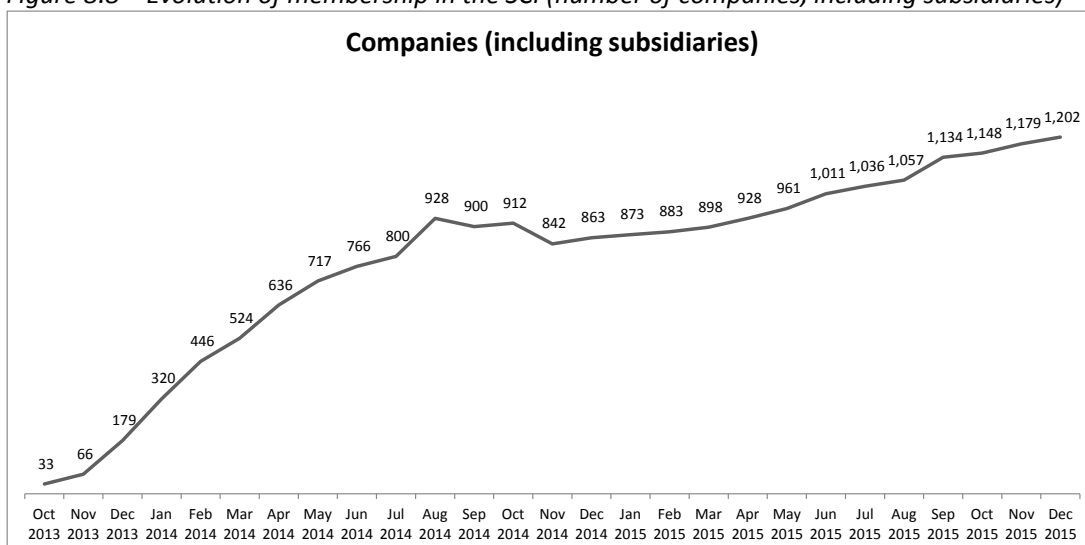
The available data on the evolution of the membership base are illustrated in figures 8.7 and 8.8.

Figure 8.7 – Evolution of membership in the SCI (number of companies, excluding subsidiaries)



Source: SCI Annual report 2015 and monthly progress reports

Figure 8.8 – Evolution of membership in the SCI (number of companies, including subsidiaries)



Source: SCI Annual report 2015 and monthly progress reports

The progress in membership (not considering subsidiaries) shows a rather steady growth pace, a sharper increase is recorded between August and November 2015, probably as a consequence of the Governance Group's decision which simplified the procedures to join the initiative for micro and small enterprises (§ 3.2).

The evolution of the overall membership base (considering also the subsidiaries which get membership as a consequence of the registration of the parent company) shows a decrease in the number of companies between August and November 2014: this is due to rectifications made by parent companies, which realized to have indicated local subsidiaries for countries where they directly operate. Apart from this, the pace of growth has anyway slowed down in the period November 2014 – December 2015 and this can be explained by the fact that many new members are SMEs (i.e. presumably companies with fewer or no subsidiaries).

Table 8.1 illustrates the number of applications/letters of intent received per month.

*Table 8.1 – Number of applications / letters of intents received, per month*

Month	Applications / letter of intent
Sep-13	85
Oct-13	n.a.
Nov-13	87
Dec-13	79
Jan-14	90
Feb-14	60
Mar-14	62
Apr-14	63
May-14	66
Jun-14	67
Jul-14	n.a.
Aug-14	65
Sep-14	61
Oct-14	59
Nov-14	55
Dec-14	52
Jan-15	n.a.
Feb-15	50
Mar-15	51
Apr-15	48
May-15	44
Jun-15	46
Jul-15	n.a.
Aug-15	48
Sep-15	50
Oct-15	51
Nov-15	49
Dec-15	48

Source: SCl monthly progress reports

The monthly detail of the number of applications/letters of intent shows a rather clear decline (from 80-90 applications/letters in the last months of 2013, to 45-65 applications/letters over most of the remaining period).

Table 8.2 shows the incidence of SMEs within the membership base.

Table 8.2 – Evolution of the importance of SMEs within the SCI membership base

Month	SMEs member	% of SMEs on total members
Sep-13	n.a.	n.a.
Oct-13	n.a.	n.a.
Nov-13	n.a.	n.a.
Dec-13	n.a.	n.a.
Jan-14	15	37%
Feb-14	23	40%
Mar-14	33	45%
Apr-14	n.a.	n.a.
May-14	41	45%
Jun-14	47	46%
Jul-14	n.a.	n.a.
Aug-14	55	47%
Sep-14	63	50%
Oct-14	n.a.	n.a.
Nov-14	74	51%
Dec-14	84	51%
Jan-15	n.a.	n.a.
Feb-15	93	53%
Mar-15	98	54%
Apr-15	103	54%
May-15	110	54%
Jun-15	129	56%
Jul-15	n.a.	n.a.
Aug-15	149	58%
Sep-15	188	63%
Oct-15	232	67%
Nov-15	254	68%
Dec-15	257	69%

Source: SCI monthly progress reports

The importance of SMEs within the SCI membership base has been growing since its launch: currently SMEs account for the majority of SCI member companies (69%), and their number has more than doubled over the last six months.

### Box 3 – Considerations on the economic representativeness of the SCI

When assessing participation in the SCI within the wider context of the EU agro-food sector, it is worth considering not only the number of member companies, but also their average size and therefore their economic representativeness. The current composition of the SCI membership base is still unbalanced towards large-sized companies with respect to what applies to the EU agro-food system as a whole: approximately 69% of SCI members are SMEs (according to December 2015 data) while FoodDrinkEurope estimates that SMEs operating in the food and beverage industry account for around 99% of the total number of companies<sup>57</sup>. Although specific data for the other stages of the food chain covered by the SCI (farming, wholesaling and retailing) are not available, an indication on the economic importance of SMEs in these stages can be drawn on the basis of the total turnover and of the number of companies operating in stage, as illustrated in Table 8.3<sup>58</sup>.

<sup>57</sup> Data & trends – European Food and Drink Industry 2014-2015 – FoodDrinkEurope (based on Eurostat data).

<sup>58</sup> Data & trends – European Food and Drink Industry 2014-2015 – FoodDrinkEurope. In the document the total number of EU players across the different levels of the food supply chain is reported, together with the turnover for each level.

**Table 8.3 – Average turnover of companies operating at different stages of the EU food supply chain**

	Agriculture	Food&Drink Industry	Wholesale	Retail
Turnover (€ billion)	409	1,062	1,255	1,132
N. of companies (1000 units)	12,248	289	338	822
Average turnover (€ million)	0.03	3.67	3.71	1.38

Source: Areté elaboration on Data & trends – European Food and Drink Industry 2014-2015 – FoodDrinkEurope (based on Eurostat data)

According to the above data, the average turnover of the EU companies operating in the four stages of the food supply chain is definitely below the maximum turnover threshold considered in the EU official definition of SME, namely 50 € million. The comparison between the turnover and the number of companies operating at each stage highlights how the incidence of SMEs in the wholesale and retail stages is presumably very similar to the one in the food and beverage industry, while for the farming stage where the average turnover is barely 0,03 € million - the incidence of SMEs is presumably much higher. It is also worth noting that FoodDrinkEurope estimates that around 79% of food and drink companies are micro-companies, having a turnover of less than 2 € million.

In the light of the above data, it is possible to conclude that the incidence of SMEs within the membership base of the SCI is much lower than the incidence of SMEs within the EU agro-food system.

It is also important to underline that the relative economic importance of SCI members within the EU agro-food system is much higher than their representativeness in purely numeric terms. An analysis of the composition of the SCI membership base reveals that the majority of EU-based multinational agribusiness companies and large-scale retailers are already members of the initiative. Focusing on food and beverage producers and food retailers (which constitute the bulk of the SCI membership base), it is important to note that:

- 5 out of the top 15 EU food and beverage producers ranked by FoodDrinkEurope (with turnovers between 8 and 76 Euro billions) are already members of the SCI;
- 9 out of the top 10 EU retailers ranked by Foodretailworld<sup>59</sup> (with turnovers between 58 and 150 Euro billions) are already members of the SCI.

The above data and qualitative considerations suggest that the economic importance of the SCI membership base (measured against the total turnover of the EU agro-food system) is much higher than its representativeness in purely numeric terms (number of SCI members vs. total number of operators in the EU agro-food system).

#### 8.1.2.2 Motivations behind the status of operators in relation to the initiative

Interviews allowed to collect additional elements about the most common reasons behind the decision to join (or not to join) the SCI. More specifically, interviewed member companies pointed out the main motivations leading to their membership, while interviewed independent experts and EU-level associations which decided not to support the SCI highlighted a number of reasons behind non-membership.

##### **Reasons behind membership**

The SCI is seen by its members as a **good chance to improve the relationships along the supply chain**, allowing operators to fruitfully talk about the main issues surrounding the negotiations and to review their internal procedures with the objective of improving fairness towards their counterparts.

<sup>59</sup> <http://www.foodretailworld.com/LeadingRetailers.htm>

On one side, membership in the SCI allows participants to discuss about fairness in business practice, involving the highest level of management and looking for an agreed and clearer definition of what is fair and unfair in business relationships.

On the other side, almost all the requirements needed to join the SCI are seen as an important **opportunity to self-review company policies and to train the staff in the light of the Principles of Good Practice**: these improvements impact both the procurement and the marketing side, and allow a much clearer company identity and shared approach in relation to UTPs. In many cases the principles promoted by the SCI were somehow already envisaged in the companies' codes of conduct: the above requirements are hence seen more as an occasion for fine-tuning of company policies, rather than a revolutionary break with the same.

Also mentioned as a motivation is the **new possibility to address an UTP without being forced to start a legal action**, allowing different parties to seek an extra-judicial solution in a more open-minded environment with respect to past years.

Finally, for some categories of operators, joining the SCI represents an **effective way to protect and sustain their reputation**.

### **Reasons behind non-membership**

There is a high level of consistency for what concerns reasons for non-membership highlighted in the different interviews.

In the first place, almost all interviewees related such motivations with what they saw as the most serious **limitations of the initiative**, namely:

1. **Lack of effective deterrents against UTPs** envisaged by the initiative (more specifically, the lack of economic sanctions, which may result in an ineffective way to tackle UTPs). Soft remedies like "naming and shaming" and exclusion from the SCI were not deemed to be effective enough as deterrents.
2. **Lack of enforcement**. The presence of an independent third party (other than the Governance Group) in charge of the enforcement of the PGP and of the Framework was deemed of paramount importance. Governance Group members are, after all, representatives of stakeholder organisations supporting the SCI, and thus "wear two hats": this perceived lack of independence constitutes a serious limitation for many stakeholders.
3. The **absence of the possibility to start investigations on the basis of anonymous complaints and a (perceived) weak level of confidentiality**. According to some stakeholders, the fear of retaliation is not adequately addressed by the level of confidentiality granted by the SCI, and the fear-factor still plays a central role in discouraging weaker parties to complain against UTPs.
4. **Lack of a body with ex-officio powers to start investigations on alleged or potential cases of UTPs**, as this solution is deemed as one of the few possible remedies to mitigate the fear-factor.

Two interviewees underlined also the failure of past attempts of voluntary codes of conducts; the most serious limitations to the success of these initiatives is basically that they rely on the willingness of the stronger party to give up a part of its benefits to the weaker one by self-committing not to abuse of its superior power. Voluntary initiatives involving operators which are so different in terms of dimensions, range of activities, geographical scope and bargaining power actually risk to result in purely cosmetic exercises in public relations, with very limited practical usefulness.

Other motivations cited by some interviewees mentioned the farming sector in general being more favourable towards regulatory intervention rather than voluntary codes of conduct, and the fact that for SMEs

most of the benefits of the initiative are available also if the company does not join, thus resulting in a lack of incentives to formally adhere. Some interviewees also explained the still rather limited participation of SMEs in the SCI with their limited knowledge and understanding of its functioning mechanisms, which can result in:

- a. a lack of trust in the initiative;
- b. a perceived “distance” of the SCI from the UTP-related issues that SMEs experience in practice;
- c. the impression that the potential benefits from membership in the SCI are too limited to justify the effort required by formal membership, although this last motivation could be effectively addressed by the recent decision of the Governance Group illustrated in § 3.2, which simplified the procedures to join for micro and small enterprises.

Other elements emerging from the interview with an EU-level stakeholder refer to the fact that most of the SMEs operate on a local basis, and therefore generally prefer national initiatives rather than European ones (the example of the Belgian platform was cited in this context). The interviewee also explained that the largest part of SMEs which joined the SCI are medium-sized companies, thus not exactly representative of the entire universe of SMEs (where micro and small companies prevail). In addition, SMEs generally cannot afford to have legal departments to treat UTPs: they usually tend to establish good business relationships and to work on a contract basis to tackle possible issues. In case of problems, SMEs are more used to contact their reference organisation or Chamber of Commerce, with a view to seeking help from their representatives.

Besides motivations related to (perceived) limitations in the SCI and to an unfavourable attitude towards the same, also the **lack of awareness about the initiative** was often cited by interviewees as a main motivation behind non-membership, especially for SMEs (much less so for bigger players).

### 8.1.3 Main findings

The evolution of the membership in the initiative has seen a rather steady growth (even if, when considering also the number of subsidiaries, a slowdown of the growth is rather evident after July 2014). The membership base sees a majority of food and beverage producers, with a substantial presence of wholesalers and retailers; by contrast, farmers are clearly under-represented in the initiative, and no improvements on this side have been recorded over the last twelve months. It is important to remember that the EU-level reference organisation for the farming sector (Copa-Cogeca) is not supporting the initiative: this has surely not helped in encouraging the participation of farmers.

The majority of the SCI membership base is now constituted by SMEs, which however are still very far from having a relative weight in the initiative comparable to the one they have in the agro-food system in the EU. On the other side, the economic importance of the SCI membership base (in terms of aggregate turnover) is much higher than its representativeness in purely numeric terms; the initiative actually succeeded in involving a good share of the EU top food and beverage producers and retailers.

As for the main reasons behind membership and non-membership in the initiative, survey results and information collected through interviews tend to converge. The following **main reasons behind membership** emerged:

1. Membership being a good chance to improve the overall relationships along the supply chain.
2. Membership allowing companies to address UTP-related disputes in a fair and transparent manner.
3. Membership providing an opportunity to self-review company policies and to train the staff in the light of the PGP.
4. The SCI offering a new possibility to address UTPs without being forced to start a legal action.

5. Membership being an effective way to protect and sustain company reputation and having a positive impact on the image of the company.

By contrast, the **main reasons behind non-membership** were related to lack of awareness about the initiative (especially relevant for SMEs) and to the key (perceived) weaknesses of the SCI, namely:

1. Lack of effective deterrents against UTPs envisaged by the initiative.
2. Weaknesses in enforcement (especially the lack of a governance structure perceived as independent from constituency).
3. The (perceived) weak level of confidentiality granted by the SCI procedures for tackling UTPs.
4. The absence of a body with ex-officio powers to start investigations on alleged or potential cases of UTPs (possibly also on the basis of anonymous complaints).

## **8.2 Governance and internal monitoring**

### *8.2.1 Overview of the relevant evidence*

#### **8.2.1.1 Assessment of the governance structure**

Whereas limited issues concerning adequateness of the governance structure of the SCI were highlighted by the interviewed member companies, most of the interviewed stakeholders who are “outside” the initiative, and also the interviewed officers of the European Commission, identified two significant **weaknesses** in this respect:

1. The **“two hats issue”**, i.e. the fact that the Governance Group members on one hand have responsibilities in the SCI, but on the other hand are representatives of the respective EU-level stakeholder organisations. If this feature can be deemed inherent to the voluntary nature of the initiative and consistent with the choice of having a “light” structure for it, it is also true that it can limit the perceived impartiality of the Governance Group, especially among stakeholders who are outside the initiative. This issue can have implications on both the effectiveness of the SCI procedures for tackling UTPs (see § 8.3) and the level of trust in the initiative (see § 8.5).
2. The adoption of a **consensus-based decision process, which requires unanimity**. The potential negative implications of such a solution can be identified in the timing of the decision process (which can get lengthy if unanimity has to be reached), in the veto power that any member in the Governance Group has, and hence also in the possibility that no decision will ever be taken on controversial issues (and UTPs, which are often far from being clear-cut phenomena, are typically controversial issues).

The **suggestions** put forward by many interviewees **to address the above weaknesses** were the following:

- a. **Transferring the governance to a third-party, independent body** (especially for what concerns decisions on UTP cases, and on aggregated disputes in particular).

According to some interviewees, such an independent governance structure should be granted ex-officio powers to launch autonomous investigations concerning UTPs, without the reception of a complaint as a necessary condition to start inquiries. In this light, an independent governance structure should allow to overcome the “two hats issue”, ensuring the necessary impartiality. On the other side, the Governance Group considers that a self-limiting mechanism enters into force with reference to the “two hats issue” in case of discussion on an alleged UTP by a member of an organisation involved in the governance structure. The SCI Governance Group pointed out that, in such cases, the representative of the organisation within the Governance Group will have to choose between “defending” the behaviour of the member company, thus



potentially compromising the organisation's credibility within the Governance Group or, in alternative, taking a more objective approach.

**b. *Switching to a majority-based decision process.***

Interviews with the SCI Governance Group revealed that ***the introduction of a majority-based decision process has never been on the SCI agenda***. According to the Governance Group, the main reason for this is related to the minor importance of this issue compared to others. This secondary importance mainly derives from the fact that the search for unanimous decisions can be considered a direct consequence of the process which unified all the stakeholders of the food chain around the Principles of Good Practice, which were adopted at unanimity. In this light, the Governance Group is confident that an unanimous agreement can be reached when discussing on actual cases of UTPs. The Governance Group members also observed that in a voluntary initiative like the SCI, the introduction of a majority-based decision process could eventually lead to the disruption of the constituency supporting the initiative, as one or more organisations, if forced to accept a decision which they opposed, could decide to cease supporting the initiative altogether.

#### 8.2.1.2 Assessment of the internal monitoring system

No formalised internal monitoring system is foreseen in the rules of procedure of the SCI. However, according to the Governance Group, the vast majority of monitoring activities are carried out through the SCI's own annual survey; more specifically, no tool is in place to keep track of bilateral disputes / individual complaints, or to understand the number of actual UTP cases, or to investigate the way in which they are managed/resolved. The questionnaire to be used for the second annual survey of the SCI was actually updated in order to provide more complete information (e.g. to understand to what extent the existence of the SCI helps in preventing UTPs). However, it must be noted that from one side micro and small companies have no obligation to respond (their participation in the annual survey is now voluntary, thanks to the decision of the Governance Group which simplified the procedures to join for micro and small enterprises); on the other side, reliability of data could be limited (as in any survey) and – in the specific case – there is no possibility to verify information on crucial aspects (number of disputes, ways of resolution, etc.). The fear factor and its impact on survey respondents should also be taken into account when reading the results of the annual survey of the SCI.

Certain interviewees considered the ***absence of a formalised internal monitoring system a cost-effective solution***, because for the moment the number of disputes treated by the SCI is extremely limited. These interviewees deemed that a light structure, without excessive bureaucratic burden or a heavy system of controls, could be appropriate for the SCI, at least for the time being.

On the other hand, ***without a formalised internal monitoring system it is difficult to grasp how the Governance Group can effectively monitor the compliance of member companies with the requirements of the SCI***. Before registering to the initiative, companies have to comply with the PGP, to provide training to their employees, to agree on the dispute resolution options proposed in the Framework, to inform suppliers/customers of their membership to the SCI and to identify one or more contact person(s). Finally, they have to deal with the self-assessment tool. The commitment process is hence clearly described in the Rules of Procedure. However, some interviewees raised some doubts about the effectiveness of the monitoring of the implementation of the commitment process. In fact, there is no system in place to guarantee the accuracy of information provided by operators at the moment of their registration, and the system relies on goodwill. If a breach of the process commitment emerges, the Governance Group has at its disposal some tools to act on the behaviour of the alleged company that can lead, in the case of severe breaches not solved after a certain number of warnings, to the suspension or the exclusion of the company. For the moment, however, the way in which the Governance Group should find out about this type of



breaches in practice remains unclear, as neither suspensions nor exclusions have ever been applied since the implementation of the SCI.

Regarding the possibility to monitor the member companies' actions related to the implementation of the PGP, unsatisfactory implementation of PGP in companies that have signed up to the SCI has been recognized by some interviewees as a factor which can jeopardise the actual effectiveness of the initiative. It is also worth noting that the initiative lacks a body with ex-officio powers to start investigations on (alleged or even potential) breaches of the process commitments: some interviewees deemed that setting up such a body could improve the internal monitoring of the SCI, besides also having positive effects in relation to the need to overcome the fear factor and to improve trust in the initiative (see also § 8.5).

### *8.2.2 Benchmarking with third country experiences*

The comparison between the SCI and the Australian Food and Grocery Code of Conduct provided at § 6 highlighted a number of differences between the two schemes. No explicit governance structure or monitoring process are envisaged in the Australian code, since most of the dispute resolution schemes are demanded to individual companies and to the Code Compliance Managers appointed by the wholesalers and retailers joining the Code.

Some functions covered by the SCI Governance Group are carried out, under the Australian Code, by a public body, the Australian Competition and Consumer Commission (ACCC). Similarly to the SCI, the ACCC cannot commit financial penalties. By contrast with the SCI Governance Group, the ACCC has the power to investigate and to audit retailers and wholesalers, but it provides neither guidance nor legal advice on the Code, nor dispute resolution services.

### *8.2.3 Main findings*

The two most serious limitations of the current structure of the Governance Group seem to be the double role played by its members ("two hats issue") and the necessity to reach unanimity in the decision process. If from one side these two issues are only "potential" weaknesses – due to the fact that the Governance Group has not yet been involved in decisions related to aggregated disputes – on the other side most opinions expressed in the interviews converged on the fact that these limitations could play an important role in discouraging companies in presenting disputes to the Governance Group, and therefore their impact should be adequately taken into account.

In relation to the adequateness of the internal monitoring system, the judgment should be split in two separate aspects.

- Very positive feedback was collected with reference to the clarity of the Rules of Procedure and of the registration process, as well as to the monitoring of the evolution of the membership base (information which is systematically reported on the SCI website).
- However, numerous concerns were raised about other – and, to some extent, more concrete – information items featured in the annual survey. Data on the number of complaints raised and solved and information on dispute resolution mechanisms adopted in the different cases, in particular, seem too vague and generic (at least in the form in which they were presented in the first annual report of the SCI). The SCI's own annual survey is a cost-effective solution for internal monitoring and limits the time spent by companies in reporting activities, but exclusive reliance on the annual survey also has implications for the completeness and reliability of the available information. Moreover, answers to the annual survey cannot be independently verified, and some companies might decide not to declare to have been accused

of unfair conduct, or not to be compliant yet with the requirements of the initiative (training, self-assessment, communications to trading partners, etc.).

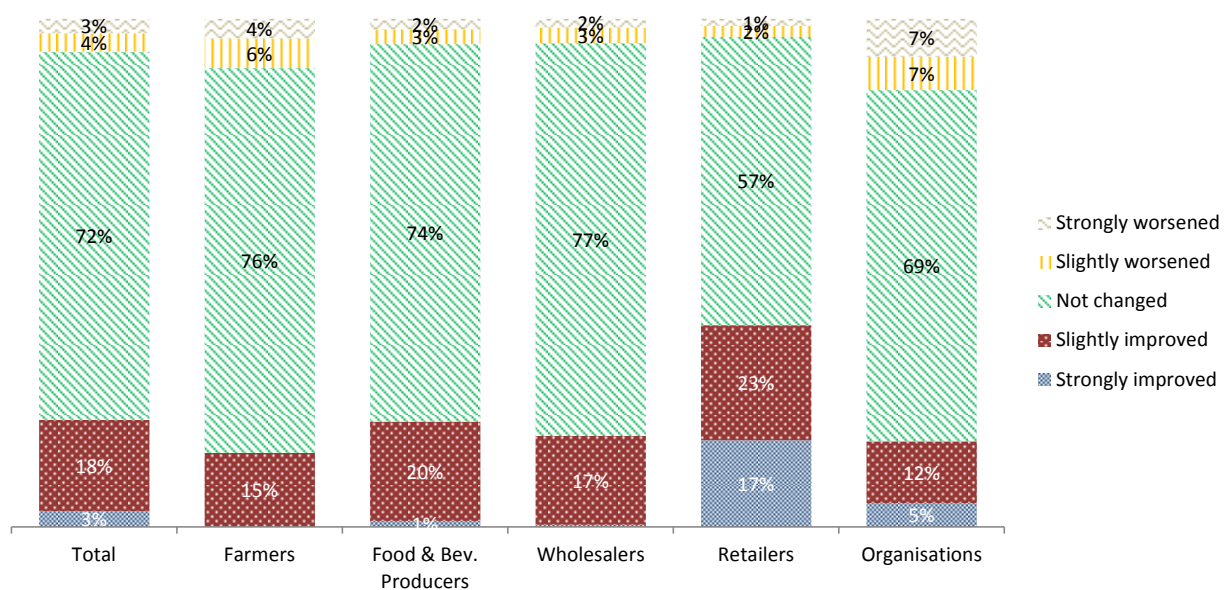
### 8.3 Effectiveness of the initiative in tackling UTPs

The effectiveness of the initiative is assessed in this section both on the basis of survey results – presented in § 8.3.1 – and of additional elements collected through interviews (§ 8.3.2). Survey questions are focused on the main aspects which concur to determine the effectiveness in tackling UTPs, and on the judgement of this effectiveness by respondents. Interviews have investigated on actual practice in tackling UTPs (with a special focus on SMEs), on the role of the initiative in promoting a greater awareness and a better perception of the issue of UTPs, and on the procedure for tackling UTPs through the initiative.

#### 8.3.1 Overview of the survey results

Question n.17 – “In your view, how has the situation concerning UTPs changed after 2013, year of implementation of “The Supply Chain Initiative” (SCI)?”

Figure 8.9 – Judgment on current situation concerning UTPs with respect to 2013 on total respondents and across levels of the chain (% and abs. value)

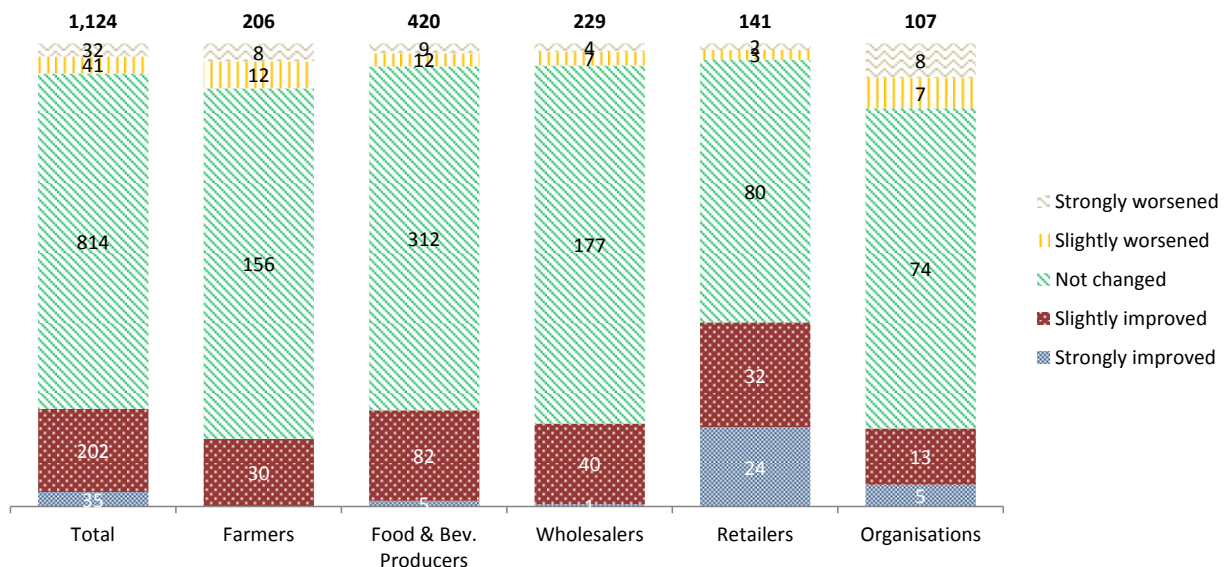


Respondents: companies and organisations

Number of collected answers: 1,124 – Farmers: 206, Producers: 420, Wholesalers: 229, Retailers: 141, Organisations: 107,

Ho.Re.Ca.: 21 (not detailed, only included in the total)

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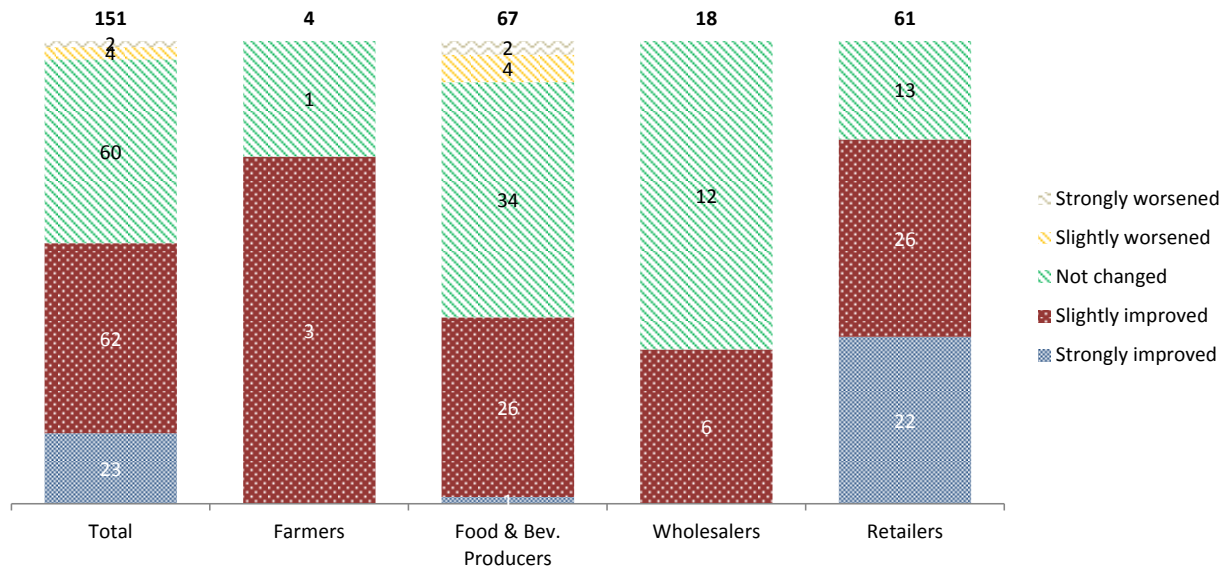
In the first section of the questionnaire, respondents were requested to express an indirect judgment on the SCI, on the basis of the perceived evolution of the situation concerning UTPs in the two years since the launch of the initiative. Some trends emerging from the replies to this question actually anticipate the trends emerging from subsequent and more specific questions focusing on a direct assessment of different elements of the SCI.

On average, 72% of total respondents affirmed that the situation concerning UTPs has not significantly changed over the last two years. It is worth noting that among the 814 respondents who expressed such view, 48% (397) also declared that they were not exposed to UTPs in the last five years: it is hence presumable that such respondents have perceived no change in the situation concerning UTPs because they have not experienced UTP-related issues.

The overall number of respondents saying that the situation has improved is higher than the number of those affirming that it has worsened; the largest gap in this respect was detected for retailers (40% of positive judgments versus 3% of negative ones) and the smallest one for farmers (15% of positive judgments versus 10% of negative ones); on the other side, organisations expressed more balanced (an less positive) views, with 17% of positive judgments versus 14% of negative ones.

Retailers are also the only category with a significant share (17%) of respondents indicating that the situation concerning UTPs since 2013 has strongly improved (against an average of 1% or less among the other categories of operators). The most negative feedback came from farmers and organisations, with around 10% and 14% of respondents respectively declaring that the situation has worsened since 2013.

Figure 8.10 – Judgment on current situation concerning UTPs with respect to 2013 for SCI members



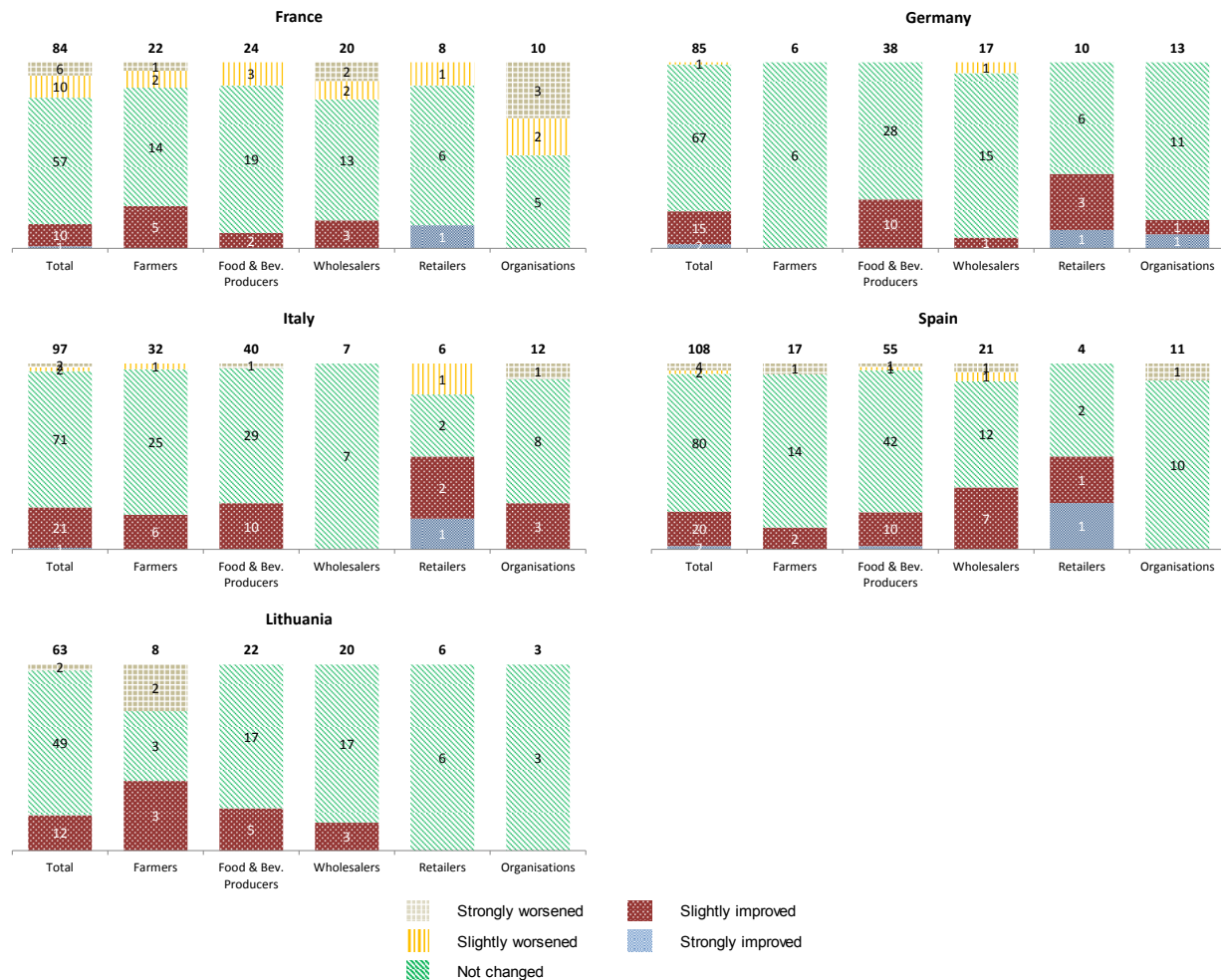
Respondents: companies member of the SCI

Number of collected answers: 151 – Farmers: 4, Producers: 67, Wholesalers: 18, Retailers: 61, Ho.Re.Ca.: 1 (not detailed, only included in the total)

A slightly different judgment can be observed when considering only the replies provided by SCI member companies (Figure 8.10). In this case, the judgement is more positive than the one emerging from the total number of respondents: the greater presence of retailers among SCI member companies should anyway be taken into account when assessing these results.

Retailers are indeed the only category which deemed that the situation has strongly improved (36% of respondents), and also the category with the highest share of answers declaring an overall improvement (79%). Conversely, food and beverage producers are the only category among the SCI members expressing a (limited) number of negative judgments (6 respondents out of 67).

Figure 8.11 – Judgment on current situation concerning UTPs with respect to 2013 by Member State and across levels of the chain



Looking at the five Member States for which a complete cross-analysis was possible (Figure 8.11), the most positive judgments were collected in Italy and Spain (with 23% and 21% of respondents indicating an improvement, respectively); the most negative judgments were expressed in France, where 16 respondents out of 84 (19%) saw a worsened situation.

A further segmentation of the analysis per level of the supply chain across the five Member States did not allow to identify clear trends which diverged from those already identified at the EU level.

**Question n.18 – “Please assess the contribution of each of these aspects in determining the effectiveness of “The Supply Chain Initiative” (SCI) in tackling UTPs”**

**Table 8.4 – Contribution of single elements in determining the effectiveness of the SCI – total respondents (% and abs. value)**

<b>Total respondents</b>	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Self-assessment process (to be done by the company before registering to the SCI)	27%	27%	18%	29%
Training of the company staff on the Principles of Good Practice	42%	30%	9%	19%
Appointment of contact person(s) for internal dispute resolution and for process-related issues	37%	23%	16%	23%
Communication of registration to the SCI to business partners	31%	34%	12%	23%
Voluntary mechanism of dispute resolution	31%	25%	18%	26%
Commercial retaliation as a serious breach of the Principles of Good Practices and process commitments	19%	24%	16%	41%
Ad hoc procedures and tools for SMEs	12%	19%	20%	49%

*Respondents: companies and organisations aware of the SCI*

*Number of collected answers: 305 – Farmers: 23, Producers: 120, Wholesalers: 35, Retailers: 68, Ho.Re.Ca.: 4, Organisations: 55*

<b>Total respondents</b>	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Self-assessment process (to be done by the company before registering to the SCI)	82	81	54	88
Training of the company staff on the Principles of Good Practice	127	93	27	58
Appointment of contact person(s) for internal dispute resolution and for process-related issues	113	71	50	71
Communication of registration to the SCI to business partners	95	104	36	70
Voluntary mechanism of dispute resolution	94	77	55	79
Commercial retaliation as a serious breach of the Principles of Good Practices and process commitments	57	72	50	126
Ad hoc procedures and tools for SMEs	36	58	62	149

Both for total respondents (Table 8.4) and for the SCI members (Table 8.5) the most important aspect in determining the effectiveness of the SCI is identified in the training of the company staff on the PGP, followed by the appointment of a contact person within the company for internal dispute resolution.

It is interesting to note that the percentage of respondents attributing a strong contribution to the two aspects above – as well as to the communication of registration to the business partners and the voluntary mechanism of dispute resolution – is higher among SCI members than among the total respondents. SCI members are likely to have a more in-depth knowledge of these elements: answers provided by this subgroup are hence important to understand the contribution of individual elements to the initiative’s overall effectiveness.

Finally, a high number of SCI members declared not to be able to assess the impact on the effectiveness of the SCI of the commercial retaliation representing a serious breach of the PGP and process commitments (59 out of 151, around 39%).

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**Table 8.5 – Contribution of single elements in determining the effectiveness of the SCI – SCI members (% and abs. value)**

<b>SCI members</b>	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Self-assessment process (to be done by the company before registering to the SCI)	34%	29%	17%	19%
Training of the company staff on the Principles of Good Practice	54%	30%	6%	9%
Appointment of contact person(s) for internal dispute resolution and for process-related issues	52%	20%	15%	14%
Communication of registration to the SCI to business partners	41%	33%	11%	15%
Voluntary mechanism of dispute resolution	44%	22%	16%	19%
Commercial retaliation as a serious breach of the Principles of Good Practices and process commitments	15%	28%	18%	39%
Ad hoc procedures and tools for SMEs	11%	21%	21%	46%

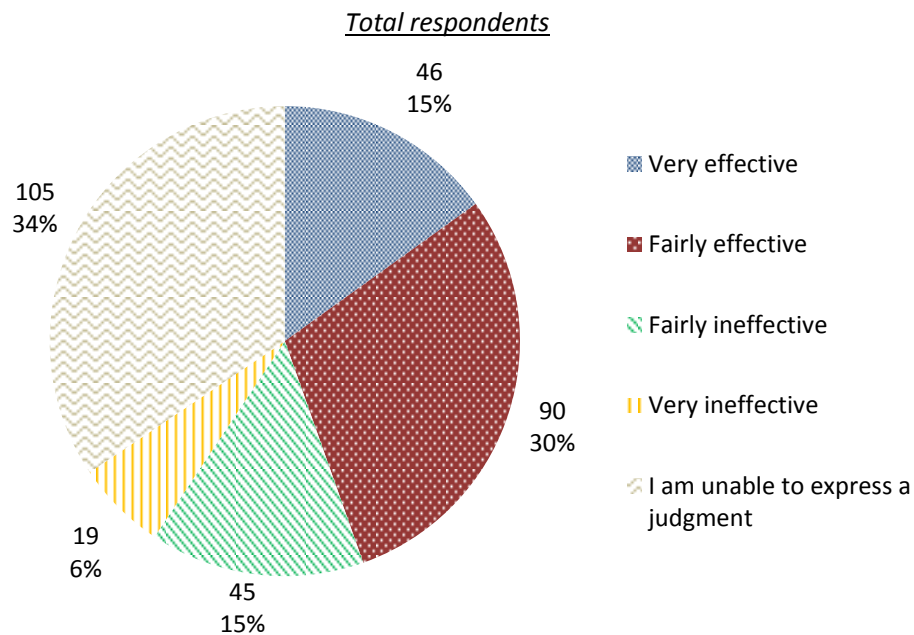
*Respondents: companies member of the SCI*

*Number of collected answers: 151 – Farmers: 4, Producers: 67, Wholesalers: 18, Retailers: 61, Ho.Re.Ca.: 1*

<b>SCI members</b>	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Self-assessment process (to be done by the company before registering to the SCI)	52	44	26	29
Training of the company staff on the Principles of Good Practice	82	46	9	14
Appointment of contact person(s) for internal dispute resolution and for process-related issues	78	30	22	21
Communication of registration to the SCI to business partners	62	50	16	23
Voluntary mechanism of dispute resolution	66	33	24	28
Commercial retaliation as a serious breach of the Principles of Good Practices and process commitments	22	43	27	59
Ad hoc procedures and tools for SMEs	17	32	32	70

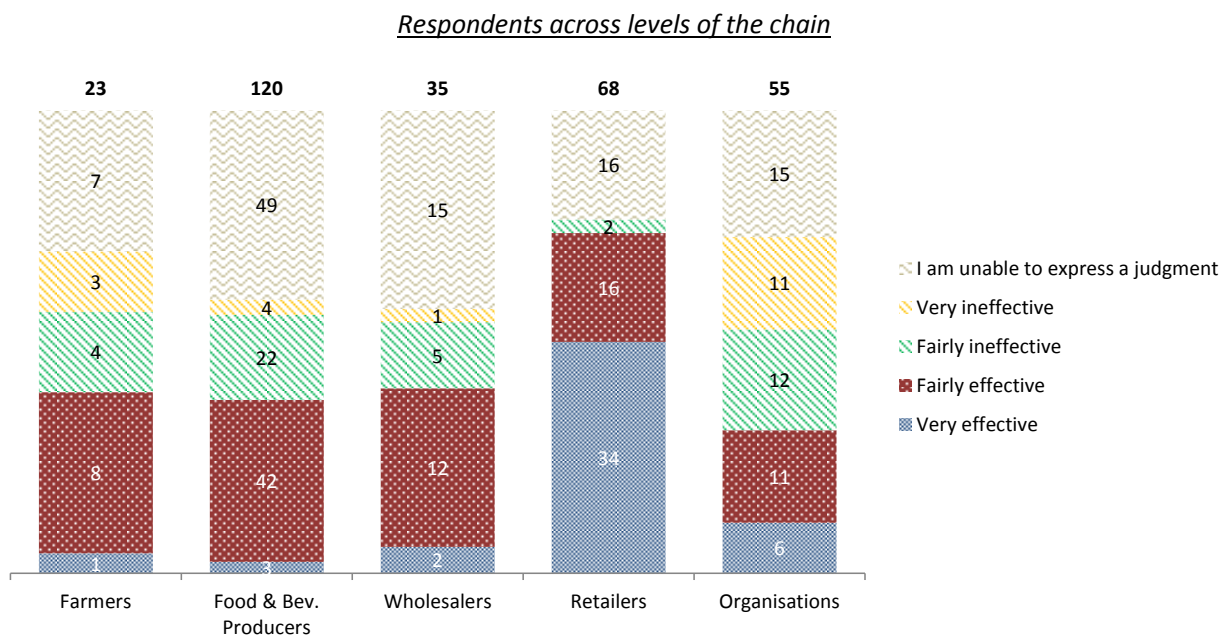
Question n.19 – “Which is your judgment about the overall effectiveness of “The Supply Chain Initiative” (SCI) in tackling UTPs?”

Figure 8.12 – Judgment on the overall effectiveness of the SCI – total respondents and across levels of the chain



Respondents: companies and organisations aware of the SCI

Number of collected answers: 305 – Farmers: 23, Producers: 120, Wholesalers: 35, Retailers: 68, Organisations: 55, Ho.Re.Ca.: 4 (not detailed, only included in the total)



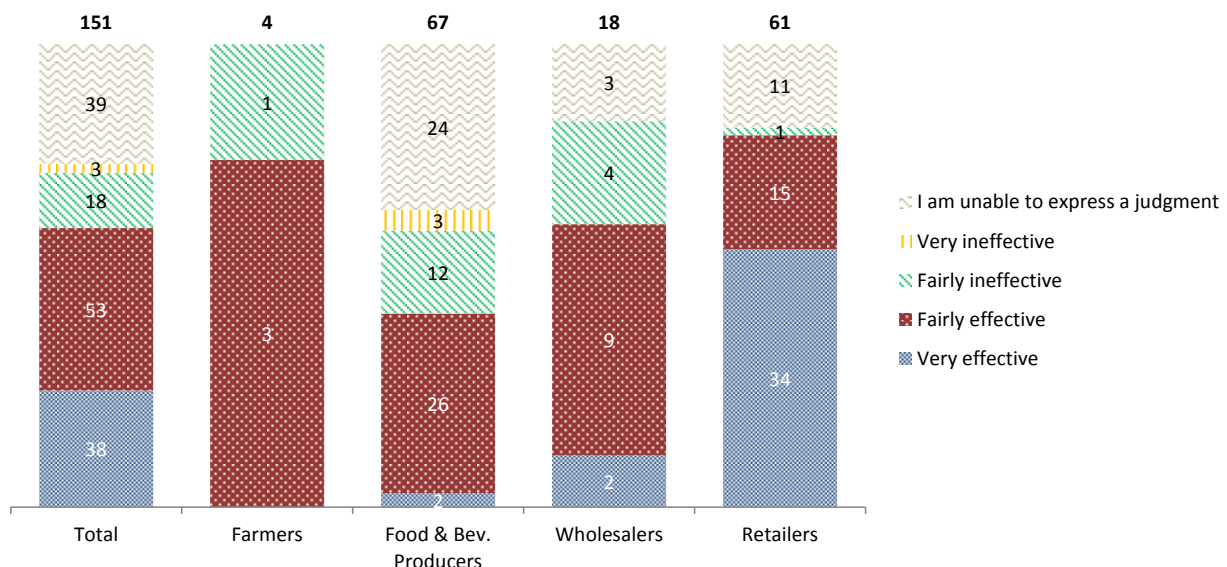


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Respondents declaring to be aware of the SCI were also asked to express their overall judgment on the effectiveness of the initiative. Around 45% of the respondents provided positive judgments on this aspect, while around 21% judged it negatively (fairly or very ineffective).

Distinguishing among the different levels of the supply chain, the most favourable judgments were expressed – also in this case - by retailers (50 respondents out of 68, 74%) while for farmers, producers and wholesalers less than half of respondents judged the initiative as very or fairly effective. As far as organisations are concerned, also in this case their negative position towards the SCI was confirmed, with 23 respondents out of 55 (42%) indicating the SCI as ineffective in tackling UTPs. Judgments expressed by organisations are much more negative than those expressed by companies (only farmers partially expressed similar negative judgments); in this context, it is important to remind that organisations cannot be members of the SCI, and therefore their judgments are by definition provided from an external standpoint.

*Figure 8.13 – Judgment on the overall effectiveness of the SCI – SCI members*



*Respondents: companies member of the SCI*

*Number of collected answers: 151 – Farmers: 4, Producers: 67, Wholesalers: 18, Retailers: 61, Ho.Re.Ca.: 1 (not detailed, only included in the total)*

Looking at the results concerning the sole SCI members, the judgment expressed is on average positive (60% of positive judgments versus only 14% of negative ones). Figures in this case should be assessed also taking into account that results for the farming and wholesaling stages are based on a very limited number of respondents, with producers and retailers prevailing.

### 8.3.2 Additional evidence

The survey was mainly aimed at collecting the judgement of respondents on the effectiveness of the SCI in tackling UTPs. Additional evidence - mainly collected through interviews, official reports and the SCI website - focused mainly on specific aspects which could not be adequately explored through the survey.

### 8.3.2.1 Procedure for tackling UTPs through the initiative

The procedures for tackling UTPs through the initiative are described in detail at § 3.2.

This paragraph aims at highlighting the **main strengths and weaknesses in the procedures**, which were identified by interviewees from a purely theoretical standpoint, whereas considerations on the (very limited) practical experience of the SCI in tackling UTPs are illustrated at § 8.3.2.2. The two topics are anyway intertwined, as perplexity expressed by some interviewees on certain aspects of the procedures appears to be spurred by the fact that these procedures have not been applied in practice yet, and hence remain somewhat undetermined.

The fact that UTPs are often not clear-cut, and can hence be difficult to identify and to assess, was highlighted by many interviewees as being a serious challenge for any procedure aimed at tackling them.

Among the most frequently cited **strengths** of the procedures for tackling UTPs through the SCI, is the very fact that these constitute - in theory at least – **alternatives to costlier and lengthier solutions**, such as arbitration and legal action. Indeed, the complementarity between the voluntary nature of the SCI and the mandatory nature of legislation was underlined by most interviewees (leaving aside their preferences for one solution or the other, or for a combination of both). Also frequently underlined by interviewees was the fact that by promoting a culture of fair business behaviour and dialogue among operators, and by offering solutions to address disputes on UTPs without recourse to legal action, the SCI has the **potential to limit – to some extent – the occurrence of UTPs, or anyway to limit their impact** for the victims and for other stakeholders.

Whereas the above strong points were usually emphasised by interviewees who supported the initiative and by institutional subjects (European Commission), interviewees who did not support the initiative and independent experts (but also the European Commission) pointed out that – already from a purely theoretical standpoint – the procedures for tackling UTPs promoted by the SCI also had more or less serious **weaknesses**, which can be synthesised as follows:

1. **Lack of effective deterrents against / remedies for UTPs**, which the critics usually identify in sanctions (seen as the only means to offset economic advantages which offenders can extract from UTPs). The effectiveness of “naming and shaming” and of the threat of exclusion from the initiative was indeed questioned by a number of interviewees.
2. **Undetermined nature and practical relevance** of the outcomes of such procedures, with special reference to aggregated disputes. The practical use of an interpretation of the PGP issued by the Governance Group remains unknown, and the fact that no aggregated disputes have been dealt with by the Group so far certainly does not help in this respect (see also § 8.3.2.2). Some of the critics observed that in case such an interpretation is issued, and in case the victims opt to seek remedies in Court, it remains to be seen which relevance the interpretation might have in such a context, due to the absence of practical cases so far.
3. A number of interviewees also raised the issue of the **perceived partiality of the Governance Group by the offended parties**. Even assuming that every member of the Governance Group strictly adheres to the Rules of Procedure, the so-called “two hats issue” (Governance Group members on one hand have responsibilities in the SCI, but on the other hand are representatives of the respective EU-level stakeholder organisations) has implications not only in terms of adequateness of the governance structure (see § 8.2.1.1) and of trust in the SCI (see § 8.5), but also in terms of effectiveness of the procedures for tackling UTPs through the SCI. If the Governance Group is not perceived as impartial by the offended parties, the recourse to procedures for tackling UTPs which see the involvement of the Governance Group (the aggregated disputes above all) could be negatively affected.

