EuroCommerce
Retail & Wholesale

Attachment

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Examples of gold-plating in the EU

INTRODUCTION

This document complements EuroCommerce's response to the European Commission's survey on gold-plating and provides a **non-exhaustive collection of examples** submitted by EuroCommerce members across the European Union. The examples illustrate situations where the implementation, application or enforcement of EU legislation has resulted in additional national requirements, administrative procedures or supervisory practices that may go beyond what is required under EU law.

For retailers and wholesalers operating across the Single Market, **regulatory consistency is essential**. Businesses rely on harmonised EU rules to develop common products, processes, supply chains and compliance systems across multiple Member States. When national measures diverge from the agreed EU framework, businesses often face additional complexity, costs and uncertainty, reducing the benefits that EU harmonisation is intended to deliver.

The examples collected from our members suggest that **gold-plating can take many forms**. It may arise through additional legislative requirements introduced during the transposition of EU directives, but also through national implementation choices, administrative procedures, reporting and documentation obligations, restrictive interpretations of EU concepts, or supervisory and enforcement practices that create more burdensome obligations than those encountered elsewhere in the EU. This is particularly relevant in areas governed by directly applicable EU regulations, where there is no formal transposition, yet national implementation and enforcement can nevertheless result in significantly different compliance burdens across Member States.

The examples in this annex also highlight the **difficulty of isolating the costs of gold-plating from wider regulatory and administrative burdens**. For many businesses, there is no clear distinction between costs resulting from bureaucracy and costs resulting from gold-plating, as the two are often closely intertwined. While robust quantitative estimates are not available for all cases, members consistently report additional compliance efforts, administrative costs, legal uncertainty, product adaptation requirements, delays and operational inefficiencies resulting from national add-ons to the EU framework.

EuroCommerce supports the implementation of EU legislation in the most harmonised, proportionate and predictable manner possible. Additional national requirements should be limited to situations where they are clearly necessary and justified. Otherwise, there is a risk of regulatory fragmentation, distortions of competition, additional barriers to cross-border trade and a weakening of competitiveness within the Single Market.

The examples presented in this document stem from a wide range of legislative and regulatory contexts, and the underlying causes of fragmentation vary. As a result, there is no one-size-fits-all solution. The Commission should therefore assess the examples and recommendations below in the context of the relevant policy area, as different tools and approaches may be required to effectively address Single Market fragmentation.

Contents

RETAIL RELEVANT EXAMPLES COLLECTED

UNFAIR TRADING PRACTICES DIRECTIVE (2019/633)

Belgium

- **National legislation**:
  - Belgian Law of 28 November 2021 transposing the UTP Directive into Book VI of the Belgian Code of Economic Law

    = law voted by the Belgian federal parliament
  - Royal Decree of 4 July 2024 adding a list of unfair market practices (black and grey list) to the list included in above-mentioned Belgian law

    = competence of the Belgian Minister of Economy and Agriculture (same Minister in the previous as in the current government)

    = main piece of legislation for the gold-plating
- **Summary of measures**:
  - The Belgian Law of 28 November 2021 already goes beyond the Directive by removing the distinction between perishable and non-perishable agricultural and food products for two prohibited practices:
    - Payment terms: The maximum payment period of 30 days applies to both perishable and non-perishable products, whereas the Directive provides for a maximum of 60 days for non-perishable products.
    - Short-notice cancellations: The prohibition on cancelling orders at short notice also applies to non-perishable products, whereas the corresponding prohibition under the Directive only covers perishable products.
  - The Belgian transposition applies to relations in the agricultural and food supply chain, between all buyers and those suppliers who have an annual worldwide turnover below 350 000 000 euros. The law however goes beyond the UTP Directive by also applying to relations between all buyers and all recognised producers' organisation under EU law.
  - **Four additional black-list practices**:
    1. Unfair delisting: The buyer may not unfairly threaten to remove a supplier's products from the shelves, remove them in retaliation for the supplier exercising its contractual or legal rights, or remove them without prior justification and written notice.
    2. Automatic charging of damages and interest: A buyer may not automatically charge damages or interest without prior written justification of the breach and the damage supporting the amount claimed.
    3. Unilateral set-off of damages and interest: A buyer may not unilaterally set off damages or interest without prior written justification of the breach and the damage.
    4. Unilateral set-off of non-compensatory penalties: A buyer may not unilaterally set off contractual penalties that are not compensatory in nature.
  - Two additional grey-list practices:
    1. Purchasing below production cost: The buyer purchasing products at a price below the supplier's production costs is considered unfair unless clearly and unambiguously agreed.
    2. Exclusion of hardship**:** A buyer may not refuse to renegotiate a contract where unforeseeable circumstances, not attributable to either party, make performance excessively burdensome, unless the parties have clearly and unambiguously agreed otherwise.

