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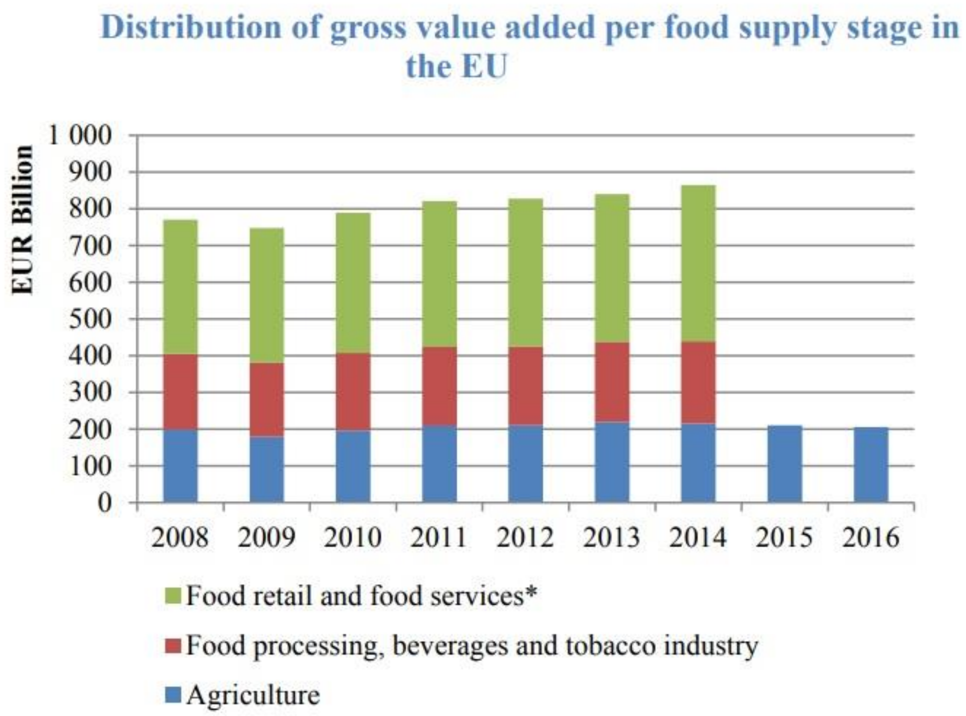
THE AGRI FOOD SUPPLY CHAIN AND THE UNFAIR TRADING PRACTICES

Distribution of value added in the food supply chain

As the largest number of businesses is involved in agriculture as opposed to the other sectors in the food chain, the share of value added attributed to it remains low. The **distribution of the value added in the food chain** is approximately **25% for the farmer, 25% for the food processing and 50% for the food retail and food services** according to the Commission factsheet released in March 2017 [1]. (DG AGRI, 2017)



Source: Eurostat, Economic Accounts for Agriculture (aact_eaa01) and Structural Business Statistics (sbs_na_sca_r2, sbs_na_dt_r2 and sbs_na_1a_se_r2).
* EU-27 data for 2008-2010; EU-28 data for 2011-2012.

Source: DG AGRI, 2017

The processing and retail stages have expanded their total value added in the food chain through following on the increased consumer demand for convenience products. At the same time, **the value added in agriculture has decreased** (from 2014 onwards and by 4% lower in 2016). This is due to increasing input costs due to competition for scarce resources as well as the limited possibilities for farmers to add value to the basic product or to get remunerated for it. (DG AGRI, 2017)
Moreover, Oxfam in their recent study Ripe for change (2018)[2] outlined the inequality of the food supply chain on the examples from UK, the Netherlands and Germany, amongst other.