In the light of the above limitations, the most common **suggestions for possible improvement** of the effectiveness of the SCI procedures for tackling UTPs put forward by interviewees were the following:

- a. Introduction of economic sanctions.
- b. Recourse to a “third party / independent” body to carry out the entire process of tackling UTPs (receiving complaints => making investigations => judging => imposing sanctions, if needed).

It is worth underlining that the SCI Governance Group, when interviewed, stated that **the introduction of sanctions has never been on the SCI agenda**. The SCI in no way intends to add a further layer of “self-regulation” to the existing legislation.

### 8.3.2.2 Actual practice in tackling UTPs, with a special focus on SMEs

Most interviewees underlined the fact that **the SCI is still “too young”, and mainly focused on expanding its membership base, to boast a significant experience in tackling UTPs in practice**. Indeed very limited data on bilateral disputes are reported in the SCI first Annual Report, and details of such disputes are not disclosed to safeguard confidentiality<sup>60</sup>. As for aggregated disputes, none of these has been presented to the Governance Group to date. All in all, the practical experience of tackling UTPs through the SCI is still too limited, and the related information too scarce (it has to be noted that none of the interviewed companies which have joined the SCI provided elements in this respect) to draw any meaningful conclusion on the effectiveness of the SCI in tackling UTPs in practice.

Some interviewees (especially among independent experts and stakeholders not supporting the initiative) observed that such limited practical experience could also derive from:

1. limited knowledge / understanding of the procedures among the membership base of the SCI (see also § 8.4.2.1 for what concerns transparency-related aspects);
2. fear of retaliation (which would imply limited trust in the capacity of the SCI to safeguard confidentiality: see also § 8.4.2.2);
3. scepticism among the membership base, and among operators in general, about the actual effectiveness of the procedures for tackling UTPs (see § 8.3.2.1).

Many interviewees saw the lack of support by stakeholder organisations in the farming sector, the extremely limited presence of farmers in the SCI membership base, and the over-representation of major players in the food chain vs. SMEs as serious **limitations for the actual effectiveness of the SCI in tackling UTPs**. Furthermore some independent experts and stakeholders not supporting the initiative argued that - for the moment at least - the SCI has achieved no tangible results in reducing the diffusion and the seriousness of UTPs in the food supply chain.

On the other side, the interviewed officers of the European Commission and the interviewed member companies observed that the very existence of the SCI can be considered an important step forward in promoting a dialogue and a cultural change in the food supply chain for what concerns fairness of business practice, and that the SCI has been successful in making UTPs a legitimate object of discussion among operators (see also § 8.3.2.3).

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<sup>60</sup> According to the first SCI annual survey, the members of the initiative dealt with 40 complaints over the period covered by the survey: all of these complaints were solved (1 lodged complaint and 39 received). However, the report does not specify if the parties involved in such complaints are member or non-member companies.

### 8.3.2.3 Role of the initiative in promoting a greater awareness and a better perception of the issue of UTPs

The views of interviewees on this topic were somewhat mixed. Whereas the judgment of the interviewed member companies was positive, the interviewed officers of the European Commission and the independent experts, albeit acknowledging the important role played by the SCI in “bringing UTPs to the table” and in promoting dialogue on the topic, still saw room for improvement. Besides suggestions about fostering the SCI’s own communication efforts, some interviewees observed that it was important to move from the “you have the right to pose UTP-related issues and to get remedy about them” message to the “you have those two rights, and we will explain you how to benefit from those two rights in practice”. On the other hand, critics observed that the communication of the SCI is mainly focused on promoting membership in the initiative and on explaining the procedures it promotes to settle UTP-related disputes, but hardly contributes to improve the knowledge of the issue of UTPs *per se*, hence “missing the essential step” in the awareness-raising process.

For what concerns the communication of the registration to the SCI to business partners, it emerged from interviews that – besides the impact that such communication can have on the overall effectiveness of the SCI – especially SMEs consider such communication of crucial importance to increase the awareness of the initiative and to further enlarge its membership base.

### 8.3.3 Main findings

The very limited practical experience of the SCI in tackling UTPs and the divergent views of stakeholders and independent observers on such theme make it difficult to draw solid conclusions on the actual effectiveness of the initiative in addressing UTPs.

Generally speaking, survey results show a positive judgment about the initiative by operators in the EU28, and especially by companies which have already joined the SCI; on the other hand, some stakeholders (especially farmers and associations/NGOs) are more cautious in their judgements, with non-negligible shares of respondents indicating a limited effectiveness of the initiative. It is also important to underline that the majority of respondents believes that the situation concerning UTPs has not significantly changed since the implementation of the SCI.

The SCI was found to have some **strong points** (albeit probably more perceived than fact-based), which may help it to be effective in tackling UTPs in practice in the future. The strong points identified are mainly related to the role played by the SCI in promoting a cultural change about UTPs in the food supply chain, and in proposing alternative, faster and cheaper options to address UTPs than legal action.

However, the SCI has also some significant (and again, possibly more perceived than fact-based) **weak points** in this respect: the lack of effective deterrents against / remedies for UTPs, the rather undetermined nature and practical relevance of the outcomes of its procedures for tackling UTPs, and the issue of the perceived partiality of the Governance Group by the offended parties. The lack of support from the farming stage of the food supply chain was seen by most interviewees as a significant limitation for the actual effectiveness of the SCI in tackling UTPs.

As a consequence, room for possible improvement of the SCI’s effectiveness in tackling UTPs was mainly related by interviewees to the introduction of economic sanctions and to recourse to a “third party / independent” body to carry out the entire process of tackling UTPs.

The views of interviewees were rather mixed on both the actual contribution of the SCI in improving business practices in the food supply chain, and on its role in promoting a greater awareness and a better perception of the issue of UTPs.

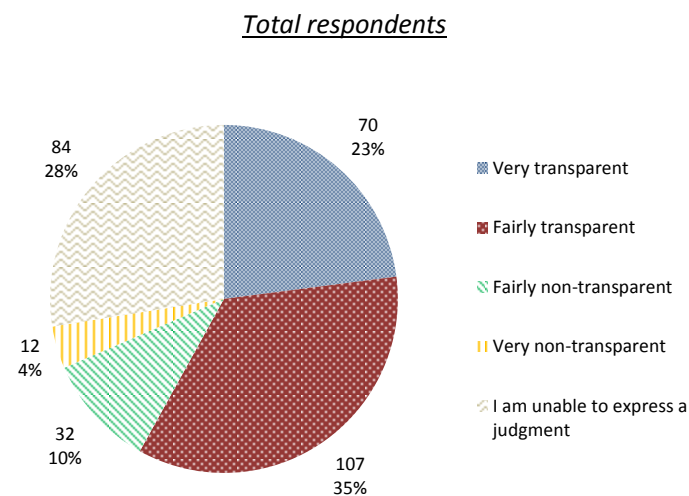
As final considerations on the **effectiveness of the SCI in tackling UTPs versus the other possible options**(in particular the adoption of specific legislation addressing UTPs at EU and/or Member State level, and the granting of ex-officio powers to competent authorities), it is worth noting that farming sector representatives who do not support the SCI are strongly in favour of legislation, with voluntary initiatives as the SCI only acting as a complement to it. It can indeed be argued that if it is already extremely challenging for legislation and competent authorities to effectively tackle UTPs, the chances that a voluntary initiative without ex-officio powers can be more successful in doing this are extremely limited. On the other hand, elements emerged from interviews and from the relevant literature (illustrated in detail at § 7.2) suggest that specific legislation (at national level or – in case it is adopted – at EU level) and competent authorities with ex-officio powers are by no means “golden bullets” which can address UTPs by themselves. According to some of the reviewed literature and to a number of interviewed experts, ***the best results in tackling UTPs are likely to come from a combination of legislation, authorities with ex-officio powers, and voluntary initiatives supported by stakeholders.***

## 8.4 Capacity to ensure transparency and confidentiality

### 8.4.1 Overview of the survey results

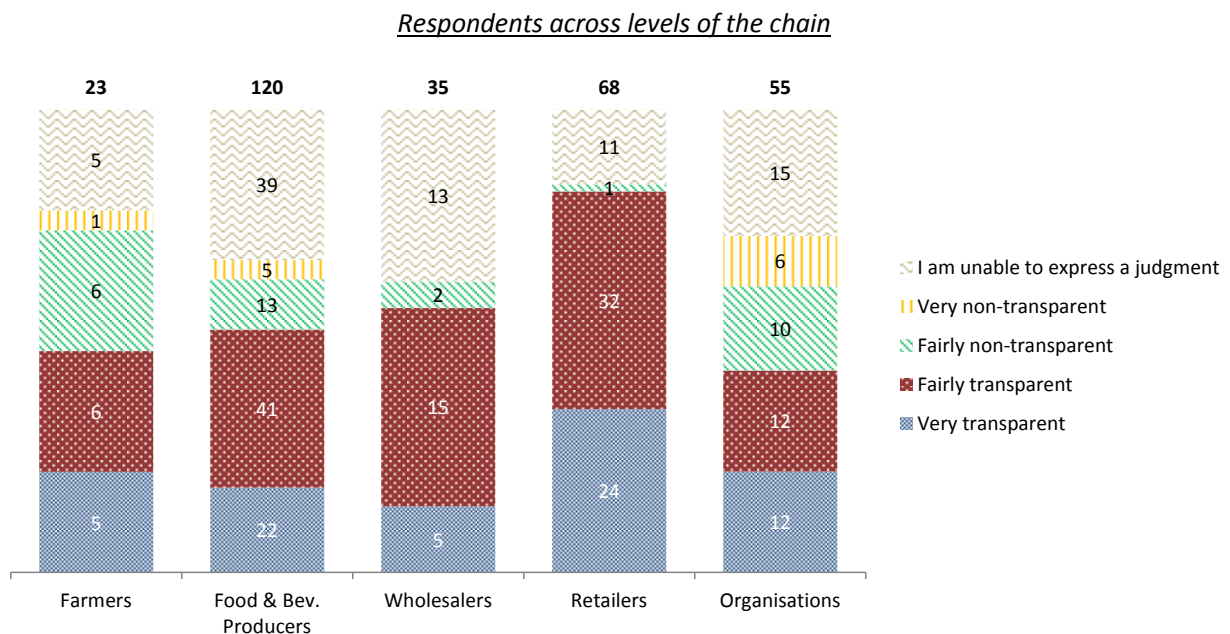
Question n.20 – “In light of the above definition, which is your judgment on the transparency of “The Supply Chain Initiative” (SCI)?”

Figure 8.14 – Judgment on the transparency of the SCI – total respondents and across levels of the chain



Respondents: companies and organisations aware of the SCI

Number of collected answers: 305 – Farmers: 23, Producers: 120, Wholesalers: 35, Retailers: 68, Organisations: 55, Ho.Re.Ca.: 4 (not detailed, only included in the total)



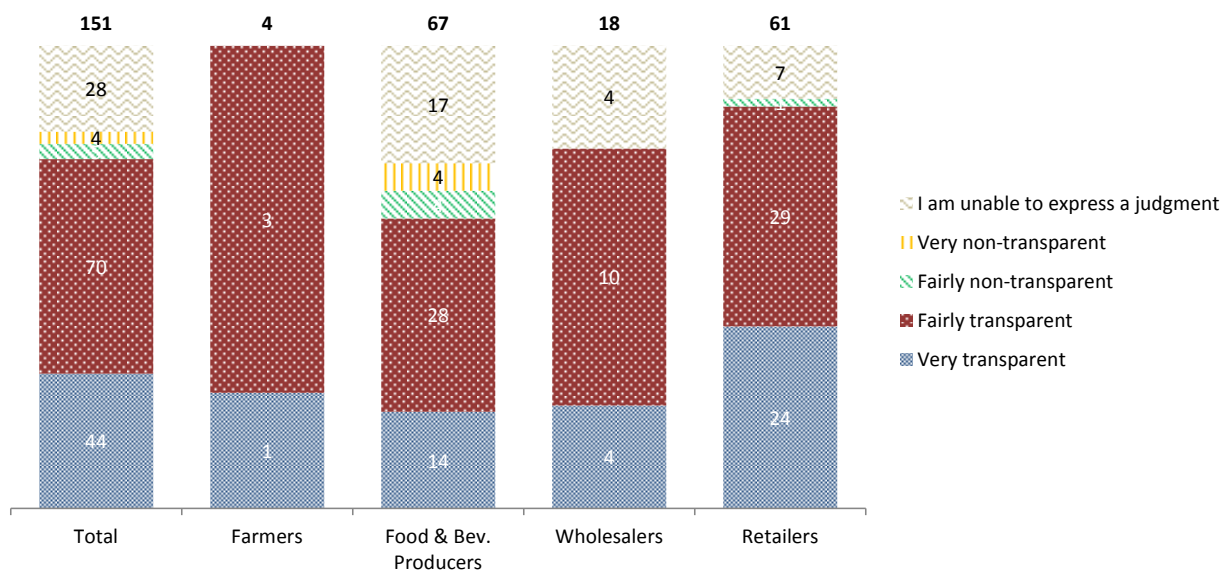
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The overall judgment on the transparency of the SCI (Figure 8.14) resulted to be positive. On average, 58% of respondents provided positive judgments, while only 14% judged the initiative as non-transparent (fairly or very non-transparent).

The most positive positions among the operators can be found within retailers (around 82% of favourable judgements), while the other categories of stakeholders were more or less aligned on less positive judgements. Judgments by farmers were more similar to those expressed by organisations rather than to judgments expressed by producers and retailers: around 30% of farmers and organisations expressed negative judgments on the initiative's level of transparency (less than 50% of respondents for both categories expressed positive judgments).

With respect to the subgroup of SCI members, generally speaking they expressed a very positive judgment (see Figure 8.15), with around 75% of respondents indicating a very high or a fairly high level of transparency; also in this case, due to the limited number of answers available for some specific categories of operators (i.e. farmers and wholesalers), figures applying to these categories should be considered with prudence.

Figure 8.15 – Judgment on the transparency of the SCI – SCI members



Respondents: companies member of the SCI

Number of collected answers: 151 – Farmers: 4, Producers: 67, Wholesalers: 18, Retailers: 61, Ho.Re.Ca.: 1 (not detailed, only included in the total)

**Question n.21 – “In light of the above definition, please assess the contribution of each of these aspects in determining the degree of confidentiality granted by “The Supply Chain Initiative” (SCI)”**

**Table 8.6 – Contribution of single elements in determining the confidentiality of the SCI – total respondents (% and abs. value)**

<b><u>Total respondents</u></b>	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Companies affected by UTPs may address their complaint to a member of the Governance Group instead that to the company allegedly in breach of the Principles of Good Practice	37%	25%	8%	30%
A member of the Governance Group can request the Governance Group to analyse aggregated disputes that affect several of its members	32%	26%	10%	32%
It is the Governance Group that contact and request a reply from the company allegedly in breach, through a confidential process	38%	20%	10%	31%
Commitment of the Governance Group to respect confidentiality	43%	18%	8%	30%

*Respondents: companies and organisations aware of the SCI*

*Number of collected answers: 305 – Farmers: 23, Producers: 120, Wholesalers: 35, Retailers: 68, Ho.Re.Ca.: 4, Organisations: 55*

<b><u>Total respondents</u></b>	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Companies affected by UTPs may address their complaint to a member of the Governance Group instead that to the company allegedly in breach of the Principles of Good Practice	114	76	23	92
A member of the Governance Group can request the Governance Group to analyse aggregated disputes that affect several of its members	98	80	29	98
It is the Governance Group that contact and request a reply from the company allegedly in breach, through a confidential process	117	62	31	95
Commitment of the Governance Group to respect confidentiality	132	55	25	93

Respondents were also required to express their judgment on the aspects having a role in influencing the degree of confidentiality granted by the SCI. Both for total respondents and for the sub-group of SCI members the most important contribution in ensuring confidentiality seems to derive from the commitment of the Governance Group to respect it, even if all the elements considered were generally deemed to provide a strong contribution in ensuring confidentiality. It is also worth noting that answers from the SCI members (Table 8.7) generally recognise a stronger role to all the cited elements.



**Table 8.7 – Contribution of single elements in determining the confidentiality of the SCI – SCI members (% and abs. value)**

<b><u>SCI members</u></b>	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Companies affected by UTPs may address their complaint to a member of the Governance Group instead that to the company allegedly in breach of the Principles of Good Practice	47%	21%	6%	26%
A member of the Governance Group can request the Governance Group to analyse aggregated disputes that affect several of its members	44%	23%	7%	26%
It is the Governance Group that contact and request a reply from the company allegedly in breach, through a confidential process	48%	19%	7%	26%
Commitment of the Governance Group to respect confidentiality	54%	15%	7%	25%

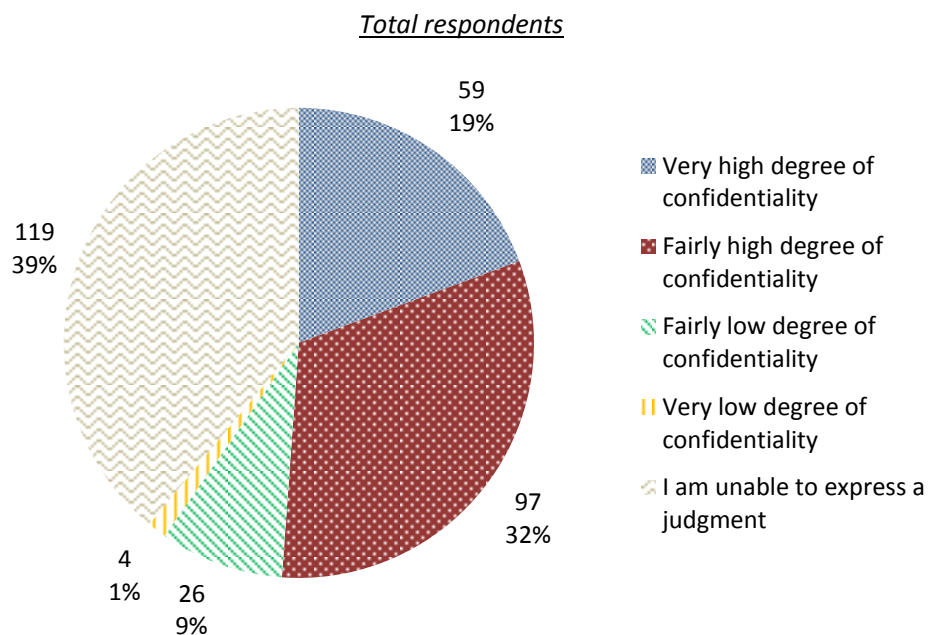
*Respondents: companies member of the SCI*

*Number of collected answers: 151 – Farmers: 4, Producers: 67, Wholesalers: 18, Retailers: 61, Ho.Re.Ca.: 1*

<b><u>SCI members</u></b>	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Companies affected by UTPs may address their complaint to a member of the Governance Group instead that to the company allegedly in breach of the Principles of Good Practice	71	32	9	39
A member of the Governance Group can request the Governance Group to analyse aggregated disputes that affect several of its members	67	34	11	39
It is the Governance Group that contact and request a reply from the company allegedly in breach, through a confidential process	72	28	11	40
Commitment of the Governance Group to respect confidentiality	81	22	10	38

Question n.22 – “In light of the above definition, which is your judgment on the degree of confidentiality granted by “The Supply Chain Initiative” (SCI)?”

Figure 8.16 – Judgment on the confidentiality of the SCI – total respondents and across levels of the chain



Respondents: companies and organisations aware of the SCI

Number of collected answers: 305 – Farmers: 23, Producers: 120, Wholesalers: 35, Retailers: 68, Organisations: 55, Ho.Re.Ca.: 4 (not detailed, only included in the total)

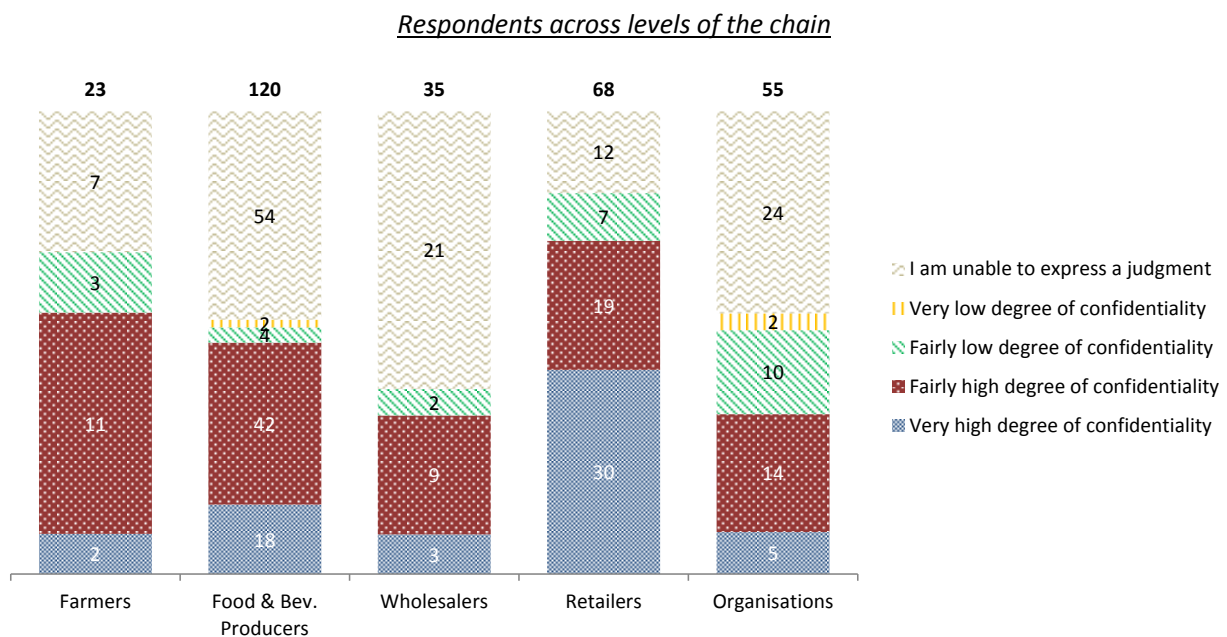
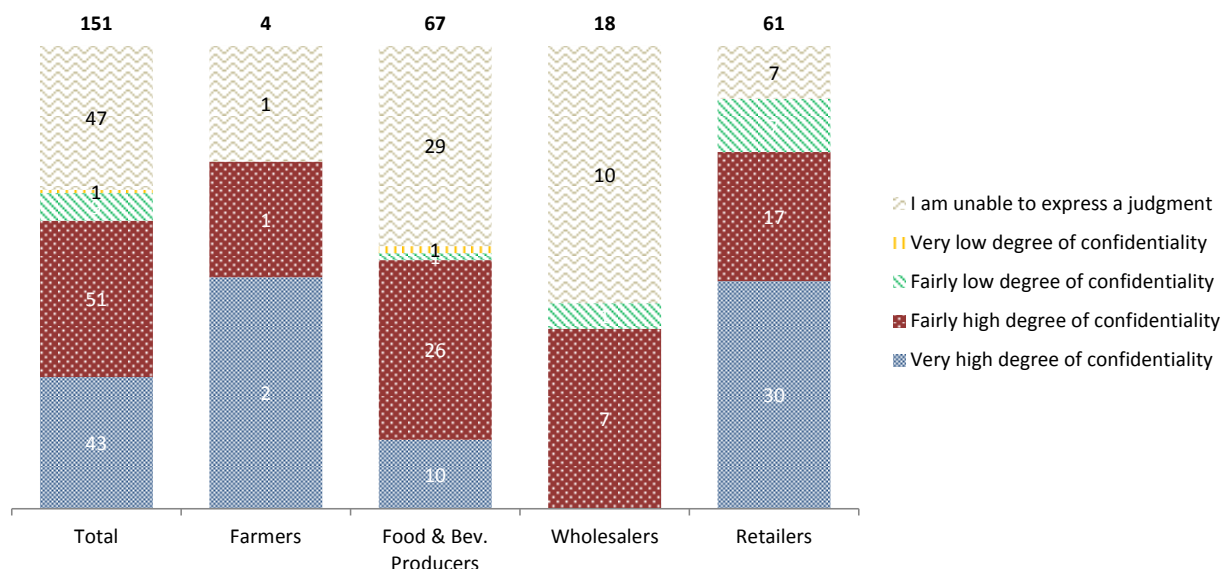


Figure 8.17 – Judgment on the confidentiality of the SCI – SCI members



Respondents: companies member of the SCI

Number of collected answers: 151 – Farmers: 4, Producers: 67, Wholesalers: 18, Retailers: 61, Ho.Re.Ca.: 1 (not detailed, only included in the total)

As far as the overall judgement on confidentiality was concerned (figures 8.16 and 8.17), respondents generally expressed favourable positions, with 51% of them formulating positive judgments and only 10% converging on negative judgments.

Once more, the most favourable positions can be found among retailers (72%), while the most negative ones are mainly to be found among organisations (35% of positive judgments versus 22% of negative ones). Judgments coming from the SCI members were, in this case, quite similar to those of the overall sample.

An additional aspect to point out is the greater share of respondents (spanning from 30% to 60% across categories, with the only exception of retailers) declaring not to have sufficient knowledge of the aspect to express a judgment: such share was greater than those recorded for other aspects analysed in the previous questions. This appears to be consistent with the actual situation of the initiative, which has never dealt with aggregated disputes so far, and therefore has no track-record of procedures where confidentiality must be granted to the involved companies.

#### 8.4.2 Additional evidence

##### 8.4.2.1 Assessment of solutions for ensuring transparency of procedures and results

The functioning mechanism of the SCI was considered by interviewees transparent for certain aspects and somewhat “opaque” for others.

The procedure to join the SCI was considered to be very transparent and well-described on the website of the SCI, and also the fact that the Rules of Procedure of the Governance Group are publicly accessible through the website was seen as a very positive element. Communication related to certain aspects of the initiative (e.g. the number of members, the sectors they are active in, the name of the contact person(s) in member companies) was also deemed to be very transparent: such information can easily be found on the SCI website.

On the other hand, the following elements were identified by interviewees as potentially limiting transparency:

- A number of details of the processes to address UTPs through the SCI might not be properly known by most stakeholders.
- A number of important information items (e.g. number and key elements of complaints received / discussed / resolved; nature of remedies) are kept confidential. If this is surely a positive element as far as the safeguard of confidentiality is concerned, it is also true that the unavailability of such information (which could be opportunely “anonymised” and “generalized” to safeguard confidentiality) to the membership base does not help to improve its knowledge about UTPs and about the way in which UTPs can be addressed in practice through the SCI. This issue was already highlighted at § 8.2.1.2 with reference to the adequateness of the internal monitoring system.
- The effects of the decisions of the Governance Group remain somewhat undefined, especially to outsiders: these usually do not know how the related decisions are structured, which are their recipients, which is their field of application.
- The process to present a complaint for an aggregated dispute to the Governance Group is clearly explained in the Rules of Procedure. However, the practical effects of the interpretation or the guidance provided by the Governance Group in the framework of such a process are not properly explained. It is also worth noting that the Governance Group has not issued any interpretation in the framework of an aggregated dispute so far, and this does not help to understand the practical relevance of the results of the related process.

Finally, a concern was raised by some interviewees about the balance between transparency and confidentiality, as full safeguard of confidentiality could be in conflict with full transparency of procedures and results. These two objectives might indeed be considered not fully compatible with each other.

#### 8.4.2.2 Assessment of solutions for addressing confidentiality issues

Victims of UTPs are extremely reluctant to provide evidence and to cooperate with third parties (from competent authorities to the dedicated structures within voluntary initiatives) in addressing UTPs, for fear of retaliation by the offending party. For this reason, confidentiality is generally considered essential to safeguard complainants from possible retaliation, in particular for SMEs.

The SCI rules of procedure foresee a detailed process to guarantee the secrecy of any sensitive information and the protection of complainants in the **aggregated disputes for serious alleged breaches of PGP** from possible retaliation. More specifically, the process foresees a number of steps to prevent the identification of the parties and to eliminate any commercially sensitive information and/or any information that can lead to recognition of the complainants:

1. Associations collect the complaint among their members and guarantee the confidentiality of the parties concerned and the confidentiality of any sensitive information.
2. After a verification of the substance of the complaint, this is submitted by the association to the Co-Chair representing the sector in which the complaint originates. The Co-Chair verifies that the particulars of the case have been correctly anonymised, or edits them in this direction, and then brings the case to the attention of the Governance Group.
3. Also the confidentiality of the alleged party is guaranteed: the Governance Group is not aware of its name, that is given by the association to a notary or equivalent third party. In this way, the

Governance Group is enabled to request a reply from the alleged company through a confidential process.

Most of the interviewees saw aggregated complaints as a well-designed and effective tool to ensure confidentiality of sensitive information and of the involved parties; however, this procedure has never been tested in practice, as the Governance Group has not issued any interpretation in the framework of an aggregated dispute so far. As a consequence, the actual effectiveness of these solutions for addressing confidentiality issues remains to be seen.

Also the SCI procedure for dealing with cases of ***complaints for alleged breaches of process commitments*** (complaints lodged against a registered company not complying with its obligations foreseen by the Framework) foresees solutions to ensure confidentiality: any complaint is brought to a member of the Governance Group, who can resolve it promptly with the Governance Group member of the sector concerned, or table it for discussion; in any case, the identity of the complainant has to be kept confidential.

Confidentiality is not guaranteed in bilateral disputes: there would appear to be no solution to safeguard confidentiality in a dispute resolution system between two parties. However, it is also important to note that certain stakeholders see anonymity (rather than confidentiality) as an essential condition to ensure for overcoming the “fear factor”. In this light, confidentiality would not be effective enough, especially if it has to be ensured by a structure which the complainant might perceive as untrustworthy. On the other hand, interviewed independent experts and officers of the Commission, observed that giving importance to anonymous complaints could have potentially disruptive outcomes (with many investigations starting on totally unfounded allegations). In the practice of ex-officio investigations (e.g. by competition and other enforcement authorities), usually a relationship with known complainants is needed (safe remaining the need to protect them from possible retaliation by the offending parties) in order to collect reliable relevant evidence; ex-officio investigations starting from anonymous complaints were deemed to be an absolute exception by interviewed experts, which did not provide any concrete examples in this respect.

All the interviewees agreed on the fact that safeguard of confidentiality is a critical issue for the SCI: allowing the identification of a company which is member of the SCI constitutes a serious failure in the safeguard of confidentiality, and can result in severe damage to corporate reputation or in the exposure to the risk of retaliation. Safeguard of confidentiality is hence of paramount importance in the process of dealing with UTP-related disputes within the SCI.

Stakeholders representing the weakest operators in the food chain expressed concern about the capacity of the SCI governance structure to effectively address transparency and confidentiality-related issues, due to the absence of a third-party, independent body, and to the very composition of the Governance Group, where members are also representatives of stakeholders having clear interests (the already mentioned “two hats issue”).

#### **8.4.3 Main findings**

The level of transparency offered by the SCI was generally considered good both by survey respondents and by interviewees; the procedure to join the initiative is clearly explained in the SCI’s website and is easily accessible. Some concerns were identified in relation to the communication of the effects of a decision/interpretation by the Governance Group in the context of an aggregated dispute, as well as on the provision of information on the role played by the SCI in bilateral disputes.

Also the solutions provided to grant confidentiality were generally considered adequate by the different categories of stakeholders; in this respect it must be noted that survey respondents expressed positive judgments, although in absence of concrete cases of aggregated disputes most participants simply assessed

the “perceived” level of confidentiality, with no chances to judge the actual level of protection offered to complaining companies.

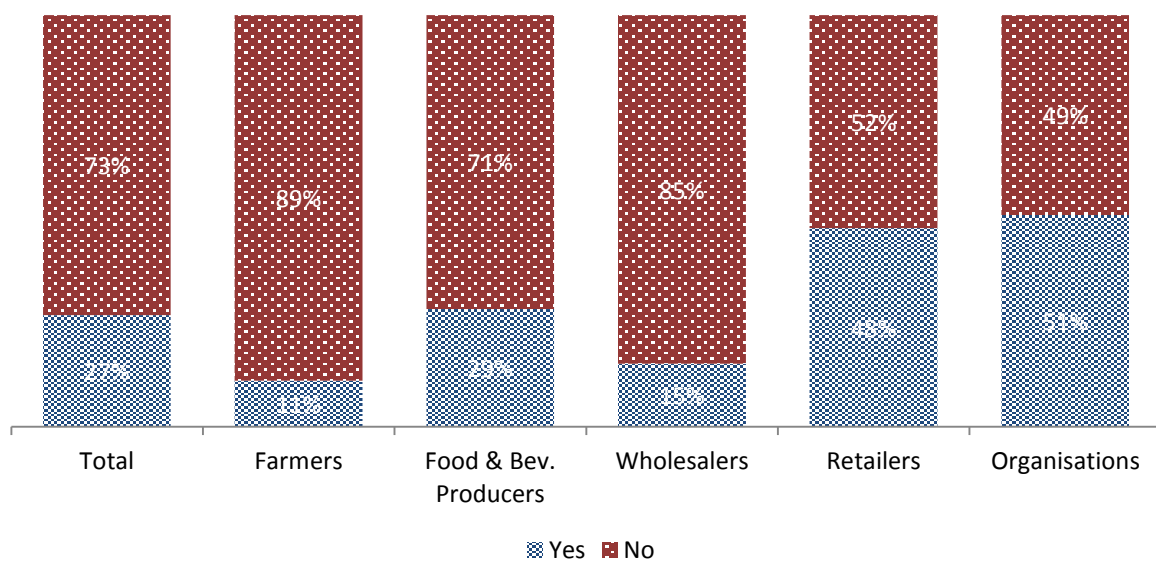
Confidentiality seems to be a central point for the vast majority of operators: failures on this aspect would compromise the whole initiative, and would make it useless because of the fear of retaliation. Taking into due account this element, it seems that for some operators the solutions envisaged by the initiative still cannot offer a satisfactory level of confidentiality; on the other hand, no concrete examples of application of the proposed improvements (with special reference to the possibility to start ex-officio investigations on the basis of anonymous complaints) were highlighted by interviewees or identified through desk research.

## 8.5 Awareness and trust in the initiative

### 8.5.1 Overview of the survey results

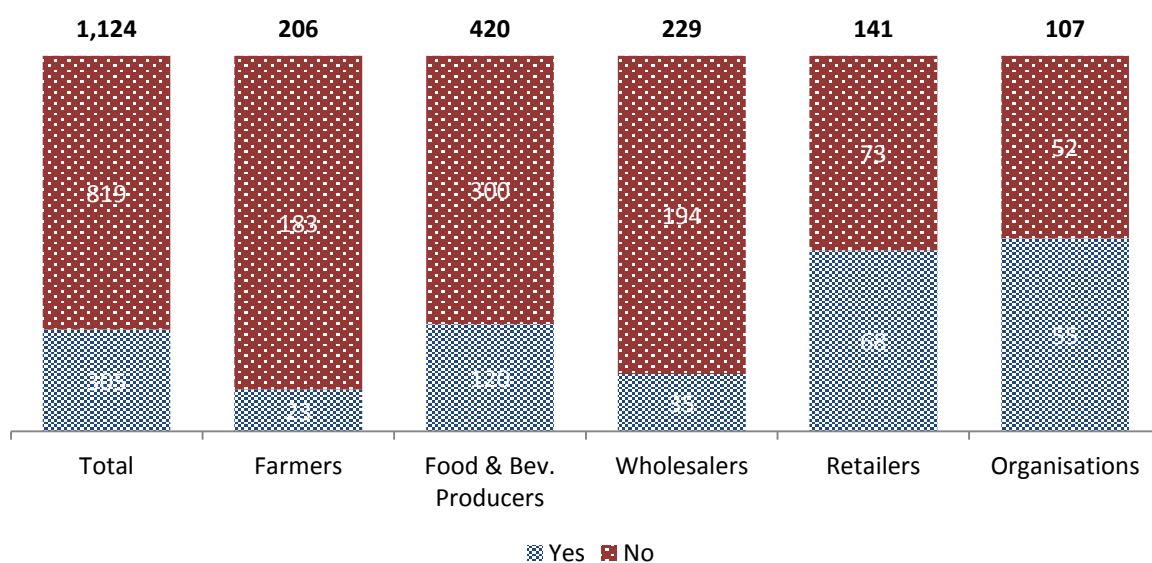
Question n.13 – “Have you ever heard about/do you know “The Supply Chain Initiative” (SCI), an EU level initiative launched with the aim of increasing fairness in commercial relations along the food supply chain?”

Figure 8.18 – Knowledge of the SCI on total respondents and across levels of the chain (% and abs. value)



Respondents: companies and organisations

Number of collected answers: 1,124 – Farmers: 206, Producers: 420, Wholesalers: 229, Retailers: 141, Organisations: 107, Ho.Re.Ca.: 21 (not detailed, only included in the total)



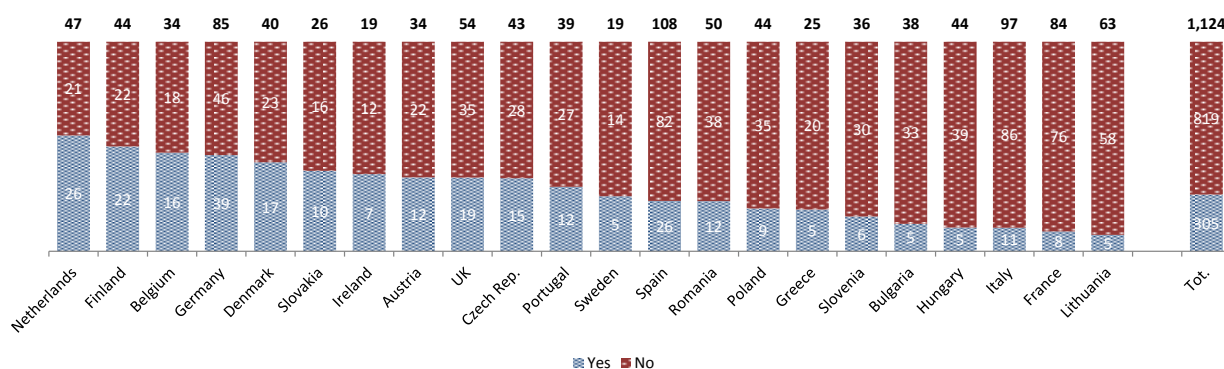
Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain  
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Specific questions were addressed to participants to assess the level of awareness and trust towards the initiative. Results from these answers show that, on average in the EU28, only 27% of the respondents are aware of the SCI, although this percentage varies significantly across the levels of the chain.

- Farmers and wholesalers – the categories of operators less involved in the SCI in terms of participation – show the lowest levels of awareness (11% and 15%, respectively); it might be useful also to remind that these two categories are also those with the highest share of SMEs in the sample (see Figure 2.7 at § 2.1.1.4). Slightly better awareness can be found among food and beverage producers (29%).
- Retailers show the highest levels of awareness among operators. In their case, the higher level of concentration (and consequently the bigger average dimension of companies), together with a stronger interest for the topic, are likely to play a relevant role.

Finally, 51% of organisations at both EU and national level declared to know the initiative; as already said, it is worth noting that these organisations are likely to be mainly farmers' and food and beverage producers' associations, due to the way in which the survey had been disseminated among the levels of the supply chain (as explained at § 2.1.1.3, specific actions were taken to involve as many of these associations as possible in the diffusion of the survey and in the sensitization of member companies; many of these associations also stated their willingness to directly participate in the survey). It is worth noting that the level of awareness among individual farmers (and also among individual food and beverage producers) was found to be much lower than in their reference organisations. The lack of support to the initiative by a number of national associations (especially in the farming sector) might contribute to explain such a difference. It is anyway important to underline that effective communication about the SCI within the farming sector presents some challenges, deriving from its fragmented and territorially dispersed structure (high number of small and micro-enterprises often scattered over vast areas), and from the location of many operators in remote areas (which may be difficult or impossible to reach via IT-based communication). On the other hand (see also § 8.5.2) a number of interviewed farmers' associations declared to have informed their membership base about the existence of the SCI and – in some cases - also to have invited their members to "test it". Figure 8.19 reports the figures on the level of awareness of the SCI across the different Member States<sup>61</sup>.

Figure 8.19 – Knowledge of the SCI by Member State (abs. value)



Respondents: companies and organisations

Number of collected answers: 1,124 (Member States with less than 15 answers not detailed, only included in the total)

<sup>61</sup> Member States for which less than 15 completed questionnaires were available are not detailed in the chart, but are included in the total.



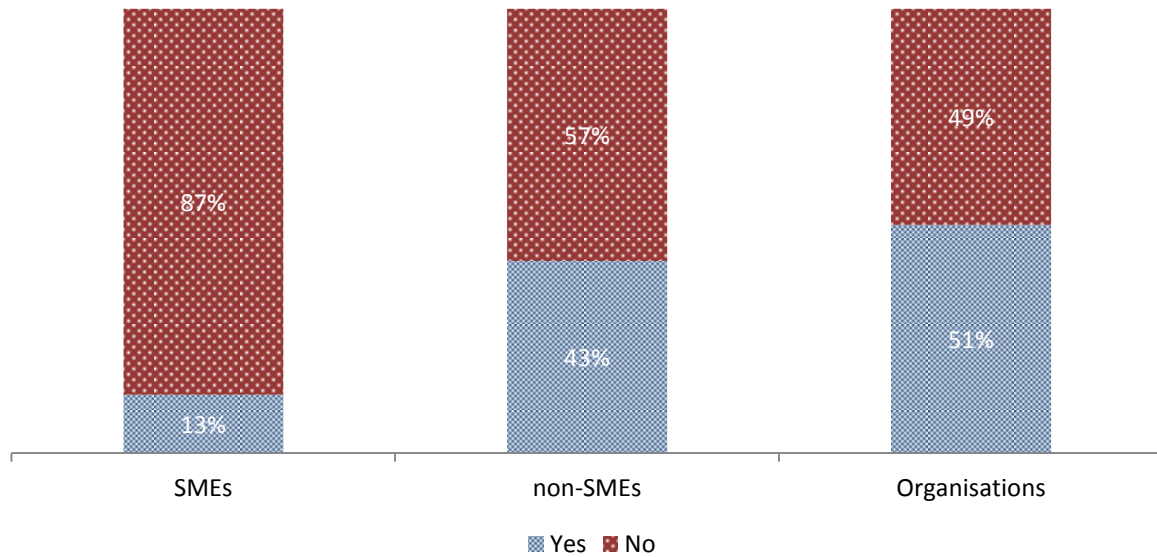
The four Member States where the highest levels of awareness were recorded are also the ones where national platforms are in place (the Netherlands, Finland, Belgium) or are close to being officially launched (Germany). This element should be taken into account when considering possible ways to improve awareness levels about the SCI.

On the other side, the three Member States with the lowest awareness levels are Italy, France and Lithuania: three out of the five Member States with the highest number of replies to this question. It could be argued that in those Member States where a greater number of companies has participated in the survey, the incidence of SCI members (which are by definition “aware” of the initiative) among respondents is lower than in Member States with fewer respondents but a relatively greater number of SCI members. In this light, lower awareness levels in Member States with an elevated number of respondents are somewhat expectable.

Finally, the split of respondents by company size reveals that awareness among SMEs is much lower than among large-sized companies: this situation is consistent both with the evidence collected through interviews and with the current composition of the SCI membership base, and it can also be explained by the fact that large-sized companies tend to be more involved in the sector associations’ activities at national and EU level, are generally easier to contact through communication programs, and are generally much more “informed” on this kind of topics than SMEs.

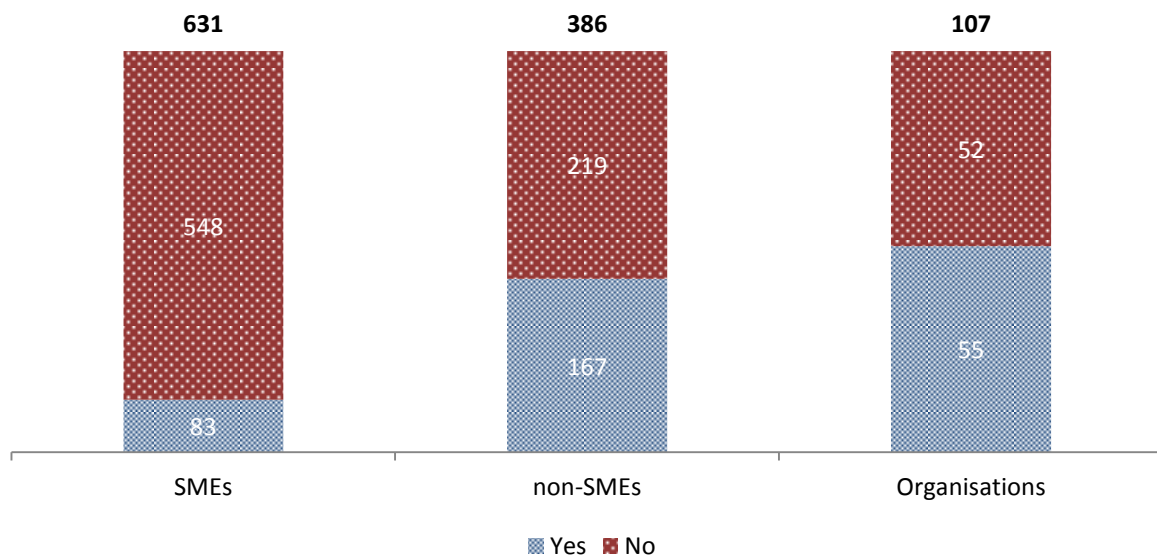
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**Figure 8.20 – Knowledge of the SCI by company type (SMEs vs non-SMEs) and organisations (% and abs. value)**



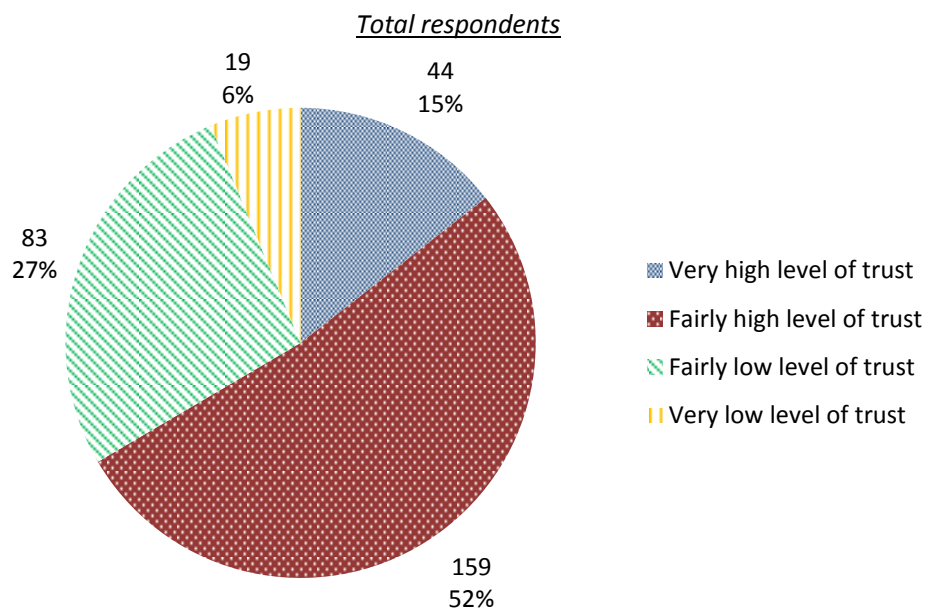
*Respondents: companies and organisations*

*Number of collected answers: 1,124 – SMEs: 631, non-SMEs: 386, Organisations: 107*



Question n.23 – “In general, which is the level of trust that your company/organisation has in “The Supply Chain Initiative” (SCI)?”

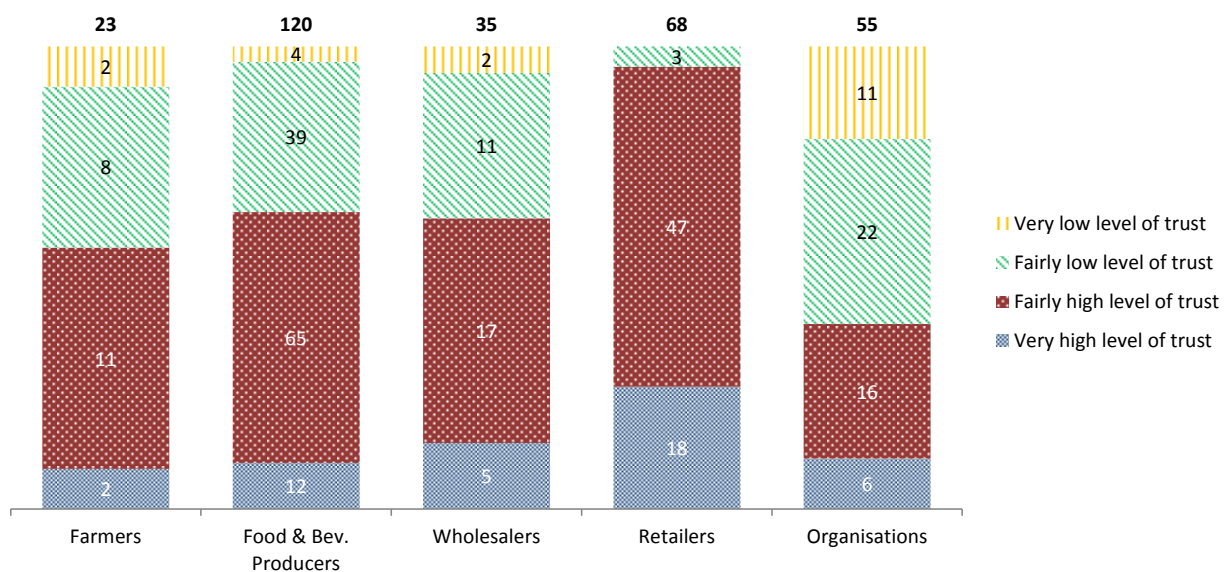
Figure 8.21 – Level of trust in the SCI – total respondents and across levels of the chain



Respondents: companies and organisations aware of the SCI

Number of collected answers: 305 – Farmers: 23, Producers: 120, Wholesalers: 35, Retailers: 68, Organisations: 55, Ho.Re.Ca.: 4 (not detailed, only included in the total)

Respondents across levels of the chain



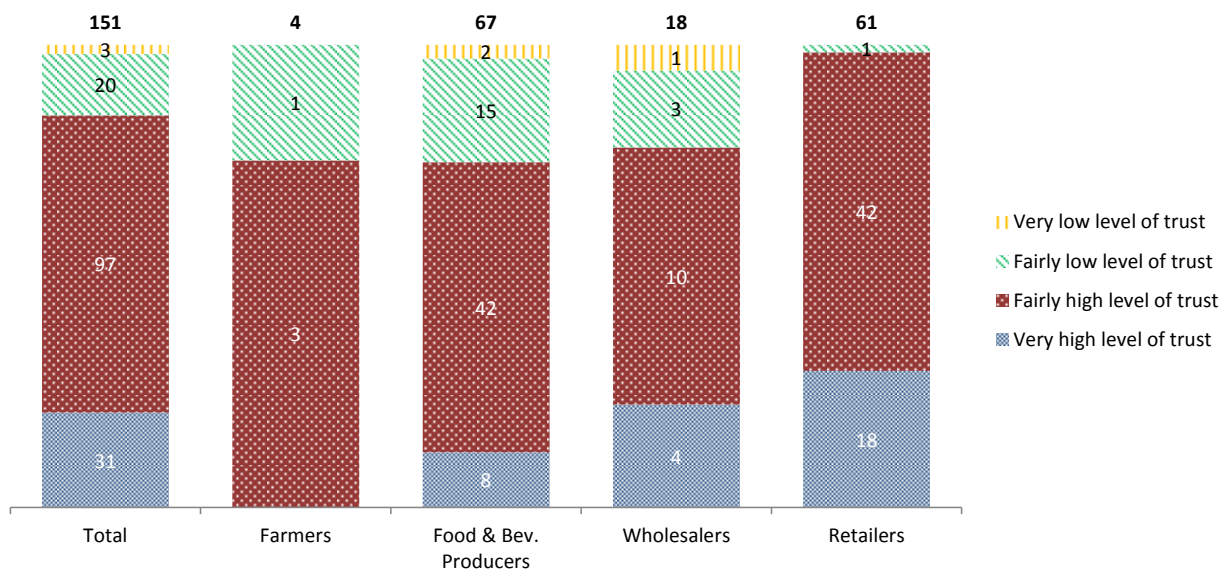
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As for the level of trust in the initiative, assessed through a specific question in the survey, it emerged as being good on average, with around 67% of total respondents indicating a very high or fairly high level of trust.