- Authorities approached:
    - National, regional or local public authority:
        - Minister of Economy and Agriculture
        - Federal Public Service Economy
    - Industry association or public affairs representative

- Gold-plating was a direct consequence of farmers protests in Belgium in 2024.
- The retail sector was involved in discussions following the farmers protests which led to Belgium gold-plating the UTP Directive, but it was always clear the government wanted to grant additional protection for the farmers via the UTP legislation.

Croatia

National implementation: Act on the Prohibition of Unfair Trading Practices in the Food Supply Chain, Articles 5, 11 and 12, Ministry of Economy.

Croatia added six further prohibitions, including the prohibition of selling agricultural and food products below purchase price and of selling private label products below production cost, and introduced an absolute turnover threshold of EUR 2 million, whereas the Directive works with revenue categories and prescribes no absolute financial threshold.

Czechia

A comparison of the main differences between the Czech Significant Market Power Act (SMPA) and the Unfair Trading Practices (UTP) Directive

- The SMPA extends its scope beyond that of the UTP Directive by also protecting suppliers with a turnover exceeding 350 million EUR, provided that the buyer's turnover in the Czech Republic exceeds 5 billion CZK (whether on its own, as a member of a purchasing alliance, or in conjunction with a controlling entity).
- The SMPA also extends its scope to entities that are recipients or providers of related services. This covers a broader range of relationships than required by the UTP Directive – some of which may have little relation with farmers (the original aim of the UTP Directive).
- The SMPA allows for the sanctioning of conduct aimed at creating a significant imbalance to the detriment of the supplier, even if such conduct is not included in the list of prohibited unfair trading practices under the UTP Directive.
- The SMPA goes beyond the requirements of the UTP Directive by protecting suppliers from unequal treatment by buyers with significant market power, an issue that the UTP Directive does not address at all. These 'general' prohibitions can create legal uncertainty and fragment the Single Market.
- The SMPA prevents the negotiation or enforcement of compensation for a penalty imposed on a supplier by a supervisory authority if the supplier did not cause the penalty to be imposed by breaching its obligations, an issue not addressed by the UTP Directive.
- The SMPA explicitly prohibits a buyer with a significant market power from passing on the costs of its audits or other inspections to the supplier. In contrast, the UTP Directive only generally prohibits demanding payments unrelated to the sale of the supplied products.
- The SMPA expressly prohibits the false indication of the place of origin of agricultural products or food products, or their significant ingredients, which the UTP Directive does not regulate.
- Going beyond the scope of the UTP Directive, the SMPA prohibits a buyer with a significant market power from making deliveries conditional on the supplier using the services of a third party, the terms and price of which are set by the buyer.

- Unlike the UTP Directive, which requires only a clear and unambiguous agreement on subsequently negotiated or applied payments or other performance, the SMPA insists that these terms must be agreed upon in writing in advance.
- The SMPA includes a significant penalty cap (up to CZK 10 million or up to 10% of the buyer's net turnover with the significant market power) comparable to the approach taken in the strictest jurisdictions. In contrast, the UTP Directive requires only effective, proportionate, and dissuasive sanctions.

Denmark

The scope of the UTP Directive has been significantly expanded in Denmark. Danish law has removed turnover thresholds and now applies to all suppliers and buyers regardless of their size (with only one exception in relation to payment practices).

There is only one exemption for buyers below €2m only in relation to the rules regarding maximum payment term; all buyers are subject all other provisions, including the other black- and grey-list requirements.

Germany

Type of gold plating: Stricter national requirements, over-implementation

Description: Germany implemented the Unfair Trading Practices (UTP) Directive beyond the minimum requirements established at EU level. In particular, the German legislation expanded the scope of application by covering business relationships beyond those required under the Directive, including certain suppliers with a group turnover of up to EUR 15 billion and buyers with an annual turnover of up to EUR 4 billion. It also introduced stricter rules by prohibiting several trading practices that remain permissible under the Directive when agreed in clear and unambiguous terms between suppliers and buyers, including return agreements, listing fees and agreements on storage costs. In addition, Germany introduced supplementary national provisions, such as an anti-circumvention clause.