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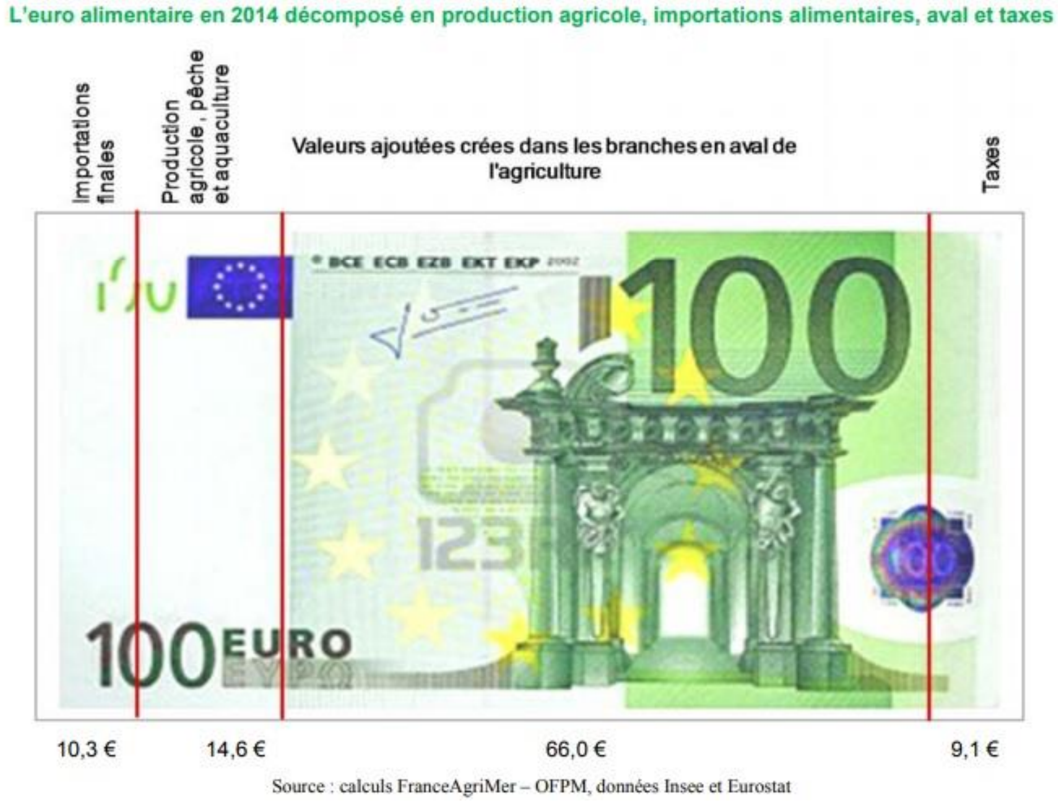
[1] https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/factsheet-food-supply-chain_march2017_en.pdf

When looking into detail on the breakdown of end consumer price, the study focused on the UK found that in 2015 **more than half of this price goes to supermarkets** (52.8%), 38.5% goes to traders and food manufacturers and **only 5.7% of the price goes to small scale farmers** and workers. The last 5% of the price goes to the cost of inputs. (Oxfam, 2018)
The FranceAgriMer has also conducted research into the concept of **"food euro"**, which attempts to divide the consumer food expenditure between the different sectors of economy which contribute to the food production (agriculture, food industries and agri-food trade, but also transport, services, other industries and other businesses). The analysis[3] shows that in 2014, out of the € 100 of national food expenditure, **the share of products of agriculture** (including fisheries and aquaculture) **represents only € 15**. Food imports represent € 10.3, excluding imports of inputs whose values are included in that of agricultural production. **Values created downstream by trade, processing and services including transportation of products make up most of the value of the food consumption with € 66**. The last part is the € 9.1 dedicated to taxes. (FranceAgriMer, 2018)



Source: FranceAgriMer, 2018

[2] https://policy-practice.oxfam.org.uk/publications/uk-supermarket-supply-chains-ending-the-human-suffering-behind-our-food-620428

[3] https://observatoire-prixmarges.franceagrimer.fr/Lists/Liste%20Rapports%20au%20Parlement%20et%20Lettres/Attachments/26/OFPM_2018_Rapport_final.pdf

<u>Concentration and market share of the retail sector</u>

Concentration in the food processing industry and retail sectors is much higher than in the agricultural sector as regards to small businesses and enterprises. As a land-based activity, agriculture is facing physical, logistical, economic and regulatory limits to concentration. Concentration is the tool that helps achieve economies of scale but it also reduces the number of players downstream in the food chain. **This gives them higher bargaining power when negotiating with their counterparts upstream**. (DG AGRI, 2017).