Also in this case the positions of retailers and organisations clearly stand out, with 65 respondents out of 68 (96%) expressing positive judgments among retailers, and with around 60% of respondents (33 out of 55) expressing low levels of trust among organisations. Farmers, producers and wholesalers show intermediate positions between these two extremes.

As for the positions expressed by the SCI members (Figure 8.22), the level of trust within this category is, as expectable, high on average, and higher than the one revealed by the overall sample of respondents.

*Figure 8.22 – Level of trust in the SCI – SCI members*



*Respondents: companies member of the SCI*

*Number of collected answers: 151 – Farmers: 4, Producers: 67, Wholesalers: 18, Retailers: 61, Ho.Re.Ca.: 1 (not detailed, only included in the total)*

**Question n.24 – “Do these elements have a role in determining the level of trust that your company/organisation has in “The Supply Chain Initiative” (SCI)”**

**Table 8.8 – Contribution of single elements in determining level of trust in the SCI – total respondents (% and abs. value)**

<b>Total respondents</b>	Yes, this element has a role	No, this element does not have a role	I have no sufficient knowledge of this element
Effectiveness of the SCI in tackling UTPs	64%	9%	27%
Capacity to ensure transparency	63%	11%	26%
Capacity to ensure confidentiality	64%	12%	24%

*Respondents: companies and organisations aware of the SCI*

*Number of collected answers: 305 – Farmers: 23, Producers: 120, Wholesalers: 35, Retailers: 68, Ho.Re.Ca.: 4, Organisations: 55*

<b>Total respondents</b>	Yes, this element has a role	No, this element does not have a role	I have no sufficient knowledge of this element
Effectiveness of the SCI in tackling UTPs	194	28	83
Capacity to ensure transparency	193	34	78
Capacity to ensure confidentiality	195	37	73

With respect to the key elements playing a role in contributing to the stakeholders’ trust in the initiative, survey results (Tables 8.8 and 8.9) show that all the three elements considered in the analysis - effectiveness, transparency and confidentiality – seem to play a decisive role in this respect, both for the SCI members and the other respondents. The fact that all these elements seem to improve trust levels by the same measure would lead to conclude that all of them should be equally pursued in the implementation of the initiative.

**Table 8.9 – Contribution of single elements in determining level of trust in the SCI – SCI members (% and abs. value)**

<b>SCI members</b>	Yes, this element has a role	No, this element does not have a role	I have no sufficient knowledge of this element
Effectiveness of the SCI in tackling UTPs	72%	7%	21%
Capacity to ensure transparency	72%	8%	21%
Capacity to ensure confidentiality	70%	11%	19%

*Respondents: companies member of the SCI*

*Number of collected answers: 151 – Farmers: 4, Producers: 67, Wholesalers: 18, Retailers: 61, Ho.Re.Ca.: 1*

<b>SCI members</b>	Yes, this element has a role	No, this element does not have a role	I have no sufficient knowledge of this element
Effectiveness of the SCI in tackling UTPs	108	11	32
Capacity to ensure transparency	108	12	31
Capacity to ensure confidentiality	106	16	29

### 8.5.2 Additional evidence

The most relevant findings about the **level of awareness of the initiative** point out that large operators, especially in the retailing and manufacturing stages of the food chain, have in general a good knowledge of the SCI, mainly thanks to the efforts made by EU-level and national associations in promoting the initiative; on the other side, awareness levels among farmers and in general among SMEs across the whole supply chain still seem very low. In an interview with a SME which knew the initiative but was not a member, it was pointed out that neither its direct competitors nor other companies with which the SME had frequent contacts were aware of the existence of the SCI.

Sector associations declared in the interviews to have been very active in communicating the existence of the SCI among their members; even some of those not supporting the initiative invited their members to test its effectiveness and usefulness. During interviews with farmers' associations, it emerged that promoting the diffusion of the initiative was not a priority (this is not surprising, given that they were not supporting the initiative). However, no elements emerged which could suggest a clear attempt of these associations to contrast the diffusion of the initiative by not communicating its existence to their members, or by asking them not to join it. Another EU-level organisation reported that it circulated information about the SCI in a neutral way to national organisations representing SMEs, but also that no additional follow-up was requested by these subjects, as they were in general not entirely convinced that the SCI could be the best approach to tackle UTPs. It also emerged from the same interview that contacts between the SCI and national associations of SMEs should be more on a "one-to-one basis" to be effective.

In spite of the efforts for promoting the diffusion of the SCI, both awareness and participation in some sectors need to be increased, and the most effective way to do so – according to many interviewees – would consist in a more direct involvement of current members in communicating their membership to, and in sponsoring the participation of, their trading partners. The Framework defines the commitments for the SCI members concerning communication in a rather loose manner: registered companies are required to inform business partners of their participation in the framework, but are left free to choose the means to do so (e.g. through a mention in contracts, or a written notice in negotiation meeting rooms). Registered companies are also encouraged to offer public information on their participation in the SCI and on the implementation of the PGP (e.g. on the company website, in company publications, etc.). According to some interviewees, a single communication to customers and suppliers is likely not to be enough: a specific reference included in contracts, and personal and informal sponsorship would probably be much more effective. Summarising, for communication to be effective there needs to be a continuous reminder that an operator is part of the initiative (not just a one-off effort). Additional actions might also come from Chambers of Commerce, which seem the only entities – together with the already involved sector associations – able to reach a good share of the fragmented universe of SMEs in the EU28.

In this context it must be noted that valuable inputs were provided to the Governance Group by some member companies particularly involved in effectively sponsoring the initiative among their trading partners. For instance, German retailer Kaufland provided specific insights regarding the approach that the company implements regarding its participation to the SCI and which, according to the company<sup>62</sup>, could become a model to improve the awareness-raising process, especially if adopted by a larger number of leading companies. Having collected most of concerns by SMEs, the retailer suggested the implementation of the following actions:

- Letter to all suppliers to inform them of the company's registration.

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<sup>62</sup> Kaufland's presentation to the SCI Governance Group "How to promote the SCI among suppliers – The Kaufland approach", Brussels, September 2015.

- Face-to-face exchange or telephone calls with SME suppliers in every product category.
- Providing explanations about the setup of the initiative and the advantages deriving from registration.
- Offering concrete help with the registration process.
- Providing in-depth insights on possible reasons behind the scarce participation by small suppliers:
  - linguistic barrier, which can be overcome by translating the SCI website in all the main EU languages;
  - concern for administrative burden;
  - concern for hidden costs.
- Sharing with other retail companies of the best practices developed in the “Kaufland approach”.

According to data presented by Kaufland, its approach resulted in an actual increase of SME participants to the SCI, thanks to the effectiveness of the company’s efforts to raise awareness about the initiative. Certain actions suggested by Kaufland have recently been implemented within the SCI (e.g. with the decision of the Governance Group which simplified the procedures to join the SCI for micro and small enterprises, or with the implementation of a multi-language version of the SCI website through Google translator).

An additional useful element only partially related to the awareness of the SCI emerged from one interview: it relates to the more general awareness of the existence of UTPs among consumers. The interviewee pointed out the necessity to raise awareness about UTPs also among consumers, since their food purchase decisions are often price-driven: in a market mainly focused on price competition, retailers might be more inclined to apply pressure on the upstream stages of the chain in order to lower selling prices. Consumers’ awareness should be raised about the sustainability of food production as a whole, and also about UTPs in the supply chain and equitable rewarding of actors at all levels of the chain.

Regarding the **trust in the initiative**, the aspects which were found to raise the greatest concerns were those related to the effectiveness of the SCI in addressing UTPs, the perceived independence of its governance structure, and its capacity to ensure confidentiality. Furthermore, trust in the initiative seems somehow related to the level of participation across the different categories of operators. Multinational groups and larger retailers generally manifested a high level of trust. On the other side, smaller operators, independent experts and some stakeholder organisations not supporting the initiative pointed out that the perceived weaknesses of the SCI as well as the most serious reasons behind non-membership (see § 8.1.2.1) basically reflect a lack of trust in the initiative, and must be taken into account to explain the low participation of some categories of operators.

### 8.5.3 Main findings

As a general finding, the **level of awareness** appears to be mirrored in the current composition of the SCI membership base. Large-scale retailers are few, concentrated and in general very well coordinated at EU level through their sector associations; in addition to this, they manifested in many occasions a particular interest in the topic and a high level of trust in voluntary initiatives. On the other hand, it is much more difficult to reach a similar level of awareness for the vast and fragmented universe of agricultural producers and small manufacturing companies. Besides the difficulties stemming from the high number of subjects to reach with the relevant information, additional difficulties derive from the specific situation of these subjects, which can be located in remote areas, and/or can be difficult or impossible to reach via IT-based communication (websites, mailing lists, etc.). Also the fact that Copa-Cogeca and the related national farmers’ associations do not support the SCI has probably contributed to limit the awareness about the initiative among farmers; despite this, the Governance Group members have had contacts with national farmers’ associations in the Member States where national platforms exist (Boerenbond in Belgium, MTK in Finland, DBV in Germany and

LTO in the Netherlands) with the objective to increase their involvement in enhancing the participation from the farming sector.

Survey results and evidence collected through interviews are very consistent in highlighting a problem of awareness with specific reference to farmers and SMEs. A number of obstacles impede for these categories the achievement of levels of awareness comparable to the levels of the retail sector; despite this, some specific actions were identified in order to improve the situation:

- Additional emphasis on the importance of communications by companies which are already within the initiative, both to their direct competitors and to suppliers and customers.
- Need to carry out these communication activities on a continuative basis and not as a one-off activity.
- Involvement of Chambers of Commerce in the different Member States in order to activate an additional channel for communications to SMEs.
- Finally, it should be considered that the actual share of companies/organisations aware of the initiative could be lower than 27%: company/organisations which are involved in or which are aware of the initiative, are more likely to have answered to this set of questions. On the contrary, companies/organisations not aware of the initiative might have been discouraged from completing the questionnaire, thus increasing the incidence of SCI members / SCI-aware respondents in the survey sample, and hence artificially elevating the level of awareness detected through question n.13.

The **level of trust** in the initiative appears to be good (at least on the basis of survey results), especially for the SCI members; despite this, some categories of operators – especially those with a lower participation in the initiative and some external stakeholders – raised concerns on the perceived impartiality of the governance structure of the initiative, on its effectiveness in addressing UTPs, on its independence and on its capacity to ensure confidentiality, thus underlining a limited trust in it.

An element of potential concern might be the number of food and beverage producers (17 out of 67, corresponding to approximately 25%) indicating a low level of trust in the initiative: being trust an element of paramount importance for recourse to the initiative, concerns could arise regarding the actual willingness of these operators to really look for dispute resolution through the SCI.

## **8.6 Implementation costs for SMEs joining the initiative**

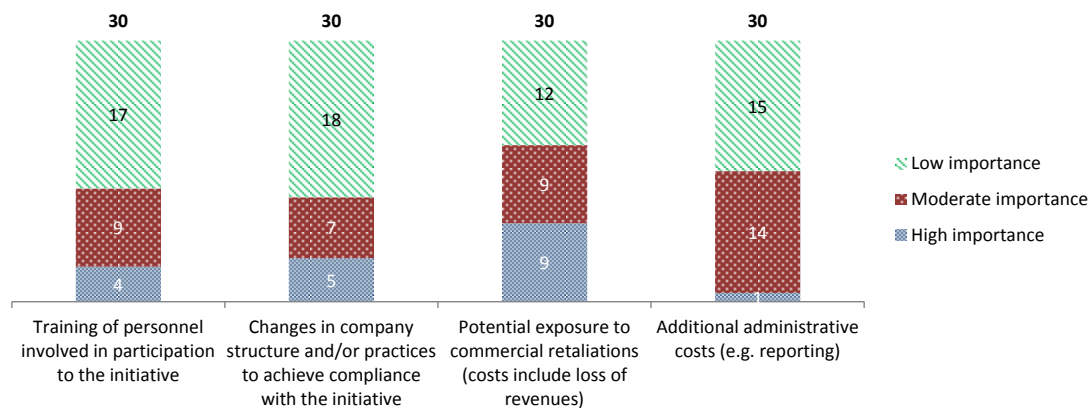
### **8.6.1 Overview of the survey results**

*Question n.25 – “Please assess the importance of each of the following cost items in determining the overall costs incurred by your company to participate in “The Supply Chain Initiative” (SCI)”*



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Figure 8.23 – Cost items determining the overall costs to participate in the SCI

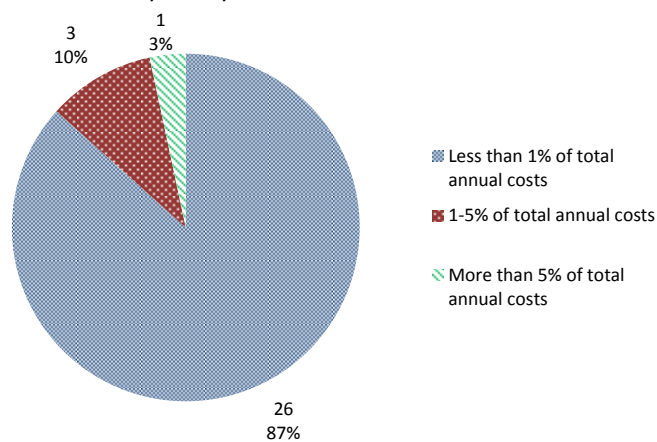


Respondents: SMEs member of the SCI  
Number of collected answers: 30

Although limited in number, indications coming from SME members identify the fear of commercial retaliation as the most important cost item potentially associated to their membership, followed by additional administrative costs, the training of personnel and the required changes in the company structure/procedures.

Question n.26 – “Please try to estimate the indicative overall costs incurred by your company to participate in “The Supply Chain Initiative” (SCI) (the cost is expressed in % of total annual costs incurred by your company)”

Figure 8.24 – Estimate of overall costs to participate in the SCI



Respondents: SMEs member of the SCI  
Number of collected answers: 30

Almost all the respondent SMEs which are members of the SCI (26 out of 30, i.e. 87%) estimate that the overall costs associated to their participation to the SCI are below 1% of their total annual costs. A limited share of respondents estimated such costs as falling between 1% and 5% of the total annual costs of the company (3 respondents in total). These answers are consistent with those regarding the main cost items affecting the membership (Figure 8.23), in which most respondents attributed a very limited importance to all the cost items.

### **8.6.2 Additional evidence**

Very few, and eminently qualitative elements were collected through in-depth interviews in the context of a mostly theoretical investigation of costs borne by SMEs to join the initiative. Whereas interviewees were able to make a number of interesting considerations on the topic, none of them ventured into providing quantitative elements on the extent of such implementation costs.

From one side, one of the initiative's objectives is to provide ways of managing disputes other than arbitration or litigation and not requiring high investments; on the other side, SMEs sometimes complained that the amount of activities needed for joining the initiative appears to be too high.

Even though a general reluctance of smaller players in investing in non-core activities can be expected, it seems that costs associated to the registration in the SCI are not perceived as too high when operators somehow believe – at least to some extent – that participation will result in a more effective and faster way of addressing UTP-related disputes. On the contrary, if no particular trust toward the SCI is present, the requirements to join will almost certainly represent a limit for SMEs' participation. In other words, although the costs alone do not represent a limit to join the initiative, their presence and the amount of time for training staff and for reviewing procedures do not allow many companies to "join just to try how it works".

It is worth noting that a medium-large operator highlighted that the above procedures "required time and money", although it also stated that the overall costs do not represent a reason for company of any dimension not to participate; on the other side, the same company clearly expressed a negative judgement on the possibility to exempt SMEs from the registration procedure, because if no true commitment is required from SMEs to join the initiative, the risk of unfounded UTP-related allegations might arise.

### **8.6.3 Main findings**

Generally speaking, results from the survey suggest that costs related to the membership and to activities needed to join the initiative are considered negligible or almost negligible by SMEs: as a consequence, such costs cannot actually be considered an obstacle to SMEs' participation in the SCI. On the other side, interviews showed how for SMEs the burden of activities envisaged in the first version of the procedure could play a role in discouraging participation. In this context, decision 5/2015 of the Governance Group has abolished the entire set of requirements for micro and small companies, and could therefore result in a wider participation for all those companies which want to "try how it works". It is anyway worth remembering that the "cost issue" as well as the "administrative burden" seem not to be the key elements in determining or not the participation of operators in the SCI.

## 9 Assessment of the voluntary initiatives and national stakeholders' platforms

This chapter illustrates the results of the assessment of four voluntary initiatives set up in Belgium (§ 9.1), Finland (§ 9.2), the Netherlands (§ 9.3) and Germany (§ 9.4; this initiative is close to becoming fully operational).

The assessment was focused on the following aspects:

- Influence of the Principles of Good Practice and of the Supply Chain Initiative on each national platform.
- Participation to the initiative (including motivations behind membership / non-membership, and implementation costs for SMEs).
- Governance structure and internal monitoring system.
- Effectiveness of the initiative in addressing and settling disputes.
- Capacity to ensure transparency and confidentiality.
- Awareness and trust in the initiative.

Each aspect was assessed on the basis of information collected through the survey, through interviews with national stakeholders, and from relevant documentation and literature.

Due to its particular state of progress, the assessment of the German initiative was focused only on the aspects for which relevant information (from documentation or from elements emerged from interviews) was already available.

### 9.1 Belgium

#### 9.1.1 *Influence of the Principles of Good Practice and of the Supply Chain Initiative on the national stakeholders' platform*

According to interviewees, a priority of the Belgian code of conduct is to achieve the mutual recognition with the SCI. Mutual recognition is considered particularly important due to the position of Belgium as a net exporter of food on the EU internal market, with the neighbouring Member States (DE, FR, NL, UK) as main trading partners.

A number of changes were made to the Belgian initiative in order to achieve mutual recognition with the SCI. The process of implementation of these changes took about one year, and the updated code was signed by the board of the initiative on June 10, 2014. Table 4.2 at § 4 summarises the changes made to the code in order to ensure compatibility of the principles which form the basis of the Belgian initiative with the PGP, and hence with the SCI. Table 9.1 highlights the areas related to company obligations which required changes, and summarises the changes which were implemented in order to enable mutual recognition.

*Table 9.1 - Areas related to company obligations identified as needing changes in order to enable mutual recognition of the Belgian code with the SCI*

Area	Changes implemented to enable mutual recognition
Registration	A commitment statement for new entrant SMEs Automatic inclusion in the SCI of SME companies already registered in the Belgian scheme, unless they explicitly refuse to be included Invitation of large companies to join the EU scheme
Geographical scope	Aggregated complaints concerning cross-border cases to be examined by the Belgian committee and referred to the SCI if necessary
Self-assessment	Larger companies are invited to join the SCI

Area	Changes implemented to enable mutual recognition
	SMEs to receive training through Belgian federations
Designated contact point	Obligation in the commitment statement for new members Contact point in existing SME members assumed to be the CEO
Compliance officer	Obligation in the commitment statement for new members Contact point in existing SME members assumed to be the CEO
Training	Obligation included in the letter inviting larger companies to join the SCI
Information to suppliers	Federations to take action on behalf of SMEs Larger companies to be informed in the letter inviting them to join the SCI
Dispute settlement	Inclusion of a four-step dispute settlement procedure in the Belgian code
Breaches of process commitments	Change to Belgian code to make the committee competent for individual cases of breaches of process commitment
Reporting requirements	Inclusion in the commitment statement of the obligation to reply to the survey of the SCI

Source: elaboration from Agro-food chain Platform "Methodology for assessing the interaction of a national scheme with the EU level voluntary initiative"

Certain changes were identified by interviewees as being particularly difficult:

- Design and implementation of a procedure for handling individual complaints (the original Belgian system only contained provisions for aggregated complaints).
- Re-registration of existing members in the new initiative, especially in the case of SMEs. In this case, there was a fear that SMEs would be cautious about signing another agreement. Consequently it was agreed that all SMEs signed up to the existing Belgian initiative would automatically be registered in the new initiative without any further action. Letters were sent to SME members of the initiative outlining the changes and providing operators with the chance to withdraw from the revised initiative on request.
- Provisions on communication and information. As they were written, such provisions were difficult to place in the Belgian code of conduct. Drafting was changed and a provision was added to the Belgian code.

Nonetheless, even if certain changes proved to be challenging and even if some time was required to adapt the Belgian initiative, one interviewee believed that its adaptation was easier than the launch of an entirely new initiative.

### **Influence exerted by the PGP**

The Belgian initiative pre-dates the publication of the PGP. Consequently, the PGP did not have any influence on the original Belgian scheme. They did, however, have some influence on the 2014 revision. Furthermore, one interviewee noted that elements of the Belgian principles and initiative may have fed into the EU-level PGP and into the SCI, given that stakeholders involved in the EU-level discussions were generally aware of the existence of the Belgian code of conduct and of its contents.

### **Influence exerted by the SCI**

As already noted, the Belgian initiative pre-dates the SCI. Consequently, the EU SCI did not have any influence on the original Belgian scheme. The SCI did, however, have an influence on the revised initiative.

#### 9.1.1.1 Main findings

Although the Belgian platform pre-dates the SCI and the PGP, the finalisation of the process of mutual recognition in June 2014 had an impact on many of its elements. The most important changes refer to the possibility to address individual complaints, to the obligation for members to appoint a contact person and a compliance officer, and to the obligations related to communication and training.

#### 9.1.2 Participation in the initiative

The Belgian initiative comprises two types of members:

- **Federations.** Five sector federations have signed up to the Belgian initiative on behalf of all of their members. These federations are:
  - AGROFRONT (the farmers' united front), comprising three associations: Boerenbond (Flemish Farmers), FWA (Walloon Farmers) and ABS (Flemish Farmers);
  - UNIZO (Flemish SMEs);
  - UCM (Walloon SMEs).
- **Individual operators.** Members of other three sector federations within the initiative must sign up individually:
  - COMEOS (retailers);
  - FEVIA (food and beverage producers);
  - BEMEFA (feed producers).

With regards to this latter category, prior to the changes to the code in 2014, it was only necessary for operators to sign a form and return it to their sector federation in order to join the initiative. Following the changes to the code in 2014, there are two different application channels, and the choice of the channel depends on the company size:

- **Larger enterprises** should register through the SCI, and hence must undergo the same process as operators registering for the EU initiative. They also face the same commitments, namely:
  - Organising training to make sure the company complies with the recommendations of the Belgian initiative.
  - Willing to apply the different options for dispute settlement foreseen in the code of conduct / SCI.
  - Accepting that threats imply a breach of the code of conduct / SCI.
  - Informing business relations of the adhesion to the code of conduct / SCI.
  - Indicating one or several persons responsible for dispute settlement and as an administrative contact.
  - Taking part in the annual survey on the application of the code of conduct / SCI.
- **SMEs** can use a simplified form, which requires them to indicate contact points for administrative issues and litigation. Signing the form also indicates that the operator will adhere to the code, and will participate in the surveys of the initiative.

One interviewee explained that, following changes to the code, SME members which had already signed up to the code were not required to sign up again. Instead, existing SME members were automatically registered for the updated initiative; a letter was sent to SME members which specified the changes and provided them with the possibility to ask to be excluded from the initiative. The reason for this approach was that there was considerable fear that SMEs would not sign up again; either they would simply overlook the letter and not reply, or they would be wary of taking on what they might consider extra obligations. A sector federation reported that it is in the process of collecting contact details from individually-registered SMEs which were transferred to the new scheme, in order to fulfil the requirement of the code with regards to the identification of a contact person.

### Categories of participants

Question n. 28 of the survey classifies the members of the initiative on the basis of the stage of food supply chain.

*Question n.28 – “You have stated that you know about [NAME OF THE NATIONAL INITIATIVE]. In relation to [NAME OF THE NATIONAL INITIATIVE], your company/organisation:”*

*Figure 9.1 – Members of Belgian stakeholder’s platform*



*Respondents: companies and organisations located in Belgium member of the national initiative*

*Number of collected answers: 8*

The very limited number of answers in the survey did not allow the study team to draw any robust analysis on the categories of operators which are members of the national platform.

Regarding the participation of organisations, the following associations are members of the platform:

- BEMEFA (animal feed producers)
- AGROFRONT. The organisation signed up on behalf of the three federations of farmers it represents (Borenbond, ABS and FWA)
- UNIZO (Flemish SMEs)
- FEVIA (food and beverage producers)
- BABM (branded product manufacturers – code of conduct only)
- UCM (Walloon SMEs)
- COMEOS (retailers)

Interviewees believed that the main federations covering the whole agro-food chain had signed up the platform. All the above federations were considered to cover the majority of operators in their sector in

Belgium (for instance, AGROFRONT was considered to cover 85-90% of Belgian farmers; UCM/UNIZO 85-90% of SMEs).

It was also noted that there is a certain degree of overlap between the membership of SME organisations UNIZO and UCM, on one side, and the membership of food and beverage producers' federation FEVIA and of retailers' organisation COMEOS, on the other side (this derives from the fact that some companies are, for instance, members of both UNIZO – or UCM - and FEVIA). Consequently, some FEVIA and COMEOS members may not be individually signed up to the initiative, but may be signed up through UNIZO or UCM. It is also likely that there is a certain degree of overlap between BEMEFA (animal feed producers' organisation) members, UNIZO/UCM members and members of AGROFRONT (farmers' organisation): this implies that some feed manufacturers may have automatically been registered to the platform through UNIZO or UCM, and/or through AGROFRONT, without individually signing up to the initiative.

### **Evolution of participation over time**

As already explained, for ABS, Boerenbond, FWA, UNIZO and UCM, the signature of the chairman is binding for all members. For the other organisations, individual companies have signed up. The evolution of the number of individual companies from BEMEFA, FEVIA-BABM and COMEOS is illustrated in Table 9.2.

*Table 9.2 - Number of individually registered participants by level of the chain, 2011-14*

<b>Year ending (June)</b>	<b>Compound feed companies (BEMEFA)</b>	<b>Distribution companies (COMEOS)</b>	<b>Food industry companies (FEVIA)</b>	<b>Total</b>
2011	42	13	166	221
2012	42	13	166	221
2013	42	14	166	222
2014	42	16	166	224

Source: Annual reports of the Belgian SCI

According to interviewees, all major distribution companies have registered, and the 166 FEVIA members (out of a total of 650) represent the majority of output of FEVIA members. As for the feed industry, BEMEFA has approximately 200 members, of which 42 have registered to the initiative (i.e. approximately 20% of BEMEFA members by number).

### **Motivations behind membership**

Interviewees identified the following reasons for membership:

- **A possible tool for historically weaker players in the chain.**
- **An effective way of solving conflicts.**
- **The voluntary nature of the scheme.**

It was noted by one interviewee that the market is taking an increasing role in the business of farmers, as subsidies and price control measures are reduced. Farmers have reacted: i) by regrouping into co-operatives (including some co-operatives with involvement in downstream activities); ii) through inter-professional agreements, which form the basis for contract negotiations; and iii) through quality differentiation. In this changing market environment for farmers, participation in the initiative was seen to be a complementary tool.

## Motivations behind non-membership

Interviewees identified the following reasons for non-membership:

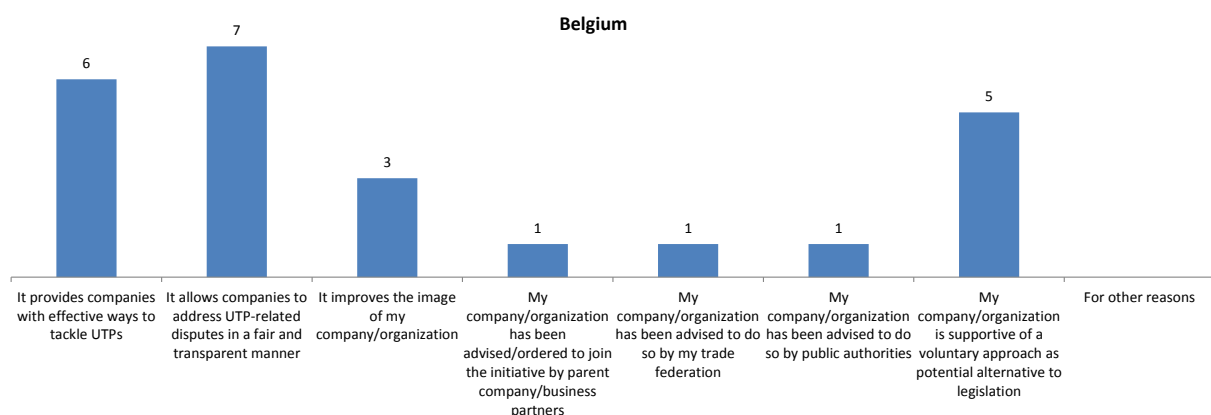
- **Lack of awareness of the scheme.** According to one interviewee, the lack of awareness can be a main reason behind non-membership for the majority of non-member operators.
- **Lack of trust in the initiative and caution about the presence of certain organisations.** Certain operators, such as farmers, may not trust the initiative, and in particular may be discouraged from joining by the presence of operators in the downstream stages of the chain.
- **Effectiveness / fear of retaliation.** Certain operators may not join because they would be afraid to present evidence of UTPs in commercial relationships with other operators, due to possible fear of retaliation.

On the other side, in the course of an interview it emerged that the PGP are unlikely to pose any particular challenge to operators, and consequently are unlikely to constitute a barrier to membership in the initiative.

Questions n. 29 and n.30 in the survey asked to respondents to identify the reasons behind their membership or non-membership in the initiative.

Question n.29 – “Your company/organisation joined/is joining [NAME OF THE NATIONAL INITIATIVE] because:”

Figure 9.2 – Reasons behind membership



Respondents: companies and organisations located in Belgium member of / applying to / with intention to apply to the national initiative

Number of collected answers: 8 respondents, 24 total options (possibility of multiple answers)

Within the limits allowed by the low number of replies (only coming from retailers, organisations and one wholesaler), it can be said that the reasons to join the initiative mainly refer to the possibility to address UTP-related disputes in a fair and transparent manner, to the effectiveness of the platform in tackling UTPs, and to the will of supporting voluntary approaches in dealing with UTPs as an alternative to legislation.



**Question n.30 – “Your company/organisation has no intention to join [NAME OF THE NATIONAL INITIATIVE] because:”**

The very limited number of answers related to the question about the reasons behind non-membership in the initiative does not allow to draw any conclusions on this issue. These results are reported in Table 9.3 for sake of completeness.

*Table 9.3 – Reasons behind non membership to Belgian stakeholder’s platform (n. of selected options)*

	Belgium
It is an ineffective way to tackle UTPs	-
It lacks fairness and/or confidentiality and/or transparency in addressing UTP-related disputes	-
UTPs are not a serious problem for my company	-
Existing legislation effectively addresses UTPs	1
My company fears unfavourable attitude / retaliation from its business partners	-
My company is a member of The Supply Chain Initiative (at EU level)	1
The overall costs/resources for joining the initiative are too high in relation to potential benefits for my company/organization	-
For other reasons	2

*Respondents: companies and organisations located in Belgium with no intention to apply to the national initiative*

*Number of collected answers: 4*

#### 9.1.2.1 Implementation costs for SMEs joining the national initiative

Interviewees confirmed that there is no cost for SMEs to register to the Belgian initiative (the application process for SMEs is lighter, as outlined in § 9.1.2.2). Furthermore, there are no direct costs involved in participation, as conflicts are treated at federation level. The only indirect cost is the time required for talking to the reference federation to provide details of a complaint, or to reply to a complaint. It was noted that individual cases may lead to costs for companies; however, there have been no individual cases so far, and hence there is no experience. Interviewees noted that other methods of dispute resolution such as mediation are generally prohibitively high in costs for SMEs.

Federations clarified that the main cost for them was the provision of time; one interviewee estimated that one man day per week was needed for participation of its federation in the initiative. Interviewees clarified that the initiative itself generally works at present without a budget. In case that an action requiring a budget is foreseen, the actual need for the action in question is established; then the budget for the action is quantified; and finally the methods for financing such budget are identified. According to information provided by interviewees, expenditure on such special actions under the initiative since its launch in 2010 amounts to approximately 350,000 EUR.

#### 9.1.2.2 Main findings

The way in which the Belgian initiative has been set up, with both federations as members and the membership of individual operators, has ensured a high level of participation to the initiative from the whole agro-food chain. Through its membership in the initiative, AGROFRONT represents around 25,000 farmers among the three supporting federations (i.e. 85-90% of Belgian farmers). UCM and UNIZO represent 85-90% of SMEs. All major retailers have signed up, and 166 of approximately 650 FEVIA members have signed up. One interviewee believed that, while the proportion is relatively low in absolute terms (around 25%), these

166 food and beverage producers might account for 70-90% of the total value of the aggregated output of FEVIA members. It was also noted that there is a certain degree of overlap between the membership of organisations for which individual registration to the platform is required (BEMEFA, FEVIA, COMEOS) and the membership of organisations (AGROFRONT, UCM, UNIZO) for which the signature of the chairman to the platform is binding for all member companies. This results in the automatic (i.e. non-individual) registration to the platform of a number of companies operating in compound feed production, in food production and in food retailing. The total number of individually registered members of the initiative has increased only slightly over the period 2010-14.

The initiative was considered to be a useful tool for smaller operators and a possible method of solving conflicts, and this encouraged operators to join. On the other side, the main reason behind non-membership was identified in lack of awareness. In this context, it should be noted that lack of awareness may not be limited to non-members of the initiative; due to the aforementioned specificities in the membership process, it is possible that many SMEs or farmers which are members of the initiative through their sector federations (which have signed up to the initiative on their behalf), are in fact still unaware of the initiative (see also § 9.1.4.4).

There is currently no direct cost for SMEs to register or to participate in the initiative. However, in order to obtain results, SMEs need to introduce complaints through their federation. As detailed at § 9.1.4.1, there have been a total of 17 complaints introduced so far, but the share of these complaints which involve SMEs is unknown.

Finally, as noted at § 9.1.4.1, there may be an element of fear of identification and retaliation which inhibits SMEs from introducing complaints (i.e. financial losses from introducing a complaint are considered to be potentially high).

### *9.1.3 Governance structure and internal monitoring system*

#### **9.1.3.1 Governance structure**

Following the joint press release of June 29, 2015, future changes to the governance structure of the initiative are expected. The following sections provide an outline of the system currently in place, and a summary of future expected changes.

#### **System in place at present**

The platform is overseen by a **governance board** comprising representatives of the federations involved in the platform (i.e. ABS, Boerenbond, BEMEFA, COMEOS, FEVIA, FWA, UCM and UNIZO). BABM is invited to governance board meetings for points relating to the code of conduct. Chairmanship of the board theoretically rotates on an annual basis, though one interviewee pointed out that Boerenbond has been the only chair of the board since the launch of the initiative.

According to the code of conduct, the board performs the following functions:

- Issuing a yearly survey to member companies on training, reporting dispute resolution options and communication. This survey in turn is used for the drafting of an annual report.
- Deciding on any adjustment to the code.
- Informing the Ministry of Economic Affairs and government administration of its activities, and drafting an annual report<sup>63</sup>.

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<sup>63</sup> Interviewees clarified that one member of the board will be responsible for drafting of the annual report, and others will then provide feedback. The board as a whole will approve the annual report prior to its publishing.

- Creating ad-hoc working groups composed of employees of different organisations and accompanied by an expert, if necessary.

Interviewees confirmed that the board also discusses aggregated disputes, acting as a moderator between parties, but does not issue decisions on them. The board does not directly deal with individual complaints, with the exception of breaches of process commitments (see also § 9.1.4.1).

According to interviewees, the board meets quarterly; in the meetings, the board checks on the progress of working groups and discusses any aggregated disputes.

In addition to the governance board, there is a **working group for the code of conduct** comprising representatives of ABS, Boerenbond, BEMEFA, COMEOS, FEVIA, FWA and UNIZO. There are also **sector-specific working groups** which bring together different parts of the chain for the following sectors:

- Dairy
- Sugar
- Poultry
- Beef meat
- Pig meat
- Industrial vegetables

According to interviewees, these sector-specific working groups focus on three topics:

- **The mechanics of price formation**, i.e. how prices are defined, and the monitoring of prices on a monthly basis. Prices are not set; however, the output of work on price formation includes an indicative price range which individual parties can choose to use during negotiations on price. This activity is based on data provided by the Ministry of Economic Affairs (see also § 4.1.2).
- **Transparency in contract conditions** (e.g. how to measure quantity and quality; production conditions; delivery conditions; payment conditions; how to deal with oversupply; etc.).
- **Transparency in quality and production requirements**, i.e. specifications for quality.

These sector-specific working groups provide updates to the governance board. According to interviewees, while these groups work independently, the governance board has a steering role in their work. The final output of these working groups is an inter-professional agreement (IPA) for the sector in question; these act as framework agreements for the sector, and each IPA has its own dispute settlement mechanism. It was noted by one interviewee that work on IPAs remains on-going for several sector-specific working groups.

### **Future expected changes**

As mentioned above, following recent discussions and the joint press release of June 29, 2015, an agreement has been reached to change the governance structure. The agreement foresees the introduction of an independent chairperson in the board with the following roles:

- To be a contact point for members which have signed the code but are not members of a sector federation.
- To oversee the dispute resolution procedure, notably to ensure that all commercial options are exhausted before any litigation is started in the case of individual/bilateral disputes.

The intervention in individual/bilateral disputes of the independent chairperson and the governance group is not generally foreseen. However, in case all commercial options are exhausted, the governance group may intervene in order to offer a wider perspective. The governance group will also be able to call in mediators or request economic inspection from the Ministry of Economic Affairs.

### **Evaluation of the governance structure**

Interviewees considered the governance structure to be effective. The only possible improvement identified by certain interviewees - the introduction of an independent chairperson – is actually foreseen for the near future. Interviewees who underlined the need for this improvement believed that the independent chairperson will add credibility to the initiative, and may also facilitate mediation.

#### **9.1.3.2 Internal monitoring system**

According to interviewees, the internal monitoring system in place is fairly simple:

- **Lists of members** are kept by individual federations. BEMEFA, FEVIA and COMEOS publish the list of members on their websites. Following the changes to the initiative and mutual recognition in 2014, the governance board has requested that they are informed when a Belgian company signs up to the SCI, so that the list of members kept by federations can be updated.
- **Complaints** are collected by the initiative's governance board members in the reference federations of the complaining parties. The contact person of the federation will then contact the contact person of the federation of which the accused party is a member. Complaints may be discussed in governance board meetings. According to interviewees, complaints are introduced verbally: large formal dossiers with written records are not created for complaints.
- **The annual report** was considered to work as a tool for recording the number of members, details of disputes and progress during the year.

No other specific internal monitoring systems were identified by interviewees, though it is possible that the independent chairman may play a role in the internal monitoring of the initiative in the future. No improvements were suggested to the system in place; the current system was considered to be effective. One interviewee commented that it is not clear to what extent federations may receive the details of Belgian companies which sign up to the SCI.

#### **9.1.3.1 Main findings**

The governance board of the Belgian platform has a branched structure, and also covers activities which are not covered by the Governance Group of the SCI (e.g. the working group for the code of conduct and sector-specific working groups).

The governance structure was generally considered to be adequate: it proved its effectiveness with a number of solved UTP cases since 2010, and is currently under revision in order to respond to requests by some members in its constituency. The appointment of an independent chairperson is now envisaged, and will be implemented in the near future: even if it is not possible to anticipate the outcomes of this change in the governance structure, there are quite positive expectations about it, which clearly emerged from interviews with stakeholders.

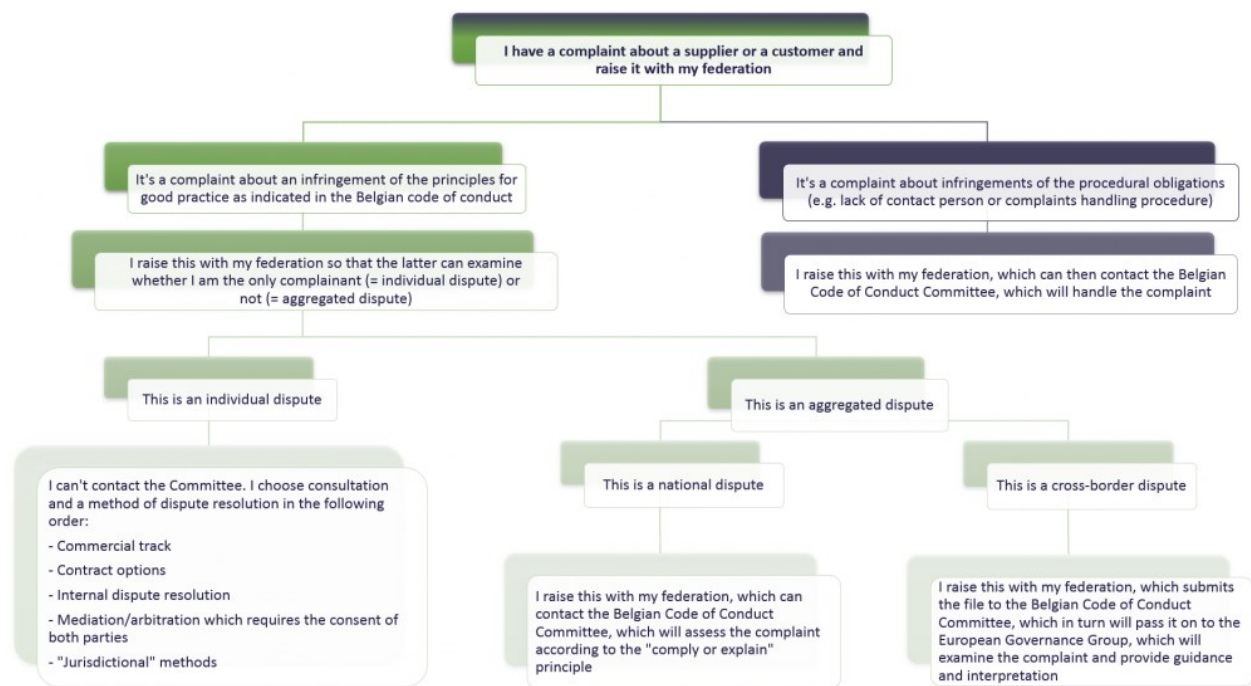
### **9.1.4 Effectiveness of the initiative**

#### **9.1.4.1 Effectiveness in addressing and settling disputes**

In case an operator deems to be facing a UTP, the platform provides a dispute resolution mechanism. Originally, the platform was only designed to deal with aggregated disputes; following the changes made in

2014, procedures are now foreseen for the handling of both individual and aggregated disputes (see also § 4.1.2). Figure 9.3 sets out the decision tree for tackling disputes.

Figure 9.3 - Decision tree for tackling disputes



Source: <http://supplychaininitiative.be/en/disputes/geschillen-in-de-praktijk/> accessed 23/6/15

According to interviewees, the time required to resolve aggregated disputes varies; some may be quickly solved with just a single exchange of information, while others may require several back-and-forth exchanges between the parties involved and their federations, as well as between the federations and the board, over a period of several months.

Interviewees confirmed that the procedures foreseen for dispute resolution by the platform were aimed at resolving disputes without legal action or, at least, with legal action seen as a last resort option. Following the press conference of June 29, 2015, an additional method of dispute resolution has been introduced under the code, i.e. economic inspection. In the case that a dispute cannot be settled, the board of the initiative may call upon the Ministry of Economic Affairs to perform an economic inspection (arbitration and sanctioning). The parties involved must accept the outcome of this economic inspection. Interviewees noted that also this economic inspection should be considered a last resort option.

Interviewees confirmed that there is no special dispute resolution procedure foreseen for SMEs. This said, the existing procedure was considered by interviewees to be very accessible for SMEs.

Interviewees believed that it should be possible to address issues with non-members of the initiative which are members of federations involved in the platform by passing through the federation in question. However, non-members of the initiative would not be able to introduce complaints. According to interviewees, there have been no cases involving non-members of the initiative so far. One interviewee expressed doubts about the extent to which action could be taken if such a case were to occur.

It was noted that the foreseen introduction of an independent chairperson would enable members of the initiative which are not members of a federation involved in the platform to introduce complaints. According to interviewees, there have been no cases of members of the initiative outside federations introducing complaints so far.

According to data from the annual reports, 17 cases were handled between the start of the initiative in 2010, and June 2014. A summary of these cases based on the “comply or explain” principle is provided in Table 9.4. Interviewees indicated that cases have always been resolved inside the platform without resorting to legal action. According to interviewees, all cases have been handled under the aggregated dispute system; there have not been any individual disputes.

*Table 9.4 - Summary of cases, 2010-14*

Year	Details
2010-11	<b>4 cases: unilateral changes of contractual terms and conditions.</b> Details of cases not provided.
2011-12	A retailer anticipated <b>charging new costs to the suppliers in the new agreements</b> : internal transport (from a central warehouse to the stores), handling of pallets, compulsory fee for packaging damaged by the consumer and for unsold goods. This was addressed with the relevant retailer.
2011-12	A farmer organisation requested to <b>no longer announce promotional discounts for fresh agricultural products</b> , given that the related costs would be recovered from suppliers. Retailers argued that promotional discounts stimulate the demand and translate, in the long term, into better prices also for suppliers. A common viewpoint was not reached, but the parties agreed on a call for restraint in the area of price discounts in crisis situations.
2011-12	The <b>recall of a certain potato variety</b> resulted in considerable damages for suppliers, due to poor co-operation by the retailer in question. After mediation, an agreement was reached between the relevant parties that resulted in arrangements for better cooperation.
2011-12	<b>Extreme price discounts</b> by some retailers were reported at different points of sale. In one instance the retailer acknowledged that it was a mistake, and sent an errata corrige to affected stores. In another case, farmers’ organisations started preliminary injunction proceedings in order to assess the compatibility with the statutory ban on sales at a loss.
2011-12	An explanation was provided about the agreement that farmers’ organisations reached with a retailer about <b>the award of an “efficiency bonus” to sow breeders</b> . The bonus was made possible through a reduction of the number of suppliers of pig meat, and therefore an increased efficiency and cost saving for the relevant retailer.
2012-13	<b>Exclusion due to communication about a recall.</b> One supplier believed it was submitting competitive offers to a retailer, but was being excluded due to a previous issue with a recall. The platform confirmed the freedom of contract as cornerstone of business to business relationship, and in view of this considered that there was no evidence of an unfair practice.
2012-13	<b>Intervention in margin loss.</b> A retailer claimed that demand for intervention at margin loss from suppliers was not normal practice and had been limited to two cases:  (1) a number of suppliers were invited to carry on negotiations about complementary conditions (in the form of a discount or commercial promotion of a limited duration) that would allow the retailer to align its prices to those of its competitors  (2) a procedure was provided (within the contractual conditions) that anticipates interventions when it becomes apparent that within the framework of a promotion the supplier appears to be unable to guarantee correct supply.

*Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain*

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Year	Details
2012-13	<b><i>Charging of promotional expenses.</i></b> A retailer adjusted its promotional plan by increasing the number and the frequency of promotions, but the financial contribution was not adjusted despite the higher degree of coverage. All arrangements were included in a new framework agreement, signed by both parties, that was adjusted each year in function of the results of the commercial negotiations.
2012-13	<b><i>Charging of expenses for communication campaign.</i></b> According to the manufacturer, the objective of the campaign was to repair the confidence of the consumers after the horsemeat crisis, and a limited contribution was requested from suppliers. Most suppliers reacted to this in a more or less positive manner. The manufacturer did not regard this action as a unilateral change of the contractual terms and conditions, or as a way to improve its own financial results in the short term.
2012-13	<b><i>Price adjustment for suppliers of meat.</i></b> The retailer in question clarified that prices and conditions are negotiated at the beginning of every year and that every adjustment to these prices and conditions will always be subject to discussion between all parties before being applied.
2012-13	<b><i>Charging of new logistical costs to suppliers.</i></b> The concerned retailer stated that nothing is being requested from suppliers that has not been discussed beforehand and has not been agreed upon between all parties.
2013-14	<b><i>Extension of payment term.</i></b> The manufacturer in question confirmed the extension of payment terms, but pointed to the possibility for suppliers to obtain early payment loans at a very interesting rate.
2013-14	<b><i>General rejection of any price adjustment for suppliers of meat.</i></b> The retailer in question clarified that prices and conditions are negotiated at the beginning of every year and that every “adjustment” to these prices and conditions will always be subject to discussion between all parties.
2013-14	<b><i>Charging of new logistical costs to suppliers.</i></b> The concerned retailer stated that nothing is being requested from suppliers that has not been discussed beforehand and has not been agreed upon between all parties.

Source: elaboration on the basis of the platform’s annual reports

Survey results about the effectiveness of the initiative in tackling UTPs are presented below. The survey asked which are the main relevant aspects determining the overall effectiveness of the initiative, and a judgement on their importance and on the role of national legislation addressing UTPs. Also in this case, the rather low number of replies limited the robustness of results, which are anyway presented here as a complement to the evidence emerged from interviews.



Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain  
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Question n.31 – “Please assess the contribution of each of these elements in determining the overall effectiveness of [NAME OF THE NATIONAL INITIATIVE] in tackling UTPs”

Table 9.5 – Contribution of single elements in determining the effectiveness of Belgian stakeholder’s platform in tackling UTPs

Belgium	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Effectiveness of the initiative in addressing and settling disputes	6	2	4	3
Capacity to ensure transparency	7	3	1	4
Capacity to ensure confidentiality	8	3	1	3

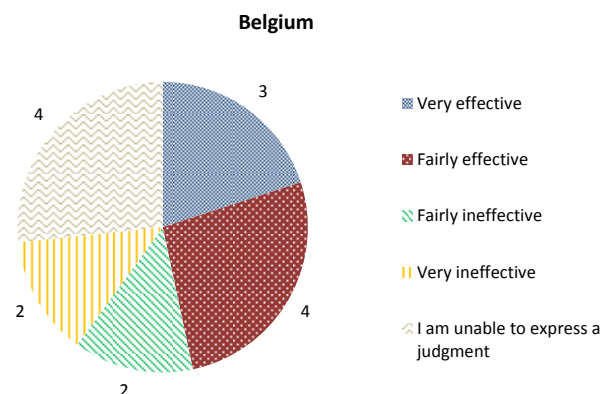
Respondents: companies and organisations located in Belgium aware of the national initiative

Number of collected answers: 15

Roughly half of respondents attributed a strong contribution to the overall effectiveness of the initiative to all the three elements under analysis: the capacity to address and settle disputes, to ensure transparency and to ensure confidentiality. This somewhat confirms the importance of all these elements in determining a favourable judgment on the overall effectiveness of the initiative in tackling UTPs (see Figure 9.4)

Question n.32 – “Which is your judgment about the overall effectiveness of the [NAME OF THE NATIONAL INITIATIVE] in tackling UTPs?”

Figure 9.4 – Judgment on overall effectiveness of Belgian stakeholder’s platform



Respondents: companies and organisations located in Belgium aware of the national initiative

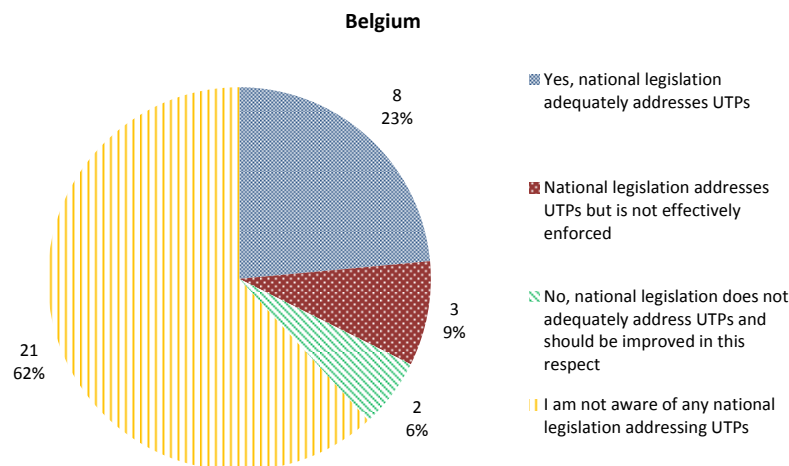
Number of collected answers: 15

With the caveats stemming from the limited number of replies, the survey results show a prevalence of positive judgments on the overall effectiveness of the initiative (not considering respondents who could not express a judgment). It is interesting to note how, although the Belgian initiative is the only one among the five assessed in the study which directly dealt with actual cases of UTPs so far, the number of respondents which were unable to express a judgement is not negligible.



Question n.33 – “Does national legislation in the country where your company/organisation is based adequately address UTPs?”