Impact: unilateral protection of large multinational food manufacturers vis-a-vis their retail and wholesale customers. This undermines the original approach of focusing on small farmers and processors; this extension brings no direct benefit for farmers and leads to different competitive conditions within the EU Single Market; additional compliance and documentation efforts; increased training requirements for companies.

Greece

The gold-plating concerns Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, as transposed into Greek law by Law 4792/2021. The relevant national measures are, in particular: (i) extend the scope of protection by applying the regime where the supplier's turnover is up to EUR 500,000 and the buyer's turnover exceeds EUR 500,000, instead of the minimum EU threshold of EUR 2 million; (ii) specify a fixed 30-day notice period for cancellation of orders of perishable products, whereas the Directive refers more generally to cancellation without "sufficiently advance" notice; and (iii) set specific very high administrative fines linked to the buyer's annual turnover. The measures were adopted by the Greek legislator. The competent authority for enforcement under the Greek framework is the authority designated under Law 4792/2021, namely the Ministry of Rural Development and Food / competent enforcement authorities for UTP matters.

Impact:

- **More stringent norms**. Expanded scope of application of EU legislation as transposed or implemented at national, regional or local level: applies to Directive (EU) 2019/633, because Greek Law 4792/2021 extends the protective scope to lower turnover thresholds than those required by the Directive. Furthermore, this expanded scope potentially applies to Sale of Goods Directive 2019/771, to the extent that the Greek rules extend the practical obligations linked to commercial guarantees and after-sales support beyond the Directive's minimum framework.
- **stricter deadlines**: applying a) to Directive (EU) 2024/825 on empowering consumers for the green transition, because the Greek transposing law applies earlier than the EU application date and b) to Directive (EU) 2019/633, because Greek Law 4792/2021 introduces a fixed **30-day notice period** for cancellation of orders of perishable products, whereas the Directive refers more generally to notice given "sufficiently in advance". Also, it applies, in part to Directive 2019/771, because the Greek law introduces a fixed **15-working-day repair threshold**, after which the consumer may request temporary replacement.
- **different thresholds** (size, turnover, emissions, etc): the Greek law uses different turnover thresholds: protection starts where the supplier's turnover is up to EUR 500,000 and the buyer's turnover exceeds EUR 500,000, instead of the Directive's EUR 2 million threshold.

Finland

The UTP Directive only sets out minimum level of harmonisation in the member countries. This left national legislators a lot of discretion in implementing their national rules. In Finland the Food Market Act is overly strictly implemented. The regulation deviates from what is envisaged in the UTP Directive as a proper and sufficient level of protection for farmers and small and medium-sized suppliers and even further deviations to the Act were introduced less than a year after the implementation of the Directive. It is worth noting that the latest deviations were carried out in haste and on political grounds, prior to the availability of any empirical evidence regarding the impacts of the Act.

Firstly, the Act deviates from the directive with its scope of application. According to Finnish Food Market Act, the buyer is obligated if the supplier is smaller than the buyer in terms of turnover and if the buyer's turnover is at least EUR 2 million and at least one of them is established in the European Union. The provisions apply irrespective of the state whose law would otherwise be applicable to the supply contract, except in cases where the supplier's annual turnover exceeds EUR 350,000,000 and the buyer is larger than the supplier.

Secondly, in Finland the payment terms are one of the shortest in EU (as of 01 May 2023):

- Perishable 14 days. However at the supplier's initiative, it may be clearly and unambiguously agreed in the supply contract that the payment period may not exceed 30 days.

- Non-perishable 14 days, or if it has been clearly and unambiguously agreed upon in the delivery contract, maximum 30 days. However at the supplier's initiative, it may be clearly and unambiguously agreed in the supply contract that the payment period may not exceed 60 days.

It is not always even in the interest of the farmers to have such short payment terms. Short payment terms lead, for example, to practical difficulties in handling invoices and may lead to payment delays, in particular for small and medium-sized buyers.

Thirdly, cancellation of orders is prohibited for perishable and non-perishable products less than 30 days before the agreed delivery date.

