

## FoodServiceEurope Position on the revision of the Unfair Trading Practices Directive

FoodServiceEurope believes that fostering fair contractual relations amongst all actors in the supply chain is essential to provide high-quality, safe and affordable food to consumers. The contract catering sector therefore supports balanced and proportionate initiatives aimed at preventing unfair trading practices and strengthening legal certainty across the agri-food chain.

The ongoing revision of Directive (EU) 2019/633 on unfair trading practices in the agricultural and food supply chain (UTP Directive) provides a timely opportunity to address these objectives, to update current rules in line with today's market realities and in particular to close the structural regulatory gap that leaves contract catering operators subject to the Directive's obligations while excluded from its protection.

The European Commission's evaluation of the UTP Directive confirmed that unfair trading practices occur at all stages of the agri-food chain and are not confined to small operators or primary producers. It also identified persistent challenges related to fear of retaliation, uneven enforcement across Member States and structural imbalances in contractual relations. These findings are of direct relevance to the contract catering sector, which occupies a unique position in the food supply chain as both a buyer of food products and a supplier of food services, and is therefore exposed to unfair trading dynamics both upstream and downstream.

FoodServiceEurope supports a targeted and proportionate revision of the UTP Directive that addresses the shortcomings identified in the evaluation and considers the specific position of the contract catering sector. In particular, the revision should:

- **Extend the scope of the UTP Directive to cover the provision of food services in business-to-business relations**, ensuring symmetry of rights and obligations along the food supply chain.
- **Examine mechanisms to improve payment symmetry**, including the possibility of **back-to-back approaches**.
- **Ensure consistent and effective application of unfair trading rules to all buyers of food products**, including public authorities and in-house providers, where public and private operators compete, in order to safeguard a level playing field.

- **Eliminate turnover thresholds to better reflect economic dependency and structural imbalance** across the agri-food supply chain.

These changes would strengthen the effectiveness of the Directive, improve legal certainty and help ensure fair and sustainable contractual relations throughout the agri-food supply chain.

### **Structural asymmetry affecting contract catering**

The current scope of the Directive is limited to the sale and purchase of food products and does not cover the provision of food services. As a result, contract catering operators are subject to the Directive's obligations when purchasing food products, including strict payment deadlines, but do not benefit from equivalent protection in their contractual relations with their clients.

In practice, this creates a structural asymmetry. Contract caterers are required to pay suppliers within 30 days, while many public and private clients operate on significantly longer payment terms, often 60 to 90 days and, in some Member States, even longer. This imbalance is particularly acute given that contract catering services are frequently provided under long-term, fixed-price contracts and often involve public service obligations. In many cases, terminating service provision in response to late payments is not a realistic option, notably where final users include vulnerable groups such as children, patients, the elderly or people in detention.

This asymmetry places contract catering operators in a structurally disadvantaged position, exposing them to cash-flow pressure and shifting financial risk upstream in the supply chain. It also risks undermining the Directive's objective of preventing unfair trading practices from being passed on to other suppliers, including farmers and SMEs.

#### **→ Recommendation: Extension of scope to food services**

Extending the scope of the Directive to cover the provision of food services in business-to-business relations is the most effective and structurally sound way to address this imbalance. If contract catering companies are covered by the Directive when acting as buyers of food products, they should equally be covered when acting as suppliers of food services. This would ensure symmetry of rights and obligations along the food supply chain and align the Directive with the evaluation finding that unfair trading practices occur throughout the chain. Such an extension would not alter the farmer-centred objectives of the Directive but would strengthen its effectiveness by preventing unfair practices and payment pressure from being displaced to downstream operators that are currently outside its protection framework.

### **Payment symmetry and back-to-back mechanisms**

In addition to extending the scope, the revision should address the structural payment imbalance that arises in complex, multi-actor contractual chains. In the contract catering sector, the combination of strict upstream payment obligations and delayed downstream payments creates systemic cash-flow risks that are not adequately addressed by existing EU rules.

Contract catering operators are often required to comply with strict payment deadlines towards suppliers, while facing significantly longer payment terms from their clients, including public authorities. This results in operators effectively pre-financing parts of the supply chain, particularly where payment delays are structural and beyond their control.