Figure 9.5 – Judgment on national legislation addressing UTPs in Belgium (% and abs. value)



Respondents: companies and organisations located in Belgium

Number of collected answers: 34

In Belgium there is an apparent discrepancy between the number of respondents judging the legislation in place as adequate, and the number of respondents who are not aware of any specific legislation addressing UTPs. In this context, it must be noted that in Belgium there is no specific legislation in place addressing UTPs: this explains the clear prevalence of respondents declaring not to be aware of any legislation, while the positive judgment about legislation expressed by a significant share of respondents is difficult to interpret.

Interviewees generally believed that the dispute resolution mechanism of the initiative was effective. However, one interviewee in particular deemed that the dispute resolution mechanism was not fully effective. This interviewee believed that there would be a greater number of cases if the mechanism was fully effective, but at present operators may be afraid to introduce complaints; this was considered particularly relevant for SMEs.

As was noted at § 4.1.2, the Belgian initiative does not focus on specific UTPs; it is rather based on a list of positive principles which should be respected. The efforts which have been made to promote awareness of the initiative itself are outlined at § 9.1.4.4. No additional efforts to promote awareness of UTPs were identified by interviewees. As reported at § 9.1.4.4, communication so far has been focused inside federations. However, with the recent information session, the launch of the website of the initiative, and the joint press conference, communication on the initiative has started to target a wider audience; interviewees believed that coverage by more mainstream media may also follow.

Interviewees generally believed that the initiative has had a positive impact on the trading environment. This positive impact was assigned to a higher awareness of UTPs leading to a change in the attitude of certain operators, and the possibility for different parts of the chain to discuss UTP-related issues through the platform. The possibility for a company to be ejected from the initiative was considered a strong potential deterrent to misbehaviour by certain interviewees (though not by others). It should be noted that, in the case a company were to be ejected from the initiative, it would simply be removed from the list of members (i.e.

no formal announcement is foreseen). Some interviewees believed that the ejection of a company would nonetheless become widely known through word of mouth and possible press coverage (hence the validity of the deterrent); on the contrary, other interviewees felt that without direct and explicit “naming and shaming”, the ejection of a company might pass unnoticed. It should also be noted that no company has been ejected from the initiative so far.

#### 9.1.4.2 Capacity to ensure transparency

The main mechanism identified by interviewees for ensuring transparency was the annual report (and its contents). The annual report contains information on changes in membership, cases addressed and other work performed under the initiative over the year.

Interviewees considered the annual report an effective mechanism for ensuring transparency, given that it provides a clear and concise update of developments under the initiative. The method of describing cases of UTP-related disputes was considered effective - assuming that information provided on cases is transparent - but also ensures the confidentiality of the parties involved (no operators are individually named). One interviewee noted that some parties were in favour of increasing transparency by naming individual operators involved in cases; however, such interviewee considered this not to be a good option, as it could discourage operators from being involved in the initiative.

The recent launch of the website for the Belgian initiative was considered by interviewees to be a further measure to ensure its transparency.

On balance, interviewees believed the transparency of the initiative to be good, and did not identify any improvements which would not compromise confidentiality.

#### 9.1.4.3 Capacity to ensure confidentiality

Interviewees considered the issue of confidentiality to be linked to that of dispute resolution (see § 9.1.4.1). The following mechanisms for ensuring confidentiality during dispute resolution were identified:

- The discussion of cases in the governance board is considered confidential; members of the governance board are not allowed to disclose this information.
- Complaints and replies from operators involved in cases are verbal; a large dossier is not created for each case.
- Operators involved are not individually named after conclusion of the case.

Interviewees noted that the issue of anonymity is separate from that of confidentiality, and that the aggregated dispute resolution procedure can help in safeguarding anonymity. However, one interviewee believed that the guarding of anonymity was difficult, as often the accused party involved in a dispute could “guess” who the other party was without actually knowing its identity. It is important to note that such problem does not directly derive from weaknesses in the mechanisms in place to guard confidentiality, but rather from the ability of one operator involved in a dispute to work out the identity of the complainant on the basis of the nature of the complaint and of other clues.

No ways for improving confidentiality were identified by interviewees. However, one interviewee did express concerns that confidentiality may be compromised in some cases under the recently proposed changes which foresee economic inspection by the Ministry of Economic Affairs. This interviewee noted that, in case the ministry is involved in economic inspection, it will have access to commercially sensitive information which

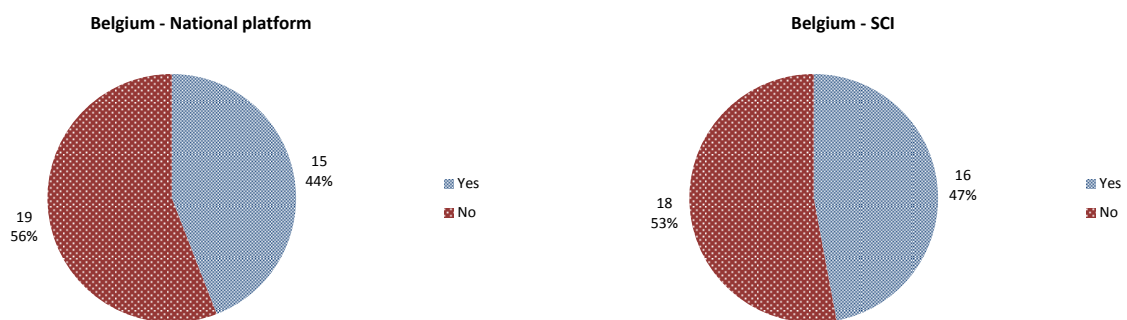
the industry may prefer to keep to itself. This proposed change might therefore have negative impacts on confidentiality.

#### 9.1.4.4 Awareness and trust in the national initiative

Survey question n. 27 measured the awareness of the national initiative among respondents.

*Question n.27 – “Have you ever heard about/do you know [NAME OF THE NATIONAL INITIATIVE], a national initiative launched with the aim of increasing fairness in commercial relations along the food supply chain?”*

*Figure 9.6 – Knowledge of Belgian stakeholder’s platform and comparison with knowledge of the SCI (% and abs. value)*



*Respondents: companies and organisations located in Belgium*

*Number of collected answers: 34*

Awareness of the national initiative among Belgian operators is comparable with the awareness of the SCI among them; considering that the average level of awareness of the SCI across the EU is around 27%, the awareness levels about voluntary initiatives (both the national one and the SCI) in Belgium are much higher.

On one hand, the presence of the national platform may result in an increasing level of knowledge also of the initiative at EU level; on the other hand, it is important to highlight that the Belgian code of conduct was signed in May 2010, more than three years before the launch of the SCI: a higher level of awareness of the national platform than of the SCI was therefore expectable for the country. Survey results suggest that there is anyway still room for increasing the awareness of operators about the Belgian initiative.

Interviewees confirmed that while considerable work had been done to promote the awareness of the initiative, the overall level of awareness remained fairly low, and not just in the wider agro-food chain, but also among the members of the initiative, at least in some cases. Low awareness among members of the initiative was identified as an issue for associations which have signed up on behalf of their members (i.e. Boerenbond, ABS, FWA, UNIZO and UCM). One interviewee noted that while considerable efforts had been made to promote the initiative within most of these associations (e.g. through articles in association publications and the organisation of specific events), many members were still either unaware of the initiative or did not understand how it works. One interviewee also felt that the initiative was better known in Flanders than in Wallonia; this is partly corroborated by the higher level of interaction with the Flemish and Federal ministries on the initiative, as demonstrated by annual reports, and by the absence of Walloon SME organisation UCM from the code of conduct working group for the code. One interviewee also noted that the

method of organisation of farmers in Wallonia (i.e. in vertical sector federations) may impact the degree of involvement of the Walloon farmers' federation FWA.

With regards to associations with members which sign up to the initiative individually, interviewees reported that the initiative had been promoted in these associations through newsletters, information sessions and personal contact with some members. However, in some cases, awareness appears to remain low; for example, less than one-third of FEVIA members have signed up to the initiative.

While the level of awareness was low, interviewees generally felt that recent developments would help to increase general visibility; more specifically:

- The launch of the website in June 2015.
- An information session on June 16, 2015 which was attended by around 50 operators.
- The joint press conference with the Ministry of Economic Affairs of June 29, 2015.

It was felt by interviewees that these developments may help in inciting more general press coverage, and that more press coverage would provide higher visibility to the initiative. The website was also expected to help SMEs to better understand the initiative.

While interviewees acknowledged that considerable effort had been made by industry associations to increase awareness among their members, they also believed that further efforts could be made. One identified method of increasing awareness internally in associations was an organised promotional tour during which companies could be visited (however, there may be the issue of financing such a promotional activity). Another identified method was training on the initiative; in this context, it should be noted that training sessions for SMEs were foreseen following the mutual recognition by the SCI (see § 9.1.1), albeit such sessions have not yet taken place. One interviewee also noted that some operators only become aware of the initiative when they understand that their inter-professional trade agreement (IPA) is based on the work of the initiative. This implies that there might be scope for raising awareness of the initiative through the connection with specific IPAs.

#### **Level of trust in the national initiative/national platform**

Interviewees had mixed views on the level of trust of operators in the platform. On one hand, certain interviewees did not believe that there were any issues with trust in the initiative. These interviewees felt that confidentiality was well protected (§ 9.1.4.3) and consequently operators could have trust in the initiative; they also felt that the track record of the initiative with dealing with disputes had increased the level of trust in the initiative. On the other hand, one interviewee believed that the inability to guard anonymity diminished the operators' trust in the initiative, and consequently acted as a barrier against the introduction of complaints. The same interviewee believed that an increase in the number of cases may help overcome the anonymity obstacle. This type of fear of retaliation was identified by another interviewee as a possible reason for the relatively low number of cases treated by the initiative. One interviewee noted that certain operators may not have trust in the initiative due to the presence of other actors of which they are afraid.

#### **9.1.4.5 Main findings on the overall effectiveness of the initiative in tackling UTPs**

It is important to note that the Belgian initiative is in the process of being modified, and that the proposed changes will impact the governance structure, as well as – at least potentially - the internal monitoring system and the solutions for ensuring transparency. The expected changes are the outcome of proposals for improvement by different stakeholders, and they will presumably further enhance the effectiveness of the platform for what concerns the governance structure, internal monitoring system and solutions for ensuring

transparency and confidentiality. No additional suggestions for improvements to any of these aspects emerged from the assessment.

While on balance evidence suggests that the overall level of awareness of the initiative is not high, participation of some 224 individual members and practical experience in dealing with UTP cases suggest that there is a certain level of awareness. Considerable efforts have been made inside federations to increase awareness; this said, taking into account that the Belgian platform was launched more than four years ago and that since 2010-2011 the overall number of members has remained stable, further efforts are reasonably required in order to guarantee an additional development of the initiative. Recent efforts to increase awareness (joint press release, launch of the website of the initiative and an open information session) may form a base for future awareness-raising actions.

On balance there would appear to be some issues in relation to trust in the initiative. These appear to stem primarily from the inability to guard anonymity, and a consequent fear of retaliation. The suggested solution to this issue was an increase in the number of cases treated by the initiative; however, no simple way for increasing the number of cases was identified in the assessment.

The Belgian initiative tackles UTPs through two mechanisms. The PGP and IPAs aim at encouraging good business relationships and at avoiding the occurrence of UTPs. The dispute resolution mechanism aims at assisting operators which believe that they are facing a UTP. The dispute resolution mechanism contains provisions for two types of dispute, aggregated and individual/bilateral, albeit so far only the aggregated mechanism has been used.

Some 17 cases were addressed under the dispute resolution mechanism between the launch of the code of conduct and June 2014. Evidence about the effectiveness of the dispute resolution mechanism is mixed. On one hand, it is not easy to understand if 17 cases are an overall sufficient result (i.e. if the number of cases could have been higher in presence of a more effective mechanism); on the other hand, it is worth stressing that the very existence of cases (in contrast with what observed in the other initiatives under study) should prove that the mechanism works. The ability to introduce aggregated complaints, and the confidentiality provisions in place (§ 9.1.4.3) do provide a theoretical framework for addressing the fear of retaliation issue, though it may be difficult to avoid retaliation and safeguard anonymity, as demonstrated by one case relating to the exclusion of a supplier. The ease with which complaints can be introduced through the board members of reference federations can be considered a strength of the initiative. Some changes are foreseen to the dispute resolution mechanism which may positively impact its effectiveness in the future. The introduction of an independent chairperson can also be considered an important step to improve the effectiveness of the platform, and to promote an increase in the number of cases treated.

The evidence collected – although limited to elements emerged from interviews – shows that the platform has had a positive impact on the trading environment in Belgium through improved awareness of the issue of UTPs, and the provision of opportunities for dialogue on the topic.

## **9.2 Finland**

### **9.2.1 *Influence of the Principles of Good Practice and of the Supply Chain Initiative on the national stakeholders' platform***

The Finnish Board of Trading Practices in the Food Supply Chain functions as a national platform implementing the SCI in Finland. The initiative can be deemed as fully compatible with the SCI in practice, and is mainly meant to evaluate compliance with the PGP in aggregated disputes involving Finnish parties and within a Finnish market environment. The SCI Governance Group has informed the Finnish board in June 2015 that mutual recognition - and hence full compatibility - will result from a standard formal procedure, but also

that there is no need for the Finnish initiative to adapt its system, as both the PGP and the Framework are already fully respected in the Finnish initiative. The Finnish board's decisions about actions for the formal mutual recognition procedure are expected in the near future.

### **Influence exerted by the PGP**

Major Finnish retailers and food and beverage producers have already implemented business practices which are in line with the PGP: such principles are hence not new to the food supply chain actors. For example, the SOK group, Kesko group and Suomen Lähikauppa have already implemented such principles in their daily business procedures, as revealed in interviews. These companies together account for over 80% of the grocery trade in Finland<sup>64</sup>.

The PGP are in line with the principles already laid down in the Finnish legislation about competition and fair trading practices, as explained at § 9.2.4.1. Therefore it can be concluded that the PGP did not have an influence on the creation of the board, which promotes their implementation in Finland.

### **Influence exerted by the SCI**

Even if a formal mutual recognition procedure has not been finalised yet, the Finnish board can be deemed as already fully compatible with the SCI in practice. This statement is based on a review of the Rules of the board and of the website of the SCI, and it is confirmed by interviewees, including the Finnish board itself, which received a communication on the matter from the SCI Governance Group in June 2015.

As Finnish companies (retailers and food and beverage producers) are used to operate under self-regulatory mechanisms<sup>65</sup> - including voluntary commitments - and have a tradition for dealing with bilateral disputes in their early stages, the implementation of the SCI in Finland has, as such, not brought a new way of doing business to Finland.

To put the relation between the SCI and the Finnish board in the right context, it is worth noting that the concept of UTP is not recognised as such in the Finnish food supply chain<sup>66</sup>; however, from a report published by the FCCA<sup>67</sup> (2012) and from elements provided in interviews it is clear that some practices that could be considered as UTPs do exist, and that such practices are often considered to fall in a sort of "grey area". Cases of UTPs in the food supply chain are bilateral (rather than aggregated); no cases of UTPs in the food supply chain have been brought to the Market Court so far. As examples of practices whose definition as UTPs is not universally agreed upon, the following can be mentioned:

- Conditional purchase requirements where retailers demand exclusive supply agreements, minimum supply quotas or tying.
- Retailers requesting special discounts from suppliers in order to keep them in their distribution network. Examples are shelf space fees, marketing allowances, additional compensations and other special fees.
- The demand for at least similar terms as offered to other retailers. This includes "most favoured customer" clause and the demand to publish the cost structure.
- Other examples are termination of long-term contracts on a short notice and removal of products from a selection.

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<sup>64</sup> Finnish Grocery Trade Association, 2014.

<sup>65</sup> Self-regulatory mechanism: a commitment of an entity to implement specific principles and procedures and comply with these. This is a very common mechanism in Finland and not only within the food sector.

<sup>66</sup> ETL, 2013.

<sup>67</sup> Björkroth et al, 2012.

The above evidence documents that some “grey area” practices do exist in the Finnish food supply chain, and that they may impact both food and beverage producers and farmers acting as suppliers to the retail market. The situation about UTPs and the “grey area” practices is further elaborated in section 9.2.4.1.

### **Main findings**

Many similarities exist between the SCI and the Finnish platform; although a formal mutual recognition still has to be finalised, the two initiatives are considered to be fully compatible in practice.

The PGP are generally considered to be in line with the existing legislation and with the principles already adopted by Finnish companies in their daily business: as a consequence, their influence in the development of the Finnish initiative seems limited.

Finally, the influence of the SCI on the Finnish initiative can be deemed strong and evident. Indeed the declared objective of the board is to implement the SCI in Finland: in this context, all the key features of the SCI were replicated in the Finnish platform, to the extent that membership in the latter occurs automatically when a company registers to the SCI.

#### *9.2.2 Participation in the initiative*

The Finnish board was founded by the following three federations:

- ETLS (Finnish Food and Drink Industries and Federations)
- FGTA (Grocery Trade Association)
- MTK (farmers)

In 2015 MTK withdrew from the board, which is now composed by ETLS and FGTA alone.

Irrespective of their membership to the above federations, companies have to sign up individually to the SCI in order to become members of the Finnish initiative. As a consequence, there is no separate membership to the Finnish initiative; in order to bring a case to the board, the applicant has to be a member of the SCI. Membership can be obtained by following the procedures laid down by the SCI. This procedure includes a due diligence during which the applicant has to go through the routines and practices of the company to check if the PGP are implemented and applied (self-assessment procedure). The due diligence can be based on a toolset provided by the SCI, or the company can do it on its own.

From interviews with operators of the trade sector which registered to the SCI, it emerged that significant efforts have been made to raise the awareness of such membership within the company. Interviewees also stated that the commitment to the SCI membership has to come from top-management, and that from there it has to be spread to all the levels of the company hierarchy. By way of example, if a major Finnish retailer registers with the SCI, membership would be valid for the entire retail group including all national (and international, if any) subsidiaries. To obtain commitment and awareness it is necessary to inform managers at all levels of the company (i.e. senior level and intermediate level managers), staff involved in buying and selling products, and personnel in the stores; a very large number of people within a company hence needs to be informed, and has to act in compliance with the PGP. It was also claimed in interviews that large retailers have imposed training activities onto their staff to ensure compliance with the PGP, but no further details about such activities were revealed.

A number of interviewees underlined that companies that have signed up to the SCI are required to state this on official trading documents such as contracts. This is regarded as a way to promote the implementation of the PGP.



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By June 2015, 46 companies operating in Finland had signed up with the SCI (Table 9.6). No information is available about the evolution of participation since the launch of the board in January 2014; it is only known that the number of members has been quite steady since the launch of the board.

*Table 9.6 - Companies operating in Finland and with membership to the SCI - July 2015*

Category of company	Number of companies having joined the SCI
Finnish farmers	0
Finnish food producers	5
Finnish companies in retail and wholesale	17
Multinational companies with operations in Finland	23
Actors from the farming sector with operations in Finland	1 (this registration is Arla Foods, an international dairy cooperative)

Source: elaboration on [http://www.supplychaininitiative.eu/registry?field\\_country\\_tid=18](http://www.supplychaininitiative.eu/registry?field_country_tid=18)

Uptake of the Finnish board in the retail sector is very good, as companies which are members of the SCI cover more than 95 % of the total market volume. In the food and beverage industry the coverage is instead much more limited. Interviewees revealed that the Finnish Food and Drink Industries Federation counts 260 members, of which some 150 companies supply retailers as private label producers. Only a handful of Finnish food and beverage producers had signed up to the SCI by July 2015; these operators are estimated to account for only about 3% of the Finnish food and beverage industry's turnover<sup>68</sup>. It has to be remarked that none of the leading Finnish food producers with activities in the domestic and foreign markets have signed up to the SCI. Finally, the absence of farmers within the membership base of the initiative, together with the recent withdrawal of MTK from the board, resulted in the lack of representation of the farming stage of the chain in the initiative.

Within the limitations given by the low number of replies, answers to the survey questions on participation reveal similar results. Results of question n.28, which classifies the respondents by sector, indicate that the majority of Finnish respondents which are members of the national platform are retailers; as already noted for the Belgian initiative, no farmer or producer participating in the survey declared to have joined the initiative.

<sup>68</sup> estimate based on statistics provided by ETL; food industry gross value by 2012 was 11 billion EUR. [www.etl.fi](http://www.etl.fi), July 2015



Question n.28 – “You have stated that you know about [NAME OF THE NATIONAL INITIATIVE]. In relation to [NAME OF THE NATIONAL INITIATIVE], your company/organisation:”

Figure 9.7 – Members of Finnish stakeholder’s platform



Respondents: companies and organisations located in Finland member of the national initiative

Number of collected answers: 10

### Motivations behind membership

According to interviews with the supply chain actors, the main motivations for joining the board are:

- Willingness to improve trading practices.
- Willingness to improve the operation of a company.
- Expectation to gain image benefits.

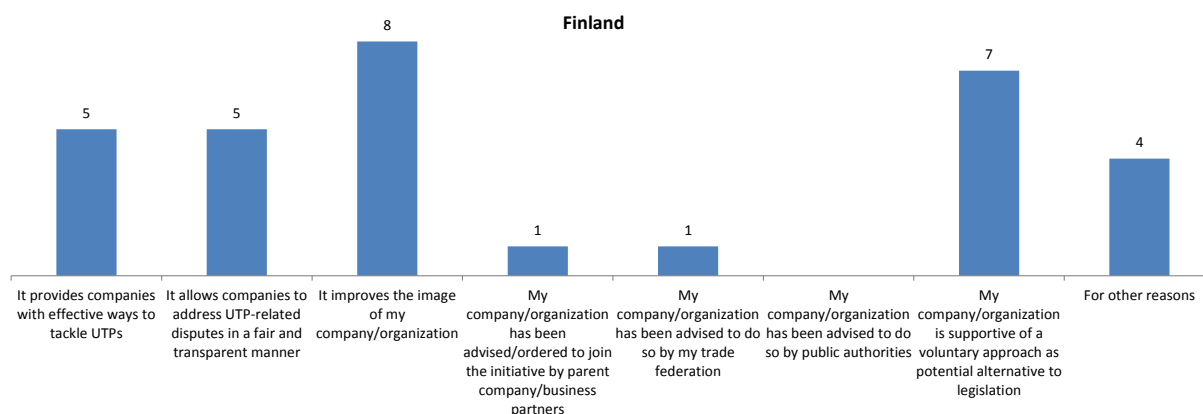
It emerged clearly from interviews that a key motivation behind membership has been the “it is better to join a good initiative than to stand outside” attitude.

Interviews with companies revealed that the person in charge of membership to the Finnish board is not directly involved in negotiating contracts or in buying or selling products. The contact person is usually an employee at corporate level with legal insights and neutrality with regard to business dealing.

With the caveats deriving from the low number of respondents, survey results (Figure 9.8) suggest that the positive impact on the image of the company is likely to play an important role in the decision to join or not the national initiative; the other prevalent motivations are basically in line with those already emerged for the SCI.

**Question n.29 – “Your company/organisation joined/is joining [NAME OF THE NATIONAL INITIATIVE]because:”**

**Figure 9.8 – Reasons behind membership**



*Respondents: companies and organisations located in Finland member of / applying to / with intention to apply to the national initiative*

*Number of collected answers: 11 respondents, 31 total options (possibility of multiple answers)*

### Motivations behind non-membership

The very limited number of answers related to the question about the reasons behind non-membership in the initiative does not allow to draw any conclusions on this issue. These results are reported in Table 9.7 for sake of completeness only. Additional elements regarding this aspect were provided by interviewees, and are reported below.

**Question n.30 – “Your company/organisation has no intention to join [NAME OF THE NATIONAL INITIATIVE] because:”**

**Table 9.7 – Reasons behind non membership to Finnish stakeholder’s platforms (n. of selected options)**

	Finland
It is an ineffective way to tackle UTPs	-
It lacks fairness and/or confidentiality and/or transparency in addressing UTP-related disputes	-
UTPs are not a serious problem for my company	1
Existing legislation effectively addresses UTPs	-
My company fears unfavourable attitude / retaliation from its business partners	-
My company is a member of The Supply Chain Initiative (at EU level)	-
The overall costs/resources for joining the initiative are too high in relation to potential benefits for my company/organization	1
For other reasons	3

*Respondents: companies and organisations located in Finland with no intention to apply to the national initiative*

*Number of collected answers: 5*

Interviews with the secretary general of the board and with representatives of the three federations highlighted three general reasons for not joining the SCI (and hence the Finnish board):

- A general lack of awareness about the initiative (please refer to § 9.2.4.4 for more details).
- A requirement for commitment at corporate level.
- Fear about possible loss of competitiveness.
- The challenges connected with the procedure for signing up via the SCI website and the requested due diligence (which may prove troublesome for SMEs and farmers).
- The mental distance between Finland and Brussels, and possibly also language barriers.

Moreover, from interviews with the organisations representing operators, it became clear that an important reason for not signing up to the SCI is the binding nature of this initiative. The point is that if a Finnish company signs up, the entire company - including its operations and subsidiaries in foreign countries - has to comply with the PGP (see § 9.2.4.1). This can lead to reduced competitive power in the following cases:

- A Finnish SCI-member company sells its products in the Finnish market, where it competes also with foreign non-SCI member companies. This situation is relevant for food and beverage producers, for wholesalers and retailers.
- A Finnish SCI-member company exports its products to a market where competitors are not members of the SCI. In this situation, the Finnish company has to comply with the PGP in Finland as well as in export markets: the Finnish company hence has - in principle at least - to act more tactfully than its competitors. This situation is relevant for food and beverage producers.
- A Finnish company has registered for SCI and therefore also the company's subsidiaries in foreign countries have to comply with the PGP. This may impact adversely the competitiveness of the Finnish company and of its subsidiaries outside Finland, as competitors which have not signed to the SCI can be non-compliant with the PGP. The situation is relevant for food and beverage producers, wholesalers and retailers.

The lack of commitment in the SCI from trade partners and competitors in, for instance, the Baltic countries and Poland, were often mentioned in interviews as being of particular relevance to Finnish companies. This issue appears to be the most important reason why the large Finnish food companies have not signed up to the SCI.

Another issue which emerged from interviews is the fact that food and beverage producers do not see the board as an effective mechanism. Food and beverage producers concede that the PGP as such are good, but the enforcement mechanism (i.e. how the board functions) is not effective enough, as the board has no real enforcement powers. A reason behind this argument may also be the imbalance of bargaining power between retailers and food and beverage suppliers in the Finnish market.

It is also important to note that no Finnish farmers have signed up to the board so far. In interviews, this was explained by the farmer's fear of losing anonymity if a case is brought to the board. It was claimed that "the Finnish market is so small that in the end everybody will know who the involved parties were". It has anyway to be noted that this is only speculation, as no cases have been brought to the board so far. Another remark made in interviews is that the "cultural distance" between a Finnish farmer and the SCI in Brussels is often substantial.

#### 9.2.2.1 Implementation costs for SMEs joining the national initiative

Registration to the SCI is free of charge for companies. The most important cost items derive from: time spent on the due diligence procedure (the SCI self-assessment tool); time spent on internal communication for awareness raising; and time required for planning and conducting internal training activities (which are mandatory following a registration to the SCI). No elements from interviews provided any indications of the time needed to register and go through the SCI self-assessment tool, or about other internal costs for e.g.

training and awareness-raising in companies. No conclusions about the implementation costs for large companies, SMEs or farmers can hence be drawn.

All companies wanting to sign up to the Finnish platform have to go through the self-assessment procedure required by the SCI. This procedure may prove too comprehensive and resource-demanding for SMEs and farmers, thus making it less attractive for these operators to sign up. Interviews in Finland with federations and companies confirmed the relevance of such issue; however, it must be noted that the recent decision of the Governance Group which simplified the procedures to join for micro and small enterprises to the SCI will also apply to the Finnish platform, and thus it can be expected that most of the above costs and requirements for SMEs will be drastically reduced.

No information emerged from interviews or from literature review about the actual costs for having the Finnish board in operation, except the fact that the three federations involved in the board each pay one third of the annual costs for maintaining the system. These costs include administrative tasks and preparation of cases.

#### 9.2.2.2 Main findings about participation in the initiative

The investigations made revealed that the penetration of the board is very strong in the retail sector and very weak among food and beverage producers. No farmers have signed up to the initiative so far. The number of members has been quite stable since the inception of the board. It can be questioned if the efforts of awareness-raising activities have been sufficient. The imbalance in the membership, with an over-representation of retailers and an under-representation of food and beverage producers, may also raise doubts on the overall effectiveness of the initiative. However, as there have been no cases brought to the board so far, such doubts derive from mere speculation.

### 9.2.3 Governance structure and internal monitoring system

#### 9.2.3.1 Governance structure

Details about the governance structure were given at § 4.2.2. From all interviews there was consensus that the governance structure is fully operational and that it is generally regarded as appropriate to deal with aggregated disputes. This is due to the fact that the board can count on legal expertise by the Chairman and other members, and on technical and supply chain expertise by independent experts. The secretary general has the responsibility to prepare cases, and this ensures an impartial and anonymised presentation of disputes to the board. Interviewees regarded as a strength the fact that the whole supply chain (farming, processing and distribution stages) was represented via the Federations (originally including FGTA, ETL and MTK); however, the recent withdrawal of MTK from the board and the fact that no farmer has joined the initiative so far raise serious concerns on the actual representation of the different stages of the supply chain in the governance structure of the platform.

The board only deals with aggregated disputes involving Finnish parties: this is considered to be a more efficient way of dealing with aggregated disputes in the Finnish market compared to taking a dispute for settlement in the SCI. The members of the board are appointed by the Chamber of Commerce; besides representatives from supporting federations (now only FGTA and ETL), the other members of the board are independent from the food supply chain. The board is very attentive to impartiality and this issue is specifically mentioned in the Rules; no board member can participate in decision making and voting in a case where he/she could have, or have had, an interest.

Interviewees underlined that in-depth knowledge and insights into the local market conditions and business practices are required in order to make decisions about good trading practices and subsequently outline guidance in a format that can be implemented in Finland. A Finnish board is deemed to be in a better position to ensure compliance with national legislation and consistency with the Finns' way of doing business. Language barriers are also considered to favour the Finnish initiative. As a consequence, the national board is perceived as a more efficient body than a EU-level initiative when it comes to disputes regarding the Finnish market.

On the other hand, interviewees noted that the board's lack of power to implement its decisions can be regarded as a weak element in the governance structure. No suggestions for improvement were however put forward by interviewees. There seems to be consensus among interviewees that it is a good element that before a final decision is announced to the involved parties, the board has to consult the SCI for its opinion. According to interviewees, this ensures that decisions about UTPs drive forward the implementation of PGP in Finland in a commonly agreed EU-level format.

#### 9.2.3.2 Internal monitoring system

The Finnish board has no internal monitoring system. This emerged in a clear way from the Rules of the board and from all interviews. There is no information about a potential procedure for an internal monitoring system in case of an aggregated dispute.

#### 9.2.3.3 Main findings

Besides the supporting sector associations, the governance structure of the Finnish board also involves a third party, as it is chaired by an independent figure with legal and economic expertise. This remarkable difference with the SCI can be considered as a strength, at least in theory, since it ensures a higher level of both expertise and impartiality. Having said that, it is worth remembering that the governance structure has not dealt with actual UTP-related cases yet, and therefore no concrete evidence is available for a proper assessment of its adequateness.

The impartiality of the members of the board is considered crucial and – again differently from the SCI – representatives with a potential conflict of interest cannot vote on decisions. However, the current organisation of the governance structure is about to change due to the recent exit of MTK (national farmers' union) from the constituency of the board: in this context, the evolution of the initiative in the next months will be of crucial importance in order to understand whether and to what extent this unwelcome development might compromise the possibility of a wider participation to the initiative at all stages of the supply chain, as well as the impartiality of the governance structure.

### 9.2.4 *Effectiveness of the initiative*

#### 9.2.4.1 Effectiveness in addressing and settling disputes

The procedure for tackling UTPs (i.e. bringing a case to the board) was explained at § 4.2.2. No cases have been brought to the board so far: as a consequence, the discussion on the procedures developed in this paragraph is only based on the Rules of the board and on (theoretical) considerations made by interviewees.

The rules of the board state that an aggregated dispute can only be brought to the board if there are at least two companies with a similar vertical relationship being subject to the same offence. Such conditions can occur in practice if there is transparency and dialogue between the actors operating at the same level of the

supply chain. From interviews, it emerged in a clear way that such dialogue is neither strong nor common in the Finnish food and beverage sector. The same situation applies to the farm sector.

In case of an aggregated dispute, the board can only issue guidance on PGP. It is then up to the involved parties to follow and implement this guidance into their business practices. It emerged from interviews that the negative impact from not complying with PGP mainly lies within the risk of image damaging: it is hence in the company's own interest to comply with the PGP and to adapt to the guidance provided in case of a dispute. Also highlighted in the interviews was the fact that it has still to be proven in practice if the board's rules are adequate to communicate guidance to a wider target group than the involved parties in case of an aggregated dispute.

The board should be perceived as an additional measure for tackling UTPs and, as such, it supplements the already existing instruments, i.e. bilateral agreements and contracts between the parties, arbitration, and the Market Court. The FCCA stated that it regards the board as an add-on to the existing system for settling trading disputes, and as a way of improving the dialogue between the actors of the supply chain.

As stated above, no cases have been assessed by the board yet: no practice for tackling UTPs through the Finnish initiative has hence been established. According to the rules of the board, SMEs do not benefit from special conditions for launching a case. It is therefore perceived that SMEs will not be subject to any special or preferential treatment in case of an aggregated dispute.

The robustness of survey results on the aspects which determine the effectiveness of the Finnish initiative in tackling UTPs (Question 31) and on the overall judgment on such aspect (Question 32) is again limited by the rather low number of replies.

*Question n.31 – “Please assess the contribution of each of these elements in determining the overall effectiveness of [NAME OF THE NATIONAL INITIATIVE] in tackling UTPs”*

*Table 9.8 – Contribution of single elements in determining the effectiveness of Finnish stakeholder's platform in tackling UTPs*

<b>Finland</b>	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Effectiveness of the initiative in addressing and settling disputes	7	7	3	5
Capacity to ensure transparency	7	7	3	5
Capacity to ensure confidentiality	8	6	3	5

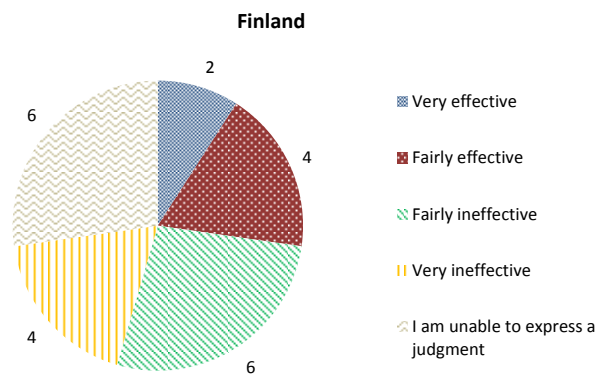
*Respondents: companies and organisations located in Finland aware of the national initiative*

*Number of collected answers: 22*

Only a minority of respondents saw a strong contribution to the overall effectiveness of the initiative for the three elements under assessment: the judgment for the Finnish initiative in this respect is more negative than those recorded for the SCI and for the other three national initiatives assessed in the present study.

Question n.32 – “Which is your judgment about the overall effectiveness of the [NAME OF THE NATIONAL INITIATIVE] in tackling UTPs?”

Figure 9.9 – Judgment on overall effectiveness of Finnish stakeholder’s platform



Respondents: companies and organisations located in Finland aware of the national initiative

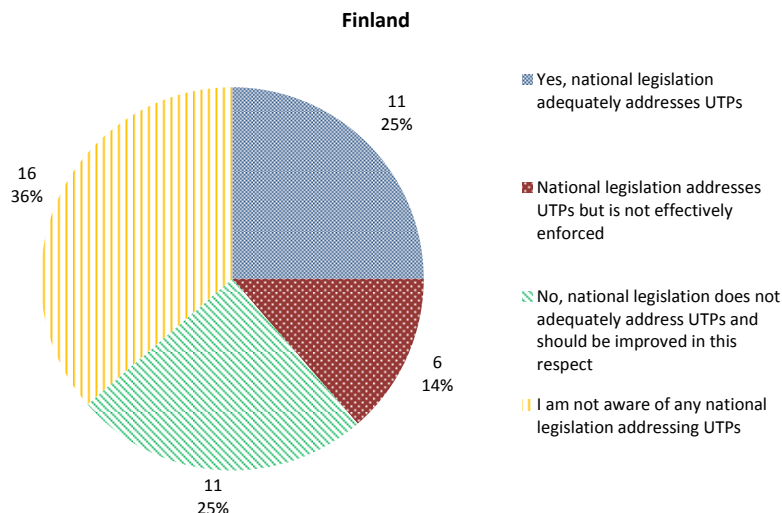
Number of collected answers: 22

Consistently with the results for the previous question, the overall judgment on the effectiveness of the Finnish board in tackling UTPs (Figure 9.9) is worse than those expressed for the SCI and for the other three national initiatives covered by the study, with 10 operators out of 22 (45%) expressing a negative judgment.

Survey question n.33 asked to respondents to express a general judgment on the protection against UTPs offered by the national legislative framework.

Question n.33 – “Does national legislation in the country where your company/organisation is based adequately address UTPs?”

Figure 9.10 – Judgment on national legislation addressing UTPs in Finland (% and abs. value)



Respondents: companies and organisations located in Finland

Number of collected answers: 44

The views of survey respondents on national legislation addressing UTPs in Finland were definitely mixed, with the same share of operators (25%) providing very positive or very negative judgements, and a smaller share underlying problems in enforcement.

### Challenges and practices related to UTPs

The FCCA produced a report in 2012 about the Finnish grocery market. Evidence from such report highlighted that private labels in Finland account for 23% of the grocery sales, and that retailers use private labels to manage product selection, pricing and display, as well as shelf-space in stores. It is also clear from the report that the Finnish food supply chain applies some practices that could be considered as UTPs, but that are usually not recognized as such. The report states that many practices applied by retailers fall in a “grey area”, and as such indicate that UTPs are likely to be part of daily business. The report reveals that buy-back claims are the most widely used form of risk transfer, and that 75 % of suppliers from the pet food and baked goods categories have been met with buy-back demands from retailers. Another trading practice is marketing allowances, which 90% of food and beverage suppliers have experienced from retailers. Food and beverage suppliers have been asked to pay marketing allowances even if no return is obtained therefrom. This shows that some activities within the “grey area” of UTPs do take place but, as it emerged clearly also from interviews, there have been no cases about UTPs in the food supply chain brought before the Market Court in recent years.

A key issue in the Finnish food market is the lack of reliable market information, and this hampers the identification of UTPs as well as of dominant market positions. It was claimed that there is a need for the supply chain actors to unite in order to set up a new market information monitoring system to collect this kind of data. If such a system was in place, then suppliers could have access to information about listings and



sales which, in relation to UTPs, is of paramount importance for investigating on listing fees and transfer of risk. At present, suppliers can only obtain information from their own systems (if they have one) or from consumer research. Interviews revealed that there have been examples of suppliers who have accused retailers of de-listing products for obtaining more space for private label products. This could be an example of a complaint that could be brought to the board. However, without proper market data this kind of complaint could most likely not be decided upon.

Some areas in Finland are sparsely populated: to ensure good living conditions in such areas, the Finnish Government provides investment aid for village grocery shops. Such shops are typically less than 400 m<sup>2</sup> and have annual sales of less than 2 million Euros. Grocery stores in villages may be independent stores or may be included in the national retail chains like Suomen Lähikauppa, SOK or Kesko. Grocery stores are supplied by national suppliers as well as local suppliers and farmers, and form the link between a local producer or farmer and the consumer market. It is not uncommon that farmers supply vegetables, or baked goods from on-farm bakeries, directly to local retail stores. Farmers are hence in a weak position when it comes to dealing with the retail sector in sparsely populated areas. This emerged clearly from interviews, as well as from a report published by the FCCA<sup>69</sup>.

According to the report from the FCCA, the farmers' weak position in the supply chain can also be related to the lack of written contracts. This situation facilitates one-sided amendment of contract terms, or giving notification of the price only after delivery or even actual sales. The trade sector also strives to transfer risks related to unsold produce by demanding that primary producers reimburse any losses. Farmers may also experience a weak position vis-a-vis food processors. Contract producers in the primary sector may have contracts that include exclusive supply obligations combined with long periods of validity of such contracts. Such kind of contracts can hamper competition and weaken the farmer's position in the food supply chain.

Potential UTPs in the Finnish food supply chain can be addressed through a number of existing mechanisms of self-regulation and commitment, through bilateral agreements, through arbitration, and through the Market Court.

The Finnish way of settling disputes (bilaterally, in voluntary self-regulatory systems, and usually before resorting to Court), the existing national legislation on competition and trading practices, and the board, each in itself and in combination with the other, are in the position to provide effective, flexible and comprehensive solutions for tackling UTPs. This emerged in a clear way from all interviews. In such a framework, it is clear that the board does not play a role in settling legal disputes, but has instead a role as provider of a "neutral ground" for bringing UTPs "to the surface" and, in this way, in making discussions about UTPs legitimate. This function of the board is perceived to spur the process towards a well-functioning supply chain.

Also remembering that the board has not dealt with any UTP cases to date, interviewees pointed to the fact that the key mission for the board should be to promote good trading practices, rather than being a means for settling disputes.

#### 9.2.4.2 Capacity to ensure transparency

According to the rules of the board, the procedure for preparing and deciding on a case is clearly defined, and there are no exemptions regarding specific sectors or company size. The only exemption concerns farmers, as this group can launch a case without having signed up to the SCI. All aggregated disputes involving Finnish

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<sup>69</sup> FCCA, 2013.

*Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain*  
*Final Report*

parties will have to be treated according to the same procedures. In this respect, the dispute resolution mechanism of the Finnish board helps to ensure transparency of procedures and results.

#### 9.2.4.3 Capacity to ensure confidentiality

As any case will have to be presented anonymously to the board (according to the procedure explained at § 4.2.2), the measures for ensuring confidentiality can be regarded as appropriate. This was confirmed in all interviews, except the one with the representative of the farming sector. From this particular interview, it was clear that assurance of confidentiality is an issue of high priority to farmers, due to the fear of recognition and subsequent risk of losing business. It was further explained in the interview that the Finnish food supply chain is so small that “in the end everybody will know who the complaining party was”. All board members must sign a non-disclosure agreement before starting a case.

It should be noted that the board goes beyond the SCI in some areas concerning confidentiality. In Finland, confidentiality and impartiality are especially emphasized, as the members of the board handling aggregated disputes are external experts. Federations participating in the board do not know the identities of the applicants, except for the federation representing the offended parties. This procedure also addresses the “fear factor” as it ensures that complainants remain anonymous.

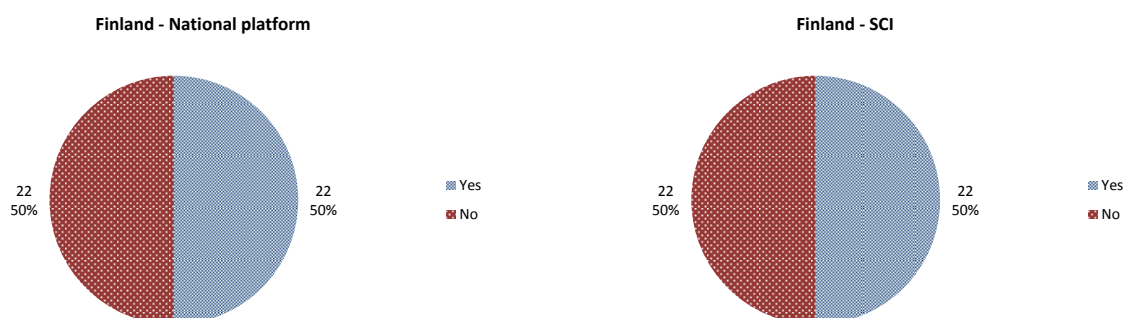
#### 9.2.4.4 Awareness and trust in the national initiative

##### **Awareness of the existence of the initiative**

The survey showed that in Finland the level of awareness of the national platform and of the SCI is exactly the same (50% of respondents); also in this case, a higher level of awareness with respect to the average across the EU (27%) must be noted.

*Question n.27 – “Have you ever heard about/do you know [NAME OF THE NATIONAL INITIATIVE], a national initiative launched with the aim of increasing fairness in commercial relations along the food supply chain?”*

*Figure 9.11 – Knowledge of Finnish stakeholder’s platform and comparison with knowledge of the SCI (% and abs. value)*



*Respondents: companies and organisations located in Finland*

*Number of collected answers: 44*

Also considering that the official launch of the national initiative took place at the beginning of 2014, the survey results show that the level of awareness of the initiative among operators in Finland can be deemed good.

When the board was launched in early 2014, the event was mentioned in national newspapers as well as in trade magazines, and was announced at a press conference. The three federations originally supporting the initiative (ETL, FGTA and MTK) have also provided information about the board to their respective member companies, and it appears ETL and FGTA have been very active in awareness-raising activities. The farmers' Federation MTK provided information to its member organisations (i.e. regional farmers' associations) and to individual farmers. Nowadays the awareness-raising activities of the initiative are however rather scarce. The board itself is not involved in awareness-raising activities and leaves this task to the three Federations.

The board is not mentioned on the website of ETL ([www.etl.fi](http://www.etl.fi)), FGTA ([www.pty.fi](http://www.pty.fi)) or MTK ([www.mtk.fi](http://www.mtk.fi)) but only on the website of the Chamber of Commerce (<http://kauppakamari.fi/en/boards/board-trading-practices-food-supply-chain/>). The board has no website of its own (as of December 2015).

From interviews with representatives of the sector federations it emerged that the bigger companies usually know about the board, but smaller companies and farmers are aware of its existence to a lesser degree. It also emerged that collaborative efforts planned for awareness-raising activities will especially be targeted at food and beverage producers. Sector federations believe that large Finnish food companies need to register in order to raise awareness and, in this way, to help expand membership.

#### **Level of trust in the national initiative/national platform**

The procedure for preparing a case and the procedure for deciding on a case are outlined in the Rules of the board to ensure transparency, equality, confidentiality and impartial treatment. This is meant to ensure a high level of trust in the board, including recognition of its impartial role, as highlighted in interviews with the secretary general and the federations.

There have been discussions in the food sector (involving company managers) about the board and its functioning mechanisms. The conclusions of the discussion point to four major issues that need to be considered if a higher level of trust and penetration of the board among food and beverage producers should be achieved:

- How can a company's image be improved by complying with the PGP, and how can feedback from customers about the PGP be used for public relations?
- How can the board be useful for settling a legal issue?
- How can the board have sufficient enforcement powers to actually make a difference?
- How can compliance with the PGP (i.e. membership to the SCI) not potentially lead to loss of competitive power? (this point is further explained at § 9.2.2.2 and § 9.2.4.1).

Interviewees pointed to the fact that because the board is established as a Finnish initiative for the implementation of the SCI, the board is regarded as more appealing to Finnish companies than the SCI. The fact that the majority of the Finnish food and beverage producers and retailers are mainly operating in the domestic market underlines such a perception (and relevance) of the initiative.

#### **9.2.4.5 Main findings on the overall effectiveness of the initiative in tackling UTPs**

The board has dealt with no cases of aggregated disputes in 18 months of operation. Interviewees identified the following as the main reasons for the board not having dealt with any cases yet:

- Companies register at corporate level, and therefore all companies within a group - i.e. its domestic and international operations - are bound by the PGP. Both retailers and food and beverage producers expressed their concerns on this issue, as it might imply loss of competitive power, especially abroad. As a consequence, large Finnish companies with multi-country operations are perceived to be especially reluctant to register with the SCI.
- Companies' uncertainty about the actions to be taken following the board's decision and guidance: companies are hence reluctant to bring cases forward (this is further explained below).
- Most operations in the farming sector are very small and operate locally with few (in some cases just one) customers: this amplifies the fear factor for farmers (as they are afraid of losing contracts with local grocery stores if they register to the initiative).
- A common statement in interviews with representatives of retailers and food and beverage producers is that Finns "do business by the book", usually comply with regulation, use common sense and do not need things "spelled out". All these features reduce the inclination of operators to start disputes.
- Existing legislation is sufficient to settle disputes.

The board interprets the way trading practices ideally should be in order to comply with the PGP in the food supply chain. It is important to underline that the board's interpretation of the principles builds on legislation, but the board does not interpret legislation. This points to the balance between the benefits and the risks of bringing a case to the board. In case of an aggregated dispute, the PGP will be applied to decide upon the case. The board will come to a decision based on its interpretation of the PGP, but the risk (from a company perspective) lies in the lack of a clear definition of what a breach actually is, and also in how the board's (and the SCI's) decision on the case can be practically implemented under Finnish market conditions. In this light, the uncertainty of how a potential breach will be defined and subsequently decided upon may impose unknown risks for a company. As a consequence, as it was often claimed in interviews, there is a need for a more detailed set of PGP tailored to the Finnish market. If such tailor-made PGP could be developed, taking into account the specific structure of the retail sector and of the processing sector, the use of private labels, and national legislation, the interviewees felt that the board would most likely experience an increase in companies signing up, and possibly also have some cases of aggregated disputes to deal with.

A central element in assessing the effectiveness of the Finnish platform is represented by the recent exit of MTK from the constituency of the board. Reasons pointed out by MTK to justify its decision mainly refer to the fact that no UTP cases were brought to the board in the first year and a half of its existence, and on the very limited enforcement powers of the board (i.e. the impossibility to declare the offending agreement void and null and to grant compensation to victims). The presence of MTK within the platform somehow granted – at least in theory – the representation of all the stages of the supply chain, and enhanced the chances of future participation of farmers; on the contrary, the present situation defines a much more challenging scenario, where the entire category of farmers will hardly be involved in the initiative. The serious issue of under-representation in the initiative also concerns food and beverage producers: although ETL is present in the board, the very low participation of its member companies in the initiative risks to make the Finnish platform a fruitless exercise, where only retailers are effectively represented.

Starting from the evidence presented in the previous paragraphs, Table 9.9 summarises the strengths and weaknesses of the *functioning mechanisms* of the Finnish SCI initiative.

**Table 9.9 - Strengths and weaknesses of the functioning mechanisms of the board**

Strengths	Weaknesses
<p>The board interprets the PGP in the context of the Finnish food supply chain.</p> <p>The board is recognised as a Finnish initiative and regarded as more “appealing” to Finnish companies than the EU initiative.</p> <p>Full support from the retail sector (membership covering 95% of market volume).</p> <p>The functioning mechanism is laid down in the Rules of the board.</p> <p>Chair and Vice-chair have high-profile legal expertise and are independent from the food supply chain.</p> <p>High level of trust, impartiality and confidentiality is ensured in case preparation and decision making. Procedures are outlined in the Rules of the board.</p> <p>The board uses external experts for ensuring in-depth knowledge about technical, legal and economic aspects of the food supply chain.</p>	<p>Withdrawal from the initiative by MTK, absence of farmers within the membership base and increasing difficulties in promoting participation within the category.</p> <p>Very low degree of participation by food and beverage producers, which raises serious doubts on the concrete possibility to have UTP cases brought to the board: two stages of the supply chain (farming and processing) are basically not represented in the platform.</p> <p>No cases yet to prove the functionality of the board in practice; the first case is needed to “break the ice” and increase awareness of the board.</p> <p>No experience or procedure for how to ensure a wider uptake of guidance on good trading practices resulting from a decision of the board.</p> <p>Uncertainty about the impact of decisions of the board – perceived balance between benefits and risks;</p> <p>Concerns about Finnish companies’ loss of competitiveness in foreign markets if they sign up to the board.</p> <p>UTPs may differ between countries and general guidance may not prove sufficient to improve trading practices: thus the need for tailor-made PGP targeting the specific Finnish market conditions.</p>

On the basis of the evidence illustrated in the previous paragraphs, the strengths and weaknesses of the Finnish initiative *in tackling UTPs* are summarized in Table 9.10.