Fourthly, returning unsold agricultural or food products to the supplier without paying for them or for their disposal is forbidden in Finland. The above-mentioned prohibition was incorporated into the Act through its latest amendment, eliciting considerable objections across the entire food supply chain. This departure from the Directive's approach, which allows such terms to be negotiated between the parties, has resulted in practical challenges. It has introduced a degree of inflexibility and legal uncertainty regarding various efficient trading models. This includes those pertinent to ensuring the availability of seasonal products and different types of shop-in-shop and suppliers' in-shop services. The contractual freedom should be maintained across the EU as this may – which was specifically acknowledged in the proposal of the prohibition - lead to fewer products being ordered.

Over-implementation creates risks to legal certainty and burden to companies (both suppliers and buyers) wishing to operate cross-border in the EU – with no evidence of positive effects to farmers or small and medium sized suppliers. For example, the Finnish supervisory authority Food Market Ombudsman published guidance reiterating that retailers have to comply with the national UTP laws of the suppliers in cross -border trade. It is practically impossible, very burdensome and costly e.g. due to language barriers, to find information and to comply with varying definitions and UTP rules in different countries. When being asked, not even the Ombudsman has the information on which national UTP laws diverge from the directive's minimum harmonisation. This is very challenging and creates huge administrative burden to companies.

Additional to the above-mentioned national gold-plating practices, the national UTP legislation was again amended in 2026. New national legislation is yet another layer of gold-plating in this field. New national provisions are as follows:

Section 2 e — Commercial Retaliatory Measures
The initiator of the matter must present evidence of the circumstances on which the submission of a matter concerning commercial retaliatory measures to the Food Market Ombudsman is based. The initiator must also present evidence in court of the circumstances on which a claim concerning commercial retaliatory measures is based.
If, on the basis of the circumstances presented during the consideration of the matter, the Food Market Ombudsman or the court may presume that the buyer has taken or threatened to take commercial retaliatory measures, the buyer must, in order to rebut this presumption, demonstrate that the buyer has not violated the prohibition on commercial retaliatory measures laid down in subsection 1.
The provisions of subsection 3 do not apply to the issuing of a public warning referred to in section 11 or to the imposition of a penalty payment for the food market referred to in section 12 a.

Section 3 a — Negotiations Due to Exceptional Circumstances
If the circumstances prevailing at the time the contract was concluded change exceptionally in such a way that the weaker party to the contract could not reasonably have taken the change into account when concluding the contract, and the change in circumstances substantially weakens the position of the weaker party to the contract, the stronger party to the contract must, at the request of the weaker party, negotiate on amending the contractual terms due to the exceptional circumstances.
When assessing whether a party is the weaker party to the contract, account must be taken of the duration of the contract and of the pricing periods, the number of alternative contracting partners, and other factors affecting the party's position.
The provisions of subsection 1 do not apply to a supply contract whose express purpose is to agree, in a manner binding on the parties, solely that the supplier will deliver to the buyer, at a specific time or within a specific period, an agricultural product conforming to the terms as one or more one-off

deliveries, in a pre-agreed quantity against pre-agreed consideration. The provisions of subsection 1 also do not apply to a financial instrument within the meaning of the Investment Services Act (747/2012).

Section 4 a — Abuse of Bargaining Power

A buyer must not use a contractual term that is unreasonable from the perspective of suppliers whose bargaining power is significantly weaker. In assessing unreasonableness, account must be taken of the entire content of the contract, the circumstances prevailing at the time the contract was concluded and thereafter, and other comparable factors.

The bargaining power of suppliers must be assessed in relation to the bargaining power of the buyer. Suppliers have significantly weaker bargaining power if, in carrying out their business activities, they are particularly dependent on the buyer. When assessing the suppliers' dependent position in relation to the buyer, account must be taken of the proportion of the suppliers' production purchased by the buyer, the number of alternative buyers, and other comparable factors.

The provisions of subsection 1 do not apply to an undertaking concerning the amount of consideration.

Section 4 b — Prohibition on Requiring Certain Information

A buyer must not use a contractual term under which the buyer may require the supplier to provide the buyer with information on the supplier's technical specifications, recipes, cost structure, or production methods that the buyer does not need for the purpose of implementing the contract or in order to comply with requirements laid down in national or European Union legislation, or with requirements concerning production methods to which the buyer has expressly committed.

If, under the contract, the supplier is required to provide the buyer with information on the supplier's technical specifications, recipes, cost structure, or production methods, the buyer must justify to the supplier the necessity of the information and inform the supplier of the purpose for which the buyer will use the information. The buyer must not use the information for any purpose other than the one communicated.