The modern retail has also expanded and increased its share in most Member States (MS), even as the situation remains relatively heterogenous across the different MS, as highlighted in a Commission study from 2014[4]. As regards to the market share, **the top 10 European retailers are continuously increasing their share**. In 2000 this accounted for 26% market share, compared to 30.7% in 2011, representing an increase of +4.7 points. Interestingly enough, these 10 top retailers have stayed the same even as some other retailers have either lost or gained market shares. (EY, Cambridge Econometrics, Arcadia International 2014).

Table 1: Market share (in edible grocery sales) of the top 10 retailers in EU (2000 - 2011)

Top 10 in 2000			Top 10 in 2011		
Company	Edible grocery banner sales (€ M)	% EU market share	Company	Edible grocery banner sales (€ M)	% EU market share
Carrefour	44 441	5.2%	Schwarz Group	50 059	4.7%
ITM (Intermarché)	27 308	3.2%	Carrefour	49 267	4.5%
Rewe Group	23 355	2.6%	Tesco	40 310	3.8%
Tesco	23 034	2.7%	Edeka	37 031	3.4%
Edeka	21 654	2.5%	Aldi	33 529	3.1%
Aldi	21 268	2.5%	Rewe Group	32 324	3.0%
Ahold	15 811	1.9%	Auchan	23 378	2.2%
Schwarz Group	15 471	1.8%	ITM (Intermarché)	22 668	2.1%
Auchan	15 234	1.8%	Leclerc	22 509	2.1%
Leclerc	14 311	1.7%	Ahold	19 851	1.9%
TOTAL	**221 889**	**26.0%**	**TOTAL**	**330 926**	**30.7%**

Source: EY analysis based on © Planet Retail

Source : EY, Cambridge Econometrics, Arcadia International 2014

As according to the DG JRC technical study on the UTPs[5], **the increasing concentration and consolidation among food manufacturers and retailers may create significant imbalances of bargaining power in the food supply chain** between contracting parties and promote implementation of UTPs. In the words of the Agricultural Markets Task Force (AMTF) (2016)[6]: '*Such imbalances may encourage certain behavioural practices on the part of the stronger party in a given commercial relationship or transaction*'. (Falkowski et al., 2017)

[4] http://ec.europa.eu/competition/sectors/agriculture/retail_study_report_en.pdf

[5] http://publications.jrc.ec.europa.eu/repository/bitstream/JRC108394/jrc_report_utps_final.pdf

[6] https://ec.europa.eu/agriculture/sites/agriculture/files/agri-markets-task-force/improving-markets-outcomes_en.pdf

Unfair trade practices and ways to combat them

The list of possible UTP has been developing for the past couple of years and is constantly being refined. To refer to a couple of concrete examples, Gorton, Lemke, and Alfarsi (GLA)[7] (2017) provide several examples drawn from the popular press or from the Groceries Code Adjudicator (GCA), of what were believed UTPs implemented by European grocery retailers. Amongst these examples are:

- retailer Holland and Barrett requiring suppliers to reduce costs by 5 % and contribute to the company's costs;
- Britain's Tesco being accused of delaying payment to suppliers as a way of enforcing leverage over them to accept harsher contract terms;
- retailer Aldi being accused of delaying payment to suppliers beyond the 30 days specified in the applicable law;
- Wm Morrison supermarkets requesting lump-sum retroactive payments from suppliers in violation of the UK's Groceries Code. (Falkowski et al., 2017)