*Table 9.10 - Strengths and weaknesses of the board in tackling UTPs*

Strengths	Weaknesses
The procedures of the board and the PGP are in line with existing Finnish legislation on competition and trading practices	No cases yet to prove the actual effectiveness of the board
The board legitimates the discussion about good trading practices and provides neutral grounds for discussing UTP-related issues	Lack of actual participation by farmers and food and beverage producers may result in a “blocked” platform, with no real chances of discussing UTP cases and solving disputes
The Finnish board is regarded to be efficient and in a good position to deal with dispute resolution in Finland, due to procedures for safeguarding confidentiality, independent experts and impartiality, and knowledge of Finnish conditions	The board lacks power to impose sanctions in case of a serious alleged breach of the PGP
Following the new section 4a in the Competition Act, the definition of dominant position is now given, and there are now stronger grounds for tackling UTPs in Finland	Lack of motivation among operators for choosing the board as the solution for settling an aggregated dispute, mainly because of the balance between the perceived benefits and risks
	The commitment to the PGP can have negative implications for the competitiveness of Finnish operators vis-à-vis competitors which have no such commitment
	The tools for preparing a case are often insufficient (due to lack of detailed market information)

All in all, the Finnish platform results to suffer from a number of serious limitations, both in absolute terms and in comparison with the other initiatives under analysis. The very limited participation of food and beverage producers, normally much more involved in similar initiatives, together with the absence of farmers and the lack of support by their national federation, greatly increases the risk of having an imbalanced platform, where only retailers are adequately represented: this also limits the chances that the board can actually be used to discuss and solve vertical B2B UTPs. Positive aspects envisaged in the design of the initiative (e.g. the structure of the governance board) might end up being useless if the problems concerning participation and representation of all the stages of the supply chain will not be addressed.

Interviewees recommended to develop the Finnish board further, towards providing tailor-made solutions matching the conditions in the Finnish market, rather than just “general guidance”. It was also recommended to consider a lighter registration procedure for SMEs and farmers - thus making membership to the initiative more appealing - and to let SMEs without membership launch bilateral disputes if they involve large companies which are registered to the initiative.

There could be room for a different role of the board in the future. Interviewees suggested that the board could play a significant role in educating operators in the food supply chain about the PGP, and in providing training and tools for promoting their implementation. Furthermore, the board might take on drafting standard contracts that farmers (and SMEs) could use when dealing with retailers.

The board will keep on having a key role in creating room for dialogue across the food supply chain to further promoting implementation of the PGP, as well as in bringing the discussion about UTPs to the surface.

### **9.3 Netherlands**

#### **9.3.1 Influence of the Principles of Good Practice and of the Supply Chain Initiative on the national stakeholders' platform**

The objectives of the SCI and of the Dutch initiative are the same, but their scope in terms of sectors is different. The SCI focuses only on the agro-food sector, while the Dutch initiative consists of two pilot initiatives in two sectors, the agro-food sector and the fashion, textile and footwear sector. The Dutch Ministry believes that the PGP can usefully be applied in all commercial sectors, and is planning to extend the initiative to a number of other sectors in case of a positive evaluation<sup>70</sup>.

Regarding other differences between the two initiatives, the national farmers' association (LTO) is part of the governance group of the Dutch initiative (although its support for the future is not guaranteed: internal discussions are being held on the matter), while the EU-level organisation (Copa-Cogeca) choose not to support the SCI. The Dutch initiative, on the other hand, does not have any representative specifically for SMEs, while at EU level there is some involvement of the SME organisation UEAPME, which attends the Governance Group meetings as an external observer. Furthermore, the Ministry has an active role in the Dutch initiative: it participates in the meetings and gives advice and suggestions. Finally, the Dutch governance board has no chair or co-chairs, unlike the SCI.

As for the similarities among the initiatives, the Dutch one took all the principles, framework, registration procedure and dispute resolution system from the SCI; there are hence no differences. This implies that, in practice, the Dutch initiative is fully compatible with the SCI, even if no formal mutual recognition has been finalised through a SCI Governance Group decision.

Given that the Dutch initiative is based on the SCI, also the type of UTPs addressed may be assumed to be similar.

#### **Influence exerted by the PGP**

Discussions about UTPs has been on-going in the Netherlands for several years. However, when the national pilot initiative was implemented, the selected option was to adopt the same PGP of the EU-level initiative also at national level.

#### **Influence exerted by the SCI**

Following the continuing discussions on UTPs, the research done on the possibility of an initiative, and the sudden pressure of the Albert Heijn case (see § 4.3.1), the Dutch government took the decision to start a pilot project. In the same period, parallel discussions were held at EU level about the SCI, and the creation of the national initiative was influenced by this. This process resulted in the adoption of the entire SCI code for the national initiative.

##### **9.3.1.1 Main findings**

The Dutch platform has numerous and important similarities with the SCI: the PGP, the Framework for their implementation, the registration procedure and the dispute resolution mechanisms are identical for the two initiatives. The only significant differences refer to the presence in the governance structure of the Dutch platform of a representative of the Ministry of Economic Affairs, and to the presence of the farmers' national association in the constituency of the initiative during its first two years of trial period.

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<sup>70</sup> The Netherlands' response to the "Green Paper on Unfair Trading Practices in the Business-to-Business Food and Non-food Supply Chain in Europe", 08/05/2013.



The PGP have had a clear and evident influence, inasmuch they have been adopted by the national platform in their entirety.

### 9.3.2 Participation in the initiative

Registration of Dutch companies to the national platform takes place on the SCI website. By signing up, Dutch companies become automatically members of both the SCI and the Dutch initiative. Furthermore, by joining the SCI, Dutch companies commit themselves to both the Framework and the PGP.

As a consequence, in order to participate to the national platform, a company must go through the following steps of the registration process, which are the same foreseen by the registration process to the SCI<sup>71</sup>:

Step 1	Sign Letter of Intent
Step 2	Inform employees about the participation to the initiative
Step 3	Assess and adapt existing trade agreements
Step 4	Appoint a dispute manager
Step 5	Train employees involved
Step 6	Appoint an internal contact point for communication with the Dutch Governance Group
Step 7	Inform trade partners about participation

Companies need to sign up individually. The reference association's signature is an incentive, but does not bind any individual company. Also farmers were initially expected to register individually, but since no single farmer did, the governance group decided in April/May 2015 to make an exception for farmers' associations, and let them register on behalf of their members. To accommodate this type of member, it was foreseen that a fourth category of membership would be added to the SCI website, though this has not occurred yet. Companies can also sign up without being members of any association.

### Categories of participants

60 companies based in or operating in the Netherlands are currently registered<sup>72</sup>.

All retailers active in the Netherlands (Albert Heijn, Aldi, Jumbo Supermarkets, Lidl and supermarket buying alliance Superunie, that represents 13 smaller supermarkets with an aggregated market share of around 30%) are formally registered with the SCI and the Dutch initiative.

FNLI has around 400 members covering around 80% of the food and beverage industry. Around 40 companies have registered so far, including the following brands: Nestle, Unilever, Mars, Ferrero, Wrigley, Coca-Cola, Kellogg's, Bieze Food Group, Peijnenburg, Verstegen, Concorp, Arch. In addition, several companies signed a letter of intent. These are however mainly the leading companies, accounting for a large share of total turnover, but for a much lower share of the total number of companies.

LTO has approximately 30,000 member companies, out of a total of more than 67,000 agricultural enterprises in the Netherlands. This represents about 65% of the Dutch production volume in Dutch size units (NGE's)<sup>73</sup>.

<sup>71</sup> SCI, Framework for the implementation and enforcement of the principles of good practice in vertical relations in the food supply chain, 25/01/2013.

<sup>72</sup> All the data were provided by the associations CBL, FNLI and LTO.

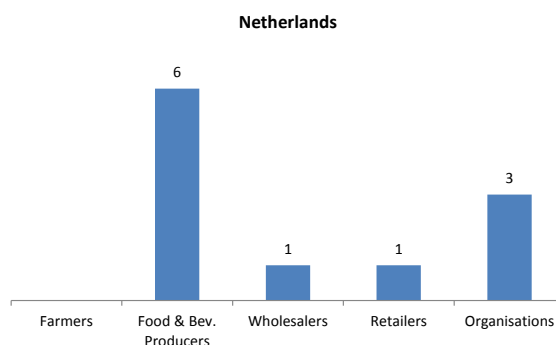


None of the individual farmers signed up. Three large co-operatives signed up, instead: sales organisation Fruitmasters (representing more than 500 fruit growers) was followed by potato organisation Nedato (with over 500 members) and by dairy cooperative FrieslandCampina (with approximately 19,000 members). In April/May 2015, when farmers' associations were allowed to register on behalf of their members, the three regional LTO organisations (ZLTO, LLTB, LTO Noord) signed up (these account for 30,000 - 50,000 farms: there is a big overlap among the three associations). Farmers which are members of these 3 associations are thus registered to the initiative, through their reference association. A few companies that are not members of any of those three associations have also registered. With reference to farmers' participation, it is worth noting that the current evaluation of the Dutch pilot may results in significant changes. The initiative is currently on hold, and the different stakeholders are discussing internally about their future support to the platform. Although no official decision has been communicated yet, farmers' association LTO anticipated that it will devote much more time and resources to other initiatives aimed at strengthening the negotiating position of farmers within the food supply chain. LTO is not against the PGP – it actually deems that the setting of standards for fair trading is a good starting point – but believes that what the pilot has achieved so far is not enough to solve the problem of the weak negotiating position of farmers. In this context, possible lack of support by LTO in the future would undoubtedly represent a serious area of concern for the effectiveness of the initiative.

The robustness of the survey results concerning the breakdown of membership by sector is seriously limited by the low number of replies. Figure 9.12 illustrates such results for the sole sake of completeness.

Question n.28 – “You have stated that you know about [NAME OF THE NATIONAL INITIATIVE]. In relation to [NAME OF THE NATIONAL INITIATIVE], your company/organisation:”

Figure 9.12 – Members of Dutch stakeholder's platform



Respondents: companies and organisations located in the Netherlands member of the national initiative

Number of collected answers: 11

### Evolution of participation over time

Retailers signed up very fast after the launch of the initiative. Within the first 6 months, all the leading retailers formally registered and complied with the code. Progression of letters of intent and complete registration of other companies has been constant since the launch of the SCI. It has taken more time for farmers to register, however. As already noted, it was initially expected that farmers would register

<sup>73</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Beantwoording vragen aangaande de oorzaken van het teleurstellend lage aantal deelnemende boeren en tuinders aan de pilot eerlijke handelspraktijken, 16/09/2014.

individually. When this did not happen, it was decided that regional LTO organisations could sign up on behalf of their members.

### Motivations behind membership

Retailers explained that they joined the initiative because the code was common sense to them, and because registration would benefit their reputation – especially after the commotion caused by the Albert Heijn and Hallo-Jumbo cases. In most cases their parent companies had already joined the European initiative. Furthermore, retailers wanted to avoid further legal intervention, as they believed that it was not only unnecessary, but could even have negative effects on competition, innovation and consumer welfare. As a consequence, retailers chose to support the SCI, believing that a bottom-up approach offers the best option to address UTPs<sup>74</sup>. Other operators, however, believe that retailers joined the initiative only because of political pressure.

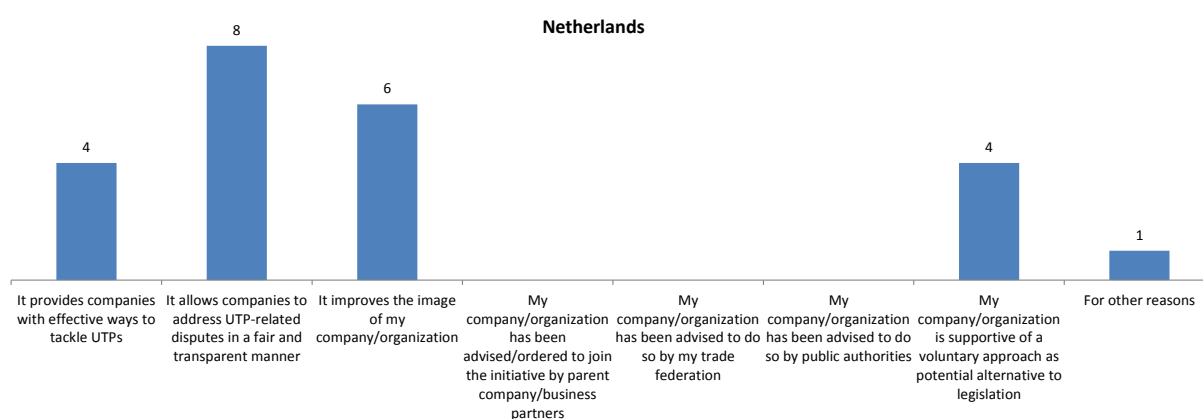
Leading operators in the food and beverage industry stated that they joined the initiative mainly because they believe that registration benefits their reputation, not because they need the initiative to tackle UTPs.

Farmer cooperatives and associations explained that they originally joined the initiative because they saw it as a way for farmers to tackle UTPs – although maybe not the most effective – and because it is better for them to be part of the initiative rather than staying out of it. More recently, farmers' association LTO expressed concern about the actual effectiveness of the initiative, not excluding withdrawal of its support to the pilot in the future.

The robustness of survey results concerning the reasons behind membership is again limited by the low number of replies (Figure 9.13); this said, the survey suggests that the possibility to address disputes in a fair and transparent manner and the positive impact on the image of the company may have played a significant role in the decision to join the Dutch initiative.

**Question n.29 – “Your company/organisation joined/is joining [NAME OF THE NATIONAL INITIATIVE]because:”**

Figure 9.13 – Reasons behind membership across sectors



Respondents: companies and organisations located in the Netherlands member of / applying to / with intention to apply to the national initiative

Number of collected answers: 12 respondents, 23 total options (possibility of multiple answers)

<sup>74</sup> Ahold Europe, Submission of Royal Ahold to the consultation of the European Commission on the Green Paper on unfair trading practices in the business food and non-food supply chain in Europe

## **Motivations behind non-membership**

Interviewees indicated several reasons that could explain low participation to the initiative on the basis of the characteristics of their company.

### **For farmers and SMEs**

- 1) No awareness (see § 9.3.4.4 for further details).
- 2) Fear factor.

Certain interviewees noted that the fear factor plays an important role in all UTP-related issues in the Netherlands. The offended party may be unwilling to complain for fear that the commercial relationship with the counterpart might be disrupted or terminated altogether.

Retailers, on the other hand, did not specify if they believe that the fear factor exists, but mainly oppose to the fear factor being used to facilitate the possibility of anonymous complaining, and to explain the low number of concrete complaints. The main reason for their opposition is that they find it hard or even impossible to defend themselves against anonymous complaints<sup>75</sup>.

- 3) Farmers and SMEs are not (directly) confronted with UTPs.

Farmers' associations reported that farmers are often members of a cooperative for marketing and valorisation of their products. In such cases, they are not involved in the contract negotiations and have no direct relationship with their customers<sup>76</sup>. Nonetheless, on a meeting between farmers and the ministry, it was stated that UTPs mainly occur between wholesale traders and retailers, but the consequences of this are (partly) paid for by primary producers<sup>77</sup>.

Farmers' association LTO recently launched a survey - which is still on-going - to collect more information on the reasons for non-participation among farmers. The overall response rate until now is very low (2-3%). However, LTO preliminary survey results so far suggest that UTPs are not considered a priority by farmers, and that other issues are perceived as more serious by the category.

A similar reasoning can be applied to SMEs. Dutch SME reference associations pointed out that only a small part of SMEs sell their products to the operators further down the supply chain. Most of them directly sell products in their own shop, and consequently do not have the problems addressed by the SCI.

Moreover, some representatives from both large and small companies indicated that the principles of the SCI are common sense, and are already being used in contracts. According to them, this solution is effective, and UTPs almost never happen. If a problem does occur, the concerned companies resolve it amongst themselves. However, a survey commissioned by the agricultural federation NAV amongst farmers suggests that UTPs are rather common in the Netherlands<sup>78</sup>.

- 4) No understanding, no time, too complex procedure.

Some interviewees believed that the initiative is very detached from the day-to-day operations of companies. Smaller companies do not have the capacity or the time to get information about the initiative or to ensure compliance. In addition, the great amount of English forms to be filled in order to join the pilot project is a

<sup>75</sup> CBL, Reactie Centraal Bureau Levensmiddelenhandel op Groenboek inzake oneerlijke handelspraktijken in de food- en non-food toeleveringsketen tussen ondernemingen in Europa

<sup>76</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Eerste bevindingen pilots gedragscode eerlijke handelspraktijken, 06/06/2014

<sup>77</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Voortgangsrapportage pilots gedragscode eerlijke handelspraktijken, 11/03/2015

<sup>78</sup> Keimpe van der Heide (Nederlandse Akkerbouw Vakbond), Boerderijkrant, 21/11/2014

substantial barrier for small businesses (even if the European PGP and Framework have been translated into Dutch). There appear to be also doubts amongst farmers on the actual scope of the pilot<sup>79</sup>.

5) The initiative does not address the issues that farmers complain about

Farmers mostly complain about the price they receive for their products. They believe that this price is too low, and that most of the profit goes to other operators in the chain. The assumption that the distribution of margins throughout the chain is unfair, however, appears to be controversial. For instance, up-to-date research carried out by NMa<sup>80</sup> showed that price changes, and therefore margins, were passed on efficiently in eight supply chains studied. Similar results emerged from several studies carried out by LEI on margins in various segments of food supply chains<sup>81</sup>. Moreover, low prices for farmers and horticultural producers can also be the result of a temporary or structural surplus of supply, as evidenced by a study carried out by SEO Economic Research<sup>82</sup>. However, the issue of price transmission within the supply chain goes beyond the theme of UTPs, even if the fact that it could be the effect of UTPs should be taken into due account.

Preliminary results of the survey launched by LTO seem to indicate that issues related with sustainability and incomes are perceived as more important by farmers. For instance, 16 out of the 500 replies received so far reported about complaints for UTPs, but only three of such replies would constitute a true complaint about UTPs in the food supply chain. Other complaints actually dealt with non-food and agricultural policy.

6) SMEs feel not to belong in the initiative

Currently only the reference sector federations are supporting the initiative, and mostly large-scale, multinational operators have signed up. According to SMEs, the initiative seems to be set up for the leading operators, and has overlooked the specificities of SMEs. Consequently, SMEs feel that they do not belong in the initiative.

**For large-scale operators**

7) Principles are too vague

The PGP are considered too conceptual and vague by some large-scale operators. This is seen as a probable issue when cases will have to be dealt with in practice. Furthermore, most large companies have their own codes of conduct. Another reported issue is the absence of a clear definition of UTPs in the Netherlands. From this point of view, the UK and Australian systems are generally considered as being far more detailed, because they have concrete provisions explicitly stating that certain practices are not allowed. Some leading companies operating in multiple Member States also stated that they cannot see how the Dutch code interacts with other national codes or the SCI code.

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<sup>79</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Voortgangsrapportage pilots gedragscode eerlijke handelspraktijken, 11/03/2015

<sup>80</sup> De Nederlandse Mededingingsautoriteit (NMa), Prijsvorming in de Agrifood sector, 2009

<sup>81</sup> Landbouw Economisch Instituut (LEI) van Wageningen Universiteit, Ketenrendementen in de Nederlandse agribusiness, 2007 and Landbouw Economisch Instituut (LEI) van Wageningen Universiteit, Macht en prijsvorming in agrofoodketens, 02/2003

<sup>82</sup> SEO Economic Research, 'Farmers' quest for sustainability', 2011

### **General**

#### **8) Costs of compliance**

There are concerns that costs of compliance may be particularly high for operators. Some companies also have to make legal arrangements and agreements with their headquarters in other countries, a process that takes time and money.

#### **9) Scepticism**

Several companies did not join because they are simply not convinced about the usefulness and necessity of the SCI and of the Dutch initiative. They do not see the immediate need to be involved, and consequently have little interest in the subject.

The very limited number of answers to the question about the reasons behind non-membership in the initiative does not allow to draw any conclusions on this issue. These results are reported in Table 9.11 for sake of completeness.

*Question n.30 – “Your company/organisation has no intention to join [NAME OF THE NATIONAL INITIATIVE] because:”*

*Table 9.11 – Reasons behind non membership to Dutch stakeholder’s platform (n. of selected options)*

	Netherlands
It is an ineffective way to tackle UTPs	-
It lacks fairness and/or confidentiality and/or transparency in addressing UTP-related disputes	-
UTPs are not a serious problem for my company	1
Existing legislation effectively addresses UTPs	-
My company fears unfavourable attitude / retaliation from its business partners	-
My company is a member of The Supply Chain Initiative (at EU level)	-
The overall costs/resources for joining the initiative are too high in relation to potential benefits for my company/organization	-
For other reasons	3

*Respondents: companies and organisations located in the Netherlands*

*Number of collected answers: 4*

#### 9.3.2.1 Implementation costs for SMEs joining the national initiative

The initiative works without budget. The governance board did not spend any money on the initiative; as for its members, their only cost is the provision of their time. Consequently, there are no direct costs for participation.

Indirectly, registered companies have to use time and staff for assuring compliance or for providing information in case of a complaint. Since this might be a reason for non-participation for SMEs, several interviewees suggested that exemptions in the registration procedure should be made for SMEs: the recent decision of the SCI Governance Group, which simplified the procedures to join the initiative for micro and small enterprises, can be expected to have a positive impact in this respect.

#### 9.3.2.2 Main findings

Upon the launch of the Dutch initiative, all parties involved were expecting many complaints and registrations. The reality proved to be very different. No complaints have been submitted to the board so far, and participation is low, especially among farmers and SMEs, i.e. the categories which are most likely to suffer from UTPs. It seems that most of these operators are still not aware of (or do not understand) the initiative, fear retaliation, are not directly confronted with UTPs, complain about other issues or simply do not believe in the initiative. The LTO survey aims at bringing more clarity on the reasons for non-participation in the case of farmers. Many large-scale operators do not seem to need the initiative, do not want to incur the related costs and think that the PGP are too vague.

Individual registration for farmers and SMEs, as theoretically required at present, might act as a barrier to the registration to the SCI, and hence to participation in the Dutch initiative. Several interviewees suggested that SMEs should have exemptions on the registration procedure, as full compliance is often too demanding for them. The recent decision of the SCI Governance Group about simplification of the procedures to join the initiative for micro and small enterprises can be expected to have a positive impact on participation. Another option is that small companies do not have to register at all, but can submit complaints through a certain designated channel. Associations can also be allowed to register on behalf of their members to address this problem. This is an aspect under discussion in the evaluation of the Dutch pilot initiatives, which is currently being carried out. Renewed support from farmers' federation LTO to the platform should not be taken for granted: the association recently expressed serious concern about the pilot's actual effectiveness in improving farmers' negotiating position in the supply chain, and stated that support to the Dutch platform is not among the current priorities of the federation.

There are currently no direct costs for SMEs to participate in the initiative. However, indirect costs could arise to use time and staff for assuring compliance or for providing information in case of a complaint.

### 9.3.3 Governance structure and internal monitoring system

#### 9.3.3.1 Governance structure

There have been some discussions about actual representativeness of the three federations supporting the Dutch initiative. Most companies which are not members of LTO, CBL or FNLI are disappointed about the fact that they were never informed or invited to the initiative. Many of these companies are SMEs, which are exactly the weaker party which could benefit the most from such initiatives.

The three federations supporting the Dutch initiative do not oppose to the involvement of non-member operators, but do not see their absence from the membership base of the initiative as a factor which may negatively affect its effectiveness.

Furthermore, the governance board of the Dutch initiative consists of representatives from three different stages of the chain with very different views on a number of problems and issues. Some interviewees do not see how these representatives can ever come to effective decisions, and think that more involvement of the Ministry is needed in this respect.

#### 9.3.3.2 Internal monitoring system

An internal monitoring system as such does not exist. Monitoring is done informally (e.g. through emails and calls), a solution which according to all interviewees works well.

#### 9.3.3.3 Main findings

Some concerns were raised about the level of representativeness offered by the three federations forming the governance structure, and about their chances to come to an agreement in case of discussion of actual UTP cases. This said, the fact that the governance structure of the initiative has not dealt with actual UTP-related cases so far does not provide any concrete evidence for a proper assessment of its adequateness.

### 9.3.4 Effectiveness of the initiative

#### 9.3.4.1 Effectiveness in addressing and settling disputes

##### **Formal procedure**

If a company believes that one of its trading partners is not acting in accordance with the Code of Conduct, it can take the following steps:

Step 1	Check whether the business partner is also a participant in the pilot.	Both the complainant and the defendant must be registered in order for the complaint to be dealt with through the initiative.
Step 2	Escalation	Discuss the complaint with the supervisor of the business partner
Step 3	Contact "administrative contact" of the trading partner	The trading partner must have an "administrative contact" by virtue of its participation in the code of conduct, and on whose existence the company should have been informed. The trading partner must also have an internal process for resolving disputes. If agreed by both parties, the dispute may be immediately submitted to a third party for non-binding (mediation) or binding advice (arbitration) or to the civil court.
Step 4	Report to trade association	If no solution is reached, the dispute can be reported to the trade association, which will see whether and how the PGP have been violated. Information has to be provided on the content of the trade agreement. All information will be treated confidentially.
Step 5	Report to the governance board	The trade association will report the breach of PGP to the governance board of the pilot. Anonymity will be protected if desired. In case several companies have been affected by the same breach of the principles, the complaints can be bundled.
Step 6	The governance board will discuss the violation	Several possibilities exist: <ul style="list-style-type: none"> <li>• The governance board will immediately formulate a judgment. The</li> </ul>

		company that breached the code is asked to stop the unfair conduct and restore a fair situation. <ul style="list-style-type: none"> <li>• The governance board recommends mediation or arbitration.</li> <li>• In case of a cross-border dispute, the governance board can immediately refer the case to a competent authority in another Member State or to the SCI Governance Group, which can draw up a general guideline on the relevant conduct. The SCI Governance Group determines the appropriate penalty (warning, temporary suspension or exclusion).</li> </ul>
Step 7	Warning letter and removal from the initiative	If the company does not take any measures to put the record straight, the governance board may send a warning letter. If that still does not lead to the desired result, the company can be excluded from participating in the pilot and removed from the list of participants. This is mentioned on the website and in the report.
Step 8	Civil court	If the above process does not lead to a satisfactory solution, the civil court can still be turned to.

Source: LTO, Handleiding Gedragscode Eerlijke Handelspraktijken Agrofood

No cases have been reported to the governance board so far. However, there have been a few episodes which almost became cases.

In September 2013, a number of top-brand manufacturers received a letter from retailer PLUS<sup>83</sup>. PLUS explained to be forced to charge them its margin loss, which had to be paid within two weeks. The manufacturers were invited to come up with any other solutions. PLUS had signed only shortly before the code of conduct for fair trade practices in Brussels and the Ministry asked the governance board of the Dutch pilot to review this letter on September 26, as it seemed a good test case. Since the pilot had just been launched, and most suppliers had not signed up yet, the governance board meeting exceptionally decided that the complainants did not necessarily had to be formally registered on the website to participate. FNLI (representing the food and beverage industry) was asked to collect all complaints and to submit an aggregated anonymous complaint to the governance board. However, the commotion led to reputation damage for PLUS, and its request was hence withdrawn. None of the manufacturers paid for the margin loss: since the issue was solved, none of them made a complaint, and the issue was never formally treated by the governance board.

Another “almost” case occurred on July 09, 2014<sup>84</sup>. Several fishermen and vegetable growers received a letter from the frozen food producer Iglo, in which the company stated its intention to break unilaterally the contracts with its suppliers to change the conditions. Suppliers were asked to reduce their delivery prices by 8% and to accept payments only after 120 days (up from the previous term of 90 days). Suppliers were given 2 days to sign. At around the same time, Oerlemans Foods sent a similar letter to its suppliers. Also Oerlemans Foods wanted to unilaterally break the contract with retroactive effect. The payment period had to be increased from 60 to 75 days, and suppliers had to renounce to the so-called retention of title, which meant that they no longer owned their products between harvest and payment. Therefore, they could not claim their products in case they, or Oerlemans, went bankrupt in that time, and would not be able to retrieve their

<sup>83</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Eerste bevindingen pilots gedragscode eerlijke handelspraktijken, 06/06/2014

<sup>84</sup> Rob Bleijerveld, Supermacht.nl, Leveranciers onder druk gezet door Oerlemans en Iglo; eerste case voor pilot Eerlijke Handelspraktijken?, 12/08/2014



harvest to sell it elsewhere. According to Oerlemans, the contract modification was necessary to achieve efficiency-raising. Retention of title would hinder the attraction of capital, and the shifting of the payment period would have been justified, because Oerlemans Foods' customers also pay later.

The letters caused anger among supplying farmers; the issue was discussed in the governance board on July 29, 2014. According to interviewees, also in this case the issue was solved through dialogue among the parties involved, and no complaint was submitted.

Also worth mentioning is the issue between a pig farmer and a trader, pointed out by the farmers' association. The pig farmer (a LTO member) was selling piglets for fattening under a long term agreement. The trader informed the farmer with a last minute notice that the price was 3 euros lower per piglet. Nothing could be done, because the trader was not registered for the initiative. According to interviewees, it is difficult to take any action against operators which have not signed up to the initiative, since it is voluntary.

Initially it was expected that the Dutch initiative would be a great success. All interviewees found it disappointing that no complaints have been reported to the governance board so far.

It is important to note that according to interviewees, the Dutch initiative helped to improve knowledge and understanding of UTPs, with respect to both their nature and diffusion. This is especially relevant for the Netherlands, as they are among the Member States with the lowest number of investigations and penalties in the field of abuse of a dominant position<sup>85</sup>. A significant body of research into the nature of UTPs and on the means by which they can be countered has been produced in the Netherlands, mainly upon request of the Ministry of Economic Affairs. Such research is however qualitative in nature, and does not present hard figures. The paucity of statistical information is also due to the fear factor (victims of UTPs are reluctant to provide information) and to the lack of a clear definition of UTPs<sup>86</sup>. Awareness of UTPs has been raised through the setting up of the initiative and the information distributed by the three supporting Federations. In the general media and even in the specialised media, however, little has been published about the initiative, and for the most part only when big issues like the Albert Heijn letter (which actually pre-dated the initiative) arose.

Most interviewees confirmed that the initiative had benefits in terms of changing the attitude of operators and of promoting better cooperation in the sector. There is fear for negative publicity, and companies tend to behave more fairly. There seem to be fewer conflicts between suppliers and retailers, less borderline practices and less pressure on price than a few years ago, although this might also be because of the better economic situation. If on one hand the LTO survey seems to show that many "perceived" UTPs experienced by Dutch farmers only rarely fall within the context of proper UTPs (being in many cases more related to sustainability and income issues), on the other hand, the NAV survey<sup>87</sup> suggests that UTPs are still common in the Netherlands. Prevention may be the key outcome of the Dutch initiative, but this is difficult to prove or quantify.

As explained in § 9.3.2, the future of the initiative will depend on the results of an independent evaluation and on the outcomes of internal discussions currently being held within the supporting federations; possible lack of support by some stakeholders (farmers above all) would definitely weaken the platform, resulting in a lower level of representativeness and, as a consequence, in decreased effectiveness.

The robustness of survey results for questions 31, 32 and 33, which focus on the assessment of the effectiveness of the initiative in tackling UTPs, is again limited by the rather low number of replies.

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<sup>85</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Vervolg eerlijke handelspraktijken, 23/11/2012

<sup>86</sup> The Netherlands' response to the 'Green Paper on Unfair Trading Practices in the Business-to-Business Food and Non-food Supply Chain in Europe', 08/05/2013

<sup>87</sup> Keimpe van der Heide (Nederlandse Akkerbouw Vakbond), Boerderijkrant, 21/11/2014

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Question n.31 – “Please assess the contribution of each of these elements in determining the overall effectiveness of [NAME OF THE NATIONAL INITIATIVE] in tackling UTPs”

Table 9.12 – Contribution of single elements in determining the effectiveness of Dutch stakeholder’s platform in tackling UTPs

<b>Netherlands</b>	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Effectiveness of the initiative in addressing and settling disputes	10	5	3	3
Capacity to ensure transparency	11	6	2	2
Capacity to ensure confidentiality	12	5	2	2

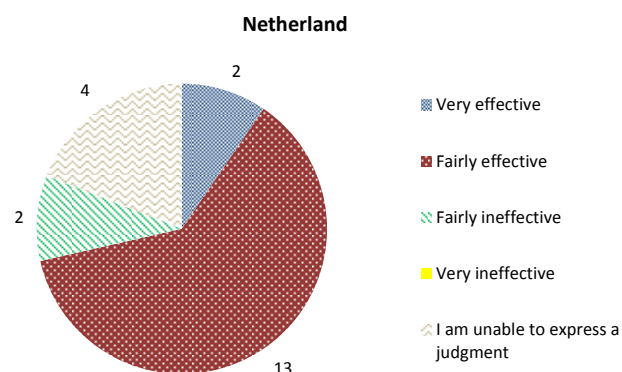
Respondents: companies and organisations located in the Netherlands aware of the national initiative

Number of collected answers: 21

Similarly to what observed for the SCI, also for the Dutch initiative (Table 9.12) all the three key elements considered for the assessment were deemed to strongly contribute to the overall level of effectiveness of the initiative by the majority of respondents. It is also worth observing that the share of respondents declaring not to have sufficient knowledge of the relevant aspects is much lower than the one observed for the SCI and for the three other national initiatives covered by the study. With the prudence dictated by the low number of replies, this might suggest that Dutch operators which are aware of the initiative also tend to have a satisfactory knowledge of its main features.

Question n.32 – “Which is your judgment about the overall effectiveness of the [NAME OF THE NATIONAL INITIATIVE] in tackling UTPs?”

Figure 9.14 – Judgment on overall effectiveness of Dutch stakeholder’s platform



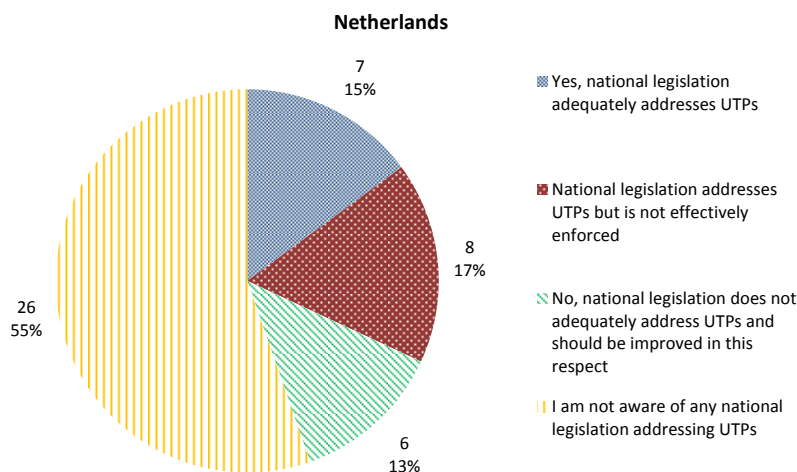
Respondents: companies and organisations located in the Netherlands

Number of collected answers: 21

The Dutch platform was deemed to have a very high level of effectiveness by the majority of survey respondents (Figure 9.14). This judgment is the most favourable expressed by survey respondents, in comparison with the SCI and the other three national platforms.

Question n.33 – “Does national legislation in the country where your company/organisation is based adequately address UTPs?”

Figure 9.15 – Judgment on national legislation addressing UTPs in the Netherlands (% and abs. value)



Respondents: companies and organisations located in Belgium, Finland, Germany and the Netherlands

Number of collected answers: 47

The share of survey respondents not aware of national legislation addressing UTPs (Figure 9.15) is above 50%. In the Dutch Civil Code, few specific provisions address UTPs, focusing on a very limited number of practices: this can partially explain the low level of awareness of operators. It should also be noted that no specific reference is made by the Civil Code to the vertical or B2B relationships in the supply chain, and therefore the legal framework addressing UTPs may appear to be rather generic.

#### 9.3.4.2 Capacity to ensure transparency

All interviewees were satisfied with the current system for ensuring transparency, although it is difficult to properly assess the level of transparency of the initiative when no concrete cases have been treated. There is sufficient transparency on how the system works, on how to file complaints, etc. on the associations' websites; transparency is also ensured by midterm reviews via the letters of the Ministry to the Parliament, which are publicly available.

#### 9.3.4.3 Capacity to ensure confidentiality

The dispute resolution system of the Dutch initiative is identical to the dispute resolution system of the SCI. As described in the rules governing the board, its members have to keep all information confidential.

In the case of a serious breach of the code of conduct whereby two or more undertakings are affected, the sector organisation can aggregate and lodge the complaint on behalf of its members, whereupon the individual members can remain anonymous.

Individual complaints should be resolved bilaterally. Only if no solution is found, the governance board can deal with them. According to all interviewees, ensuring confidentiality in individual complaints is much more

difficult. The governance board has to protect confidentiality, but from the details of the complaint, the misbehaving company will guess immediately who made the complaint. This reinforces the fear factor, and should hence be avoided. However, also the personal responsibility of the complainant to broach the matter with the other party has to be taken into account, as well as the potential adverse impacts of anonymity, as unfounded allegations may arise. The company concerned has the right to know the exact nature of the complaint and who made it. Stakeholders in the Dutch initiative agreed on the fact that a balance should be found, depending on the specific case.

Moreover, it is the governance board itself, consisting of representatives of the supporting sectors, that deals with complaints: its independence can hence be questioned. One suggested solution to this issue is to establish an independent commission that deals with dispute resolution, as in the textile pilot. Several interviewees supported this idea, although it is not clear where funding must come from. Other interviewees did not see the need to set up such an expensive commission, as there are currently no complaints.

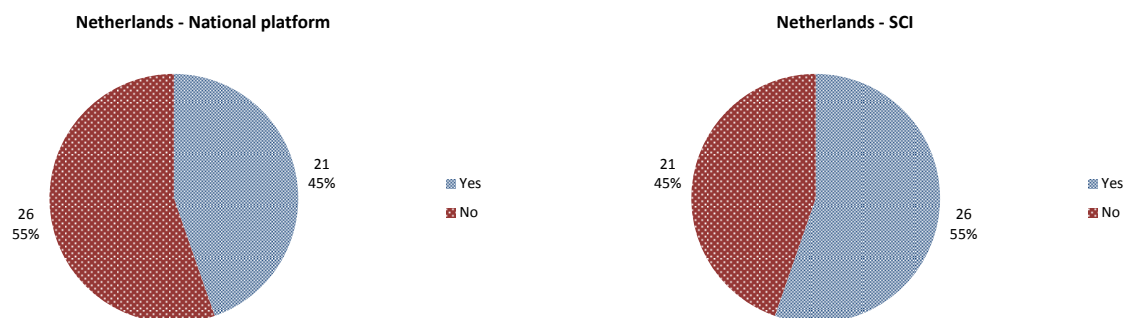
#### 9.3.4.4 Awareness and trust in the national initiative

##### **Awareness of the existence of the initiative**

The results from survey question n.27 about awareness of the initiative are illustrated in Figure 9.16.

*Question n.27 – “Have you ever heard about/do you know [NAME OF THE NATIONAL INITIATIVE], a national initiative launched with the aim of increasing fairness in commercial relations along the food supply chain?”*

*Figure 9.16 – Knowledge of Dutch stakeholder’s platform and comparison with knowledge of the SCI (% and abs. value)*



*Respondents: companies and organisations located in the Netherlands*

*Number of collected answers: 47*

Awareness of the Dutch platform among respondents is not very high (45%), and is actually lower than the awareness of the SCI. This situation is difficult to explain, mainly because the two initiatives were launched simultaneously in September 2013. The fact that Dutch operators are more familiar with the SCI than with the national initiative may indicate a limited effectiveness of the communication programs put in place by the supporting federations.

It is indeed the responsibility of the associations to raise awareness on the pilot amongst their members. All relevant industry associations have distributed general information on websites and newsletters, placed

articles in professional journals, discussed the initiative in the board and membership meetings, organised meetings on the topic for their members, called on their members to comply with the code of conduct, answered questions from members and made manuals to facilitate understanding<sup>88</sup>.

Nonetheless, the awareness is particularly low amongst farmers. This has been confirmed by research done by the “Nederlandse Akkerbouw Vakbond” (NAV)<sup>89</sup>. Awareness-raising among farmers was considered slow to start by certain interviewees (it was expected that farmers having complaints to put forward would register quickly); this happened because of the limited work capacity of sector associations, and also because of the higher importance attached to other priorities.

Little has been communicated about the pilot to companies that are not members of one of the three supporting associations, and especially to SMEs. The general media and even specialized media tend to report little information about the initiative. The Ministry organised one event with 15-20 traders’ organisations, which promised to trickle down the information to their members. Interviewees generally believed that awareness of the Dutch pilot should be raised: it is in everybody’s interest that as many parties as possible join the initiative. A suggested improvement is to create a dedicated website for the initiative.

#### **Level of trust in the national initiative/national platform**

Amongst some interviewees, there was scepticism both on the effectiveness of the initiative in tackling UTPs and on the actual necessity of the initiative.

For some parties, the weakness seems to be the voluntary framework in which the Code is cast. They eventually want to introduce a system with a mandatory code and an independent dispute adjudicator as in the UK, or even specific ad-hoc legislation. These critics believe that codes of conduct sound nice, but make little impression on big and powerful players.

According to other interviewees, UTPs are not the main problem of operators and if they occur, they can be dealt with internally. The structural solution should be sought in strengthening the market position of farmers by organising them in cooperatives. The focus should hence be on purchase-bundling, distinctive product offerings, curbing over-production, improving collaboration with customers or even allowing joint bargaining. Policy makers could give farmers a helping hand at these points, and that is likely to be what the farmers will really benefit from.

Other large-scale operators use their own internal code, and do not see any additional advantage that the Dutch code may bring. The only possible benefit for them is the advantage for the company’s reputation, which is less relevant for SMEs.

#### **9.3.4.5 Main findings on the overall effectiveness of the initiative in tackling UTPs**

The effectiveness of the initiative has been questioned on several aspects. As the fear factor stays prominent, the idea of an independent commission dealing with complaints has been suggested on several occasions. The issue has strong defendants and opponents. Such independent commission would be good to address confidentiality, have unbiased decisions and take away the fear factor, but it is not clear how it should be funded. Therefore it has also been suggested that the Ministry of Economic Affairs could take a bigger role as an independent institute.

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<sup>88</sup> Ministerie van Economische Zaken, Brief aan de Tweede Kamer, Eerste bevindingen pilots gedragscode eerlijke handelspraktijken, 06/06/2014

<sup>89</sup> Keimpe van der Heide (Nederlandse Akkerbouw Vakbond), Boerderijkrant, 21/11/2014.

In addition, awareness of the initiative stays low despite efforts from sector associations to inform their members. It is worth noting that there has been particularly little effort to involve companies outside of the three supporting associations. Some of these companies are disappointed about the fact that they have not been involved in the initiative, and see this as a missed chance for them and for the initiative. The pilot's participants themselves, on the contrary, do not see this as an important factor influencing the effectiveness of the initiative.

The future of the initiative is currently under discussion among stakeholders. Possible lack of support by some sector associations could deprive the initiative of one of its main strengths, i.e. the involvement of the entire supply chain, thus further reducing its practical effectiveness.

Finally, part of the scepticism about the initiative is related to the absence of an enforcement system and of a detailed description of what constitutes an UTP. In comparison with other initiatives, the Dutch platform seems to be indeed rather vague on its principles. Some interviewees have observed that UTPs are not the main concern of operators, and can be dealt with bilaterally. According to them, the Ministry should instead focus on strengthening farmers' cooperatives.

All interviewees seemed to be satisfied with the transparency and the internal monitoring system (which is not a formal one).

Some external factors, specific to the Netherlands and impacting the effectiveness of the initiative, were identified by interviewees. Trading fairly and having clear contracts is already considered common sense in the Netherlands. The "poldermodel" is used, which means that agreements go by consent and that communication between parties is essential and common. Stakeholders in the supply chain are well organised, and the cooperative model can provide farmers with more power. Finally, the Netherlands is the second agricultural exporter in the world. This means that Dutch farmers mainly depend on the international market, and only in part on Dutch large-scale retailers.

The initiative had no cases to deal with so far, and for none of the operators it is clear why. It is possible that the initiative is not working as expected because of issues like its voluntary nature, the fear factor and low awareness. The initiative might also be felt as unnecessary, because farmers have other problems and because true UTPs might be infrequent. It is also possible that prevention is the main outcome of the initiative, as most interviewees indicated that there have been fewer conflicts and less borderline practices than before, but this is impossible to prove. Consequently, it is difficult to identify the weaknesses of the initiative and to define the related adjustments, since it is not clear what exactly prevents the initiative from working as expected. If the initiative is to be continued, stopped or modified, it will be decided after the conclusion of the currently on-going evaluation of the pilot.

#### **9.4 Germany**

As the German initiative has not been officially launched yet, and is still undergoing a process of finalisation of its structure and functioning mechanisms, most of the relevant evidence for its assessment is missing at present, and will become available only in the future. All the four supporting associations had emphasised to the study team their willingness to communicate further details on the relevant topics as soon as the formal democratic decision procedures were successfully completed and finalised; just before finalisation of the present report, representatives of these associations provided additional information regarding the participation in the initiative (§ 9.4.2) and the envisaged and agreed dispute resolution mechanisms which are expected to be officially communicated to the public in the first weeks of 2016 (§ 9.4.3.1)

The peculiar state of progress of the German initiative has suggested to adopt a slightly different structure for illustrating the key findings of the investigations carried out, which are presented in the following paragraphs.

#### *9.4.1 Influence of the Principles of Good Practice and of the Supply Chain Initiative on the national stakeholders' platform*

##### **9.4.1.1 Overview of the relevant evidence**

The four supporting associations have initiated the German national dialogue platform in order to adapt the SCI procedures and practices to German day-to-day business, and to implement them efficiently and sustainably. Limited information on how the German platform will actually function is available at present. Some months are likely to be still needed to finalise the implementation process, and then some additional time to see which experiences will be made, and whether the objectives of the initiative will be met.

This said, the German national dialogue platform is expected to act mainly as a discussion forum, in order to improve awareness about UTPs, but is not meant to constitute a full-fledged, stand-alone additional platform.

##### **Influence exerted by the PGP**

The PGP and the Framework served as a model for the German initiative, but the initiators of the dialogue platform tailored them to the specific situation and needs of Germany, with the aim of transferring them into the national business environment and practice. Interviewed stakeholders also underlined that it will be important to create procedures which fully comply with German regulations and legal requirements; in spite of this, the same stakeholders explicitly excluded from the scope of the platform the development of independent principles and of a framework for the implementation and enforcement which might diverge from the SCI's own.

##### **Influence exerted by the SCI**

The process which led to the launch of the SCI at EU level was the reason and the origin for the establishment of the German dialogue platform. The supporting associations joined forces with the aim of assessing options for the implementation of the PGP and of the Framework in Germany. For this purpose, autonomously decided instruments were proposed and developed. The supporting associations agreed on the fact that the framework of the national dialogue platform should by no means include measures going beyond EU-level agreements reached within the SCI.

##### **9.4.1.2 Main findings**

Differently from the other national initiatives assessed in the study, the German initiative does not seem to be a "replica" of the SCI in a national context: both the PGP and the SCI structure and functioning mechanisms will probably be adapted to take into account the specific characteristics of the German business environment and to ensure compatibility with national legislation. However, no independent development of new principles and/or of a new framework for their implementation and enforcement is planned by the four supporting associations.

This said, only when all the features of the initiative will be agreed upon and made public, a proper assessment of these influences will be possible.

#### *9.4.2 Participation in the initiative*

The four supporting associations have recently clarified that formal membership by individual companies in the dialogue platform is not planned, and that formal membership will not be needed for the company to make use of the available dispute resolution instruments. Rather, these will be available to all companies in Germany – also regardless of their registration status in the SCI.



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Taking into account the above information on the envisaged non-membership for individual companies, the results from question n. 28, 29 and 30 in the survey can be read as an expression of the intention of respondents to be actively involved in the initiative as soon as it will become operational.

The breakdown of survey respondents by sector is provided in Figure 9.17.

*Question n.28 – “You have stated that you know about [NAME OF THE NATIONAL INITIATIVE]. In relation to [NAME OF THE NATIONAL INITIATIVE], your company/organisation:”*

*Figure 9.17 – Prospective members of German stakeholder’s platform*



*Respondents: companies and organisations located in Germany member of the national initiative*

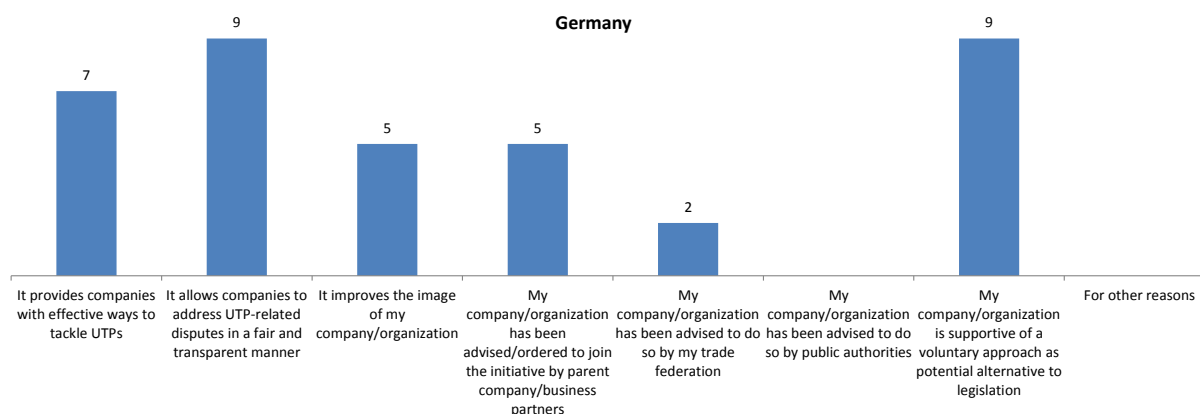
*Number of collected answers: 12*

Looking at the reasons behind prospective involvement in the German initiative (Figure 9.18), with the prudence dictated by the low number of replies to the survey, it emerges that answers are fairly similar to those observed for the SCI. It is interesting to note that the role played by parent companies, business partners and trade federations in promoting the initiative and in raising awareness about it appears to be more important for the German platform than for the other national initiatives assessed in the study. Bearing in mind that the initiative is not yet operational, this could be a positive element in terms of effectiveness of the communication strategy.



**Question n.29 – “Your company/organisation joined/is joining [NAME OF THE NATIONAL INITIATIVE]because:”**

**Figure 9.18 – Reasons behind prospective involvement across sectors**



*Respondents: companies and organisations located in Germany member of / applying to / with intention to apply to the national initiative*

*Number of collected answers: 14 respondents, 37 total options (possibility of multiple answers)*

Due to the extremely limited number of replies in the survey (which are presented in Table 9.13 for pure sake of completeness) and to the lack of relevant elements provided by interviewees, an analysis of the reasons potentially preventing operators to be actively involved in the initiative is not possible at this stage.

**Question n.30 – “Your company/organisation has no intention to join [NAME OF THE NATIONAL INITIATIVE] because:”**

**Table 9.13 – Reasons behind prospective non-membership to German stakeholder’s platform (n. of selected options)**

	Germany
It is an ineffective way to tackle UTPs	-
It lacks fairness and/or confidentiality and/or transparency in addressing UTP-related disputes	-
UTPs are not a serious problem for my company	-
Existing legislation effectively addresses UTPs	-
My company fears unfavourable attitude / retaliation from its business partners	1
My company is a member of The Supply Chain Initiative (at EU level)	-
The overall costs/resources for joining the initiative are too high in relation to potential benefits for my company/organization	-
For other reasons	2

*Respondents: companies and organisations located in Germany with no intention to apply to the national initiative*

*Number of collected answers: 3*

A proper assessment of motivations behind prospective involvement in the initiative by German companies is not possible at this stage, since the platform cannot be considered fully operational, and its functioning mechanisms still have to be defined. Moreover, only recently the four supporting associations clarified that no

formal membership will be required or planned for individual companies: it is hence reasonable to read the above survey results as an indication of the respondent's willingness to "test" this new voluntary approach for tackling UTPs.

The German national dialogue platform focuses on establishing the PGP in the German agro-food system; these principles will apply to all kinds and sizes of enterprises, including SMEs, but with no specific rules envisaged for the latter.

As for implementation costs for SMEs, it emerged from interviews that costs will only arise for a company when using the dispute resolution tools which will be offered on the platform, e.g. for a mediator who will be consulted in a concrete case. No other relevant evidence on costs is available at present, due to the on-going finalisation process of the platform.

### *9.4.3 Effectiveness of the initiative*

#### *9.4.3.1 Effectiveness in addressing and settling disputes*

As reported in §4.4.2, only some elements regarding the enforcement of PGP and the functioning of the initiative have been agreed and communicated in the interviews; the information provided so far mainly concerns the foreseen dispute resolution mechanisms. To ensure the implementation and enforcement of the principles at national level, those dispute resolution instruments will be made available to all companies in the supply chain.