The provisions of subsections 1 and 2 do not apply to information that the supplier offers to the buyer.

Section 4 c — Prohibition on Favouring the Buyer's Own Brand

If the supplier is in a weaker bargaining position than the buyer, the buyer must take into account the benefits associated with the following products sold by the supplier to the buyer:

1. agricultural products, where these products compete with agricultural products that the buyer offers for sale under the buyer's own brand;
2. food products, where these food products compete with food products that the buyer offers for sale under the buyer's own brand.

The supplier's bargaining power must be assessed in relation to the buyer's bargaining power. The supplier is in a weaker bargaining position than the buyer if, in carrying out its business activities, the supplier is particularly dependent on the buyer. When assessing the supplier's dependent position in relation to the buyer, account must be taken of the proportion of the supplier's production purchased by the buyer, the number of alternative buyers, and other comparable factors.

Where a supply contract for agricultural products or food products concerns products other than those sold under the buyer's own brand, the conclusion of the supply contract, or the continuation of the contractual relationship or orders, must not be conditional upon, and the buyer must not otherwise require, the supplier to also conclude a contract with the buyer for the supply or manufacture of agricultural products or food products sold under the buyer's own brand, or to continue such a contract.

France

The objective of the UTP directive is to protect farmers and industrial SMEs in the agrifood chain when dealing with buyers that are significantly more powerful. The UTP directive prohibits 10 practices (blacklist) and for 6 practices, requires a written agreement between parties (grey practices).

The 2024 assessment of the transposition has shown that many Member States across the EU have gone beyond minimal harmonization on thresholds, changes to the grey and black practices and introduction of general unfairness clauses.

The French EGALIM laws go well beyond this limited **scope** to cover all sellers, whatever their size and power, which means that buyers will have limited leeway for negotiation, even when trading with powerful multinational manufacturers. Some aspects of the laws regulate business-to-business relations also outside the food sector, which disconnects the French rules from the EU objective of protecting farmers.

Article 1 of EGALIM 3 (known as the Descrozaille law) provides that over 40 provisions of the French commercial code apply **extraterritorially** to the negotiations for any product that is destined to French shelves, whatever the place of establishment of the supplier, the buyer and whatever the law they chose for their commercial negotiations as per Rome I regulation.

Although the first EGALIM law existed before the UTP directive, the French framework was not articulated afterwards with EU law to be coherent with the UTP directive, Rome I and Brussels I bis regulations and Single Market principles.

Additional restrictions in B2B relations that do not stem from the UTP directive:

- Dictated timeline of negotiations (i.e. annual negotiations from November to end of February) and of contractual relationships;
- Detailed contractual information requirements and extensive documentary obligations;
- For food products: Non-negotiability, throughout the food supply chain, of the price paid to the producer for the agricultural raw materials, usually accompanied by certification requirements;
- Restrictions on promotions to consumers;
- Logistic penalties (restriction of contractual freedom, ad-hoc contract, reporting);
- Wide prohibition of behaviours under general clauses;
- Extensive administrative sanctions against buyers.

An amendment to the 2025 Frech bill implementing EU law proposes to require that any service provided that deviates from the palletizing and packaging conditions included in the supply contract or in the supplier's general terms and conditions of sale be compensated and invoiced separately. Although the UTP directive already protects producers by requiring prior written consent for any logistics service, this amendment would add a strictly French formal requirement, putting domestic players at a disadvantage compared to their European competitors. Electronic data interchange (EDI) flows are standardized at the European level. Imposing a specific line item not provided for by standard protocols requires significant IT investments and increases the error rate in automated invoice processing. The amendment creates significant uncertainty regarding the determination of the legal price.

Impact: The impact takes different forms. First, the impact of extraterritoriality of art. 1 of the Descrozaille law.