To combat these UTPs, **several MS have launched different measures**. There are 20 MS who have either introduced or amended legislation which aims specifically at targeting UTP's with a varying degree of coverage, stringency and regime. Three MS have only voluntary framework and five MS have neither UTP legislation nor voluntary framework. The stringency of the measures set for combatting the UTPs is then compared to the perceived occurrence of the UTP in the given state in order to evaluate the effectiveness of the regulatory framework. (Falkowski et al., 2017)

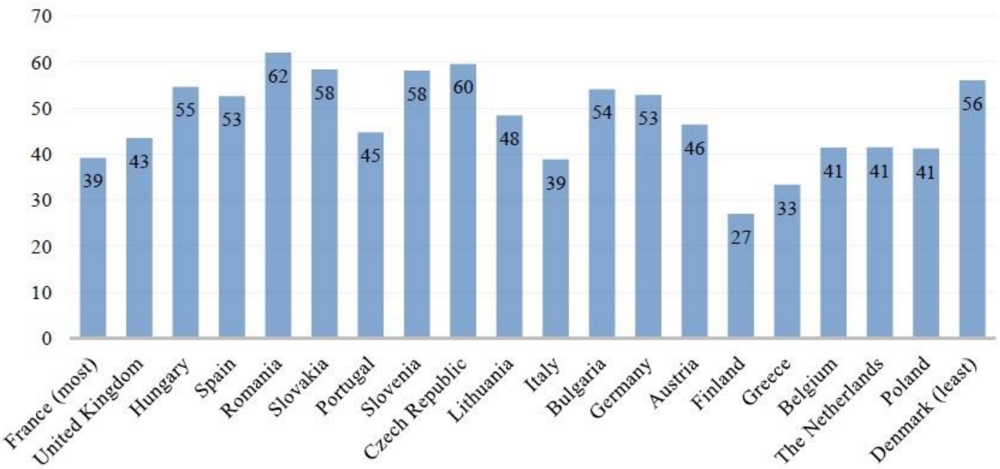


Figure 1. Perceived occurrence (in %) of UTPs by Member State, ranked from most stringent to least stringent UTP regulatory framework (*Source*: Gentile et al., 2016 and own calculations)

Source : Falkowski et al., 2017

[7] Gorton, M., F. Lemke, and F. Alfarsi (2017). 'Methodological Framework: Review of Approaches Applied in the Literature to Analyse the Occurrence and Impact of UTPs.' Paper presented at the workshop on 'Unfair Trading Practices in the Food Supply Chain', European Commission, Brussels 17-18 July 2017.

The takeaway from this survey amongst MS and also from the case studies is that when it comes to introducing effective legislation to deal with UTPs, the **fear factor** is absolute key. For example, one of the main reasons the original voluntary framework in the UK was unsuccessful was the lack of a mechanism which allowed for confidential complaints and ex officio investigations. Only when that possibility was introduced with the GCA, the perception of the framework changed considerably. **One could even argue that the 'fear factor' is the main reason why countries decide to explicitly legislate UTPs in the first place.** (Falkowski et al., 2017)

There are now not yet any specific rules at EU level governing the UTPs. There have been a number of initiatives, amongst which count the voluntary **Supply Chain Initiative,** which started in 2013. The performance of this initiative has been satisfactory, but should be strengthened, with a considerable room for improvement. According to the latest annual report of the initiative, there are currently 390 companies signed up and the membership continues to grow. (SCI 4th annual report, 2018)[8].

The trustworthiness of the members of this initiative was somewhat undermined by the fact that one of the members, **Tesco plc, has been put under investigation in 2015** into the compliance with paragraph 5 of the Groceries Supply Code of Practice which relates to delay in payments and paragraph 12 relating to payment by suppliers in order to secure better positioning or an increase in shelf space[9]. **The investigation found that they have indeed in breach of paragraph 5 of the Code**. There was not enough evidence for the dereliction of duty on paragraph 12, yet there were concerns raised about practices connected with this issue. (GCA, 2016)

Delay in payments was a widespread issue that affected a broad range of Tesco suppliers on a significant scale. It had a financial impact on suppliers, was an administrative burden to resolve, detracted from the time available to develop customer-focused business and had a detrimental impact on some suppliers' relationships with Tesco. (GCA, 2016)

Most importantly, **the Supply Chain Initiative**, which recognises that the GSCOP and GCA operate in line with the SCI's retailer requirements (SCI, 2016)[10], and of which Tesco plc was member at the time, **chose not to take any action** against Tesco plc following the investigation.