The principle of voluntary action applies to all the envisaged dispute resolution instruments. For solving potential conflicts, the instruments of mediation, arbitration as well expert opinions will be available. Cases may also be assessed through anonymised procedures, should they have general significance for the supply chain.

It is not yet possible to comment on the practical effectiveness of these instruments, as they will be made available to companies in the next months: no concrete experience in their application has been gained so far. An assessment of the effectiveness of the initiative, as well as a review of its functioning mechanisms, is planned two years after its official implementation – i.e. not before 2018 - with a view to achieving sufficient practical experience to identify potential for improvements.

The survey results on this aspect – whose robustness is again limited by the rather low number of replies – have hence to be read as a "theoretical" judgment, expressed in the light of the available information on the functioning mechanisms of the platform. This said, the importance of the contribution attributed by survey respondents to each of the key elements of the initiative in terms of overall effectiveness (Table 9.14) is fairly similar to that observed for the SCI. The higher prevalence of respondents with no sufficient knowledge to express a judgment can be related to the fact that the development process of the platform still has to be finalised.

**Question n.31 – “Please assess the contribution of each of these elements in determining the overall effectiveness of [NAME OF THE NATIONAL INITIATIVE] in tackling UTPs”**

**Table 9.14 – Contribution of single elements in determining the effectiveness of German stakeholder’s platform in tackling UTPs**

<b>Germany</b>	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Effectiveness of the initiative in addressing and settling disputes	10	5	0	11
Capacity to ensure transparency	11	4	1	10
Capacity to ensure confidentiality	7	5	2	12

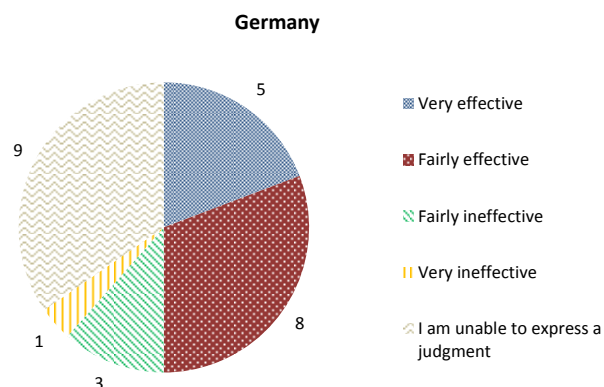
Respondents: companies and organisations located in Germany aware of the national initiative

Number of collected answers: 26

Out of 26 survey respondents, 13 expressed a positive (theoretical) judgment on the perceived effectiveness of the German platform (Figure 9.19); also in this case, the important presence of respondents which declared to be unable to express a judgment can be related to the fact that the development process of the platform still has to be finalised.

**Question n.32 – “Which is your judgment about the overall effectiveness of the [NAME OF THE NATIONAL INITIATIVE] in tackling UTPs?”**

**Figure 9.19 – Judgment on overall effectiveness of German stakeholder’s platform**



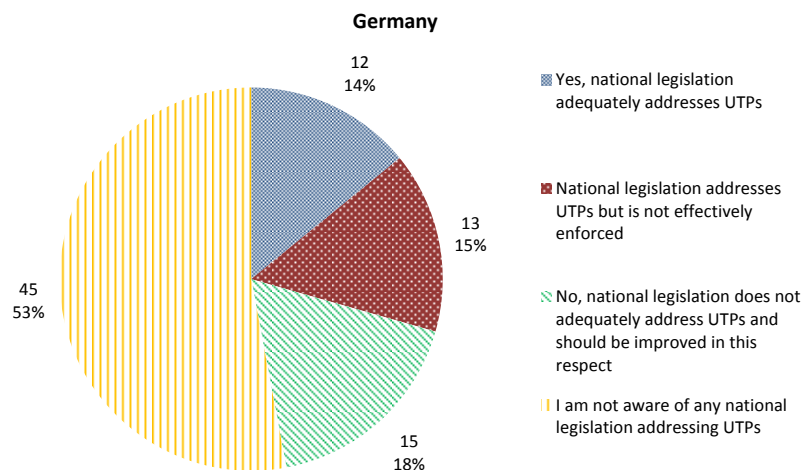
Respondents: companies and organisations located in Germany aware of the national initiative

Number of collected answers: 26

Survey results for the question assessing the level of protection from UTPs provided by national legislation show rather mixed views (Figure 9.20). Provisions addressing UTPs do exist in the German legislation; however, survey results would suggest that many German operators might lack a basic knowledge of such legislation; among those who are aware of national legislation, a higher number of positive judgments has been recorded.

Question n.33 – “Does national legislation in the country where your company/organisation is based adequately address UTPs?”

Figure 9.20 – Judgment on national legislation addressing UTPs in Germany



Respondents: companies and organisations located in Germany

Number of collected answers: 85

#### 9.4.3.2 Capacity to ensure transparency

The level of transparency ensured by the German platform was not covered by any specific question in the questionnaire; the only available information comes from replies to question n. 31, where respondents recognized to transparency a strong contribution in the overall assessment on the effectiveness of the initiative (11 respondents out of 26 indicated a strong contribution, while 10 stated that they had no sufficient knowledge of this aspect).

#### 9.4.3.3 Capacity to ensure confidentiality

Similarly to transparency, confidentiality was not specifically covered in the questionnaire; general information coming from question n. 31 – although based on a rather low number of respondents – indicates that the importance attributed to this aspect is slightly slower than the importance attributed to transparency: out of 26 respondents, 7 indicated a strong contribution to the overall effectiveness of the initiative, 5 indicated a weak contribution and 12 indicated an insufficient knowledge of this aspect.

#### 9.4.3.4 Additional information on the overall effectiveness of the initiative from the case study

##### Awareness of the existence of the initiative

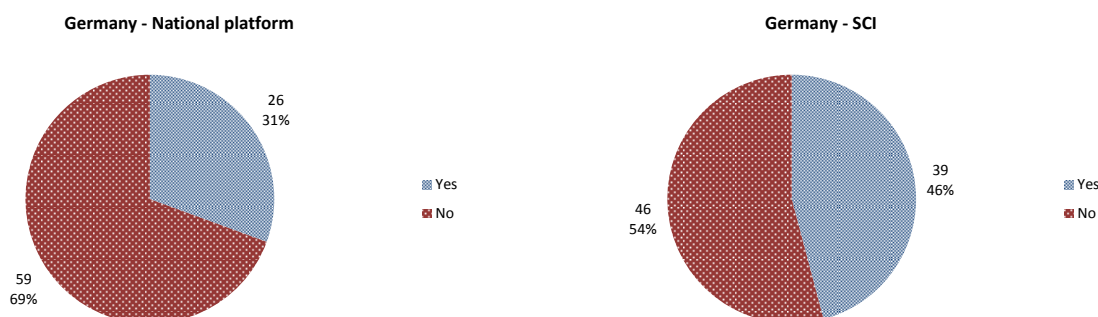
Although the four initiators of the German platform have reported through sector-relevant media and circular letters about the initiative, the related on-going developments and the results of internal discussions, the awareness of the initiative among German operators can still be considered quite low.

One interviewee representing the perspective of manufacturers of branded products estimated that 50-60% of the members have a general idea of the initiative in mind, but have no concrete elements on procedures or potential benefits. The interviewee expects that after successfully launching the dispute resolution mechanisms (i.e. the mediation rules), the initiative will turn from the more or less theoretical construct which it has been so far for most enterprises, into real business life. This will support awareness as well as participation levels. In addition, starting from 2016, the involved associations have agreed to present and intensively advertise the planned instruments for dispute resolution with a targeted public relations campaign; information on the dialogue platform and the dispute resolution instruments will also be communicated via a dedicated website.

Figure 9.21 illustrates the results of the survey question focusing on the awareness of German initiative among operators.

*Question n.27 – “Have you ever heard about/do you know [NAME OF THE NATIONAL INITIATIVE], a national initiative launched with the aim of increasing fairness in commercial relations along the food supply chain?”*

*Figure 9.21 – Knowledge of German stakeholder’s platform and comparison with knowledge of the SCI (% and abs. value)*



*Respondents: companies and organisations located in Germany*

*Number of collected answers: 85*

As expectable, the level of awareness of the German initiative is low both in absolute terms and with respect to the awareness of the SCI expressed by German respondents; survey results hence confirm the evidence emerged through interviews.

##### Level of trust in the national initiative/national platform

Due to the early stage in which the implementation process still is, no information on the level of trust in the German platform is available at present.

This said, interviewees pointed out that the level of trust in the initiative and in mediation procedures is essential for the success of the whole project. A core part of the process seems to be the listing of persons who combine broad experience and competence in economic affairs with reputation (especially for what concerns safeguard of confidentiality and impartiality) and with full acceptance by relevant stakeholders along the entire supply chain. In addition to that, the general mediation procedure needs promotion within the food supply chain in order to become an easily used, natural and common practice for all stakeholders. Reports on successfully solved cases will likely boost all trust-building measures. These aspects are on the agenda for the first months of 2016.

Relevant evidence about the practical effectiveness of the initiative is obviously missing at present, due to the on-going finalisation process. One interviewee suggested that the effect of the SCI and the national attempts in tackling UTPs might be less important for German companies in comparison to companies in other countries, because an effective legislation addressing UTPs does exist in Germany, and because the institutional framework dealing with fair competition and market functioning works in general quite well. Nonetheless, at the moment this is an unproven hypothesis, that needs further empirical evaluation after the platform becomes fully operational.

#### **Overall effectiveness of the national initiative/national platform**

Due to the fact that the German platform is still in an introductory phase, its practical effectiveness, its actual strengths and weaknesses, the awareness about it and most of the other topics of interest cannot be properly and fully evaluated at this stage. To do so, the platform needs to be launched, promoted and used in practice by German enterprises, and additional months of development and experience are needed. Trust-building between partners takes time, but it will be likely to play a vital role in the initiative. All interviewees involved in the German national dialogue platform underlined the need of a period of gaining in-depth experiences with the mediation procedures and instruments concerning dispute resolution in 2016 and 2017, before a conclusive judgment on the initiative's success can be made.

## **10 Comparative assessment of the key aspects of the national platforms and of the SCI**

This chapter illustrates the results of a comparative assessment of the most relevant aspects of the SCI and of the four national platforms (wherever a comparison is meaningful). It must be underlined that - with the only exception of the Belgian initiative - all the national platforms covered by the assessment were inspired by the SCI: as a consequence, they are similar to the SCI for a number of aspects. In the Belgian case, the overall similarity of the national platform with the SCI was further increased by the finalisation of the process which led to mutual recognition between the two initiatives in 2014.

The most significant similarities refer to the objectives of the initiatives, to the types of UTPs addressed, and to the kind of disputes treated (§ 10.1). On the other side, the initiatives differ for a number of specific aspects, which may have a direct impact on their effectiveness (at least in the perception of some stakeholders): a horizontal comparison for such aspects is also presented at § 10.1, safe remaining that a full assessment of such aspects is provided at § 8 and 9.

The chapter also illustrates the results of a comparison of the survey results among the five initiatives (§ 10.2), covering additional aspects such as the level of awareness and judgments on the overall effectiveness of the initiatives and of the existing legislation in addressing UTPs.

### **10.1 Evolution and key characteristics**

A first comparison of the five initiatives can be based on their evolution over time and on the results achieved in terms of stakeholders' **participation**.

The Belgian initiative – launched in 2010 – is the one with the longest track record and the widest participation of all stages of the supply chain. Differently from the SCI and the Finnish initiative, the Belgian one is supported also by a cluster of farmers' associations (AGROFRONT): these associations have joined the initiative on behalf of their members, thus ensuring – at least theoretically – the involvement of farmers in the initiative. In addition, some specific features of the Belgian initiative such as sector-specific working groups seem to stimulate a more active involvement of all the categories of participants. Also in the case of the Dutch initiative, the presence within its constituency of the national farmers' association (LTO) seems to have stimulated to some extent a greater participation of farmers; however, the doubts expressed by LTO on the achievements of the platform in its first two years of operation, and LTO's intention to concentrate its efforts on other initiatives aimed at strengthening the negotiating position of farmers in the supply chain, may endanger the platform's balanced representation of all the levels of the supply chain.

On the opposite side, it is important to highlight a number of serious limitations affecting the Finnish initiative, where the recent withdrawal of support by the national farmers' federation (MTK), the absence of farmers within the membership base, and the very limited participation of food and beverage producers seem to endanger the actual possibility of the platform to be a useful tool for the whole supply chain, taking into account that an adequate representativeness only exists for retailers.

Also the SCI is experiencing difficulties in involving farmers to join, but in this case a much higher participation of the other stages of the supply chain (especially of food and beverage producers), together with an increasing number of SME members, at least seems to prevent the risk that just one category of operators is actually represented in the initiative.

Table 10.1 illustrates key information regarding the launch and the evolution of the different initiatives.

Table 10.1 – Comparison of the evolution and participation between EU-level SCI and national stakeholders' platforms

	EU-level SCI	Belgian national platform	Finnish national platform	Dutch national platform	German national platform
Launch of the initiative	September 2013	May 2010; the Code was revised in June 2014	January 2014	September 2013 <i>(currently on hold and under evaluation)</i>	Discussion platform set up in May 2013; official presentation of the initiative to companies planned for January 2016
Stakeholders involved	7 EU-level associations representing: <ul style="list-style-type: none"> <li>• food and beverage producers,</li> <li>• branded goods manufacturers,</li> <li>• retail sector,</li> <li>• traders of agricultural products.</li> </ul>	9 national associations representing: <ul style="list-style-type: none"> <li>• farming sector,</li> <li>• food and beverage producers,</li> <li>• Belgian SMEs,</li> <li>• branded goods manufacturers,</li> <li>• retail sector.</li> </ul>	2 national associations representing: <ul style="list-style-type: none"> <li>• food and beverage producers,</li> <li>• grocery sector.</li> </ul> <i>In September 2015 MTK, representing the farming sector, withdrew from the initiative.</i>	3 national associations in the two year's trial period representing: <ul style="list-style-type: none"> <li>• farming sector,</li> <li>• food and beverage producers,</li> <li>• retail sector.</li> </ul>	4 national associations representing: <ul style="list-style-type: none"> <li>• farming sector,</li> <li>• food and beverage producers,</li> <li>• branded goods manufacturers,</li> <li>• retail sector.</li> </ul>
Indicative number of participants	As of December 2015, 375 groups and single companies representing 1,202 national operating companies.	As of October 2014, 224 companies individually registered, plus collectively registered companies (farmers and SMEs) participating through their sector associations.	As of July 2015, 46 companies operating in Finland and registered to the SCI at EU level (thus also participating in the Finnish initiative).	As of July 2015, 60 companies registered, plus collectively registered companies (farmers) participating through their sector association.	N.a.
Membership	Membership for individual companies	Two kinds of members: farmers federations signing up on behalf of their members (AGROFRONT) and individual operators (retailers and producers) which must sign up through the SCI website	No membership specifically of the Finnish initiative. Companies have to sign up to the SCI to join the Finnish initiative	No membership specifically of the Dutch initiative. Companies have to sign up to the SCI to join the Dutch initiative. Farmers are indirectly signed up through their national association (LTO).	No membership foreseen for individual companies. The dispute resolution instruments will be available for all German companies.



The organisation and functioning of the **governance structure** is probably the aspect where the most interesting comparison among the five initiatives can be made. The Governance Group of the SCI is formed only by representatives of the supporting associations (the representative of UEAPME attends the meetings as an observer); on the contrary, all the national platforms somehow envisage the presence of independent third parties in the governance structure, although with different roles and functions:

- In the Belgian platform, the presence of an independent chairperson is about to be introduced. Its functions will be mainly to act as a contact point for companies not belonging to any sector association, and to oversee the dispute resolution procedure.
- The Finnish platform is chaired by an independent figure with legal and economic expertise, and a market court judge is also present with the role of vice-chairman.
- One representative of the Ministry of Economic Affairs is present in the governance board of the Dutch platform, although with no voting rights.
- As for the German platform, the available information seems to indicate that its governance structure might differ from the SCI's own in some respects. For instance, the platform's arbitration board (in charge of supporting and implementing its dispute resolution mechanisms) will be composed of four independent and neutral arbitrators with expert knowledge.

The different approaches adopted by national initiatives seem to respond to the general request – manifested by interviewees in the assessment of the SCI governance structure – to include an independent party with functions of monitoring and/or of ensuring the possibility to decide on the most controversial issues. As mentioned above, the functions of independent third parties vary significantly, and in some cases are very limited (e.g. in the Dutch platform): despite this, their presence is however generally seen by interviewees as beneficial for a perceived neutrality of the governance structure.

A direct comparison of the **effectiveness** of the initiatives in tackling UTPs is not possible on the basis of interviews, since most of the collected feedback reflects rather mixed judgments for which no clear trend can be traced. Despite this, an important element is represented by the direct experience of each initiative in dealing with actual cases, and hence in providing concrete answers to the problem of UTPs. In this context, the Belgian platform is undoubtedly the one with the most solid track record of aggregated disputes treated and solved (17 in the 2010-2014 period), and its role in stimulating dialogue on UTP-related issues in Belgium should also be acknowledged. Also the Dutch initiative somehow proved to be of help in addressing UTPs: the very existence of the initiative contributed to prevent disputes for three important cases of UTPs which involved a large number of suppliers, without the necessity to formally discuss them in the governance board. However, it must be underlined that a debate on the future of the Dutch initiative is open, and that there is currently no guarantee that it will be reconfirmed, or that all the stakeholders which supported it over its trial period will keep doing so in the future.

As for the SCI, no aggregated dispute has been treated by the Governance Group since 2013, and no detailed evidence is available so far with respect to the role of the initiative in preventing bilateral disputes; however, the first annual survey of the SCI reports that 1 member lodged a complaint and that 6 other members received a total of 39 complaints (not specifying if by other members or by non-member companies); all these cases result to have been solved.

While the German platform is not yet active and hence not comparable with the other four in terms of practical effectiveness, the fact that the Finnish initiative has not dealt with any concrete case so far seems to confirm the already reported concerns on its effectiveness, also remembering that the very unbalanced composition of the membership base (for the most part composed of retailers) is unlikely to encourage a higher utilization of the platform in the future.

**Disputes** treated by the different initiatives are fairly similar. The SCI and the Belgian, Dutch and German platforms all envisage the possibility to deal with both bilateral and aggregated disputes; the only exception is represented by the Finnish platform, which explicitly limits its scope to the sole aggregated disputes.

Table 10.2 provides a synopsis of the key characteristics of the five initiatives, also reporting those similar features for which a comparative analysis is less meaningful.

Table 10.2 – Comparison of the key characteristics of the EU-level SCI and the national stakeholders' platforms

	EU-level SCI	Belgian national platform	Finnish national platform	Dutch national platform	German national platform
<b>Objective</b>	To promote good practices between business partners along the supply chain.	To promote fair relationships between suppliers and purchasers	To implement the SCI in Finland	Similar to the SCI: to prevent UTPs and to promote fairer business behaviour	To support and promote the SCI in Germany and to provide mechanisms for the enforcement of the PGP (to be finalised)
<b>Governance structure</b>	Governance group comprising representatives of signatory federations	Governance group comprising representatives of signatory federations, plus an independent chairperson (foreseen development)	Governance group comprising representatives of signatory federations and chaired by an independent figure with economic and legal expertise. A market court judge acts as vice-chairman	Governance group comprising representatives of the 3 signatory federations plus 1 Ministry member as a neutral party (with no voting right)	To be finalised: it might differ from the SCI but attention will be paid on developing a structure as simple as possible
<b>UTPs addressed</b>	Examples of fair and unfair practices set out in the PGP document	No UTPs explicitly identified; context believed to be of key importance in deciding if a practice is unfair or not	No UTPs explicitly identified	No UTPs explicitly identified; context believed to be of key importance in deciding if a practice is unfair or not	Still under discussion
<b>Influence of the SCI and of PGP</b>	-	The PGP and the SCI did not have any influence on the original Belgian scheme. However, the process of revision, ended in June 2014, was influenced by both of them	The PGP had limited influence in the development of the Finnish initiative. Key features of the SCI were instead replicated in the platform	Both the PGP and the SCI structure were entirely adopted by the Dutch initiative	The PGP served as a model for the German initiative. Both the PGP and the SCI structure and functioning mechanisms will probably be adapted to take into account the specificities of the German business environment
<b>Disputes</b>	Individual and aggregated disputes	Individual and aggregated disputes	Only aggregated disputes	Individual and aggregated disputes	Individual and aggregated disputes

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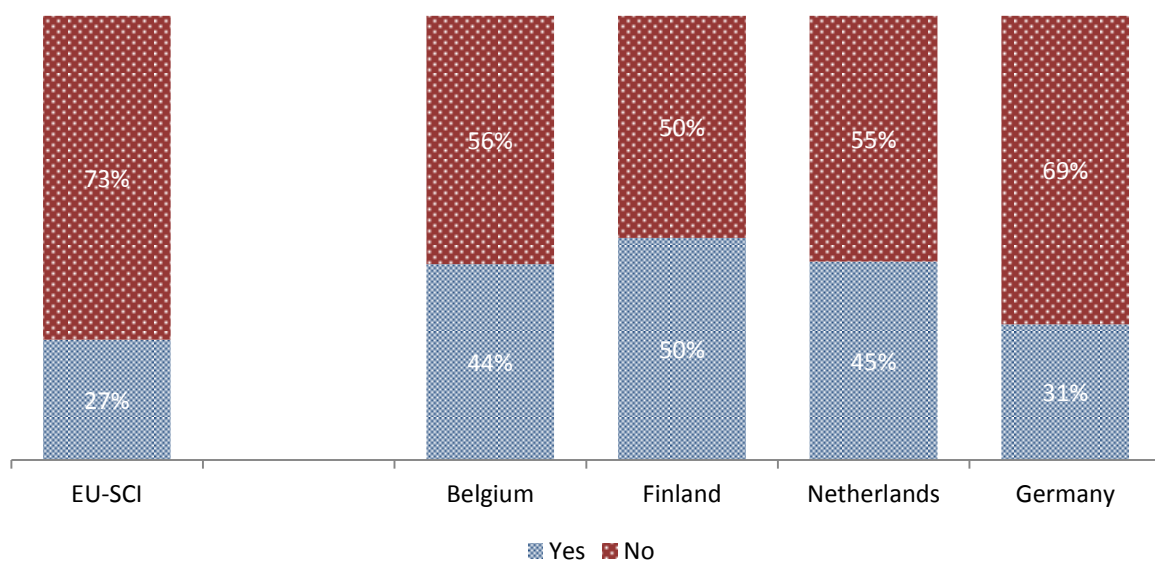
	<b>EU-level SCI</b>	<b>Belgian national platform</b>	<b>Finnish national platform</b>	<b>Dutch national platform</b>	<b>German national platform</b>
<b>Decision making</b>	Consensus and unanimity only	Not envisaged: the governance group acts as a moderator between parties, but does not issue decisions on them Appointment of an independent chairperson is foreseen	Decisions can be reached with a majority vote of 2/3	Decisions are taken at 75% majority (because the governance board consists of three members voting, in practice decisions are taken by consensus)	Still under discussion

## 10.2 Comparison of survey results

Besides the comparative assessment at § 10.1, it is also interesting to provide a comparison between survey results related to the SCI and to the national platforms. Due to the structure of the questionnaire, the analysis has been performed on a limited number of questions and is based on quite different samples for each initiative (all respondents were requested to answer to questions related to the SCI, while only respondents from the specific Member State were requested to answer to questions on “their own” national platform).

### Awareness of the EU SCI and of the national stakeholders’ platforms

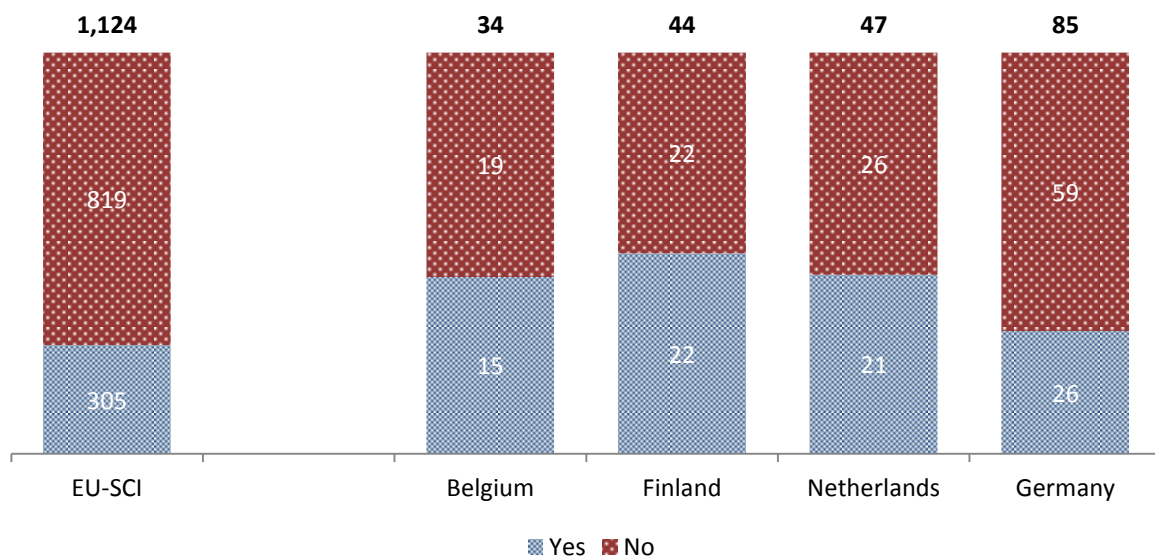
Figure 10.1 – Knowledge of the SCI and of national stakeholder’s platform (% and abs. value)



Respondents: EU-SCI: companies and organisations across 28 MS (all respondents)

National platforms: companies and organisations located in Belgium, Finland, Germany and the Netherlands

Number of collected answers: EU-SCI: 1,124, Belgium: 34, Finland: 44, Germany: 85, Netherlands: 47

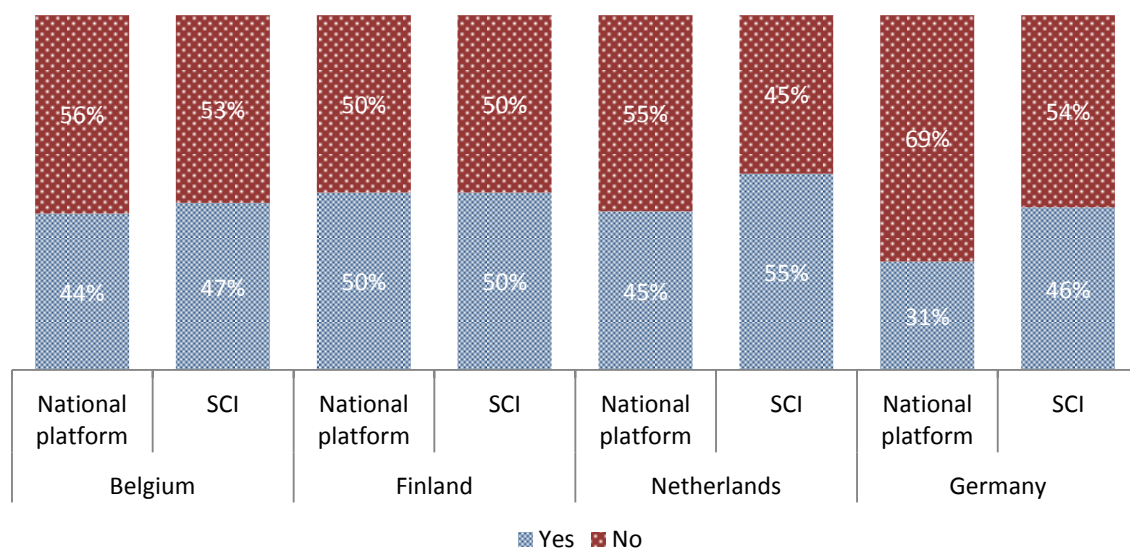


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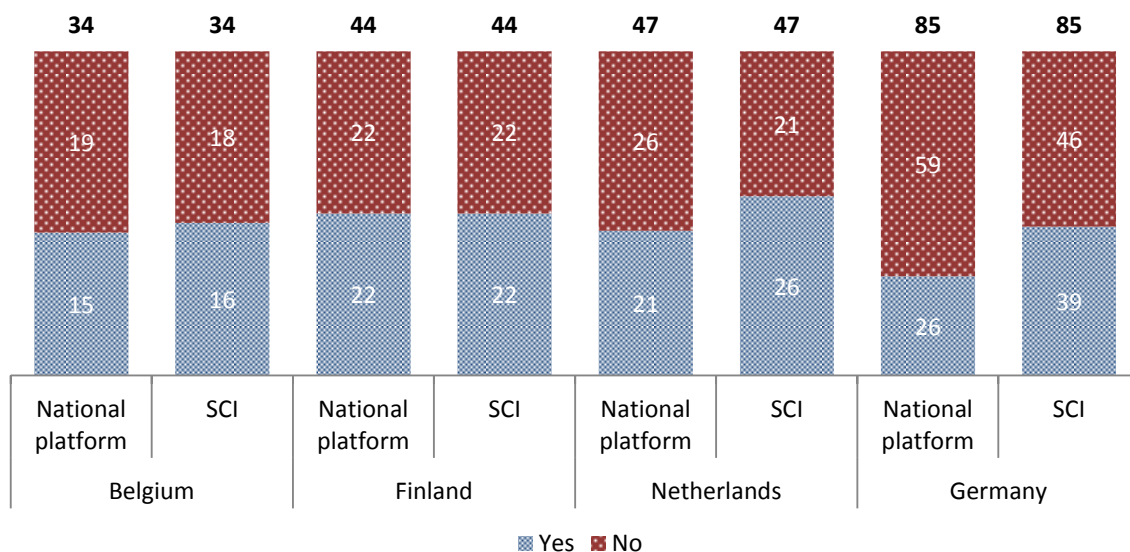
As previously noted in § 8.5.1, the average level of awareness of the SCI across the EU appears to be still limited: around 27% of respondents declared to have heard about the initiative during the two years since its launch; on the other side, the awareness of national platforms in their respective Member States results to be higher, even in the case of Germany, where the initiative still has to be officially launched.

In order to better appreciate the specific situation applying to each country, it is interesting to compare the awareness of national platforms in the four different Member States with the awareness of the SCI as expressed by operators based in the same countries. Figure 10.2 illustrates the results from this comparison.

Figure 10.2 – Comparison between knowledge of national stakeholder's platforms and knowledge of the SCI across the four Member States



Respondents: companies and organisations located in Belgium, Finland, Germany and the Netherlands  
Number of collected answers: Belgium: 34, Finland: 44, Germany: 85, Netherlands: 47



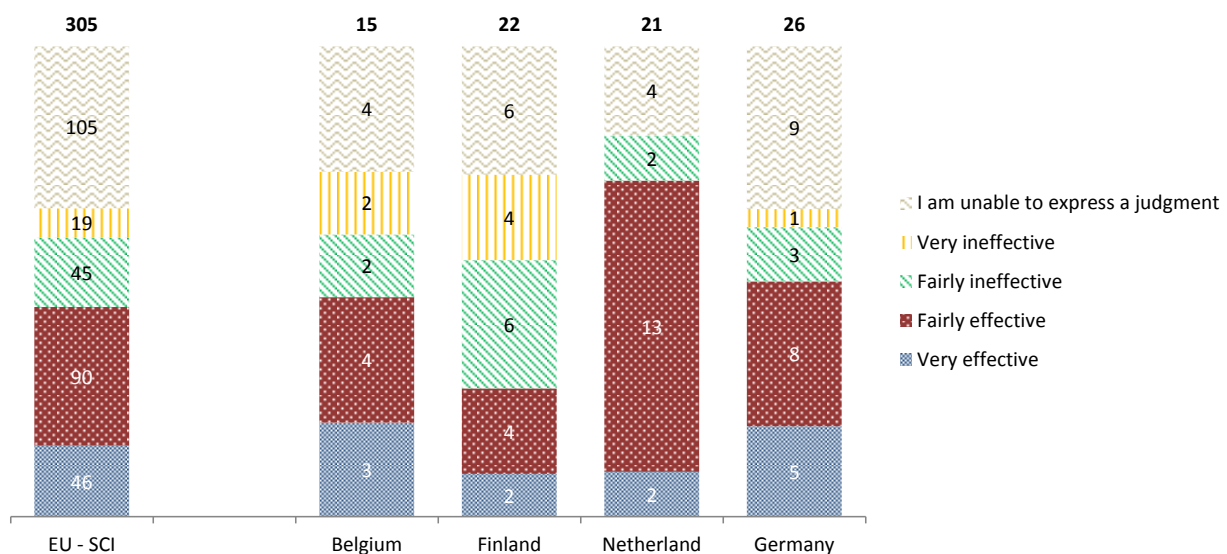
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With the only exception of Finland, the levels of awareness of national platforms result to be lower than those of the SCI; it is in Germany that the largest gap between the two initiatives can be found (13 operators, around 15 percentage points) and, as already said, this is likely to be due to the fact that the national platform still has to be officially launched. In Belgium, where the code of conduct was signed in May 2010 – more than three years before the launch of the SCI – the level of awareness between the two initiatives is quite similar, with just one operator declaring to know the SCI but not the Belgian initiative. In the Netherlands, where the national platform was established together with the SCI in September 2013, five operators out of 47 were aware of the SCI but not of the national platform.

Generally speaking, at least the same level of awareness for the national initiative and the SCI should be expected in the Member States where national platforms were established and are presently working: this should be especially the case in Belgium, where the national initiative has a longer track record than its EU counterpart. It is anyway worth noting that participation in the national initiatives requires operators to sign up with the SCI in Finland and in the Netherlands (with the exception of farmers, which have signed up through their reference federation): this process tends to favour similar levels of awareness of both initiatives among operators.

### Overall effectiveness of the EU SCI and of the national stakeholders' platforms

Figure 10.3 – Judgment on overall effectiveness of the SCI and of the national stakeholder's platforms



Respondents: EU-SCI: companies and organisations aware of the SCI across 28 MS

National platforms: companies and organisations located in the four MS aware of the national initiative

Number of collected answers: EU-SCI: 305, Belgium: 15, Finland: 22, Germany: 26, Netherlands: 21

While the Belgian and the German initiatives recorded a judgment on their overall effectiveness similar to that expressed for the SCI, the situation in Finland and in the Netherlands appears to be significantly different. It is however important to note that survey results for the four national platforms are based on a very limited number of replies, and should therefore be considered with great prudence. It is also important to consider that the positive judgments expressed about the overall effectiveness of initiatives which have not dealt with

concrete cases yet (i.e. the Dutch, Finnish and German ones) have to be considered as eminently “theoretical” in nature.

The Member State with the highest level of satisfaction is the Netherlands, with 15 stakeholders out of 21 judging the initiative very or fairly effective; on the other side, 10 operators out of 22 expressed negative judgments on the Finnish initiative.

The Belgian initiative is the only one which dealt with actual cases of UTPs; despite this, it is interesting to note that the judgment on the overall effectiveness of the Belgian initiative is not better than those expressed for the SCI or the other national platforms, with the only exception of the Finnish one.

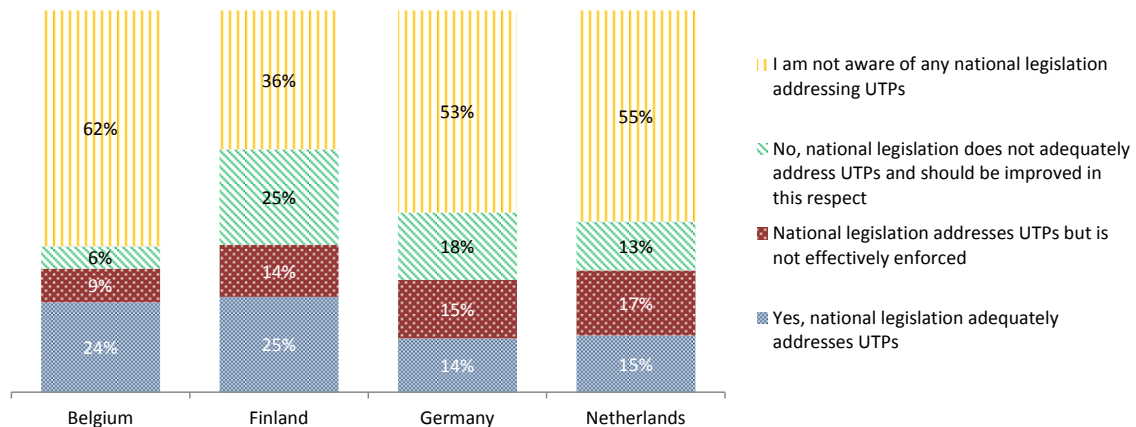
Finally, the share of respondents unable to express a judgement (i.e. with no sufficient knowledge of the initiative to respond) results to be slightly lower for the national initiatives than for the SCI; also in this case, the only exception is represented by the German initiative, presumably for the reasons already reported (the initiative is not yet operational). It is also interesting to note that, regardless of the level of awareness in the different Member States, operators based in Member States where a national platform is in place and which are aware of the initiative, result to have a better knowledge of the national platform than the average of EU respondents has of the SCI.

#### **Judgement on national legislation for the four Member States where national initiatives are in place**

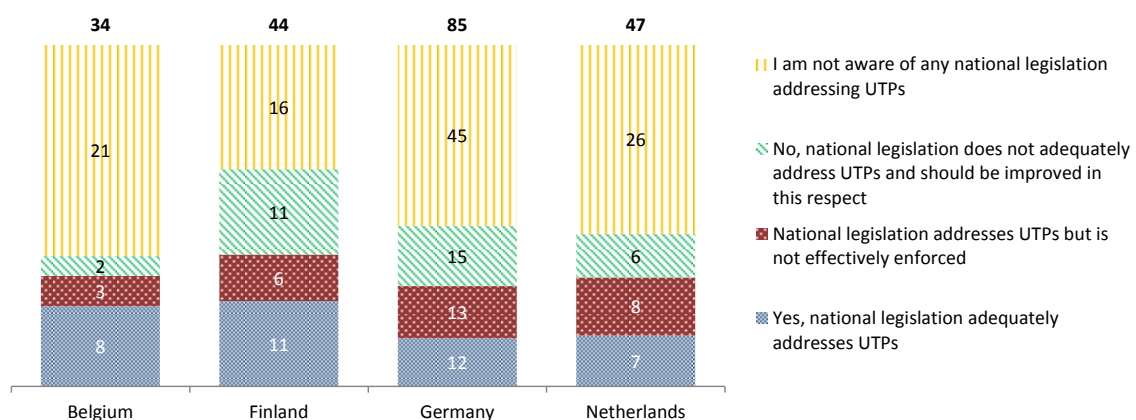
With respect to the assessment of the national legislation provided by respondents, the comparative analysis is only limited to the four Member States where a national platform is in place. It is worth noting, in fact, that survey participants across the EU answered to these questions having in mind and taking into account the specific situation of the Member State where they are based, and a comparison between their aggregated answers and the specific situation applying in each of the four Member States would clearly be misleading.



Figure 10.4 – Judgment on national legislation addressing UTPs across the four Member States



Respondents: companies and organisations located in Belgium, Finland, Germany and the Netherlands  
Number of collected answers: Belgium: 34, Finland: 44, Germany: 85, Netherlands: 47



While in Germany and the Netherlands judgments on the legislative situation appear to be fairly similar, in Belgium and Finland a greater share of respondents (24% and 25%, respectively) stated that the legislation in place adequately addresses UTPs.

As already mentioned in the assessment of the national platforms, some inconsistencies apparently emerge from these replies, which could at least partially be explained also in the light of the low number of replies available for each Member State/national initiative. It is anyway possible to make some considerations on the survey results, which can be summarised as follows:

- The great share of respondents not aware of any specific legislation addressing UTPs in Belgium is consistent with the actual legal framework provided by the Belgian law: no specific legal protection is provided in the country against UTPs, and the private regulation scheme offered by the national platform is basically the only instrument in the hand of operators.
- In Finland, where legislation on UTPs is present, the main point to be noted is the presence of similar shares of operators expressing very positive and very negative judgments on it. This aspect might be explained by the different perspective of respondents and by their individual perception of the context.

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- In Germany there is a similar problem with respect to the judgments expressed: fairly similar shares of respondents provided very different judgments on the legislative framework. Generic provisions potentially addressing UTPs do exist in Germany, but more than half of respondents declared not to be aware of them.
- Finally, the Dutch Civil Code is the only piece of legislation featuring provisions potentially addressing UTPs in the Netherlands; in this context, the limited knowledge expressed by respondents can be deemed consistent with the actual situation in the country.

## 11 Conclusions

This chapter presents the conclusions which are drawn from the findings on the different aspects under investigation in the study.

The conclusions serve two main purposes:

- a. Providing an evidence-based, sound and robust judgment on the different aspects which determine the effectiveness of the Supply Chain Initiative (SCI) and of the national initiatives in addressing unfair trading practices (UTPs).
- b. Putting forward suggestions for improving the effectiveness of these initiatives by addressing the main weaknesses highlighted in the assessment.

The conclusions are grouped under three main themes, namely:

1. Effectiveness of the Supply Chain Initiative (§ 11.1).
2. Effectiveness of the voluntary initiatives implemented at Member State level (§ 11.2).
3. Perceived exposure to UTPs among food chain operators in the EU (§ 11.3).

The analysis of the available evidence highlighted a number of relevant findings for each of the above themes. In some cases, the evidence emerging from the analysis was clear enough to allow the study team to formulate straightforward judgments on the aspects of interest; in other cases, evidence was less clear and judgments had to be nuanced to reflect exceptions and/or conflicting trends and elements.

### 11.1 Conclusions on the effectiveness of the “Supply Chain Initiative”

The assessment of the overall effectiveness of the SCI focused on a number of relevant aspects: evolution of participation in the initiative; adequateness of its governance structure and internal monitoring system; available solutions for addressing UTPs; transparency; safeguard of confidentiality; level of awareness about, and trust in, the initiative; implementation costs for SMEs.

As far as **participation** in the initiative is concerned, the SCI has achieved significant progress in its first two years since implementation in terms of both the expansion of its membership base and the relative importance of SMEs within this. It is also positive that a high number of the top food and beverage producers and retailers in the EU are involved in the initiative. On the negative side, although high, the share of SMEs involved in the initiative is lower than their importance in the EU agro-food system. Another major drawback is the fact that farmers are still seriously under-represented within the SCI membership base, in spite of the efforts of the Governance Group to increase their participation: the fact that the EU-level reference organisation for the farming sector (COPA-COGECA) does not support the initiative has not helped in encouraging the participation of farmers. The low level of participation of farmers in the SCI, and the lack of support by COPA-COGECA, compromises the initiative because the farming sector – due to its fragmented structure and the specificities of production processes (seasonality, perishable products etc.) – is generally considered to be more exposed to UTPs.

At a more general level, elements drawn from the survey results and from interviews with stakeholders and independent experts suggest that the main reasons behind non-membership in the initiative are some (perceived) limitations in its functioning and/or lack of trust in the initiative itself. Also, the still limited level of awareness about the initiative (see below) has played a role in limiting participation, especially among SMEs.

All these critical aspects need to be addressed in order to promote a wider participation in the initiative; although it is worth noting that cultural changes need time to take place, and also that the initiative still has to

prove its actual effectiveness in addressing the problem of UTPs. Once the initiative succeeds in achieving tangible results, this is likely to have positive effects in terms of increasing participation.

The **governance** of the initiative was found to suffer from two important limitations, perceived especially by external observers:

- the double role played by each member of the Governance Group (so-called “two-hats issue”): members have responsibilities in the SCI, but also represent their own reference sector organisations;
- the need to take unanimous decisions (consensus-based governance).

It is important to stress that criticism on the above aspects is based more on theoretical considerations than on empirical evidence, as the Governance Group has had few (if any) chances to prove its capacity to take decisions on controversial issues (for instance, no aggregated disputes have been brought before the Governance Group so far). Also, the fact that the involvement of the Governance Group is limited to cross-border disputes, or to domestic disputes for which there is no national stakeholder platform in place, reduces the number of potential “tests” for the governance structure of the initiative, as most UTP-related disputes were found to have only domestic relevance. There is indeed a risk that the above limitations might spark a “vicious circle”: no aggregated disputes are brought before the Governance Group because of these limitations and - as a consequence - the Governance Group is denied a chance to prove in practice that its decision mechanisms are adequate.

In terms of possible improvement of the governance structure, many interviewees suggested that the SCI should consider recourse to an independent third party and/or to a majority-based decision process, at least for deciding on the most controversial issues. In this respect, it is also worth noting that the presence of independent figures characterises – albeit with some specificities – all the four national initiatives covered by the assessment. On the other hand, the voluntary and multi-stakeholder nature of the initiative could work against the adoption of these solutions, which could have disruptive effects on its constituency: it emerged from the assessment that supporting organisations might simply withdraw from the initiative if unwelcome decisions were to be imposed upon them by a third party.

No formalized **internal monitoring system** is foreseen in the rules of procedure of the SCI, and the vast majority of monitoring activities are based only on the SCI annual survey. This is seen as a cost-effective solution, also taking into account the very limited direct involvement of the initiative in addressing disputes and the objective to maintain a lean structure. On the other hand, a number of key information items (actual implementation of process commitments, number of bilateral disputes, ways of resolution, etc.) cannot be verified, and the reliability of the information provided is based only on the goodwill of survey respondents. This constitutes a weakness of the current monitoring system, and can have negative implications for the effectiveness of the SCI (with special reference to actual implementation of the process commitments). It is extremely difficult to devise a way to implement systematic checks on the completeness and reliability of the information provided in the survey, especially under the assumption of limited financial and human resources for such purpose. Some external observers suggested that the creation within the initiative of a body with ex-officio powers to start investigations on (alleged or even potential) breaches of the process commitments could improve - among other aspects – the internal monitoring of the SCI.

The formulation of conclusions on the **effectiveness of the SCI in tackling UTPs** posed some challenges. The coexistence of strengths and weaknesses, as well as the often diverging judgments expressed by survey respondents, interviewed stakeholders and external observers, suggested the formulation of prudent, nuanced and rather articulated conclusions.

The *survey* showed a clear prevalence of positive judgments over negative ones, especially among the members of the initiative and among retailers (negative judgments prevailed only among organisations). For a correct interpretation of the survey results, it is however essential to keep in mind that the SCI (and especially

its Governance Group) has had very little practical experience in dealing with UTP cases so far: the aforementioned favourable judgments are hence likely to reflect a positive perception of the “theoretical” effectiveness of the SCI in addressing UTPs, rather than an appreciation of practical results and/or for significant changes in business practice resulting from the initiative. Indeed the great majority of survey respondents saw no improvement in the situation concerning UTPs since the launch of the SCI, with the partial exception of - again - retailers; the perception by SCI members on the evolution of the situation concerning UTPs tends - again - to be more favourable (especially among retailers). The aspects which were deemed by survey respondents (and especially by SCI members) to contribute most to the overall effectiveness of the initiative in tackling UTPs were the training of company staff on Principles of Good Practices (PGP) and the appointment of contact person(s) for internal dispute resolution and for process-related issues.

*Interviews* with stakeholders (both inside and outside the initiative), Commission officials and (especially) independent experts provided many useful elements for the identification of the main strengths and weaknesses of the SCI in terms of effectiveness.

The fact that the SCI has started to promote a cultural change about UTPs in the food supply chain and that it contributed to stimulate a dialogue about such a complex topic can be deemed one of the main **strengths** of the initiative.

Another positive aspect is related to the fact that the alternative options to address UTPs promoted by the SCI are generally perceived by operators as being faster and cheaper than taking legal action. This element should be linked with another element emerging from the assessment, namely the low number of UTP-related disputes for which a solution was sought through “soft” approaches or legal action, in spite of the perceived high diffusion of UTPs (see § 11.3).

Generally speaking, the judgments expressed on a number of aspects affecting the overall effectiveness of the SCI were more positive among operators which are members of the initiative than among external observers. Although this might be the result of a combination of different factors (membership base composition, average size of member companies, etc.), a high level of satisfaction was anyway expressed by the majority of surveyed SCI members.

Finally, another strength of the SCI is its EU-wide dimension: the initiative provides a common and consistent framework to all operators (regardless of the specificities of national legislation addressing UTPs), and could hence facilitate the resolution of UTPs with a cross-border dimension.

On the other hand, a number of **weaknesses** of the initiative emerged in relation to its effectiveness in tackling UTPs. In the opinion of many operators and stakeholders (especially those outside the initiative), the SCI lacks effective deterrents against, and/or remedies for, UTPs. The SCI Governance Group itself acknowledged that the SCI has rather limited powers to directly enforce measures to counteract UTPs.

Some external observers underlined that it was difficult to understand how an interpretation of the PGP, or the outcome of an aggregated dispute discussed within the SCI, could facilitate a favourable judgment for victims in a court. Due to the absence of practical cases so far, no evidence exists on the practical effects of the result of an aggregated dispute for those companies looking for concrete remedies (e.g. damages/restitutions).

Another element often highlighted as a weakness of the initiative is the fact that the SCI lacks the possibility to promote ex-officio investigations and to consider individual confidential complaints.

Finally, the perceived impartiality of the SCI Governance Group by the offended parties cannot be taken for granted, due to the so-called “two hats issue”: its members have responsibilities in the SCI, but also represent the respective EU-level supporting organisations.

In the light of the above areas of criticism, the room for possible **improvement of the effectiveness of the SCI in tackling UTPs** was found to be mainly related to the possible introduction of economic sanctions, and with the recourse to a “third party / independent” body in charge of dealing with the entire process of tackling UTPs (from receipt of complaints to imposition of sanctions, if needed).

As already highlighted for governance, the room for possible adoption of the above solutions by the SCI appears to be limited, in practice, by their acceptability for the constituency of the SCI and by their perceived coherence with its voluntary nature. The SCI Governance Group, when interviewed for the study, stated that the introduction of sanctions has never been on the SCI agenda, and that the SCI in no way intends to add a further layer of “self-regulation” to the existing legislation.

Survey results and interviews showed that the **transparency** of the SCI is generally appreciated by operators (and especially by SCI members); more specifically, information regarding the process to join the initiative, the rules of procedure and the evolution of the membership base of the initiative are effectively presented on the website. On the other hand, other relevant information is provided exclusively through the SCI annual survey, and hence suffers from the limitations previously highlighted for the internal monitoring system. More specifically, the reliability of information regarding the number and the nature of disputes promoted, treated and solved within the initiative is not verifiable: this makes it difficult to assess exactly (i.e. in quantitative terms) the actual effectiveness of the initiative. Also, the lack of clarity on the practical relevance of the Governance Group’s decisions can be seen as an area of concern in terms of perceived transparency of the initiative, especially for external observers.

The level of **confidentiality** granted by the SCI was considered satisfactory by the majority of survey respondents (and especially by SCI member companies, and retailers in particular). The commitment of the Governance Group to respect confidentiality emerged as the element which can provide the strongest contribution in this respect. On the other hand, as already observed for the effectiveness of available solutions for tackling UTPs, as the actual safeguard of confidentiality offered by aggregated disputes has never been tested in practice, it must be concluded that the positive judgment of survey respondents is in some respects a “theoretical” one which has not been tested empirically. Concerns on the actual level of confidentiality granted by the SCI were indeed raised by some external observers, which would favour a more radical approach (e.g. consideration of anonymous complaints to start ex-officio investigations). Other interviewees, however, observed that the consideration of anonymous complaints does not seem to occur in practice in other voluntary / regulatory frameworks, and that it could have potentially disruptive consequences (as it could lead to the lodging of unfounded complaints). Safeguard of confidentiality emerged as an essential element for the success of the initiative: failures in this respect would indeed compromise its functioning due to the fear of retaliation.

The survey results showed that the level of **awareness** of the initiative is rather limited, especially among SMEs and farmers, and this in spite of the efforts of the SCI Governance Group to promote the initiative across the entire food supply chain. A potentially effective solution to address this serious weakness could be to promote a strongest involvement of current SCI members (especially large companies) in actively endorsing the initiative among their trading partners. The involvement of other entities (for instance the Chambers of Commerce) in providing information about the SCI could also help in this regard. This would also help to address the problem that promoting the SCI is unlikely to be a priority for EU-level and national organisations which do not support the initiative (this is especially relevant for the farming sector).