- The most straightforward impact is that of **fines**. The French Ministry of the Economy has repeatedly fined retail alliances or companies legally established in another EU countries for not respecting the French law, although these alliances legally source under the rules of other Member States (Belgium, Spain). The sanctions typically stem from missing the deadline established by French law for concluding negotiations (these must take place between November and March 1st). Only retailers are sanctioned in case suppliers and retailers cannot agree by March 1st. The penalty can reach up to 1 million for a delay, however small, and multiplied by the number of suppliers.
    - As an illustration, in February 2026, one EU retail alliance based in Belgium (which encompasses 3 retailers: French, German and Dutch/Belgian), was fined €33 million for missing the short timeframe for negotiation allowed in France (November- end of February) with different large suppliers. However, the UTP directive and the Belgian law do not limit negotiations in time. This has sparked costly legal proceedings in both Belgium and France to recognize the right for the alliance to trade under Belgian law. In the same manner, another EU retail alliance based in Spain and gathering French and German retailers was fined €6 million early 2026 for negotiations concluded after the deadline.
- The Descrozaille law also **limits the ability of French retailers to take part in the Single market** and joint purchasing alliances with European partners because of 1) too diverging rules (e.g. on the timeline for negotiations) and 2) additional risks linked to fines that weigh indirectly on the European partner of an alliance accepting French members. It impedes French retailers from negotiations better prices at EU level with large food and non-food manufacturers and passing the economies to the French consumers – as recognized in the Commission's 2026 country report for France.
- With the logic of the Descrozaille law, the parties need different contracts for each country, and more resources for compliance. It increases legal uncertainty and litigation risks.
- The Descrozaille law limits the ability of non-French retailers and suppliers to enter the French market because they are not accustomed with the French commercial code and its case-law.

Second, the content of the rules also creates burden when applying to trade relations rightfully covered by French rules.

- The use of general open-ended clauses (e.g. provisions prohibiting "significant imbalance" in the rights and duties of the parties, or the "advantage without cause/compensation") has significant drawbacks. Given that virtually any clause could trigger unfairness, it is both difficult to enforce and a source of strong legal uncertainty. As a result, the litigation risk is high.
- The prohibition of abusive logistic penalties has a very wide acceptation of what is « abusive » which leads to an unbalanced framework, where retailers cannot obtain compensation to cover the full extent of the damages suffered as a result of the breach (non-delivery of goods).
- As a more indirect impact of gold plating, the timeframe for negotiations, the procedural/ formalism requirements have stiffened trade relations, as recognized by the French Minister for SMEs and Trade.

Third, the additional formal requirements create additional **reporting** such as:

- Annual reporting on logistic penalties (art. L.441-19 commercial code) including regarding the amount of logistic penalties imposed on suppliers in the last 12 months and the amounts actually received month by month, for each retailer;

- Annual reporting on the "SRP+10" rule, which prohibits retailers to sell certain food products below a threshold amounting to resale-at-a-loss plus 10%. Retailers have to report on the turnover generated by the rule, and face a fine of up to 0.4% of the annual turnover in case of failure. They also have to provide details within 15 days of a request
- As per a 2026 law, owners of private label products must report the share of their private label products that have a primary ingredient of EU/EEA origin, and among those, the share of products which have a primary ingredient of French origin. In a blatant discrimination, such a reporting obligation does not apply to manufacturers of proprietary brands. The lack of a methodology also creates high uncertainty.
- The same law creates mandatory reporting on the share in value of "sustainable and quality" products. This reporting applies to manufacturers of proprietary products, and to retailers. Retailers have to report on private label and proprietary products alike.
- When a French retailer receives terms and conditions from a manufacturer, the retailer has one month to accept them or motivate in writing, in detail and with objective elements why the retailer would like to enter negotiations and seek to lower tariffs.
- Promotions that French retailers can offer to consumers are limited by law in different ways. Among those, retailers cannot accept promotions by a supplier on more than 25% of the volume or turnover covered by the contract. This must appear in the contract, controlled by the authorities, which creates indirect reporting.

Despite efforts from French and European retail, the issue remains unaddressed to date, with no solution proposed by French authorities or the European Commission yet. The courts have been seized of the issues related to article 1 of the Descrozaille law (extraterritoriality) both in France and Belgium.

Spain

Gold-plating through the Food Chain Law

- **Spanish Law 12/2013 on the Food Supply Chain, as amended (2020, 2021), is a clear example of national rules going significantly beyond Directive (EU) 2019/633.** While the Directive was designed to prohibit a limited number of unfair trading practices and protect weaker suppliers, the Spanish framework has evolved into a much broader regulation of commercial relations and price formation throughout the food supply chain.

- **The main element of gold-plating is the scope of application, which goes significantly beyond the turnover thresholds established by Directive (EU) 2019/633**. As a result, the Spanish framework moves away from the Directive's original rationale of providing specific protection to the weaker party in the food supply chain, particularly primary producers, and extends regulatory constraints to commercial relationships between operators that do not necessarily present the imbalance in bargaining power that the Directive was intended to address.