FoodServiceEurope recognises that introducing a general back-to-back payment clause raises legal and political challenges within the current design of the Directive. However, addressing this imbalance is necessary to prevent financial pressure from being shifted upstream and to ensure that unfair trading practices are not indirectly imposed on other actors in the food supply chain.

➔ **Recommendation: Consideration of a back-to-back payment approach**

The revision of the UTP Directive should consider the introduction of a proportionate back-to-back payment approach, allowing payment obligations towards suppliers to reflect objectively justified delays in downstream payments, particularly where such delays are structural and beyond the operator's control. Any such mechanism should be carefully designed to remain consistent with the overall objectives and architecture of the Directive.

**Public in-house provision and level playing field**

In several Member States, public authorities provide food services directly through in-house structures or via public-public cooperation arrangements, while also competing with private contract catering operators in the same markets. Public sector operators benefit from exemptions, including in-house and public-public cooperation exemptions under Article 12 of Public Procurement Directive 2014/24, which may shield them from competitive tendering and normal market discipline. In addition, in-house public service providers may benefit from favourable VAT treatment and specific financial or administrative arrangements not available to private operators.

Where such public entities purchase food products to deliver services comparable to those provided by private contract caterers, differences in regulatory and economic treatment risk distorting competition and reinforcing structural imbalances in the market.

In the context of the UTP Directive, this issue is particularly relevant. While public authorities and in-house providers are formally subject to the Directive when purchasing food products, private contract caterers must comply with strict payment deadlines towards suppliers while operating under competitively tendered, fixed-price contracts and facing delayed downstream payments. In such circumstances, any inconsistency in the application or enforcement of unfair trading rules may further exacerbate competitive distortions and undermine the objective of ensuring fair and balanced trading conditions across the agri-food supply chain.

➔ **Recommendation: Ensuring uniform enforcement between public authorities and private contract catering operators**

The revision of the UTP Directive should ensure that the application of unfair trading rules does not reinforce structural competitive advantages enjoyed by public in-house providers when they operate in markets also served by private operators. Where public authorities purchase food products to provide services comparable to those delivered by private contract caterers, equivalent rules and obligations should apply to safeguard fair competition and preserve a level playing field.

**Turnover thresholds and coverage**

The UTP Directive applies on the basis of relative annual turnover thresholds between suppliers and buyers. These thresholds are intended to serve as a proxy for bargaining power and determine whether a supplier benefits from protection under the Directive.

However, unfair trading practices occur throughout the agri-food supply chain, and the current calibration of these thresholds may not always reflect the realities of commercial risk and economic dependency in certain segments of the market. Several Member States have already extended protection beyond the minimum EU thresholds.

In the contract catering sector, operators may face strict upstream payment obligations, fixed-price contracts and limited flexibility to pass on cost increases, irrespective of their turnover level. The existing turnover thresholds may therefore not fully capture actual exposure to unfair trading practices and risk creating uneven protection across the value chain. Moreover, an unfair trading practice remains unfair irrespective of the size of the operator affected.

➔ **Recommendation: Eliminate turnover thresholds**

The revision should eliminate the current turnover thresholds to ensure that the scope of protection better reflects economic dependency and structural imbalance within the agri-food supply chain. Their removal would help ensure that operators facing comparable commercial risks are treated consistently under the Directive, while maintaining its overall objectives.

#### About FoodServiceEurope

FoodServiceEurope represents the European contract catering sector at the EU level. It brings together 11 National Member Associations, as well as four Associate Member companies, which together represent a significant share of the EU market.

Contract catering encompasses food and ancillary services provided to people working or living in communities – private and public undertakings, schools, universities, hospitals, retirement homes and prisons – under the terms of a contract with the client communities. It is a unique part of the food system and differs significantly from other forms of food service, as services are provided on the premises of the contracting party, which awards contracts through procurement tenders.

Contract catering plays a crucial social function. Its meals are regularly delivered to vulnerable consumers (e.g., children, patients), at a subsidized “social” price. Contract catering thereby guarantees access to nutrition to individuals that may not otherwise have it.

With an annual turnover of around €25 billion, the sector’s 600,000-strong workforce delivers approximately 6 billion meals each year to workers, civil servants, pupils, students, hospital patients and care home residents in the EU.