The fact that there is a high level of **trust** in the initiative clearly emerged from the survey, especially among member companies (once again, a particularly favourable judgment by retailers stood out). It has, however, to be noted that some external stakeholders expressed serious doubts on the whole design and structure of the initiative, and on its capacity to provide a concrete answer to the problem of UTPs in the food supply chain. In particular, specific concerns were raised on the perceived independence and impartiality of the

Governance Group (the already cited “two hats issue”), especially in the eyes of external observers. As already observed for other elements under assessment, this issue appears to be difficult to solve, as recourse to an independent third party for “critical” decisions is not viewed favourably within the constituency of the initiative (see in particular the considerations made for governance).

The survey clearly showed that the direct **costs incurred by SMEs to join the SCI** are limited, and should not prevent their participation. A more important aspect in this context might be represented by indirect costs, namely time, organisational efforts and resources to be allocated in order to fulfil the requirements for registration in the initiative, especially if these costs are measured against the perceived potential benefits from membership. If the benefits are seen to be limited, the requirements to join will almost certainly discourage participation by SMEs. In this respect, it must be noted that since most of the requirements were recently relaxed for micro and small enterprises (following decision n.5/2015 of the Governance Group), indirect costs should not represent an obstacle anymore for these enterprises willing to “join the SCI just to see how it works”.

In the light of the considerations made above on the various relevant aspects for the assessment of the overall effectiveness of the SCI, a number of **conclusive remarks** can be made.

By admission of the Governance Group itself, and as confirmed by a wide number of other interviewees, the SCI has rather limited powers to directly enforce measures to address UTPs. The declared objective of the SCI is indeed that of promoting and developing cooperation and fair dealing along the food supply chain, and of facilitating as much as possible dispute resolution through collaborative approaches and without recourse to legal action. In addition, the initiative has been operational for a rather short period (two years): changes in business practices usually require time to become widespread, especially when the incentive for operators in applying such practices is important (UTPs can result in substantial gains for the offending parties).

The question of the actual effectiveness of the SCI in tackling UTPs could be posed in these terms: *can actively pursuing its declared objective be enough for the SCI to achieve tangible improvements in the relationships among operators in the food chain?* The importance of the role played by the SCI in this respect so far is rather difficult to assess, in part because of specific features of the problem of UTPs (in particular the unwillingness of companies to provide information on their exposure to / involvement in such practices) and in part because of some limitations in the SCI’s own monitoring system. Given such difficulty in the assessment, *it would not be prudent to conclude that there is no need to take further and more effective measures against UTPs* only on the grounds of i) positive feedback on the initiative coming from surveys (both the one for this study and the SCI’s own); and, ii) a general appreciation for the SCI from most stakeholders. *Prudence should also be applied because such positive judgments are mainly theoretical in nature*: the study has shown that the practical experience of tackling UTPs through the SCI has been rather limited so far.

*The actual impact of the SCI can be deemed important in relation to the rather limited scope of the initiative*: the SCI has surely contributed to increasing awareness of and promoting a dialogue about, the issue of UTPs in the food supply chain, and to encouraging the adoption by operators of a more collaborative approach in dealing with such issues. It is however worth noting that some evidence suggests that in any case UTPs have usually been managed by operators through informal approaches, mainly due to the length, cost and uncertain outcomes of court cases.

On the contrary, *the actual achievements of the SCI may seem very modest if measured against the (actual or perceived) magnitude and seriousness of the issue of UTPs in the food supply chain, and even more so if measured against the expectations of the stakeholders which are most seriously impacted by UTPs, and of policy makers.*

In any case, the key aspect to understand is *whether the “soft” (voluntary, self-regulatory) approach of the SCI – basically subject to the goodwill of the stronger parties to cooperate with the weaker ones – can be enough*



*to effectively address, **by itself**, the issue of UTPs in the food supply chain*, also taking into account that the deterrent of potential sanctions applied by the SCI in case of unfair behaviour appears to be limited.

On the other hand, the fear factor and the limited knowledge of operators about specific legislation addressing UTPs, even in Member States where such legislation is present, also suggests that *a solution exclusively based on legal protection could be ineffective*.

As also highlighted at § 11.3, the findings of previous research and of the present study suggest that *a combination of “soft” (voluntary / self-regulatory) and “hard” (legislative) approaches is more likely to achieve significant results in addressing the issue of UTPs*.

With specific reference to the **room for possible improvements in the SCI**, the findings of the assessment suggest that the *need to guarantee transparency in procedures and the central role of confidentiality should find a better match with a different **enforcement mechanism***. Enforcement powers should ensure the practical effectiveness of available tools for addressing disputes through the initiative: in this context – also on the basis of findings of previous research on the study topics – the possibility to involve an independent party with strong ex-officio powers should at least be considered (in spite of the lack of support for this within the present governance structure). In this respect, it is worth underlining that presence of independent figures in the governance structure is a common feature of all the four national initiatives covered by the assessment (albeit with some specificities).

The involvement of an independent party would also help to address criticism concerning the perceived partiality of the governance group (“two hats issue”), thus representing an improvement in the **governance structure** of the initiative; it would also help to foster **trust** in the SCI by external observers.

Possible improvement of the enforcement mechanism of the SCI would imply considering:

1. the *possible recourse to a “third party / independent” body in charge of dealing with the entire process of tackling UTPs* (from receipt of complaints to imposition of sanctions, if foreseen and needed), and possibly also of *promoting ex-officio investigations and of considering individual confidential complaints*;
2. the *possible introduction of economic sanctions*.

In the light of the weaknesses of the current monitoring system, it should be noted that the creation within the initiative of a *body with ex-officio powers to start investigations on (alleged or even potential) breaches of the process commitments* could improve - among others – also the **internal monitoring** of the SCI for this critical aspect.

Finally, with reference to the still rather limited **awareness** of the SCI among operators, a potentially effective solution to address this serious weakness of the SCI could be *promoting the greater involvement of current SCI members (especially large companies) in actively endorsing the initiative among their trading partners*, and/or the *involvement of other entities (for instance the Chambers of Commerce) in providing information about the SCI*.

## **11.2 Conclusions on the effectiveness of the voluntary initiatives and national stakeholders’ platforms**

The analysis developed at § 9 and § 10 clearly showed that the four voluntary initiatives at Member State level covered by the study are in different stages of their implementation process. This requires a presentation of conclusions on their effectiveness by individual initiative, rather than across all the initiatives. The following paragraphs will hence present the conclusive remarks which can be drawn from the assessment for each national initiative; the most significant elements of comparison between the initiatives are also included.



### *11.2.1 Belgium*

The Belgian platform is the oldest among the five studied in this report (SCI included), and also the only one with direct experience in dealing with UTP cases: it managed and solved four aggregated disputes in its first year of existence, and another four cases were dealt with in its second year. This shows that companies at different levels of the food supply chain made use of the solutions provided by the initiative right from its start.

The Belgian initiative was implemented before the publication of the **PGP** and the creation of the **SCI**; which had therefore no **influence** on the original scheme. However, both the PGP and the SCI had an impact on the process of revision of the Belgian platform concluded in 2014, which resulted in the mutual recognition with the SCI.

The objectives of the Belgian initiative are very similar to those of the SCI; that said, the Belgian platform covers a wider range of activities than the SCI, also envisaging sectorial working groups devoted to specific themes; this feature is likely to have helped in increasing the involvement of its members.

The level of **participation** must be assessed taking into account that two important categories of stakeholders (farmers and SMEs) are automatically associated through their national federations; this choice allows, at least in theory, a wider participation with respect to the SCI. As for the other levels of the food chain, non-SME producers and retailers must register individually; all the leading companies in the two categories are already part of the initiative.

In its current version, the **governance structure** is fairly similar to that of the SCI, with the significant difference that representatives of the farming sector and of Belgian SMEs are also involved in governance. It is, however, essential to note that an important change is about to be implemented with the introduction of an independent chairperson with the role of providing a contact point and control function. The judgment expressed by stakeholders on the governance of the initiative is positive; the introduction of an independent chairperson was requested by some stakeholders, and is expected to further increase the credibility of the platform and its capacity to provide mediation.

The assessment of the **effectiveness of the initiative in tackling UTPs** could be based only in part on the survey results, due to the relatively low number of responses. It is important to note that the lack of national legislation specifically addressing UTPs makes the initiative the only tool able to offer a certain level of protection from UTPs to operators in Belgium: this is likely to be a factor in the positive judgment on its effectiveness. Although the structure of dispute resolution mechanisms is fairly similar to the SCI (also as a result of the mutual recognition process concluded in 2014), a significant difference is the introduction of economic inspection. This additional method for dispute resolution is generally accepted as the last resort in case of failure of other “soft” approaches, but it can help in ensuring better chances of resolution for particularly controversial cases.

Other key merits of the Belgian initiative which are widely recognized refer to:

1. the better knowledge it promoted of the issue of UTPs in the food supply chain;
2. the change of attitude in dealing with UTPs it encouraged among operators;
3. the possibility it offered to discuss UTP-related issues.

Feedback from operators and stakeholders appears to be less unanimous with respect to the actual effectiveness of envisaged remedies, and more specifically to whether the potential exclusion of participants can represent enough of a deterrent (this issue has already been discussed with reference to the SCI).

The level of **transparency** offered by the initiative was deemed to be very good by different stakeholders, and no room for improvement in this aspect emerged from interviews: information reported in the annual report was judged to be complete, clear and with a very good balance between transparency and the need to guarantee confidentiality to member companies.

The level of **confidentiality** granted by the initiative was also deemed to be fully satisfactory by most stakeholders, with special reference to the dispute resolution system, which was judged to include all the features needed for an adequate protection of the complainant parties. Some doubts were though raised on the recently introduced economic inspection by the Ministry of Economic Affairs: more specifically, some operators pointed out that the industry would prefer not to disclose commercially sensitive information. However, such criticism cannot be related to “confidentiality” intended as protection of complainants from commercial retaliation.

In spite of the significant merits of the initiative highlighted above, the survey results showed that the level of **awareness** of the initiative among operators in the Belgian agro-food system is not high, especially taking into account that the initiative was established over five years ago. Despite the efforts made by supporting stakeholders to promote the initiative across the different levels of the supply chain, it emerged that the vast majority of farmers and SMEs who joined the initiative through their national association have no knowledge of its basic principles and procedures, and that in some cases they might even be unaware of its very existence (a rather paradoxical “inadvertent membership” in the initiative).

The survey results showed that the level of **trust** in the initiative is generally high; the only elements of concern refer to the still relatively low number of disputes tackled through the initiative, which could result in an easier identification of complainants.

It can be concluded that the Belgian initiative has had more time than the other initiatives to prove its effectiveness, and this has helped it to deliver significant results which are generally appreciated by its membership base and also by external observers. Also the support from stakeholders at all the levels of the food supply chain (including farmers) appears to have contributed to the overall effectiveness of the initiative.

### *11.2.2 Finland*

A foreword is necessary in introducing the results of the assessment of the effectiveness of the Finnish platform due to the recent decision of the Finnish farmers’ association (MTK) to withdraw its support for the initiative. Reasons put forward by MTK refer to the limited practical results in tackling UTPs in the first year and a half of operations (with no concrete cases brought before the board), and to the very limited enforcement power of the board, which cannot grant compensation to offended parties or declare contracts invalid. Although this decision could also be explained by political motivations (MTK in the same press release expressed the urgent necessity for EU-level legislation, a statement which is in line with COPA-COGECA’s position on the issue of UTPs), the elements underlined by MTK are concrete and actually reflect the most serious weaknesses of the board which emerged from the assessment.

The **PGP** are generally considered to be in line with the existing legislation and with the principles already adopted by Finnish companies in their daily business: as a consequence, their influence in the development of the initiative seems limited. On the other side, all the key features of the **SCI** strongly influenced the structure of the Finnish platform.

The level of **participation** in the initiative is still low; only the retail sector is well-represented in the initiative (member companies account for around 95% of the overall value of the retail market), whereas the participation of food and beverage producers is very limited (member companies account for less than 3% of

the overall turnover of the sector), with no leading producer having joined the platform so far. One of the most serious obstacles to wider participation appears to be the perceived loss of competitiveness that the obligation to comply with the PGP would determine in all the markets in which the joining company operates. The unbalanced composition of the current membership base represents - according to interviewed stakeholders and experts - an obstacle for the board's effectiveness, and further discourages participation of operators in stages of the chain other than retailing, thus creating a sort of vicious cycle.

The Finnish initiative only deals with aggregated disputes. This difference aside, the responsibilities of the **governance** structure are very similar to those of the Governance Group of the SCI, in that they mainly refer to the promotion of fair business practices, to the interpretation of PGP and to the provision of guidance in domestic aggregated disputes. Serious limitations to the effectiveness of the Finnish initiative are related to the fact that:

1. the board cannot impose sanctions;
2. it is not clear if and how guidance provided by the board could be extended to operators not directly involved in an UTP-related dispute.

It must be noted that some features of the board are aimed at improving its independence and impartiality. In particular, the prohibition on the involvement of board members who are also applicants in a dispute in attending discussions on the dispute and on voting was highlighted as one of the main strengths of the governance structure. Similarly, the high level of technical expertise provided by the involvement of external experts and the choice to appoint an independent chairman and vice-chairman was found to be highly appreciated by stakeholders. On the other hand, the recent withdrawal of MTK (national farmers' union) from the initiative clearly deprived it of another key strength, i.e. the involvement of stakeholders at all levels of the food supply chain.

The feedback of operators on the **effectiveness** of the platform, derived from survey results, does not allow a clear-cut judgment (due to the rather limited number of replies), but is basically negative (only a minority of respondents expressed positive judgments). It is also important to note that no actual cases of UTPs have been brought to the attention of the board so far; this implies that the feedback of operators and stakeholders is "theoretical" in nature, in so far as it concerns the design of the initiative rather than its practical results. In this context, most interviewees pointed out that the true role of the board is not to address UTP-related disputes, but to provide a neutral ground where companies can discuss UTP-related issues.

It is worth noting that a recent development in the Finnish platform - the envisaged possibility to develop standard contracts to be used by farmers and SMEs when dealing with retailers - might have significant practical implications in B2B relationships.

The **transparency** of the initiative was deemed to be good by different stakeholders: the rules governing the functioning of the board and the procedures for dealing with aggregated disputes are clearly defined and explained.

The theme of **confidentiality** was found to be of special importance for farmers, who judged the level of protection granted as still insufficient. It is important to note that the structure of the Finnish agro-food system (especially in the vast and scarcely populated rural areas) makes it very difficult to prevent the identification of complainants. On the positive side, the fact that external experts are in charge of dealing with aggregated disputes within the board, and the fact that the identity of complainants is protected by their reference sector associations, both contributed to a positive overall judgment on the level of confidentiality ensured by the initiative (once again, with the caveat about the theoretical rather than empirical nature of this judgment).

Although participation in the initiative is still limited, the level of **awareness** among Finnish operators was higher (around 50% of survey respondents) than in the other three Member States covered by case studies. This is especially high considering that the initiative was only officially launched in January 2014. No actions for further promotion of the initiative among operators of the food chain are currently being implemented in Finland.

The composition of the board was designed to ensure a high level of **trust**, especially as far as the impartiality of the governance structure is concerned. No specific evidence emerged to allow a fully-fledged assessment of the level of trust in the initiative; some interviewees pointed out that because the platform is established as a Finnish initiative for the implementation of the SCI, this could make it more appealing to Finnish companies, which operate mainly domestically in most cases.

It can be concluded that the Finnish initiative has had too little time to prove itself: the evidence on actual achievements of the board is still too limited to allow for a fully-fledged assessment of its overall effectiveness in tackling UTPs. That said, the recent withdrawal of the national farmers' union from the board represents an unwelcome development, and probably will not help the initiative in delivering more tangible results in the near future.

### *11.2.3 The Netherlands*

The establishment of the Dutch initiative was incentivised by a series of cases of UTPs in 2012. These involved a large number of suppliers and confirmed that the problem of UTPs in the food supply chain was both concrete and widespread.

The three main levels of the food supply chain are involved in the initiative: farmers, producers and retailers. A representative of the Ministry of Economic Affairs is also involved: this official mainly participates in the meetings and provides guidance and suggestions. The **participation** of the different categories of stakeholders is different: many retailers joined the initiative right after its launch, so this category is well-represented in the membership base; around 40 leading food and beverage producers are also members, including multinational companies operating in the Netherlands through subsidiaries. Direct participation of the farming sector is limited to three leading cooperatives, while a large number of smaller companies are only indirectly involved in the initiative through their national reference organisation (LTO). As a consequence, concrete participation of these companies in the initiative is very limited. In addition, some recent statements by LTO seem to anticipate a possible decision to focus on other initiatives aimed at strengthening farmers' negotiating position within the supply chain, rather than confirming LTO's support to the platform. The main reasons which have led Dutch retailers to join the initiative are the fear of over-regulation and the pressure by parent companies operating abroad. As for food and beverage producers, the positive impact on the image of the company emerged as an important motivation to join the initiative. Stakeholders in the farming sector considered that the initiative has the merit of providing additional ways to tackle UTPs, although they do not see them as the most effective ones (specific legislation emerged as the preferred option). A long and varied list of reasons not to join the platform emerged from the investigations made (these were provided mainly by farmers and SMEs, but also by some large companies). On one side, these motivations are mirrored in the limited participation of operators; on the other side, they raise some doubts on the level of **trust** in the initiative by some categories of stakeholders.

The **PGP** have had a clear and evident influence on the Dutch initiative, as the Dutch Ministry of Economic Affairs believes that they can usefully be applied in all commercial sectors. When the national pilot initiative was implemented, the PGP were adopted in their entirety. The Dutch platform is very similar to the **SCI** for many aspects, such as the Framework for the implementation of the PGP, the identical dispute resolution

mechanism and the same registration procedure. Some limitations already highlighted for the SCI were found to also apply to the Dutch initiative: for instance, its recommendations are not legally binding, and the envisaged penalties are considered by many stakeholders as not being enough of a deterrent for offenders. Generally speaking, the most serious criticism refers to the very limited set of actions available to the governance board.

Some doubts were expressed by stakeholders and external observers on the actual capacity of the **governance structure** to reach unanimity in the discussions of disputes: in this context however it must be noted that no actual cases of UTPs have been discussed within the platform so far, and therefore this issue is only theoretical at present. Some doubts were also raised on the independence of the board, whose representatives might be in a conflict of interest when discussing disputes. In this respect, the possibility to set up an independent commission has been advanced, although there are no actual suggestions on how to finance it.

The results of the survey showed a positive judgment of operators on the **effectiveness** of the Dutch initiative in tackling UTPs; in this respect, it has to be noted that in the absence of specific legislation, the platform is the main mechanism to tackle UTPs available in the country. Once again, this positive judgment has to be considered with care due to its derivation from theory (no concrete cases of UTPs have been tackled by the platform so far). This said, it also emerged from the assessment that the initiative has been useful in discouraging and preventing UTPs even without discussion of actual disputes by the governance board: in three cases, potentially serious disputes between purchasers (both retailers and producers) and suppliers (farmers or producers) were avoided, with companies in alleged breach of the PGP “stepping back” for fear of potential damage to their corporate reputation. In this context, a certain degree of practical effectiveness must be recognized, especially in situations involving a large number of suppliers where awareness of the issue amongst the general public tends to be higher. The future of the initiative is not clear at present: both the Ministry of Economic Affairs and the sector associations are waiting for the finalisation of an independent evaluation to decide if and how to proceed with the pilot. In particular, it seems that farmers’ federation LTO might be reluctant to confirm its support to the initiative, although no official position has been taken yet, and the internal discussion on the matter is still ongoing.

The level of **transparency** of the initiative was positively judged by stakeholders, by virtue of the clarity of its procedures and of the information reported on the sponsoring associations’ websites.

Due to the high similarity with the SCI, the judgment expressed on the level of **confidentiality** granted by the platform resembles the one expressed for the SCI: in particular, procedures for aggregated disputes were considered to be well-structured and able to offer protection to the offended party; on the other hand, the limitations which emerged were also similar, especially with reference to the fact that in bilateral disputes it is impossible to grant confidentiality.

**Awareness** of the initiative among operators is still rather limited in the Netherlands; the survey results highlighted that knowledge of the national platform was even lower than of the SCI for Dutch respondents. Although this apparent “paradox” could be explained (in part at least) by the need to register via the SCI website in order to join the Dutch platform. The low overall level of awareness of the national initiative within the Dutch agro-food system nevertheless constitutes a weakness.

In conclusion, also the Dutch initiative appears to be “too young” for a fully-fledged assessment of its actual effectiveness in tackling UTPs (even if some concrete results, at least in terms of prevention, have actually been reached). Being very similar to the SCI (thanks to the adoption of most of its functioning mechanisms), the Dutch initiative essentially shows the same strengths, and suffers from the same weaknesses. The future of the initiative will be presumably decided in the coming months, in the light of the results of an independent evaluation and of the outcomes of internal discussions within the supporting federations. In this context,

renewed support to the platform from all the levels of the food supply chain, and in particular from farmers, should not be taken for granted.

#### *11.2.4 Germany*

Among the five voluntary initiatives assessed in the study, the German platform is the only one which has not yet been officially launched; most of its key features are still under discussion within its constituency. For this reason, no conclusive judgment on the effectiveness of the initiative in tackling UTPs is possible at this stage. Within the limits allowed by the information available to this study, it is nevertheless possible to highlight some aspects which could impact – both positively and negatively – on the effectiveness of the initiative once it becomes operational. It is worth noting that even if Germany has generic legislation addressing UTPs, it appears that only a small proportion of food operators is aware of its existence. In addition, operators which are aware of such legislation raised doubts on its adequateness and effective enforcement.

At this stage, the whole supply chain (farmers, producers and retailers) is involved in discussions on the development of the initiative: this is clearly a strength in comparison with the SCI and the Finnish initiative (which recently saw the withdrawal of farmers from its constituency).

Another positive aspect is the orientation towards making the envisaged dispute resolution instruments available to all operators in the food supply chain (also regardless of their registration status in the SCI): no formal membership for individual companies is foreseen for the initiative.

Particular attention has been paid to the development of the dispute resolution mechanisms: these will be implemented by an arbitration board composed of independent and neutral experts, and will be centred on mediation, arbitration or expert opinions on anonymised disputes of general significance.

Special attention is also being paid in tailoring the PGP to the specific situation and needs of Germany; other elements emerged from the investigations made lead to the conclusion that the SCI model will not be taken “as it is” by the German platform (in contrast to the approach in the Netherlands).

The intention to have the simplest possible governance structure - stressed by the interviewed stakeholders – should also be seen positively.

On the negative side, it must be noted that the level of awareness of the initiative still seems to be very low; the situation is expected to improve starting from January 2016, when the platform and the dispute resolution mechanisms are planned to be officially launched.

### ***11.3 Conclusions on perceived exposure to UTPs among operators of the food chain in the EU***

The analysis of evidence from both desk research and the survey results allowed the study team to conclude that **UTPs occur across all Member States and at all stages of the food supply chain**. The survey showed that the perceived exposure to UTPs of retailers is significantly lower than those of operators in the upstream stages of the chain. Differences among Member States do exist (in particular, the survey results showed a higher perceived exposure to UTPs in New Member States than in former EU15 countries), but **the problem is present in each Member State, and is perceived as serious by most stakeholders**. It is important to underline that a certain degree of uncertainty surrounds the issue: UTPs are often far from being clear-cut and easily interpretable phenomena. It is also worth noting that in spite of the perceived high diffusion of UTPs, the number of cases which have actually been addressed through “soft” tools (such as the ones promoted by the



initiatives under study) or legal proceedings appears to be rather limited, despite the increasing emergence of UTP legislation and independent enforcement bodies.

The analysis of survey results did not allow the detection of any clear link between the presence/absence of national legislation addressing UTPs and the perceived exposure to UTPs of operators (for instance, perceived exposure to UTPs in Member States lacking specific legislation was found to be lower than the one recorded in some Member States where such legislation exists).

The survey results showed that some types of UTPs listed in the EU Green Paper seem to be more common than others; that said, **with the only exception of commercial retaliation, the most common UTPs are rather “generic” in nature** (e.g. the unfair transfer of a commercial risk, or ambiguous contract terms). As expected, differences were detected across the food chain: only 14 retailers reported having been subject to ambiguous contract terms versus 158 operators at upstream levels of the chain (35 farmers, 90 producers and 33 wholesalers); similarly, only five retailers reported as a problem the lack of written contracts compared to 80 operators at upstream levels (23 farmers, 41 producers and 16 wholesalers). The available evidence suggests that it might be difficult to deal with UTPs “in isolation”, i.e. without considering the overall business environment and the prevailing business practices in any specific context where UTPs are applied.

The survey results and the key findings about the functioning of the SCI (see § 11.1) lead to the conclusion that **the problem of UTPs is fundamentally domestic**. The organisation of the food supply chain tends to limit the number of UTP cases with a cross-border relevance - i.e. those which can primarily determine the involvement of the SCI Governance Group - to a very small share of the total (it is worth observing that multinational companies have subsidiaries in a number of Member States, and this often gives a “domestic” dimension to UTP cases which involve this type of company).

As for the **most effective approaches in tackling UTPs**, the *survey results* have shown a clear preference of stakeholders for two approaches (which were favoured by one-third of survey respondents each): “specific legislation at the EU level” and “combination of voluntary/self-regulatory initiatives and public enforcement”. The survey also highlighted a clear preference for EU-level legislation over national legislation, and for the “mixed” approach (“soft” tools and public enforcement) over the “purely voluntary approach”. However, average data were found to hide significant differences, mainly linked to the typology of stakeholders and to geographical factors.

As for the different preferences of *specific typologies of stakeholders*, EU-level and/or national legislation, or a combination of voluntary/self-regulatory initiatives and public enforcement, are viewed favourably by food and beverage producers, farmers, wholesalers and sector associations (with a probable significant presence of national farmers’ associations among respondents). All these categories tend to judge the sole recourse to voluntary initiatives as an ineffective solution. Retailers, on the other hand, expressed a clear preference for the sole recourse to voluntary initiatives (at EU or Member State level).

The analysis of survey results also highlighted some *differences across Member States / geographical areas* as far as the preferred approach in tackling UTPs is concerned. In particular, a clear preference for “legislation” (be it at national or EU level) emerged in most New Member States, whereas the preference for a “combination of voluntary/self-regulatory initiatives and public enforcement” was found to be significantly higher in the former EU15 Member States.

Survey results also revealed the presence of a *significant linkage between the preference for voluntary/self-regulatory initiatives and the operation/planned launch of stakeholders’ platforms aimed at addressing UTPs*. The highest proportion of respondents expressing a preference for voluntary initiatives at EU or national level was actually recorded in Belgium, Finland, Germany and the Netherlands (i.e. the four Member States whose national stakeholders’ platforms were assessed in the present study).

On the contrary, *the linkage between preferred approaches and the presence/absence of national legislation specifically addressing UTPs was found to be unclear*: the elements emerging from the analysis of survey results were rather contradictory.

It is important to underline that the survey questionnaire was not aimed at investigating the reasons behind the perceived exposure to UTPs of operators, or the stakeholders' preferred approaches to tackle UTPs: this implies that any of the above linkages should not be read as a "cause-effect" relationship (e.g. "the preference for approach "Y" in country "X" derives from the presence of legislation / voluntary initiatives aimed at addressing UTPs").

Additional elements for the identification of the most effective approaches in tackling UTPs emerged from the *analysis of the relevant literature*, from *interviews* with external experts, Commission officials and EU-level organisations (see § 7.2 and § 7.3), and from the *results of the assessment of the SCI* (see § 11.1) and of the *four national initiatives* covered by the study (see § 11.2). Qualitative information pointed out serious limitations both for "purely legislative" approaches and for "purely voluntary" ones, mainly due to the complexity of the problem, to the fear factor and to the necessity to adopt a more "composite" approach to hopefully grant a higher degree of protection to weaker parties in the food supply chain.

In this context, it is worth noting that legislation, voluntary/self-regulatory initiatives, and public enforcement are not mutually exclusive approaches; on the contrary, previous studies suggested that the coexistence/combination of these approaches could be a more effective solution to adequately address such a multifaceted issue as UTPs.

The survey results showed that the positions of stakeholders with respect to **specific remedies to contrast UTPs** are more mixed; that said, the position of retailers stands out again, as they clearly prefer "preventive" remedies (i.e. the publication of names of companies which are self-committed to fair B2B trading relationships). Actors in other stages of the supply chain tend to prefer "punitive" remedies, with special reference to "naming and shaming" and monetary penalties.

The preferences of individual typologies of stakeholders for specific types of approaches and remedies can be explained – to some extent – in terms of prevailing status of each typology with respect to UTPs: retailers (especially large-scale ones, which were well-represented in the survey sample) are more frequently involved in UTP cases as (alleged) offending party; on the contrary, food and beverage producers and especially farmers are more likely to be involved as perceived victims.

When critically reviewed with a view to drawing useful insights for policy making, the above *conclusions on preferred approaches and remedies to address UTPs must be read also in the light of their actual applicability*. Evidence on the low number of UTP-related cases (even in Member States which have specific legislation addressing UTPs), together with the fact that the issue of UTPs has blurred boundaries (UTPs can be difficult to define from a legal standpoint), suggest that the drafting of a comprehensive and effective legislation addressing UTPs could be quite challenging (especially at the EU level, due to the different situations applying in individual Member States), and/or that its enforcement through ordinary courts could be extremely difficult.

Literature review, insights from interviewed stakeholders and independent experts, together with the clear preference expressed by survey respondents for "specific legislation at the EU level" or for a "combination of voluntary/self-regulatory initiatives and public enforcement", suggest that a *mixed system, envisaging self-regulatory schemes enforced by an independent authority with wide powers* (e.g. the possibility to promote investigations ex officio and to consider also confidential complaints), *within a general regulatory framework provided by EU-level specific guidelines or provisions*, might constitute an approach which combines effectiveness with the acceptance of stakeholders.



## **Bibliography**

<b>European Commission and official communications</b>
European Commission - "Communication: A better functioning food supply chain in Europe", 2009
European Commission, High Level Group - "Report on Competitiveness of European Agro-Food Industry", 2009
European Commission - "Decision of 30 July 2010 establishing the High Level Forum for a Better Functioning Food Supply Chain", 2010
AIM, CEJA, CELCAA, CLITRAVI, Copa-Cogeca, ERRT, EuroCommerce, Euro Coop, FoodDrinkEurope, UEAPME, UGAL - "Vertical relationships in the Food Supply Chain: Principles of Good Practice", 2011
European Commission - "Summary Report of the responses received to the Commission's consultation on unfair business to business commercial practices", 2012
European Commission - "High Level Forum for a Better Functioning Food Supply Chain, Report", 2012
European Commission - "Green Paper on Unfair Trading Practices in the business-to-business food and non-food supply chain", 2013
AIM, CELCAA, ERRT, EuroCommerce, Euro Coop, FoodDrinkEurope, UEAPME, UGAL - "Framework for the implementation and enforcement of the principles of good practice in vertical relations in the food supply chain", 2013
European Commission – "Summary of responses to the European Commission Green Paper "Green Paper on Unfair Trading Practices in the business-to-business food and non-food supply chain", 2013
European Commission - "Communication: Tackling unfair trading practices in the business-to-business food supply chain", 2014
CEPS, European University Institute, College of Europe - "Study on the Legal Framework covering business-to-business unfair trading practices in the retail supply chain", 2014
European Commission - "High Level Forum for a Better Functioning Food Supply Chain, Report", 2014
European Commission - "Development of the dairy market situation and the operation of the "Milk Package" Provisions", 2014

<b>Studies and reports on UTPs</b>
Oxford University Press - "Private Labels, Brands, and Competition Policy", 2009
M. Vander Stichele, B. Young - Agribusiness Accountability Initiative - "The Abuse of Supermarket Buyer Power in the EU Food Retail Sector", 2009
CIAA-AI - "Unfair commercial practices in Europe - Survey results", 2011
British Institute of International and Comparative Law - "Enforcing Good Practice in Vertical Relationships in the Food Supply Chain", 2012

<b>Studies and reports on UTPs</b>
Consumer International - "The relationship between supermarkets and suppliers: What are the implications for consumers?", 2012
European Competition Network - "Report on competition law enforcement and market monitoring activities by European competition authorities in the food sector", 2012
S. J. Hoch, A. L. Montgomery, Y.-H. Park - "Why Private Labels Show Long-Term Market Share Evolution", 2012
British Institute of International and Comparative Law - "Models of Enforcement in Europe for Relations in the Food Supply Chain", 2012
Copa-Cogeca - "Impact of Unfair Trading Practices in the European agro-food sector", 2013
British Institute of International and Comparative Law - "Fair Relations in the Food Supply Chain", 2014
J. Berasategi - "Supermarket power: serving consumers or harming competition", 2014
European Commission, EY, Arcadia Int., Cambridge Econometrics - "The economic impact of modern retail on choice and innovation in the EU food sector", 2014
Organisation for Economic Co-operation and Development (OECD) - "Competition Issues in the Food Chain Industry", 2014
Fair Trade Advocacy Office, PFCE, Traidcraft and Fairtrade Deutschland - "Who's got the power? Tackling Imbalances in Agricultural Supply Chains", 2014
F. Cafaggi - European University Institute - "A Comparative Analysis of Transnational Private Regulation: Legitimacy, Quality, Effectiveness and Enforcement", 2014/15
IMCO workshop - "Unfair trading practices in the business-to-business food supply chain (UTP) - presentation", 2015

<b>The Supply Chain Initiative</b>
Governance Group decision 02/2013 - "UK and compatibility of The Supply Chain Initiative to GSCOP", 2013
Governance Group decision 01/2013 - "UK and double jeopardy", 2013
Governance Group decision 03/2014 - "The dispute resolution options foreseen in contracts", 2014
Governance Group decision 04/2014 - "Compatibility of the Belgian Code of Conduct with The Supply Chain Initiative", 2014
The Supply Chain Initiative - "Mid-term Review", 2014
The Supply Chain Initiative - "First Annual Report", 2015
SCI website: <a href="http://www.supplychaininitiative.eu/">http://www.supplychaininitiative.eu/</a>

<b>Case study - Finland</b>
Finnish Competition Authority - "Study on Trade Groceries - How does buyer power affect the relations between the trade and industry?", 2012
Björkroth T., Frosterus H., Kajova M., Palo E. - "Study on Trade in Groceries – How does buyer power affect the relations between the trade and industry. FCA reports 1/2012. FCCA, 2012" (Accessed from <a href="http://www.kkv.fi">www.kkv.fi</a> June 2015)
Finnish Food and Drink Industries' Federation (ETL) - "Response to the Commission's Green Paper on Unfair Trading Practices in the B2B food and non-food supply chain in Europe", 2013
ETL - "Response paper to the Commission's Green Paper about unfair trading practices", 2013
FCCA - "Contract practices and regulation put primary producers in a difficult position in the food supply chain; Press release about a new report", 2013. (Accessed from <a href="http://www.kkv.fi">www.kkv.fi</a> June 2015)
Finnish Grocery Trade Association - "Finnish Grocery Trade 2012-2013" (Accessed from <a href="http://www.ptty.fi">www.ptty.fi</a> June 2015)
Finnish Grocery Trade Association - "Finnish Grocery Trade 2013-2014" (Accessed from <a href="http://www.ptty.fi">www.ptty.fi</a> June 2015)
J. Koivisto - "The Finnish Board of Trading Practices in the Food Supply Chain", 2014
<i>Finnish Chamber of Commerce - "The Board of Trading Practices in the Food Supply Chain - Rules, Members and Aggregated Disputes"</i> (Accessed from <a href="http://www.kauppakamari.fi">www.kauppakamari.fi</a> June 2015)
The Board of Trading Practices in the Food Supply Chain (web pages on the Finnish Chamber of Commerce website): <a href="http://kauppakamari.fi/en/boards/board-trading-practices-food-supply-chain/">http://kauppakamari.fi/en/boards/board-trading-practices-food-supply-chain/</a>

<b>Case study - Belgium</b>
Agro-food platform - "The Code of Conduct for fair relations between suppliers and purchasers in the agro food chain", 2010, 2014
Agro-food platform - "Annual reports", 2011, 2012, 2013, 2014
Agro-food platform - "Methodology for assessing the interaction of a national scheme with the EU level voluntary initiative", 2014
Agro-food platform - "The adhesion form for SMEs", 2014
Agro-food platform - Press release "La Concertation de la chaîne passe à la vitesse supérieure", 2015
Borenbond - "Concertation de la chain agro-alimentaire. Etat de la situation", 2015
SCI Belgium website: <a href="http://supplychaininitiative.be/en/home/">http://supplychaininitiative.be/en/home/</a>

<b>Case study - Germany</b>
Haucap, J. et al. - " – Wettbewerbsprobleme im Lebensmitteleinzelhandel. DICE Working Paper, September 2013
Bundeskartellamt- Sektoruntersuchung Lebensmitteleinzelhandel, 2014
Bundeskartellamt - Fusionskontrolle: Edeka/Kaiser's Tengelmann, 2015
BE, DBV, HDE, Markenverband – "Nationale Umsetzung der SCI", July 2015

<b>Case study - The Netherlands</b>
Landbouw Economisch Instituut (LEI) van Wageningen Universiteit - "Macht en prijsvorming in agrofoodketens", 2003
Landbouw Economisch Instituut (LEI) van Wageningen Universiteit - "Ketenrendementen in de Nederlandse agribusiness", 2007
De Nederlandse Mededingingsautoriteit (NMa) - "Prijsvorming in de Agrifood sector", 2009
SEO Economic Research, "Farmers' quest for sustainability", 2011
Ministerie van Economische Zaken, Brief aan de Tweede Kamer - "Gedragscode eerlijke handelspraktijken", 2012
Ministerie van Economische Zaken, Brief aan de Tweede Kamer - "Eerlijke handelspraktijken", 2012
Ministerie van Economische Zaken, Brief aan FNLI - "Gedragscode eerlijke handelspraktijken", 2012
Ministerie van Economische Zaken, Brief aan de Tweede Kamer - "Vervolg eerlijke handelspraktijken", 2012
Tilburg Institute for Interdisciplinary Studies of Civil Law, and Conflict Resolution Systems (TISCO) - "Eerlijk, scherp en betrouwbaar", 2012
Ministerie van Economische Zaken, Brief aan de Tweede Kamer - "Rapport over oneerlijke handelspraktijken", 2013
Ministerie van Economische Zaken, Brief aan de Tweede Kamer - "Concept kabinetsreactie op het Groenboek inzake oneerlijke handelspraktijken in de food- en non-food toeleveringsketen tussen ondernemingen in Europa", 2013
"The Netherlands' response to the 'Green Paper on Unfair Trading Practices in the Business-to-Business Food and Non-food Supply Chain in Europe", 2013
Ministry of Economic Affairs - "Letter to the House of Representatives, Policy letter on Sustainable Food Production", 2013
Tweede Kamer der Staten-Generaal - "Nieuwe Commissievoorstellen en initiatieven van de lidstaten van de Europese Unie", 2013
SEO economisch onderzoek - "Oneerlijke handelspraktijken: voldoet bestaande (zelf)regulering?", 2013
NU.nl - "Te weinig regels tegen oneerlijke handel", 2013
Ministerie van Economische Zaken, Brief aan de Tweede Kamer - "Eerste bevindingen pilots gedragscode eerlijke handelspraktijken", 2014

<b>Case study - The Netherlands</b>
Ministerie van Economische Zaken, Brief aan de Tweede Kamer - "Beantwoording vragen aangaande de oorzaken van het teleurstellend lage aantal deelnemende boeren en tuinders aan de pilot eerlijke handelspraktijken", 2014
Ministerie van Economische Zaken, Brief aan de Tweede Kamer - "Kabinetsreactie op de initiatiefnota 'Een eerlijke boterham, over het versterken van de voedselketen', 2014
Bart de Liefde (VVD) - "Anoniem klagen bij het meldpunt oneerlijke handel lijkt onmogelijk", 2014
Chantal De Bie (Tilburg University) - "Oneerlijke handelspraktijken & zelfregulering", 2014
Keimpe van der Heide (Nederlandse Akkerbouw Vakbond) - "Boerderijkrant", 2014
M. Jansen (CBL) - "Boerderijkrant, Klachten oneerlijke handel zijn er om op te lossen: dien ze in", 2014
R. Bleijerveld - "Supermacht.nl, Leveranciers onder druk gezet door Oerlemans en Iglo; eerste case voor pilot Eerlijke Handelspraktijken?", 2014
Food Personality - "Grote fabrikanten tekenen gedragscode niet", 2014
Ministerie van Economische Zaken, Brief aan de Tweede Kamer - "Voortgangsrapportage pilots gedragscode eerlijke handelspraktijken", 2015
Food Personality - "Gedragscode eerlijke handelspraktijken", 2015
LTO - "Proeftraject om fatsoenlijk zakendoen te bevorderen"
LTO - "Handleiding Gedragscode Eerlijke Handelspraktijken Agrofood"
CBL - "Reactie Centraal Bureau Levensmiddelenhandel op Groenboek inzake oneerlijke handelspraktijken in de food- en non-food toeleveringsketen tussen ondernemingen in Europa"
Ahold Europe - "Submission of Royal Ahold to the consultation of the European Commission on the Green Paper on unfair trading practices in the business food and non-food supply chain in Europe"
FNLI - "Stappenplan aanmelding Supply Chain Initiative"
Australian Competition and Consumer Commission, website

<b>Other National initiatives</b>
UK Competition Commission - "The supply of groceries in the UK market investigation", 2008
UK Government - "Groceries Code Adjudicator" Annual Report and Accounts, 2014, 2015
Spain - Comisión Nacional de la Competencia - "Report on the relations between manufacturers and retailers in the food sector"

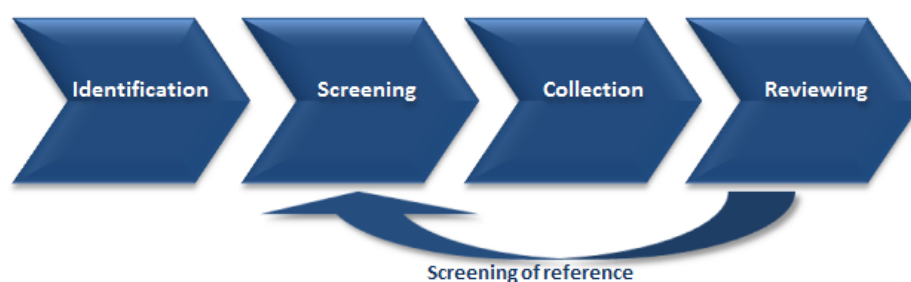
## **ANNEXES**

**ANNEX 1 – Desk research**

Desk research played an important role to collect evidence on all the relevant topics, but was especially focused on investigating on the occurrence and impact of UTPs in the EU as a whole and in individual Member States. Besides relevant bibliography identified and collected by the study team experts, additional bibliography of interest was highlighted/provided also by some interviewed subjects (including members of the Steering Committee for the study).

### **Protocol for collecting documentation and literature review**

The **protocol for collecting the relevant documentation and for reviewing the available literature** is outlined in the scheme below.



**Identification:** was the searching stage, aimed at identifying the relevant documentation/references.

**Screening:** once the identification was completed, an initial sifting through the documents/references was carried out to reveal those which should be studied in more detail. The titles, authors and brief synopsis of content of the most important documents/references were added to an *ad hoc* document.

**Collection** involved retrieval of the relevant documentation and of the bibliography to be reviewed.

**Reviewing:** the most important documents/references were studied in depth and reviewed in detail. A synopsis for each document/reference was produced, along with a guide to the topics of the study for which it was relevant.

### **Overview of the evidence from desk research**

Key reference literature (including websites) is illustrated in this paragraph through a set of boxes which provide a synthetic description of the most important documents. Initially, documents/references on the horizontal issue of UTPs are presented while, subsequently, the literature review has been organised around the five case studies: Supply Chain Initiative, voluntary initiatives in Belgium, voluntary initiatives in Finland, voluntary initiatives in Germany and voluntary initiatives in the Netherlands. Inside each section, the key references are reviewed in chronological order.



## Unfair Trading Practices in the food supply chain and measures to address them

### ***Box 4 – The issue of unfair trading practices in EU official documents***

This box synthetically recalls the key reference documents issued by EU institutions on the issue of unfair trading practices, and on possible measures to address them.

The **Report on the Competitiveness of the European Agro-Food Industry**, issued on 17/03/2009 by the High Level Group on the Competitiveness of the Agro-Food Industry (promoted by the European Commission Enterprise and Industry DG, Food Industry Unit), reported – among others – the results of investigations made on the theme of relationships along the food supply chain, also covering aspects related to the issue of abusive behaviour resulting from imbalances in bargaining power.

The **Communication on a better functioning food supply chain in Europe** (COM(2009) 591 final, Brussels, 28/10/2009) dealt – among others – with the issue of imbalances in bargaining power and potentially unfair trading practices with the aim of promoting sustainable and market-based relationships between stakeholders in the food supply chain (chapter 3.1 of the Communication).

On 30/07/2010, a **Commission Decision** (2010/C 210/03) was issued, **establishing the High Level Forum for a Better Functioning Food Supply Chain**. The Forum was set up “to ensure follow-up to the recommendations of the High Level Group on the Competitiveness of the Agro-Food Industry and to the Commission initiatives” and to assist the Commission in the implementation of the initiatives proposed in the aforementioned Communication *A better functioning food supply chain in Europe*. Following a request made by the European Commission in the B2B Platform of the High Level Forum, a multi-stakeholder dialogue was created to discuss fair/unfair practices along the food supply chain: on 29/11/2011, the outcomes of such dialogue took the form of a set of **Principles of Good Practice** and of a **list of examples of unfair and fair practices in vertical trading relationships**, agreed by the core members of the B2B platform (AIM, CEJA, CELCAA, CLITRAVI, COPA-COGECA, ERRT, EuroCommerce, Euro Coop, FoodDrinkEurope, UEAPME, UGAL). This document, together with the **Framework for the implementation and enforcement of the principles of good practice in vertical relations in the food supply chain**, signed on 25/01/2013 by eight members of the B2B platform (AIM, CELCAA, ERRT, EuroCommerce, Euro Coop, FoodDrinkEurope, UEAPME, UGAL), constitutes a core reference for the operation of the Supply Chain Initiative.

On 15/02/2012, the European Commission DG for the Internal Market and Services issued a **Summary Report of the responses received to its consultation on unfair business to business commercial practices**, which had been launched on 14/07/2011 via the European Business Test Panel (“EBTP”) to seek the views of the companies on unfair commercial practices. The report constitutes a key reference for the study as it illustrates the results of the consultation, which focused on: the occurrence, nature, and relevance of UTPs; enforcement of measures addressing UTPs; and transparency of contractual relations.

The **Report 2012 of the High Level Forum** (issued on 05/12/2012) provides – among others -information on the activities and achievements of the Forum in the field of improvement of vertical B2B contractual relationships, including addressing the issue of UTPs. The High Level Forum for a Better Functioning Food Supply Chain adopted a new Report in 2014. The **2014 Report** (issued on 15/10/2014) contains the results of the discussions held on UTPs and reflects the outcome of the deliberations of the Forum members.

The issue of UTPs is also dealt with in the Commission **Communication setting up a European Retail Action Plan** (COM(2013) 36 final, Brussels, 31/01/2013), especially with reference to the objective of developing a more balanced business-to-business food and non-food supply chain (chapter 3.3 of the Communication). On the same day, the Commission issued the **Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe** (COM(2013) 37 final, Brussels, 31/01/2013), which constitutes a key reference inasmuch it provides a definition of UTPs, describes the legal framework addressing UTPs and the related enforcement, and outlines a number of different types of UTPs.

Another important reference document is the recent (2014) Commission ***Communication on tackling unfair trading practices in the business-to-business food supply chain*** (COM(2014) 472 final, Strasbourg, 15/07/2014), which provides additional information on the issue of UTPs, on the related legislation, on voluntary initiatives aimed at addressing UTPs (with special reference to the Supply Chain Initiative), outlining the key elements of the Commission's strategy against such practices.

The following boxes synthetically review a number of key references by authoritative institutions or independent experts on the issue of unfair trading practices in the food supply chain and on the (legislative or voluntary) measures to address them.

<b>Author(s):</b> European Competition Network	<b>Year:</b> 2012
<b>Title:</b> Report on competition law enforcement and market monitoring activities by European competition authorities in the food sector	
<b>Content:</b> The report was published in May 2012. It is a compilation of contributions from national competition authorities of the European Union and the Competition DG of the European Commission. After outlining the key concerns about the functioning of the food supply chain and the legal framework for the application of the competition rules in the EU food sector, the report provides a wide overview of enforcement actions (antitrust and merger control cases) and of market monitoring actions. Even if not specifically focused on UTPs, the report provides a good amount of information on the way in which notable cases of UTPs were addressed by national competition authorities in various Member States. The report combines a "horizontal" approach (food supply chain and agro-food sector) with a sector-specific one.	
<b>Key findings:</b> The report is focused on the illustration of a great amount of evidence on the covered topics, rather than on drawing conclusions. However, the report mentions the issue of UTPs linked to imbalances of bargaining power, in particular between suppliers and retailers, which mostly do not fall within the scope of competition rules at the EU level or in most of the Member States.	

<b>Author(s):</b> J. Stefanelli and P. Marsden for the British Institute of International and Comparative Law (BIICL)	<b>Year:</b> 2012
<b>Title:</b> Models of Enforcement in Europe for Relations in the Food Supply Chain	
<b>Content:</b> This briefing paper identifies and evaluates existing national enforcement mechanisms in the EU in relation to the food supply chain and other sectors, with the aim of assessing the feasibility of and possibilities for a EU-wide enforcement mechanism for improving trading relationships. It considers existing soft law and hard law mechanisms, together with plans for regulation in several Member States. It illustrates notable examples of enforcement mechanisms (including a few concerning third countries) in the food supply chain and also in other sectors (communications, energy, advertising, etc.), extracting a number of relevant findings and drawing conclusions on the different possible options.	
<b>Key findings:</b> the Member States have employed several mechanisms to tackle the issue of UTPs, which differ according to the needs and legal traditions of the Member States. Besides competition law, which the authors do not see as the best solution to address UTPs, a number of other tools can be employed for this purpose, ranging from soft law to hard law. The authors conclude that while control of quasi-abusive behaviour by quasi-dominant retailers through competition law might become more effective in the future, the adoption of codes (voluntary or mandatory) may be a more successful short term solution, especially if accompanied by strong enforcement mechanisms, and if operators themselves can be signatories. The authors deem that in order to achieve a truly effective enforcement mechanism, a mix of soft and hard law options might be necessary. As UTP-related issues are experienced across the EU Member States, the authors believe that it would be helpful to regulate B2B conduct at EU level, preferably through the development of a code of conduct that can be enforced either at EU level, or at Member State level.	

<b>Author(s):</b> OECD	<b>Year:</b> 2013
<b>Title:</b> Competition Issues in the Food Chain Industry	
<b>Content:</b> The document collects the proceedings of a Roundtable on Competition Issues in the Food Chain Industry held by	

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*Annex 1 - Desk Research*

the Competition Committee of OECD in October 2013. Even if not specifically focused on UTPs, the contributions from some national delegations are interesting because they provide information on notable cases of UTPs and on measures adopted to address them in the EU, in a number of Member States and also in some third countries (Australia, Canada, Japan, Norway, Turkey).

**Key findings:** the conclusion of the Roundtable is that several approaches are used in the various countries considered to integrate the analysis of buyer power and unfair trade practices into the competitive assessment of cases in the food supply chain, but none of these approaches appears to be favoured by every country. In particular, the EU observes that while the abuse of buyer power is a clear competition issue, and should hence be tackled under the current competition rules, it is less obvious that competition law has to deal with UTPs in bilateral relationships, which should instead be tackled by unfair trading laws or by codes of conduct. Countries like Japan, Finland, Italy and Hungary consider that traditional competition policy tools are not enough to deal with issues of buyer power and UTPs, and deem that additional regulation to tackle these issues is necessary.

