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CONTRIBUTION

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Subject:	Regulation on cross-border enforcement of unfair trading practices (UTPs) - Comments from Denmark



9 January 2025



Preliminary Danish Remarks: Proposal for a regulation on cooperation among enforcement authorities responsible for the enforcement of Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain

Please find below Denmark's preliminary remarks on the proposal as regards cooperation among authorities responsible for the enforcement of the UTP Directive, taking into account that the proposal has not yet been presented officially.

<i>Explanatory Memorandum</i>	<i>Danish Remarks</i>
Impact Assessment	Denmark regrets that the Commission has not conducted an impact assessment in order to be certain that the objectives of the proposal will be achieved as efficient and effective as possible. In addition, Denmark finds that the proposal may introduce additional burdens on the enforcement authorities.

<i>Proposal for Regulation</i>	<i>Danish Remarks</i>
Article 3(d)	It is unclear whether the reference is made exclusively to the listed unfair trading practices in the UTP Directive, and thus not to more far-reaching national rules that the UTP Directive permits. Legal uncertainty may arise, considering that requested

	<p>enforcement authority rightly enforces the rules in accordance with national law in that Member State.</p>
Article 3(e)	<p>Denmark would like more information about which circumstances should be considered when assessing whether actors in a Member State are ‘involved’ in unfair trading practices.</p> <p>Furthermore, it is not clear what rules should apply, i.e. whether it is the minimum rules laid down in the UTP Directive or the more far-reaching national rules that the UTP Directive permits.</p>
Article 5.1	<p>It is unclear as to when a requested enforcement authority has fulfilled the commitment to provide information. On which criteria is this deemed fulfilled? It should be clarified in the legal text when the commitment to provide information may be deemed fulfilled.</p>
Article 7.1 and 7.2	<p>The meaning or the consequences of the following terms used is unclear:</p> <ul style="list-style-type: none"> - ‘final decisions imposing fines’ - ‘reasonable efforts’ - ‘sufficient assets’. <p>As regards the term ‘final decisions imposing fines’, it could be considered to amend the text to ‘final decisions that could impose fines’.</p> <p>In addition, it should be defined that any financial proceedings</p>

	<p>from imposing fines fall to those Member States imposing the fine at the request of the applicant enforcement authority.</p>
Article 8	<p>What other enforcement authorities are meant by ‘all other enforcement authorities’?</p>
Article 10.2 and 10.2(d)	<p>There is an inconsistency between Article 10.2 and Article 7.4, since Article 7.4 regulates limitation periods for the enforcement of fines, which is not referred to in Article 10.2. It should be possible to refuse a request with reference to national limitation periods for enforcement.</p> <p>Furthermore, as regards Article 10.2, Denmark finds that ‘one or both’ should be formulated as ‘one or more’ as there are more than two examples in Article 10.2(a)-(d).</p> <p>Regarding Article 10.2(d), it is unclear how ‘the information that is necessary’ should be evaluated as well as when and on which criteria the commitment in Article 5.1 is fulfilled.</p>
Article 11.2	<p>Denmark finds that in cases of disagreement on language arrangements, the preferred working language should be English.</p>
Article 13.1	<p>The meaning of the following term is unclear:</p> <ul style="list-style-type: none"> - ‘reasonable suspicion’. <p>It is unclear as to what will be the role of the ‘agreement’ in coordinated action, and what the ‘agreement’ entails.</p>

Article 14(c)	<p>Denmark provisionally supports this, provided that the exception also covers cases where the trading practice in question is not considered unfair under the national law of the requested enforcement authority – even if the trading practice in question is (potentially) considered unfair under the law of the applicant authority.</p> <p>Furthermore, the proposal leaves no discretion/flexibility for enforcement authorities to prioritize tasks (e.g. based on resources and impact) and on that basis refuse to participate in coordinated investigations, e.g. if the unfair cross-border trading practice only has negligible/minimal effects within the territory of a Member State.</p>
Article 19.1	It is unclear what is meant by “without delay”.
Article 19.3	It is unclear what is meant by ‘easily accessible’
Article 20	Referring to our remarks on Article 11.2.