The Proposal for Regulation on promoting fairness and transparency in e-commerce[11] has also outlined issues with the voluntary approach to combatting UTPs:

"Previous experience with the Supply Chain Initiative (SCI) in the food sector also suggests that purely voluntary initiatives are not suited for creating a functioning independent redress mechanism and fairness rules that are attractive and credible for both sides of the market. Despite some progress (elaboration of principles of good practice and setting up of a governance group), agricultural providers – the main supposed beneficiaries of the scheme – did not sign up to the scheme because of confidentiality and enforcement concerns. In the meantime, 21 Member States have already adopted national legislation and initiatives to combat potentially harmful trading practices in the food supply chain.

[8] https://supplychaininitiative.eu/sites/default/files/sci_-_4th_annual_report_-_march_2018.pdf

[9] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/494840/GCA_Tesco_plc_final_report_26012016_-_version_for_download.pdf

[10] https://www.supplychaininitiative.eu/sites/default/files/annual_report_02_finale_0.pdf

[11] http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2018/0238/COM_COM(2018)0238_EN.pdf

For this reason, only a legislative instrument can effectively address the problems identified. A Regulation is in addition preferred, as it is directly applicable in Member States, establishes the same level of obligations for private parties, and enables the coherent application of rules in the inherently cross-border online intermediated trade and online search. This will also address and prevent fragmentation of the Digital Single Market."

Copa and Cogeca position

The **imbalances of power in the food supply chain** between price setters and price takers has led to undue pressure being put on the weaker links of the chain (farmers and agri-cooperatives). As a result farmers and agri-cooperatives have, quite often, been forced to accept unfair and abusive prices and conditions. Under these circumstances prices regularly do not even cover production costs nor enable them to have an economic return on their activity. This is a known problem with an EU-wide dimension.

Under these circumstances, the high level of concentration of the retail sector and the fundamental importance of defending a well-functioning Internal Market, **Copa and Cogeca have been calling for an EU framework legislation to address and curb UTPs in the food supply chain**. This is, in our opinion, the only way to address an EU wide problem. An EU framework legislation that includes the prohibition of UTPs with control and enforcement mechanisms combined with deterrent sanctions is the way to address this problem. Unfair trading practices put at stake the viability and sustainability of the farming sector across the EU.

Copa and Cogeca have worked in the past with other stakeholders in the food chain to address UTPs but **relying solely on a voluntary approach** (e.g. guidelines, recommendations and other non-legislative actions) **has not worked**.

The Supply Chain Initiative (SCI), to which Copa and Cogeca have not signed up to, has not delivered on a reduction of UTPs. A legislative approach is therefore the solution.

For Copa and Cogeca it is very clear**. We need a fair, transparent, well-functioning and equitable food supply chain**. One that is good for farmers and all stakeholders including processors, retailers, and above all, consumers.

Therefore Copa and Cogeca are very happy with the Commission's proposal for a Directive to curb UTPs in the food supply chain and the work that has been carried out both in the European Parliament and in the Council.

We need to improve the functioning of the food supply chain and we need to have a more balanced distribution of the consumer Euro along the food supply chain. UTPs put at stake the viability and sustainability of the farming sector across the EU.

We are aware of the mandate given to the SCA to start the trilogues as soon as the European Parliament is ready. **In this respect we are very supportive of reaching a political agreement on this before the end of the year.**

As Copa and Cogeca we are very supportive to a legislative approach to address UTPs in the food supply chain at EU level in such a way that would not endanger well-functioning legislative systems already in place in Member States.