

# An EU Directive on unfair trading practices in the food supply chain

CDG Beef, 26 March 2019  
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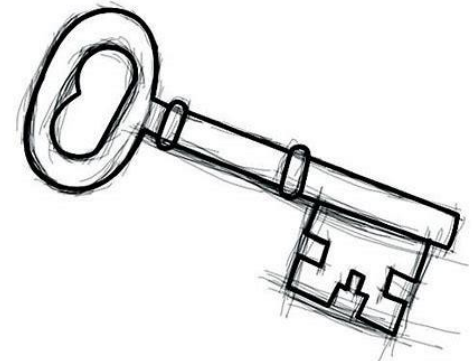
# State of play of legislative process

- Political agreement on 19 December 2018 between the European Parliament, the Council and the European Commission
- Formal endorsement by European Parliament and Council
- Lawyer-linguists process
- Adoption of Directive: likely April



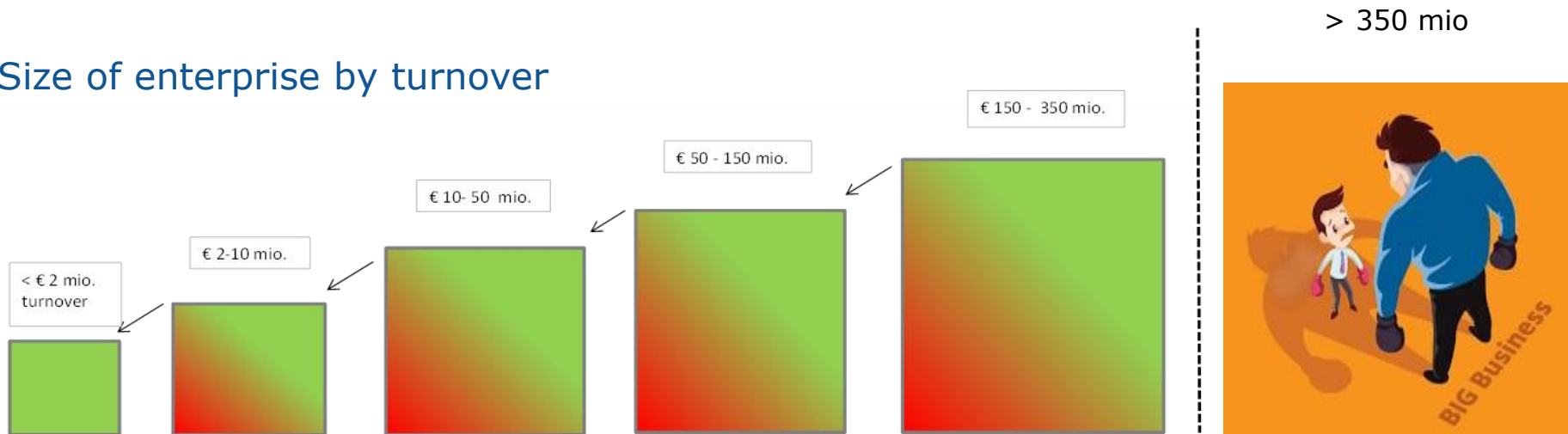
# Key elements

- Legal basis: Article 43 TFEU
- The Directive:
  - protects weaker suppliers against stronger buyers (B2B) against UTPs occurring in the food supply chain
  - links to ag and food products
  - follows minimum harmonisation approach (MS can go farther)
  - protects against 16 specific unfair trading practices
  - provides for minimum enforcement power
  - foresees coordination between MS authorities



# Protecting the weak against the strong – Article 1

Size of enterprise by turnover

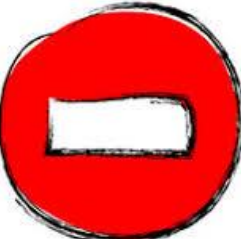


- Turnover calculation >> Commission SME Recommendation
- Foreign suppliers / foreign buyers (territorial competence)

# Distinction between black and grey UTPs – Article 3

- The distinction between black and grey UTPs in the Commission's proposal has been retained.
- Article 3 (1) : **Black UTPs**. Prohibited, whatever the circumstances.
- Article 3 (2): **Grey UTPs**. Prohibited, if the parties do not clearly and unambiguously agree beforehand.

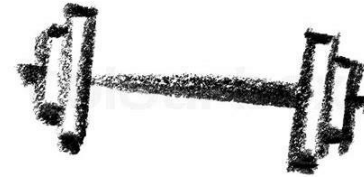
# Unfair trading practices prohibited – black

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1. Payments later than 30 days for *perishable* agricultural and food products
  2. Payment later than 60 days for other agri-food products
  3. Short-notice cancellations of perishable agri-food products
  4. Unilateral contract changes by the buyer
  5. Money not related to a specific transaction
  6. Risk of loss and deterioration transferred to the supplier
  7. Refusal of a written confirmation of a supply agreement by the buyer, despite request of the supplier
  8. Misuse of trade secrets by the buyer
  9. Commercial retaliation by the buyer
  10. Transferring the costs of examining customer complaints to the supplier

# Unfair trading practices prohibited – grey

- 11. Unsold products
- 12. Payment of the supplier for stocking, display and listing
- 13. Payment of the supplier for promotion
- 14. Payment of the supplier for marketing
- 15. Payment of the supplier for advertising
- 16. Payment of the supplier for staff of the buyer, fitting out premises

# **Powers of the enforcement authority – Article 6**



- **MS have to designate an enforcement authority**
  - Can be an existing authority
- **Vested with powers:**
  - Power to act upon a complaint or act ex officio
  - Power to investigate
  - Power to terminate an infringement
  - Power to levy fines and impose other penalties
  - Power to publish decisions



# Cooperation - Article 8

- **Cooperation**
  - MS to ensure that the enforcement authorities cooperate effectively with each other and with the Commission
  - And to provide each other mutual assistance in cases with cross-border dimension
- **Regular meetings**, facilitated by the Commission
- **Website**, internally for enforcement authorities and public website with links to designated authorities and information about acts of transposition

# Next steps

- Endorsement by the co-legislators
  - Still during this legislative mandate
  - After lawyer linguist review
- Publication in the Official Journal
- Entry into force of the Directive
- 24 months after entry into force: transposition, Article 13
- 30 months after entry into force: application of rules, Article 13