<b>Author(s):</b> J. Berasategi	<b>Year:</b> 2014
<b>Title:</b> Supermarket power: serving consumers or harming competition	
<b>Content:</b> This paper analyses a wide range of evidence to understand the effects of bargaining power of large-scale retailers versus consumers and upstream operators. The analysis is aimed at proposing complementary regulatory and competition remedies to ensure that access to supermarket platforms and competition within them promotes fair dealing, consumer welfare and economic growth, also drawing inspiration from the remedies enforced in other competitive bottlenecks (mobile communication networks, internet service providers and search engines, and credit card networks). Even if not specifically focused on UTPs and on the food supply chain, the paper is interesting for the great amount of information presented, and for the assessment of different types of UTPs and of the possible remedies. It also provides information on the Supply Chain Initiative, and on the process which led to its creation.	
<b>Key findings:</b> the author argues that leading large-scale retailers have exploited their power vis-à-vis their suppliers in two stages: 1) transferring more and more of the risks of their retailing operations to suppliers by means of remunerated service agreements, manifestly unbalanced purchase agreements and unilateral practices that disregard contractual terms and legal provisions; 2) excluding independent grocery brands from the market (rather than trading with them) through vertical integration and launch of product lines (manufactured or not by them) carrying their own grocery brands. The author hence deems imperative to enforce ex ante regulatory and ex post competition law remedies in order to address the retailers' unfair/exclusionary practices and to ensure vigorous and efficient competition between grocery brands and between supermarket chains. These would comprise (i) FRAND ("fair, reasonable and non-discriminatory") terms regarding access to and competition within purchasing platforms of large-scale retailers; (ii) a separation of the supermarket grocery brand activities from the distribution services or the retailer function; (iii) an independent enforcement of the regulatory obligations with ex officio investigatory powers; and (iv) the control of retail concentration.	

<b>Author(s):</b> College of Europe, European University Institute, Centre for European Policy Studies for DG Internal Market	<b>Year:</b> 2014
<b>Title:</b> Study on the legal framework covering business-to-business unfair trading practices in the retail supply chain	
<b>Content:</b> After giving an overview of the legal and economic aspects of UTPs in the retail chain, the report illustrates the results of a survey covering the related national legislation (competition law and other specific legislation), cross-border B2B UTPs, and private regulation (e.g. codes of practice), identifying the most notable trends in addressing UTPs. It then reviews national legislation tackling selected UTPs and its enforcement, in order to assess the Member States' ability to successfully address existing UTPs in the retail chain. It finally draws conclusions on the themes covered and puts forward policy recommendations. Even if the report does not cover exclusively the food sector (to which a specific focus is however dedicated), it constitutes a key reference for the evaluation as it provides a comprehensive analysis at Member State level of measures addressing UTPs.	
<b>Key findings:</b> The report identifies a number of key trends in addressing UTPs: i) the expansion of national competition law beyond the scope of EU antitrust rules; ii) the expanding role of competition authorities or other <i>ad hoc</i> enforcement bodies; iii) use of combinations of hard and soft law; iv) public enforcement of private regulation. The recommendations	

call for: 1) a clear definition of the policy problem; 2) additional measures to complement EU competition law, which is insufficient; 3) addressing the fragmentation of legal rules and approaches in the EU28; 4) addressing the “fear factor”; 5) giving paramount importance to enforcement; 6) providing more detailed information as regards the unfair nature of certain trading practices; 7) refraining from a “one-size-fits-all” approach; 8) adopting a “principles-based” approach; 9) adopting a “functional” approach that regulates UTPs rather than fields (contracts, unfair competition, etc.) leaving to Member States the task of indicating which combination of instruments should be used; 10) adopting a “co-regulatory” approach (combination of hard and soft law), coupled with coordinated administrative and judicial enforcement.

<b>Author(s):</b> J. Stefanelli and P. Marsden for the British Institute of International and Comparative Law (BIICL)	<b>Year:</b> 2014
<b>Title:</b> Fair Relations in the Food Supply Chain: Establishing Effective European Enforcement Structures	
<b>Content:</b> The paper starts with evaluating the role and operation of similar existing enforcement frameworks at EU level. It then discusses specific details regarding enforcement (e.g. scope of and access to the national enforcement mechanism, how to conduct investigations that respond to issues of supplier fear, tools that the national enforcement authorities might use to remedy UTPs, etc.) and analyses how the national enforcement authorities can work with each other and with the EU in addressing UTPs, also studying the related legal and practical issues (e.g. legal basis for EU action, funding, etc.). The paper is of particular interest for the evaluation because it focuses specifically on the food supply chain.	
<b>Key findings:</b> The authors conclude that the effectiveness of any enforcement mechanism depends to a great extent on its attention to practical detail, particularly in relation to protection of the anonymity and confidentiality of suppliers who complain about UTPs. In providing an overview of the key choices that the EU will have to make when deciding how best to approach enforcement, the author suggest that the EU should give Member States primary responsibility for enforcement against UTPs, according to principles and minimum procedures established at EU level and under a framework managed at EU level.	

#### ***Box 5 – Stakeholder’s investigations on the issue of UTPs***

In recent years, a few stakeholder organizations engaged themselves in investigations on the occurrence, nature and impacts of UTPs in the European food supply chain. The two notable examples outlined here took the form of questionnaire-based surveys, and were both carried out by the same independent research company (Brussels-based Dedicated Research) on behalf of AIM-CIAA (results published in March 2011) and of COPA-COGECA (results published in June 2013).

The survey for **AIM-CIAA “Unfair commercial practices in Europe”** was carried out between December 2010 and January 2011 in 15 European countries, for a total of 686 valid replies. The survey found out that 96,4% of respondents were exposed to UTPs in 2009; non-respect of contractual terms and de-listing threats to obtain unjustified advantages resulted to be the UTPs most frequently applied, with the most serious impacts on costs and sales; only 13% of respondents took actions towards the offending party (with legal complaints being the preferred action, followed by legal counsel/lawyer advice; recourse to arbitration / mediation services resulted to be limited to 2% of total respondents).

The survey for **COPA-COGECA “Impact of Unfair Trading Practices in the European agri-food sector”** was targeted at farmers, agro-food cooperatives and other entities (e.g. food processors) in 21 European countries, for a total of 434 valid replies. The survey found out that 94% of respondents had been affected by at least one of the 17 types of UTPs considered, with 46% of respondents affected by all 17. Most of the UTPs were found out to occur in the post-contractual phase. Imposing a requirement to fund the cost of a promotion, imposing general terms and conditions that contain unfair clauses, and refusing or avoiding putting essential terms in writing resulted to be the most widespread UTPs applied. 53% of farmers and 45% of agri-coops felt to be more or much more exposed to UTPs than 5 years before. The large majority of respondents estimated that actions against UTPs were necessary at EU or Member State level.

**Box 6 – United Kingdom’s Groceries Code Adjudicator and the Groceries Supply Code of Practice (GSCOP)**

Often cited as a reference example of legislation-based system to address UTPs in the food chain, UK’s **Groceries Code Adjudicator (GCA)** is an independent adjudicator overseeing the relationship between large-scale retailers and their suppliers. It ensures that large-scale retailers treat their direct suppliers lawfully and fairly, investigates complaints and arbitrates in disputes. The **Groceries Code Adjudicator Act**, which created the GCA, came into force on 25/06/ 2013. The GCA has the powers to enforce the **Groceries Supply Code of Practice (GSCOP)**. In the UK, retailers are required to comply with the **Groceries (Supply Chain Practices) Market Investigation Order** of 2009: GSCOP is contained within schedule 1 of the Order, and provides detail on how designated retailers (as listed in Article 4(1)(a) of the Order) should manage their relationship with suppliers, to ensure compliance with both the Order and GSCOP. The website of the GCA and the web pages illustrating the GSCOP constitute important references for the evaluation.

GCA website: <https://www.gov.uk/government/organisations/groceries-code-adjudicator>

GSCOP web pages: <https://www.gov.uk/government/publications/groceries-supply-code-of-practice/groceries-supply-code-of-practice>

Supply Chain Initiative: genesis, evolution, organisation and functioning

The launch of the Supply Chain Initiative is rather recent (September 2013). As a consequence, only some of the most recent references mention the SCI, and even fewer deal with it to some extent. Among the key references reviewed at § 11.4.1, only the recent Commission *Communication on tackling unfair trading practices in the business-to-business food supply chain* (COM(2014) 472 final) and the studies by BIICL (2014) and Berasategi (2014) mention the SCI, and only the latter provides some information on it. This implies that the key reference documents to understand the genesis, evolution, organisation and functioning of the initiative are the SCI’s own **website** and the SCI’s own **Annual Report**, published for the first time in January 2015. The following boxes provide essential information on these two key references.

**Box 7 – The Supply Chain Initiative website**

The SCI’s website features:

1. Information on the nature, objectives and key features of the SCI, and supporting organisations.
2. A “join us” section, including an online procedure to join the initiative.
3. Tools for companies which intend to join the initiative or have already joined it, including an e-learning training module for personnel.
4. An updated registry of companies that have signed up to the SCI, organised by sector and country (members can be listed alphabetically or chronologically).
5. A section on dispute resolution, providing information on bilateral disputes, aggregated disputes, and breaches of process commitments.
6. Answers to FAQs on the initiative and on the various aspects of its functioning.
7. Key documentation concerning the implementation of the SCI: Principles of Good Practice in vertical relationships in the Food Supply Chain; Framework for the implementation and enforcement of the principles of good practice in vertical relations in the food supply chain; Rules of Procedure for the Governance Group of the SCI.
8. Decisions of the Governance Group.

9. A section on regional/national supporting initiatives, features key information by Member State.
  10. Tools for national associations, with special respect to the establishment of national voluntary platforms of stakeholders or the recognition of existing platforms.
  11. The SCI Annual Report.
  12. Press releases and other communication materials.
- Website of the Supply Chain Initiative: <http://www.supplychaininitiative.eu/>

**Box 5 – The Supply Chain Initiative Annual Report**

The first edition of the SCI Annual Report was published in January 2015.

The introductory sections feature information on the nature, objectives and functioning of the SCI, on supporting organisations, and on the process which lead to the launch of the SCI. These are followed by sections describing the evolution of company registration and the progress in achieving a “critical mass” of registered companies.

An important section of the document illustrates the results of the *SCI’s questionnaire-based compliance survey*, conducted by an independent third party. When the survey was launched (01/09/2014), the SCI covered 112 companies representing a total of 715 operating companies at national level; of these, 90 companies responded to the survey, resulting in a total of 491 completed questionnaires at national level (response rate of about 80%). The survey focused on the various process commitments under the Framework: 1) training of staff; 2) communication to business partners; and 3) operation of the dispute resolution options (e.g. number of complaints lodged and received and the option chosen to solve each dispute).

The reports also gives an overview of the establishment of national platforms, reports the decisions of the Governance Group, and provides information on the development and promotion of tools. The registry of companies which had joined the initiative at the time of publication is annexed to the report.

**Voluntary initiatives in Belgium**

Among the four voluntary initiatives covered by case studies for the evaluation, the Belgian one is the only boasting a full-fledged stand-alone website, whose content is synthetically described in the box below.

**Box 8 – The Belgian Supply Chain Initiative website**

All the pages of the website are available in three languages: Flemish, French and English. The layout of the site is similar to the EU-level SCI website’s.

The site features sections explaining the origin of the initiative and the reasons behind it, its objectives, organisation and functioning, and its linkages with the EU SCI. Other sections highlight the benefits from joining the initiative, and explain the dispute settlement mechanisms for breaches of the principles of good practice, individual disputes and aggregated disputes.

The site also features a registry of the companies which have joined the initiative (individually or collectively through their reference associations), a library containing the *Code of Conduct for fair relations between suppliers and purchasers in the agro food chain* and the adhesion form for SMEs, answers to FAQs on the initiative and on the various aspects of its functioning, and a news section.



A synthetic review of the reference literature for the case study on Belgium is provided in the boxes below.

<b>Author(s):</b> Agro food platform (Belgium)	<b>Years:</b> 2011, 2012, 2013, 2014
<b>Title:</b> Annual Reports	
<b>Content:</b> Summary of annual progress of the Belgian SCI. Each annual report includes: number of individual members; information on the number of disputes in the year and their nature; possible changes to the Belgian SCI; and progress year on year.	
<b>Key findings:</b> Number of members has barely increased since 2011 (224 in 2014 compared to 221 in 2011); 17 disputes over the four year period since the beginning of the initiative in 2010 (annual figures available); progress has been made in different areas of working groups. Changes to the Belgian SCI were implemented in 2014.	

<b>Author(s):</b> Agro food platform (Belgium)	<b>Year:</b> 2014
<b>Title:</b> Methodology for assessing the interaction of a national scheme with the EU level voluntary initiative	
<b>Content:</b> Summary of differences between the EU level scheme and the Belgian scheme, assessment of compatibility and suggested resolutions for recognition.	
<b>Key findings:</b> While various areas were found to be fully compatible, others were not (e.g. dispute settlement).	

<b>Author(s):</b> Borenbond (2015).	<b>Year:</b> 2015
<b>Title:</b> Concertation de la chain agro-alimentaire. Etat de la situation	
<b>Content:</b> Summary of the basis of the Belgian initiative, and the state of play of different sectoral working groups.	
<b>Key findings:</b> The document is focused on the illustration of the evidence on the covered topics, rather than on drawing conclusions.	

#### Voluntary initiatives in Finland

Even if it lacks a stand-alone website, the voluntary initiative set up in Finland has a dedicated section on the website of the Finnish Chamber of Commerce, with which the initiative (denominated *Board of Trading Practices in the Food Supply Chain*) is affiliated. The content of the related web pages is synthetically outlined in the box below.

#### ***Box 9 – Finland: Board of Trading Practices in the Food Supply Chain – web pages***

The section of the website of the Finnish Chamber of Commerce dedicated to the Board is available in Finnish, Swedish and English. It features:

1. Key information on the nature, objectives and key features of the initiative.
2. A section on the Principles of Good Practice and on examples of unfair and fair trading practices.
3. A page listing the members of the Board for 2014-2016.
4. The Rules of the Board of Trading Practices in the Food Supply Chain (the Finnish version prevails on the unofficial translations in Swedish and English).
5. A page explaining the only mechanism for addressing UTPs available, i.e. aggregated disputes.

A synthetic review of the reference literature for the case study on Finland is provided in the boxes below.

<b>Author(s):</b> T. Björkroth, H. Frosterus, M. Kajova and E. Palo. Finnish Competition Authority	<b>Year:</b> 2012
<b>Title:</b> Study on trade in groceries. How does buyer power affect the relations between the trade and industry?	
<b>Content:</b> Initially, the report provides an overview of the grocery trade in Finland. Then, in the following chapters, the report investigates how practices such as buyer power, category management, private labels, slotting fees, marketing allowances, and transfer of risk are implemented by the trade. The report's conclusive section outlines the consequences of these actions on competition in the food supply chain. The report constitutes a key reference as it provides a comprehensive analysis of the Finnish grocery trade and of the impacts from UTPs.	
<b>Key findings:</b> The report states that there are some practices implemented by the trade that fall within a "grey area", as these practices cannot for sure be identified as UTPs. The trade manages selection, pricing and display of products through its use of private labels, thus private labels act as a gatekeeper. Marketing allowances are part of the established trade practice in Finland. Despite requiring marketing allowances, the trade does not commit itself to any degree of reciprocity. The marketing allowances requested by trade may in practice lead to competition problems. The widely occurring transfer of risk causes serious competition concerns to suppliers. The report concludes that the size of trade's bargaining and buyer power does not automatically indicate lack of competition or distortion thereof. But the complexity and inter-relatedness of the phenomena and their existence in the "grey area" create a need for further investigation. Even if none of the "grey area" practices violate the Competition Act alone, their cumulative impact may be so big that effective competition is threatened.	

<b>Author(s):</b> Finnish Food and Drink Industries' Federation (ETL)	<b>Year:</b> 2013
<b>Title:</b> Finnish Food and Drink Industries' Federation (ETL) response to the Commission's Green Paper on Unfair Trading Practices in the B2B food and non-food supply chain in Europe (COM2013/37)	
<b>Content:</b> The response paper provides short statements and answers to 15 questions regarding UTPs in Finland. The response paper is drafted following responses provided by FoodDrinkEurope and European Brand Association (AIM) to the Commission's Green Paper on Unfair Trading Practices.	
<b>Key findings:</b> The paper explains that the concept of UTP is not recognised in Finland and agrees that some trading practices do exist that fall within a "grey area". The paper states that UTPs can occur at all stages of the supply chain. The paper mentions as examples of practices in the "grey area" gratuitous marketing allowances and transfer of risk. Finally the paper mentions the amendment of the Finnish Competition Act, and states that ETL is committed to support the implementation of good trading practices in the food supply chain.	

<b>Author(s):</b> J. Koivisto. Finnish Grocery Trade Association	<b>Year:</b> 2014
<b>Title:</b> The Finnish Board of Trading Practices in the Food Supply Chain	
<b>Content:</b> A presentation that introduces the organisation and management of the Finnish Board of Trading Practices in the Food Supply Chain, and explains the procedure for bringing a case to the Board.	
<b>Key findings:</b> The Finnish Board of Trading Practices in the Food Supply Chain is the implementation of the Supply Chain Initiative in Finland. The Board can only deal with aggregated disputes involving Finnish partners. The Board will issue its guidance with 2/3 majority vote if consensus cannot be reached. The Chairman of the Board is required to have a Master's Degree in Law. All members of the Board are chosen by the Finland Chamber of Commerce.	



#### Voluntary initiatives in Germany

Given the early stage of development of the German initiative (see § 4.4), basically all the evidence base for the analysis was collected through in-depth interviews. No relevant references found in literature can hence be reviewed here.

#### Voluntary initiatives in the Netherlands

A synthetic review of the reference literature for the case study on the Netherlands is provided in the boxes below.

<b>Author(s):</b> Ministerie van Economische Zaken	<b>Years:</b> 2012, 2013, 2014, 2015
<b>Title:</b> Brief aan de Tweede Kamer, pilot eerlijke handelspraktijken	
<b>Content:</b> In its letters to the Dutch House of Representatives, the Ministry of Economic Affairs informs on the progress of the Dutch SCI. The letters include information on the general objective and functioning of the pilot, state of registration, communication done, “almost cases”, problems and possible solutions, evaluation.	
<b>Key findings:</b> Until today, no cases have been dealt with by the governance board. The few “almost cases” were solved before being reported. All retailers signed up, together with around 40 companies of the food industry, 3 farmers’ cooperatives and 3 regional farmers’ associations. The reason for low participation of farmers and SMEs is not clear and no solutions have been agreed upon.	

<b>Author(s):</b> SEO economisch onderzoek	<b>Year:</b> 2013
<b>Title:</b> Oneerlijke handelspraktijken: voldoet bestaande (zelf)regulering?	
<b>Content:</b> As commissioned by the Ministry of Economic Affairs, the report examines whether existing legislation supplemented with self-regulation is sufficient to counter unfair trade practices in the Netherlands.	
<b>Key findings:</b> The study concludes that self-regulation as a complement to the existing legislation is the appropriate way to counter UTPs. Self-regulation should provide for a code of conduct that fills open standards from civil law, and for a neutral body giving binding advice, arbitrating or mediating.	

<b>Author(s):</b> Dutch government	<b>Year:</b> 2013
<b>Title:</b> The Netherlands’ response to the ‘Green Paper on Unfair Trading Practices in the Business-to-Business Food and Non-food Supply Chain in Europe’	
<b>Content:</b> The document describes the view of the Dutch government on UTPs, existing legal framework, possible solutions, the desired functioning of the pilot and the fear factor. It also specifies which UTPs are the most common in the Netherlands.	
<b>Key findings:</b> According to the Dutch government, UTPs exist in all stages of the supply chain and in all sectors. The Dutch government believes that self-regulation, as an adjunct to the existing legislation (NL Code of Civil Law, competition law and Authority for Consumers and Markets as the regulatory body), is the most appropriate route to follow. Self-regulation should be clear, accessible and include an impartial body to counter the fear factor. For any action, the government very much looks at the developments at European level. However, as the Dutch government attaches great importance to free enterprise, it is left to the sector organisations to determine the most appropriate form of the Dutch SCI.	

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*Annex 2 - Interviews*

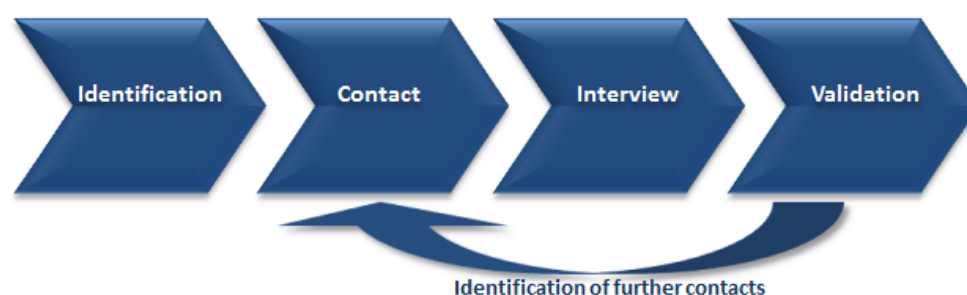
***ANNEX 2 – Interviews***

Interviews made for the purposes of the study aimed at filling, in combination with the questionnaire-based survey and desk research, the required base of data and information for the study. The main criteria used to design the list of candidates for the interviews is the relevance of their role in relation to the objectives of the study. In particular the interviewees belong to different groups of stakeholders that, as a whole, allowed to have a perspective on the SCI and on the national initiatives from various angles.

In-depth questionnaire-based interviews to organisations/stakeholders played an important role especially to understand the reasons behind the decision to become/not to become a member of the initiatives under study, the perceived effectiveness of the SCI / of the national initiatives, and their strengths and weaknesses in this respect.

### **Protocol for in-depth interviews**

The **protocol which have been used for carrying out interviews** is outlined in the scheme below.



**Identification:** the first step was the identification of interview targets; once this was completed, contact details were established.

**Contact:** Potential interviewees were sensitized through opportune procedures, and then contacted to request an interview and to arrange a suitable date. Interviewees were provided in advance with indications on the specific topics to be discussed and with the list of questions.

**Interview proper:** Interviewers followed a questionnaire which set out specific questions to ask, although they were encouraged to go beyond these questions if it was apparent from the conversation that this would be of benefit to the study. This approach was facilitated by guidance notes and briefings provided to interviewers, who were anyway well aware of the wider context of the study

**Validation:** Validation was a key part of the interview process. Minutes were returned to the interviewee for validation using tracked changes. Sometimes areas for further questioning or for clarification were identified during this process, and specific questions were then added to the notes for the interviewee to consider. The validation process allowed interviewees to make any necessary amendments and was an opportunity to provide any further information of relevance. The process also reassured interviewees (who could see exactly what information they provided) and facilitated any further contact which have been necessary over the progress of the study.

### **Interviews carried out**

**In-depth interviews** were made between June 9<sup>th</sup> and November 17<sup>th</sup>. Two interviews with the SCI Governance Group were carried out: the first one at the beginning of the round of interviews and the second one at the end, in order to examine more in depth certain critical aspects of the EU level initiative emerged in the course of the study.

Interviews were made for the case study on the Supply Chain Initiative and for the four case studies on national voluntary initiatives in Belgium, Finland, Germany and the Netherlands.

Table below shows the list of interviews which have been carried out for the study.

Case study on EU SCI	
Reference organisation	Interviewee(s)
DG AGRI	Oana Surdu
Supply Chain Initiative (Governance Group)	Jessica Imbert (SCI Secretariat) Mella Frewen (FDE) Evelyne Dollet (FDE) Christel Delberghe (Eurocommerce) Todor Ivanov (Eurocoop) Antoine Quentin (AIM) Susan Czech (ERRT) Pascale Rouhier (CELCAA) Else Groen (Independent Retail Europe)
DG GROW	Francesca Mancini Gerd Heinen
Clitravi – Assica	Enrico Frabetti Michele Spangaro
Independent expert (Professor, University of Tilburg)	Cédric Argenton
Arla Foods – SCI member Company	Peter Giortz-Carlsen Lise Lotte Langston
COPA-COGECA	Paulo Gouveia
DG-COMP	Philippe Chauve Rachel Whitworth
Independent expert (Professor, European University Institute)	Fabrizio Cafaggi
Independent expert (Berasategi & Abogados)	Javier Berasategi
Ferrero International S.A. – SCI member Company	Patrick Baubry Alessandro Cagli Filippo Guarneri Aldo Cristiano
Ahold – SCI member Company	Hendrik-Jan Van Oostrum

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Wild Dairy Ingredients GmbH - SCI SME member company	Jochen Antl
Pit Süßwaren & Nahrungsmittelfabrik Hoffmann GmbH & Co.KG - SCI SME member company	Bertram Zehetbauer
Turrões Picó, S.A. – SCI non-member company	Ana Picó Filliol
UEAPME	Birte Day, Colijn Toering (NBOV), Jens Karsten (EHPM), Kornelia Lienhart (WKO)

Case study on Belgium	
Reference organisation	Interviewee(s)
Boerenbond	Marc Rosiers
Ministry of Economic Affairs	Pascal Vanderbecq
UNIZO (Belgian SME association)	Romain Cools
FEVIA (Belgian Food industry federation)	Claire Bosch
Agristo	Dirk Decoster
COMEOS (Belgian Retailers)	Nathalie De Greve

Case study on Finland	
Reference organisation	Interviewee(s)
Suomen Lähikauppa	Riku Korpela
SOK Corporation	Virpi Ojanen
Board of Trading Practices of the Food Supply Chain	Paula Paloranta
Finnish Grocery Trade Association	Janne Koivisto
Finnish Food and Drink Industries Federation	Heli Tammivuori
Central Union of Agricultural Producers MTK	Minna-Mari Kaila

Case study on Germany	
Reference organisation	Interviewee(s)
Ministry of Agriculture	Peter Bohlen
AFC Consulting	Otto Strecker
Federation of German Food and Drink Industries (Bundesvereinigung der Deutschen Ernährungsindustrie – BVE)	Tobias Andres
German Farmers' Association (Deutscher Bauernverband – DBV)	Bernhard Krüsken
German Retail Association (Handelsverband)	Peter Schröder

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Deutschland – HDE)	Astrid Krone-Hagenah
Carl Jung GmbH (SME)	Caroline Jung
German Trademark Association (Markenverband)	Christian Köhler Andreas Gayk
Deutsches Milchkontor GmbH (DMK)	Philipp Inderhees
University of Göttingen, Agricultural Marketing	Achim Spiller
University of Kiel, Institute of Agricultural Economics	Birgit Schulze-Ehlers

Case study on The Netherlands	
Reference organisation	Interviewee(s)
LTO (NL Federation of farmers - Agriculture and Horticulture)	Klaas Johan Osinga
Independent Expert	Bernd van der Meulen
CBL (NL retailers)	Marc Jansen
NBOV	Wiepke Colijn-Toering
FNLI (NL food industry)	Murk Boerstra
Ministry of Economic Affairs	Jurian Muller, Larissa Ensink

***ANNEX 3 – List of questions - EU level interviews***

## Introduction

The present document features the complete list of topics which have been dealt with in the framework of in-depth structured interviews with relevant stakeholders in the Supply Chain Initiative (SCI). For each topic, a number of relevant questions was provided, together with an indication of the categories of stakeholders to which each question was asked. When carrying out the interviews, experts always referred to the “Guidelines” for their conduction. Interviewed stakeholders had also been always left free to answer to specific questions in written form and/or by providing documentation featuring the required information, when they preferred to do so.

Questions	Categories of stakeholders				
	Officers of the EU Commission	Subjects within the SCI structure	Members of the SCI	Other stakeholders (external)	Independent experts
<b>§ 1 Level of participation to the initiative</b>					
<b>§ 1.1 Process leading to full membership in the SCI</b>					
1. Please provide any available information/data/documents about the steps and the procedures to take in order to become a member of the SCI		Subjects with roles and responsibilities concerning application process			
2. Please illustrate the requirements to be met in order to become a member of the SCI		Subjects with roles and responsibilities concerning application process			



*Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain*

*Annex 3 - List of questions - EU level interviews*

Questions	Categories of stakeholders				
	Officers of the EU Commission	Subjects within the SCI structure	Members of the SCI	Other stakeholders (external)	Independent experts
<b>§ 1.2 Participation to the initiative</b>					
<b>§ 1.2.1 Categories of participants</b>					
3. Please provide any available information on the categories of participants to the initiative (n. of participants by sector and by stage of the supply chain).		Subjects with roles and responsibilities concerning application process			
<b>§ 1.2.2 Evolution of participation over time</b>					
4. Please provide any available information on the evolution of participation over time (n. of participants by year, and breakdown by dimension, sector, stage of the supply chain)		Subjects with roles and responsibilities concerning application process			
5. Please provide any available information on the number of ongoing application processes and on formal or informal intentions to join the SCI, if possible with details on dimension/sector/stage of the supply chain of the related operators					
<b>§ 1.3 Motivations behind the status of operators in relation to the SCI</b>					
<b>§ 1.3.1 Motivations behind membership</b>					
6. Which are the main motivations to join the initiative?		Subjects with roles and responsibilities concerning application process			

*Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain*

*Annex 3 - List of questions - EU level interviews*

Questions	Categories of stakeholders				
	Officers of the EU Commission	Subjects within the SCI structure	Members of the SCI	Other stakeholders (external)	Independent experts
<p><b>§ 1.3.2 Motivations behind involvement in the SCI</b></p> <p>7. Please provide any information on the reasons behind direct or indirect involvement of:</p> <ul style="list-style-type: none"> <li>a. Parent companies and subsidiaries</li> <li>b. Trade associations and their members</li> <li>c. Other organizations and their members</li> </ul>		Subjects with roles and responsibilities concerning application process			
<p><b>§ 1.3.3 Motivations behind non-membership</b></p> <p>8. Which are the main motivations not to join the initiative?</p>					
<b>§ 2 Assessment of the effectiveness of the SCI in tackling unfair practices</b>					
<b>§ 2.1 Issue of UTPs</b>					
<p>9. Please provide any available information/insight regarding <u>economic</u> aspects related to UTPs, with special reference to:</p> <ul style="list-style-type: none"> <li>a. Conditions favouring the occurrence of UTPs</li> <li>b. Impacts of UTPs on affected operators</li> <li>c. Notable cases of UTPs</li> </ul>		Subjects with roles and responsibilities in tackling UTP complaints			
<p>10. Please provide any available information/insight regarding <u>legal</u> aspects related to UTPs, with special reference to:</p> <ul style="list-style-type: none"> <li>a. EU Legislation dealing with UTPs</li> <li>b. Jurisprudence and notable cases</li> <li>c. Remedies</li> </ul>		Subjects with roles and responsibilities in tackling UTP complaints			

*Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain*

*Annex 3 - List of questions - EU level interviews*

Questions	Categories of stakeholders				
	Officers of the EU Commission	Subjects within the SCI structure	Members of the SCI	Other stakeholders (external)	Independent experts
<b>§ 2.2 Procedure for tackling UTPs through the SCI</b>					
11. Please provide any available information regarding the formal procedure and the organisational aspects of the process to tackle UTPs through the SCI		Subjects with roles and responsibilities in tackling UTP complaints			
12. Can non-members tackle UTPs through the SCI? If yes, can you please describe the procedure, highlighting its differences (if any) with the procedure reserved to members?		Subjects with roles and responsibilities in tackling UTP complaints			
13. As for the procedure for tackling UTPs, are there any special provisions for SMEs? If yes, please describe their characteristics and functioning mechanism		Subjects with roles and responsibilities in tackling UTP complaints			
14. Which are the available legal instruments (if any) that food chain operators can use - besides the SCI - in order to tackle UTPs?		Subjects with roles and responsibilities in tackling UTP complaints			
15. Which is the relation between the procedure for tackling UTPs through the SCI and other legal instruments with the same objective? Do you see a potential for conflicts?		Subjects with roles and responsibilities in tackling UTP complaints			

*Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain*

*Annex 3 - List of questions - EU level interviews*

Questions	Categories of stakeholders				
	Officers of the EU Commission	Subjects within the SCI structure	Members of the SCI	Other stakeholders (external)	Independent experts
<b>§ 2.3 Elements determining the effectiveness of the SCI in tackling UTPs</b>					
16. Please provide any available information and data regarding the number of cases tackled and related outcomes (number of complaints received; number of complaints treated; number of complaints successfully resolved; notable cases)		Subjects with roles and responsibilities in tackling UTP complaints			
17. Can the victims of UTPs find remedy more effectively if their counterpart has signed up to the SCI or to a voluntary framework at national level?		Subjects with roles and responsibilities in tackling UTP complaints			
18. In relation to trading relationships, how has the operating environment for food chain operators changed since the implementation of the SCI? Can any improvement be detected?		Subjects with roles and responsibilities in tackling UTP complaints			
19. Do you consider the SCI as an effective way to tackle UTPs? Please highlight the aspects which you see as the main strengths and weaknesses of the procedure for tackling UTPs through the SCI		Subjects with roles and responsibilities in tackling UTP complaints			
20. Which are the external (social, cultural, legal, etc.) factors that hinder or facilitate the effectiveness of the SCI in tackling UTPs?		Subjects with roles and responsibilities in tackling UTP complaints			

Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain

Annex 3 - List of questions - EU level interviews

Questions	Categories of stakeholders				
	Officers of the EU Commission	Subjects within the SCI structure	Members of the SCI	Other stakeholders (external)	Independent experts
<b>§ 2.4 Role of the SCI in promoting a greater awareness and a better perception of the issue of UTPs</b>					
21. Which actions (if any) has the SCI taken to promote greater awareness and better perception of UTPs among non-registered companies and in the food sector in general? Do you consider such actions to be adequate and effective? Why / why not?					
22. Is there any room for improving the role of the SCI in promoting a greater awareness and a better perception of the issue of UTPs?					
<b>§ 3 Assessment of the governance and internal monitoring of the SCI</b>					
<b>§ 3.1 Assessment of the governance structure</b>					
23. Please describe the governance structure of the SCI, focusing on the following aspects: a. Organization, roles and responsibilities b. Functioning mechanism c. Legal implications (if any)		Subjects with roles and responsibilities in the governance structure			(mainly for what concerns possible legal implications)
24. Are you aware of entities in third countries similar to the SCI? If yes, could you please outline the governance structure of these entities focusing on the following aspects: a. Organization, roles and responsibilities b. Functioning mechanism c. Legal implications (if any)					

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Annex 3 - List of questions - EU level interviews

Questions	Categories of stakeholders				
	Officers of the EU Commission	Subjects within the SCI structure	Members of the SCI	Other stakeholders (external)	Independent experts
25. Do you consider the governance structure of the SCI to be adequate? Why / why not? Please highlight the aspects which you see as the main strengths and weaknesses of the governance structure and the room for possible improvement					
<b>§ 3.2 Assessment of the internal monitoring system</b>					
26. Please describe the internal monitoring system of the SCI, focusing on the following aspects: a. Organization, roles and responsibilities b. Functioning mechanism c. Legal implications (if any)		Subjects with roles and responsibilities in the monitoring system			(mainly for what concerns possible legal implications)
27. Are you aware of entities in third countries similar to the SCI? If yes, could you please describe the monitoring system of these entities focusing on the following aspects: a. Organization, roles and responsibilities b. Functioning mechanism c. Legal implications (if any)					
28. Do you consider the internal monitoring system of the SCI to be adequate? Why / why not? Please highlight the aspects which you see as the main strengths and weaknesses of the internal monitoring system and the room for possible improvement		Subjects with roles and responsibilities in the monitoring system			

Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain

Annex 3 - List of questions - EU level interviews

Questions	Categories of stakeholders				
	Officers of the EU Commission	Subjects within the SCI structure	Members of the SCI	Other stakeholders (external)	Independent experts
<b>§ 4 Assessment of the solutions for ensuring transparency and confidentiality of the SCI</b>					
<b>§ 4.1 Assessment of solutions to ensure transparency implemented by the SCI</b>					
29. Please describe the solutions to ensure transparency implemented by the SCI, focusing on the following aspects: a. Organization, roles and responsibilities b. Functioning mechanism c. Legal implications (if any)		Subjects with roles and responsibilities in dealing with transparency issues			(mainly for what concerns possible legal implications)
30. Are you aware of entities in third countries similar to the SCI? If yes, could you please describe the solutions to ensure transparency implemented by these entities focusing on the following aspects: a. Organization, roles and responsibilities b. Functioning mechanism c. Legal implications (if any)					
31. Do you consider solutions for ensuring transparency to be adequate? Why / why not? Please highlight the aspects which you see as the main strengths and weaknesses of the solutions for ensuring transparency and the room for possible improvement		Subjects with roles and responsibilities in dealing with transparency issues			
<b>§ 4.2 Assessment of solutions for addressing confidentiality issues</b>					

Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain

Annex 3 - List of questions - EU level interviews

Questions	Categories of stakeholders				
	Officers of the EU Commission	Subjects within the SCI structure	Members of the SCI	Other stakeholders (external)	Independent experts
32. Please describe the solutions for addressing confidentiality issues implemented by the SCI, focusing on the following aspects: a. Organization, roles and responsibilities b. Functioning mechanism c. Legal implications (if any)		Subjects with roles and responsibilities in dealing with confidentiality issues			<i>(mainly for what concerns possible legal implications)</i>
33. Are you aware of entities in third countries similar to the SCI? If yes, could you please describe the solutions for addressing confidentiality issues implemented by these entities focusing on the following aspects: a. Organization, roles and responsibilities b. Functioning mechanism c. Legal implications (if any)					
34. Do you consider solutions for addressing confidentiality issues to be adequate? Why / why not? Please highlight the aspects which you see as the main strengths and weaknesses of the solutions for addressing confidentiality issues and the room for possible improvement		Subjects with roles and responsibilities in dealing with confidentiality issues			



*Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain*

*Annex 3 - List of questions - EU level interviews*

Questions	Categories of stakeholders				
	Officers of the EU Commission	Subjects within the SCI structure	Members of the SCI	Other stakeholders (external)	Independent experts
<b>§ 4.3 Level of satisfaction by the operators of the supply chain</b>					
35. Please indicate your level of satisfaction for the solutions implemented by the SCI for what concerns: a. Transparency of SCI's procedures and results b. SCI's capacity to address confidentiality Please provide an explanation of the reasons behind your answer					
<b>§ 5 Assessment of the level of awareness of and trust in the initiative</b>					
<b>§ 5.1 Awareness of the existence of the initiative</b>					
36. Which is in your opinion the level of awareness of the existence of the initiative among the operators of the food sector? Do you see any differences in the level of awareness in relation to the stage of the food chain and/or to the dimension of the company?					
37. In your opinion, which are the reasons behind the level of awareness about the Initiative identified in the previous question?					
38. Does the SCI have a communication plan to promote its activities?					
39. Do you have any idea or suggestion about the way to improve the awareness about the initiative among the operators of food supply chain in your country?					
<b>§ 5.2 Level of trust in the initiative</b>					

*Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain*

*Annex 3 - List of questions - EU level interviews*

Questions	Categories of stakeholders				
	Officers of the EU Commission	Subjects within the SCI structure	Members of the SCI	Other stakeholders (external)	Independent experts
40. Which is the level of trust that the companies have in the initiative? Why / why not? Please highlight the aspects which you see as the main strengths and weaknesses of the solutions for ensuring trust					
41. Are there other improvements you would deem useful to increase the level of trust that food chain operators have in the SCI?					
<b>§ 6 Assessment of the implementation costs for SMEs</b>					
<b>§ 6.1 Preliminary theoretical investigation</b>					
42. Please identify, describe and – if possible – provide indications on the extent of the most relevant costs that a SME has to cover in order to join the SCI					
<b>§ 6.2 Empirical investigation</b>					
43. Please identify, describe and – if possible – provide indications on the extent of the most relevant costs related to your participation to the SCI. Did you experience significant deviations from the costs you expected to face?			SMEs only		
44. Are there other improvements you would deem useful to make the SCI more SMEs friendly (easiness of registration process, compliance with rules, etc.)					

*Monitoring of the implementation of principles of good practices in vertical relationship in the food supply chain*  
*Annex 4- Survey questionnaire*

**ANNEX 4 – Survey Questionnaire**

## 1. Characterisation of the respondent / exposure to unfair trading practices

- 1) In which EU Member State is your company/organisation based?
- 2) On behalf of which type of entity are you answering this questionnaire:
  - ☐ Company
  - ☐ Organisation (consumer association, sector organisation, etc.)
- 3) Is your company a micro, small or medium-sized enterprise (SME)? (definition: your company employs fewer than 250 persons and has an annual turnover not exceeding 50 million euro, and/or an annual balance sheet total not exceeding 43 million euro)
  - ☐ Yes, it is an SME
  - ☐ No, it is not an SME
- 4) Is your company a partner of the Enterprise Europe Network?
  - ☐ Yes
  - ☐ No
- 5) At which level of the food supply chain does your company mainly operate:
  - ☐ Farming/Fishing/Primary production
  - ☐ Manufacturing of food and beverage or ingredients production
  - ☐ Wholesale trade in food, beverages, ingredients or agricultural commodities
  - ☐ Retailing
  - ☐ Restaurant/Catering
- 6) Which kind of organisation are you:
  - ☐ Organisation of economic operators (e.g. farmers, food producers, retailers, etc.)
  - ☐ Consumer association
  - ☐ Other NGOs

*The European Commission defines Unfair Trading Practices (UTPs) as “practices that grossly deviate from good commercial conduct, are contrary to good faith and fair dealing and are unilaterally imposed by one trading partner on another. Examples are:*

- a trading partner's retroactive misuse of unspecified, ambiguous or incomplete contract terms*
- a trading partner's excessive and unpredictable transfer of costs or risks to its counterparty*
- a trading partner's misuse of confidential information*
- the unfair termination or disruption of a commercial relationship*

*To note: Tough negotiations, general price pressure or margin differences throughout the supply chain do not automatically qualify as UTPs.*

*(Source: Communication on UTPs of 17/07/14)*

- 7) According to the above definition of Unfair Trading Practices (UTPs), would you say that your company has been exposed to UTPs over the last five years?
- ☐ Yes, some of them resulting in a dispute managed through in house compliance officer/mediation
  - ☐ Yes, some of them resulting in a dispute managed through arbitration/court cases
  - ☐ Yes, but none of them resulting in a dispute
  - ☐ No
- 8) Which UTPs has your company been exposed to more frequently during the last five years? (possibility of multiple answers)
- ☐ Ambiguous contract terms
  - ☐ Lack of written contracts
  - ☐ Retroactive contract changes
  - ☐ Unfair transfer of commercial risk
  - ☐ Unfair use of information
  - ☐ Unfair termination of a commercial relationship
  - ☐ Territorial supply constraints
  - ☐ I am unable to classify UTPs within the above categories
- 9) According to the above definition of Unfair Trading Practices (UTPs), has your company received complaints by other companies (suppliers and/or customers) about UTPs over the last five years?
- ☐ Yes, some of them resulting in a dispute managed through in house compliance officer/mediation
  - ☐ Yes, some of them resulting in a dispute managed through arbitration/court cases
  - ☐ Yes, but none of them resulting in a dispute
  - ☐ No
- 10) Out of all the actual or alleged UTPs that your company has dealt with over the last five years, the largest part involves:
- ☐ companies located in your same country
  - ☐ companies located in other countries
- 11) In your view, which is the most effective way to tackle UTPs? (one option)
- ☐ Specific legislation at EU level
  - ☐ Specific legislation at national level
  - ☐ Voluntary/Self-regulatory initiatives at EU level
  - ☐ Voluntary/Self-regulatory initiatives at national level
  - ☐ A combination of voluntary/self-regulatory initiatives and public enforcement
  - ☐ There is no need of specific action against UTPs
- 12) Which of these remedies against UTPs do you deem as the most effective?

- ☐ Injunctions, i.e. orders requesting to “cease and desist” from a given UTP and/or to adopt a specific conduct
- ☐ Publication of parties being found guilty of applying UTPs (naming and shaming)
- ☐ Publication of names of companies self-committed to fair trading B2B relationships
- ☐ Invalidity, i.e. lack of legal effects from acts (e.g. contracts) which determine UTPs
- ☐ Monetary penalties to companies applying UTPs
- ☐ Damages/Restitutions, i.e. remedies due to compensate the victims of UTPs
- ☐ Others, i.e. provided by national legislation

## 2. Questions on the Supply Chain Initiative

### Participation in the initiative

- 13) Have you ever heard about/do you know “The Supply Chain Initiative” (SCI), an EU level initiative launched with the aim of increasing fairness in commercial relations along the food supply chain?



- ☐ Yes
  - ☐ No
- 14) You have stated that you know “The Supply Chain Initiative” (SCI). In relation to the SCI, your company:
- ☐ Is a member
  - ☐ Has applied to become a member
  - ☐ Intends to apply for membership
  - ☐ Has not decided yet whether to apply for membership or not
  - ☐ Has no intention to apply for membership
- 15) Your company joined/is joining “The Supply Chain Initiative” (SCI) because: (possibility of multiple answers)
- ☐ It provides companies with effective ways to tackle UTPs
  - ☐ It allows companies to address UTP-related disputes in a fair and transparent manner
  - ☐ It improves the image of my company
  - ☐ My company has been advised/ordered to join the SCI by parent company/business partners
  - ☐ My company has been advised to do so by trade federation
  - ☐ My company has been advised to do so by public authorities
  - ☐ My company is supportive of a voluntary approach as potential alternative to legislation
  - ☐ For other reasons

16) Your company has no intention to join “The Supply Chain Initiative” (SCI) because:

(possibility of multiple answers)

- ☐ It is an ineffective way to tackle UTPs
- ☐ It lacks confidentiality in addressing UTP-related disputes
- ☐ It lacks transparency and/or fairness in addressing UTP-related disputes
- ☐ UTPs are not a serious problem for my company
- ☐ National legislation provides sufficient remedies against UTPs
- ☐ My company fears unfavourable attitude/retaliation from its business partners
- ☐ My company is involved in another similar initiative (e.g. at national level)
- ☐ The overall costs/resources for joining the SCI are too high in relation to potential benefits for my company
- ☐ For other reasons

17) In your view, how has the situation concerning UTPs changed after 2013, year of implementation of “The Supply Chain Initiative” (SCI)?

- ☐ Strongly improved
- ☐ Slightly improved
- ☐ Not changed
- ☐ Slightly worsened
- ☐ Strongly worsened

**Effectiveness of the initiative in tackling UTPs**

18) Please assess the contribution of each of these aspects in determining the **effectiveness** of “The Supply Chain Initiative” (SCI) in tackling UTPs

<b>Aspects</b>	<b>Strong contribution</b>	<b>Weak contribution; could be improved</b>	<b>No influence</b>	<b>I have no sufficient knowledge of this aspect</b>
Self-assessment process (to be done by the company before registering to the SCI)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Training of the company staff on the Principles of Good Practice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Appointment of contact person(s) for internal dispute resolution and for process-related issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Communication of registration to the SCI to business partners	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Voluntary mechanism of dispute resolution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Commercial retaliation as a serious breach of the Principles of Good Practices and process commitments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Ad hoc</i> procedures and tools for SMEs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

19) Which is your judgment about the overall effectiveness of “The Supply Chain Initiative” (SCI) in tackling UTPs?

- ☐ Very effective
- ☐ Fairly effective
- ☐ Fairly ineffective
- ☐ Very ineffective
- ☐ I am unable to express a judgment



### Capacity to ensure transparency and confidentiality

#### TRANSPARENCY

*In the framework of “The Supply Chain Initiative” (SCI), transparency can be defined as the possibility to benefit from a clear process giving access to a defined set of dispute resolution options, irrespective of company size.*

20) In light of the above definition, which is your judgment on the transparency of “The Supply Chain Initiative” (SCI)?

- ☐ Very transparent
- ☐ Fairly transparent
- ☐ Fairly non-transparent
- ☐ Very non-transparent
- ☐ I am unable to express a judgment

#### CONFIDENTIALITY

*In the framework of “The Supply Chain Initiative” (SCI), confidentiality can be defined as the capacity to deal with confidential issues just in the framework of aggregated disputes for the breach of Principles of Good Practice.*

21) In light of the above definition, please assess the contribution of each of these aspects in determining the degree of confidentiality granted by “The Supply Chain Initiative” (SCI)

Aspects	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect
Companies affected by UTPs may address their complaint to a member of the Governance Group instead that to the company allegedly in breach of the Principles of Good Practice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A member of the Governance Group can request the Governance Group to analyse aggregated disputes that affect several of its members	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
It is the Governance Group that contact and request a reply from the company allegedly in breach, through a confidential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

process				
Commitment of the Governance Group to respect confidentiality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

22) In light of the above definition, which is your judgment on the degree of confidentiality granted by “The Supply Chain Initiative” (SCI)?

- ☐ Very high degree of confidentiality
- ☐ Fairly high degree of confidentiality
- ☐ Fairly low degree of confidentiality
- ☐ Very low degree of confidentiality
- ☐ I am unable to express a judgment

Trust in the initiative

23) In general, which is the level of trust that your company/organisation has in “The Supply Chain Initiative” (SCI)?

- ☐ Very high level of trust
- ☐ Fairly high level of trust
- ☐ Fairly low level of trust
- ☐ Very low level of trust

24) Do these elements have a role in determining the level of trust that your company/organisation has in “The Supply Chain Initiative” (SCI)

Elements	Yes, this element has a role	No, this element does not have a role	I have no sufficient knowledge of this element
Effectiveness of the SCI in tackling UTPs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Capacity to ensure transparency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Capacity to ensure confidentiality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Implementation costs for participants in the initiative**

25) Please assess the importance of each of the following cost items in determining the overall costs incurred by your company to participate in “The Supply Chain Initiative” (SCI)

Items	High importance	Moderate importance	Low importance
Training of personnel involved in participation to the initiative	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Changes in company structure and/or practices to achieve compliance with the initiative	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Potential exposure to commercial retaliations (costs include loss of revenues)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Additional administrative costs (e.g. reporting)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

26) Please try to estimate the indicative overall costs incurred by your company to participate in “The Supply Chain Initiative” (SCI) *(the cost is expressed in % of total annual costs incurred by your company)*

- ☐ Less than 1% of total annual costs
- ☐ 1-5% of total annual costs
- ☐ More than 5% of total annual costs

**3. Questions on voluntary initiatives and national stakeholders’ platforms**

**Participation in the initiatives/platforms**

27) Have you ever heard about/do you know [NAME OF THE NATIONAL INITIATIVE], a national initiative launched with the aim of increasing fairness in commercial relations along the food supply chain?

- ☐ Yes
- ☐ No

28) You have stated that you know about [NAME OF THE NATIONAL INITIATIVE]. In relation to [NAME OF THE NATIONAL INITIATIVE], your company/organization:

- ☐ Is a member
- ☐ Has applied to become a member
- ☐ Intends to apply for membership
- ☐ Has not decided yet whether to apply for membership or not
- ☐ Has no intention to apply for membership

29) Your company/organization joined/is joining [NAME OF THE NATIONAL INITIATIVE] because:  
(possibility of multiple answers)

- ☐ It provides companies with effective ways to tackle UTPs
- ☐ It allows companies to address UTP-related disputes in a fair and transparent manner
- ☐ It improves the image of my company/organization
- ☐ My company/organization has been advised/ordered to join the initiative by parent company/business partners
- ☐ My company/organization has been advised to do so by my trade federation
- ☐ My company/organization has been advised to do so by public authorities
- ☐ My company/organization is supportive of a voluntary approach as potential alternative to legislation
- ☐ For other reasons

30) Your company/organization has no intention to join [NAME OF THE NATIONAL INITIATIVE] because:

(possibility of multiple answers)

- ☐ It is an ineffective way to tackle UTPs
- ☐ It lacks fairness and/or confidentiality and/or transparency in addressing UTP-related disputes
- ☐ UTPs are not a serious problem for my company
- ☐ Existing legislation effectively addresses UTPs
- ☐ My company fears unfavourable attitude / retaliation from its business partners
- ☐ My company is a member of "The Supply Chain Initiative" (at EU level)
- ☐ The overall costs/resources for joining the initiative are too high in relation to potential benefits for my company/organization
- ☐ For other reasons

### Effectiveness of the national voluntary initiatives/platforms

31) Please assess the contribution of each of these elements in determining the overall effectiveness of [NAME OF THE NATIONAL INITIATIVE] in tackling UTPs

Elements	Strong contribution	Weak contribution; could be improved	No influence	I have no sufficient knowledge of this aspect

Effectiveness of the initiative in addressing and settling disputes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Capacity to ensure transparency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Capacity to ensure confidentiality	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

32) Which is your judgment about the overall effectiveness of the [NAME OF THE NATIONAL INITIATIVE] in tackling UTPs?

- ☐ Very effective
- ☐ Fairly effective
- ☐ Fairly ineffective
- ☐ Very ineffective
- ☐ I am unable to express a judgment

33) Does national legislation in the country where your company/organisation is based adequately address UTPs?

- ☐ Yes, national legislation adequately addresses UTPs
- ☐ National legislation addresses UTPs but is not effectively enforced
- ☐ No, national legislation does not adequately address UTPs and should be improved in this respect
- ☐ I am not aware of any national legislation addressing UTPs



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