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#### **CONTRIBUTION**

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

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## Feedback Belgium on the proposal for a “UTP Enforcement Regulation”

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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

COM/2024/576 final

### Article 2

- **The scope only includes the UTP Directive. What about the newly proposed obligations outside of the UTP Directive and especially the new proposal for written contracts?** If these new proposals were to be adopted, it would be good to bring them under the scope of the UTP Enforcement Regulation. Otherwise, we cannot send an enforcement request to another member state if e.g. a cross-border contract is not written.
- The CPC Regulation (Regulation (EU) 2017/2394) on consumer law enforcement uses an Annex that lists all specific (articles of) directives and regulations to which the CPC cooperation applies. This way of working might be more flexible and future-proof to add new legislation to the UTP Enforcement Regulation.

### Article 3

- e) The definition of a ‘widespread unfair trading practice with a cross-border dimension’ is a bit unclear: “*involving at least three Member States*”. If the supplier and the buyer are in different member states, would you only need one additional member state involved (probably a second supplier, located in another member state, to the same buyer) to reach this number? This is more carefully formulated in the similar provision of the CPC Regulation.
- **What about coordinated actions against companies established in third countries?** Provide for this option in the definition of the widespread infringement, so the UTP Enforcement Network has a clear legal base to also launch coordinated actions against companies established in third countries that commit the same infringement(s) in multiple member states. (The lack of an explicit mention of traders established in third countries is currently one of the major points for the possible revision of the CPC Regulation.)

### Article 4

- Very general provision to provide “the necessary resources and expertise” for the application. No specific minimum enforcement powers (only in article 6 of the UTP Directive itself). Especially a problem for the “other equally effective penalties” and “interim measures” which are not harmonised.
- Article 4 of the UTP Directive provides the possibility to “designate one or more authorities to enforce the prohibitions”. As such, it could be considered to also add a difference between “Competent Authorities” and a national “Single Liaison Office” (as in article 5 of the CPC Regulation) (which could be the same authority if there is only one authority).

### Article 6

- A request for enforcement measures only refers to “the powers set out in Article 6(1), first subparagraph, points (a), (b) and (c), of Directive (EU) 2019/633”. Points (a), (b) and (c) only include the investigation phase and not the sanctioning or cessation of the infringement. As such, it is unclear to us what would be the exact outcome of such a request.

**The current formulation of the “request for enforcement measures” is only a request for investigation, which is not sufficient to stop the infringement. We fear that national authorities could argue that only a report with the results of the investigation is obligated. An obligation to take all necessary measures to stop the infringement should be added.**

For example, the CPC Regulation (article 12) includes the following phrase: “At the request of an applicant authority, a requested authority shall take all necessary and proportionate enforcement measures to bring about the cessation or prohibition of the intra-Union infringement by exercising the powers set out in Article 9 and any additional powers granted to it under national law.”

#### Article 7

- **The link between article 6 and article 7 seems to be missing. Article 6 only imposes on the requested authority to investigate a cross-border infringement (but does not mention if it should try to stop the infringement) and article 7 imposes on requested authorities to enforce decisions imposing fines, other penalties or interim measures from other member states.**
- **What about differences in the legal assessments of the possible infringement(s) between authorities when asking for the cross-border enforcement by another authority of a final decision imposing a fine?** The legal interpretation of the UTP Directive is not crystal clear and it is possible that a requested authority has a different legal view. **As such, the requested authority should have the possibility to intervene and give its legal views. Ideally, such a case would then be referred to the ECJ.**
- **Also, there is no (minimum) harmonisation of the fine levels and it is unclear which “other equally effective penalties” or “interim measures” would be possible.** There is no legal harmonisation of these systems (especially for “other equally effective penalties” or “interim measures”), so this would directly create many procedural legal questions. What about requested authorities that agree with the legal argumentation of a decision, but have a different regime to establish the appropriate level of the fine? What about fines imposed by a national authority that go above the maximum fine level of the requested authority? This would put enforcement authorities in a difficult position.
- **We believe that national enforcement authorities should first have the possibility to nationally enforce a case (following an enforcement request in accordance with article 6 and within a reasonable timeframe) before another enforcement authority can issue a fine and then ask the requested authority to impose it. As such, each national enforcement authority has the possibility to handle its national and its cross-border cases in a consistent manner.**
- The term ‘buyer’ may include a group of such natural and legal persons (article 2(2) of the UTP Directive). Also for the calculation of the annual turnover (article 1(2) of the UTP Directive) they are taken into account. What about assets of such a group?

#### Article 8

- This notification should be done when the decision is issued and before it becomes final and no further appeal is possible. This should be phrased more clearly.

#### Article 9

- The European Commission should provide an electronic database to facilitate such procedures (and the requests for information, requests enforcement measures, etc.). The CPC Regulation explicitly provides for such an electronic database.

#### Article 10

- **Point 2: A requested authority should have the possibility to refuse a request under article 7 if previously the applicant authority did not send an enforcement request under article 6 and as such, the requested authority was not given the possibility to nationally enforce the case.**

#### Article 11

- If an applicant enforcement authority sends a request under article 7 with their national decision, and no translation is given, would it be up to the requested enforcement authority to get it officially translated in (one of) their national language(s) to be able to enforce a final decision imposing a fine? It might be more logical if the applicant enforcement authority has to get an official translation of their own decision (in agreement with the requested enforcement authority).

#### Article 16

- Also in the context of coordinated actions, it could be possible that an enforcement authority does not take the necessary measures in a case within a reasonable timeframe. If an enforcement authority takes no effective measures according to article 6, the applicant authority should have the possibility to issue a fine itself.
- What about cases where multiple fines need to be issued (for example against multiple buyers of a retail alliance)? Article 18(1)(f) states that the coordinator shall “*coordinate enforcement measures adopted by the enforcement authorities concerned*”. However no actual formal coordination mechanism for fines is provided for this. As there is also no harmonisation of the fine levels, it is very difficult to handle such a case in a consistent method (with the risk of very different levels of sanctions for the same type of infringement).