- Other elements of gold-plating include **mandatory written contracts and detailed contractual requirements; compulsory registration of food contracts and their modifications; the prohibition on purchasing below the supplier's effective production cost; restrictions on resale below purchase price and promotions; and additional requirements arising from enforcement practices and administrative interpretation.** These obligations go beyond those required by the UTP Directive and create additional compliance and legal costs for operators.

- The **production-cost rule is particularly problematic**. Buyers are legally required to ensure that the price paid covers the supplier's effective production cost. **However, buyers do not have access — and cannot have access — to the supplier's internal cost structure and are therefore unable to independently verify whether the price complies with this requirement.** This creates a particularly problematic situation in which the buyer may be held responsible for compliance with an obligation based on information that is exclusively within the supplier's sphere of knowledge. **Recent Spanish case law illustrates the resulting legal uncertainty.** In a 2025 National Court case concerning a €66,000 fine imposed on a supermarket for allegedly purchasing milk below production cost, the company argued that it had not been given access to the data or methodology used by the authority to calculate that cost. The sanction was annulled because the lack of transparency in the calculation undermined legal certainty and the company's rights of defence. The courts have also stressed that **generic estimates of production costs are not sufficient evidence: individualised and verifiable data are required.** This case highlights a fundamental difficulty with this type of gold-plating: **the buyer is required to comply with — and may be sanctioned for breaching — an obligation based on information that it cannot independently verify.**

- More broadly, the Spanish experience shows that going beyond the UTP Directive has resulted in **greater administrative burden, legal uncertainty and complexity in commercial negotiations**, without clear evidence that these additional obligations have resolved the structural problems affecting farmers. Farmers themselves continue to question the effectiveness of the Spanish system.
- From a Single Market perspective, Spain illustrates the fragmentation created when Member States develop substantially different rules on contracts, prices, promotions and commercial negotiations.

Slovenia

National implementation: Food Act (Zakon o hrani), Articles 70 and 72, Ministry of Agriculture, Forestry and Food.

Under Directive (EU) 2019/633, Slovenia turned the 16 practices of the Directive into 28 prohibited practices, requires written, prior and demonstrably implemented agreements for several of the grey practices, and added prohibitions the Directive does not list, for example contributions to the expansion of the distribution network, remuneration for a reduction in turnover, sales or margin, and non-acceptance of agreed volumes where the deviation exceeds 25%.

Romania

1. Transposition and subsequent implementing acts

The UTP Directive was transposed into national legislation through Law no. 81/2022 on unfair trading practices between businesses in the agricultural and food supply chain (“**Law no. 81/2022**” and/or the “**UTP Law**”). Legislative updates concerning the application of the UTP Law are set out in the following normative acts:

- Government Decision no. 198/2023 approving the Regulation on the procedure for registering, investigating and resolving referrals concerning unfair trading practices between businesses in the agricultural and food supply chain (“**UTP Regulation**”). The UTP Regulation provides:
    - the procedure by which referrals filed by suppliers and/or buyers from Romania regarding a potential breach of the UTP Law are analysed and sanctioned by the competent national authorities: the Ministry of Agriculture and Rural Development (“**MADR**”) and the Competition Council (“**Competition Council**” and/or “**CC**”);
    - certain clarifications for the application of the UTP Law, including, but not limited to the method of calculating the turnover of suppliers and buyers involved where the supplier/buyer belongs to a group of companies, the method of calculating the thresholds applied for discounts/services, etc.

- Competition Council Order no. 1193/2023 implementing the Instructions on granting favourable treatment to businesses that acknowledge committing an unfair trading practice under the UTP Law (“**Order**”). The Order establishes the procedure for granting favourable treatment to the party (buyer/supplier) that acknowledges committing the unfair trading practice, and the potential reductions applicable to the fine imposed by the CC.

- Informative guidance/instructions issued by the Competition Council that are not contained in a specific normative act. This guidance covers aspects of the scope of application of the UTP Law with reference to specific food products, such as food supplements, natural mineral water, and carbonated water. These are exclusively guidelines provided by the CC.

