

The Danish UTP Act

Annual report on enforcement
activities

October 2022



KONKURRENCE- OG FORBRUGERSTYRELSEN

The Danish UTP Act

The Danish Competition and Consumer Authority

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Chapter 1

Introduction

On 1 July 2021, the Danish Act on unfair trading practices in business-to-business relationships in the agricultural and food supply chain entered into force; cf. Act No. 719 of 27 April 2021¹ (the Danish UTP Act). The Danish UTP Act transposes Directive 2019/633/EU on unfair trading practices in business-to-business relationships in the agricultural and food supply chain² (hereafter referred to as the "UTP Directive"). The Directive intends to eliminate or limit certain types of trading practices (so-called "Unfair Trading Practices").

Under article 10, subsection 1 of the Directive, the Danish Competition and Consumer Authority (hereafter referred to as "the DCCA") must publish a report, which describes the activities that fall within the scope of the UTP Directive. The report includes i.a. the number of complaints received and the number of investigations opened or closed during the previous year.

In this report, the DCCA describes the most significant activities related to the transposition of the Directive and the authority's enforcement of the new rules in the area.

¹ <https://www.retsinformation.dk/eli/lt/2021/719> (the Danish Act on unfair trading practices in business-to-business relationships in the agricultural and food supply chain "The Danish UTP Act")

² [L 2019111DA.01005901.xml \(europa.eu\)](https://eur-lex.europa.eu/eli/dir/2019/633/oj)

Chapter 2

New rules

2.1 New rules on unfair trading practices in the agricultural and food supply chain

The Danish UTP Act regulates trade between buyers and suppliers at all levels of the agricultural and food supply chain. This includes producers of primary goods, manufacturing firms, distributors and retail trade. The Act does not regulate consumers' purchase of agricultural and food products.

The Act regulates agreements between suppliers and buyers of agricultural and food products. The Danish transposition deviates from the UTP Directive by widening the scope compared to the UTP Directive in that all suppliers enjoy the protection given by the directive, also when trading with smaller buyers. With regard to the rules concerning maximum payment periods in Sections 3 and 4 of the Act, there are certain exceptions for small buyers with an annual revenue of EUR 2 million or less and for large suppliers with an annual revenue of more than EUR 350 million, respectively.

2.2 Interim provision

It follows from Section 21, subsection 2, of the Danish UTP Act that the Act applies to all agreements entered into after 1 July 2021.

According to Section 21, subsection 3, agreements entered into before 1 July 2021 had to be in compliance with the prohibitions laid down in the Danish UTP Act by 30 April 2022. Thus, a large number of companies have had to adapt to the new rules during spring 2022.

Box 2.1

Background to the rules

- » Aim to protect producers and suppliers of agricultural and food products against unfair trading practices from larger buyers
- » Prohibits 16 types of unfair trading practices

Chapter 2

Enforcement of the act

3.1 The DCCA's enforcement of the Act since July 2021

The DCCA has been appointed as the independent enforcement authority of the rules concerning unfair trading practices in the Danish UTP Act. Thus, the DCCA receives complaints and adopts decisions in accordance with the Danish UTP Act.

Since the Act entered into force, the DCCA received only one complaint. The complaint was subsequently withdrawn, which is why no decisions have been adopted under the Danish UTP Act as of now.

3.2 Focus on information and guidance

The DCCA has focused on informing and offering informal guidance to companies about the rules in the new Danish UTP Act.

The DCCA has published guidelines, which provide companies with an overview of the rules, and give a number of concrete examples of who and what the regulation covers, and what constitutes unfair trading practices. The guidelines are available on the DCCA's website: www.kfst.dk/utp.

The DCCA has also provided general guidance to companies about the provisions of the Act and their interpretation. The general guidance has, among other things, referred to the Act's definitions, including:

- Which products fall within the scope of the Act cf. Section 2, subsection 1, no. 1, of the Danish UTP Act.
- When a product is considered perishable, cf. the definition in Section 2, subsection 1, no. 5 of the Danish UTP Act.

In addition, the Authority has answered a number of questions regarding the interpretation of the 16 prohibition provisions.

Box 3.1

Prohibition provisions**Absolute prohibitions**

1. Payment for perishable agricultural and food products later than 30 days³
2. Payment for other agricultural and food products later than 60 days⁴
3. Cancellation of orders of perishable products at short notice
4. Unilateral changes of supply agreements
5. Requesting payments that are not related to the supplier's sale of agricultural and food products
6. Requesting payment for the deterioration or loss, or both, of goods which is not caused by the negligence or fault of the supplier
7. Buyer refuses to confirm in writing the terms of a supply agreement
8. Illegal acquisition, use or disclosure of the supplier's trade secrets
9. Buyer threatens to or carries out acts of commercial retaliation, for example if the supplier's legal rights are exercised
10. Requesting compensation for costs of examining customer complaints, despite the absence of negligence or fault on the part of the supplier

Prohibitions that can be waived by prior agreement

11. The buyer returns unsold agricultural and food products without paying for those.
12. The supplier is charged for stocking, displaying or listing of the goods
13. The buyer requires the supplier to bear all or part of the costs of any discounts as result of e.g. sales promotion
14. Requesting payment for advertising the product
15. Requesting payment for marketing of the product
16. Charging for staff for fitting-out premises used for the sale of the good

The DCCA has participated in several events in order to present the new legislation. On these occasions, the DCCA has been in dialogue with market participants about the challenges companies have faced due to the new legislation.

It is the impression of the DCCA that there has generally been attention on the new legislation and that companies have focused on adapting their agreements in order to be in compliance with the new rules.

3.3 Cooperation across EU member states

In order to achieve a consistent approach to the interpretation of the rules on unfair trading practices throughout the EU, the UTP Directive prescribes a close collaboration between the enforcement authorities of the EU Member States and the European Commission.

The DCCA has participated in discussions with other European enforcement authorities about the transposition and enforcement of the prohibition provisions.

³ For suppliers with an annual turnover of more than EUR 350 million, a maximum payment period of 60 days applies. No maximum payment deadlines have been set for buyers with an annual turnover of less than EUR 2 million.

⁴ Ibid.

Chapter 3

Monitoring

4.1 The DCCA has carried out the first monitoring

The Danish UTP Act constitutes a new sector specific regulation of the food supply chain.

The UTP Directive is a so-called minimum directive, and the Member States have therefore had the possibility of introducing rules that are more strict than the directive requires.

The Danish UTP Act transposes the underlying UTP Directive without the turnover categories that follow from Article 1 of the Directive, with certain exceptions regarding the provisions on payment periods. This decision reflected a balancing of various considerations, including the consideration to effective competition and also avoiding unnecessary complexity and administrative burdens for the companies. Consequently, the Danish UTP Act applies to more trades than what follows from the underlying directive.

On that basis, it was decided that an ongoing monitoring of the effects of the Act should be carried out and gathered in an evaluation 3 years after the Act entered into force.

For the purpose of investigating the impact of the Danish UTP Act, the DCCA sent out a survey to a number of industry and trade organizations which represent the different levels of the food supply chain on 30 March 2022.

The feedback from the market players has been limited, and companies have only expressed concern regarding few areas. Concerns have generally been related to the prohibition provisions in general following from the Directive and not the extended application of the rules in Denmark. However, it is important to note that the rules have only been in effect for a short period of time, and a significant number of agreements could be changed until spring 2022 in order to comply with the new rules.

The DCCA will conduct a new round of monitoring in spring 2023.