There is currently a legislative proposal registered with the Chamber of Deputies (registration no.: PL-x no. 16/2025) to amend the UTP Law by adding definitions of “commercial contract” and “food additives” and introducing a new unfair trading practice, under which the buyer is prohibited from *“refusing or limiting the listing and marketing of food products manufactured without food additives”*, without any further details or clarifications being provided regarding the unfair trading practices already regulated by the UTP Law.

Even after adopting the normative acts/guidance/legislative proposal presented above, provisions that conflict with EU legislation and create significant practical difficulties in the commercial relationship between suppliers and retailers remain in force. In this context, AMRCR maintains that a substantial amending law is needed to align national legislation with European legislation on unfair trading practices and ensure balanced application throughout the supply chain.

At national level, Romanian authorities have encouraged and supported the implementation of certain additional commercial practices that go beyond the scope of the UTP Directive, and which have been promoted (including publicly):

- commercial practices addressing retailers’ private labels (e.g. listing and shelf-display requirements applicable both to a private-label product and to a national-brand product, applying different commercial conditions for private label vs national brand) – including through a bill (that is now registered with the Chamber of Deputies with no. PL-x no. 585/2025), which provides for a limitation for economic operators operating supermarkets and hypermarkets, intending to cap the sale of private-label products at no more than 20%;
- the mechanism and value of commercial discounts/services (e.g. the prohibition on invoicing commercial discounts above the 20% threshold of the invoiced value, or on providing marketing/promotion services and secondary placement/support for promotional sales in an amount exceeding the 5% threshold of the amount received by the supplier), as well as the obligation to provide services (marketing, advertising, secondary placement, merchandising) only at the supplier’s prior request;
- the prohibition on returning unsold products (where no non-conformity applies);
- the prohibition on directly or indirectly requiring the supplier to buy from or sell to a third party;
- the prohibition on selling at a loss (the UTP Law has not expressly defined this; the measure generically targets the prohibition on selling at a loss).

Regarding written requests for information sent by the Competition Council, these have mainly concerned information about the implementation and application of the UTP Law, such as:

- The types of commercial discounts applied in relation to UTP suppliers, the percentage level of the discount and the calculation method;
- The types of services provided for the benefit of UTP suppliers, the manner of application and the calculation method;
- Information regarding private labels (including shelf space allocated);

- Information regarding payment terms;
- Criteria for listing/delisting UTP suppliers.

2. Operational experience with the rules on unfair trading practices

Although the prohibitions provided under national legislation, in addition to the provisions of the UTP Directive, were based on requests made by certain supplier associations or even by individual suppliers, they in fact operate to the detriment of suppliers and local producers, placing them at a competitive disadvantage compared with their competitors in other Member States (e.g. the difficulties encountered in the marketing and advertising area, where, although the parties could contractually agree on a larger budget for such services provided by the buyer for the benefit of suppliers, the UTP Law imposes restrictions that significantly limit their contractual freedom).

By way of example, the following unfair trading practices, provided for exclusively under the UTP Law, without an equivalent under the UTP Directive and without having been properly documented through an impact assessment of such provisions, generate numerous practical problems throughout the supply chain:

1. **The prohibition on the buyer using self-billing for agricultural and/or food products, except in the cases set out in Article 320 of Law no. 227/2015 on the Fiscal Code** – the introduction of this prohibition raises, first of all, the issue of the incorrect transposition of Directive 2006/112/EC on the common system of value added tax ("**VAT Directive**") and the unjustified limitation of the right, provided under the Fiscal Code, to issue a self-billed invoice, evidently subject to compliance with the requirements expressly set out in the Fiscal Code.

2. **The imposition of a maximum 20% cap on commercial discounts calculated by reference to the value invoiced between supplier and buyer for UTP products** – separately from the issues concerning the breach of the principle of freedom to set prices, the unjustified interference with commercial freedom to negotiate and establish commercial conditions, and the breach of the principles set out in the TFEU (relating to the free provision of services and the free movement of goods), as well as the artificially created discriminatory effect between buyers operating in Romania compared with buyers in other Member States, the imposition of a maximum threshold on commercial discounts generates multiple operational difficulties:

   (i) the calculation method, even taking into account the additional clarifications in the UTP Regulation, does not account for the complexity and dynamics of the commercial relationships between suppliers and buyers (for example, the question arises as to the calculation method for off-invoice discounts applied later, which relate to meeting a long-term target across multiple products);

   (ii) there are frequent situations in which suppliers themselves propose and request the acceptance of certain commercial discounts, having a legitimate interest in doing so, with the buyer being placed in the position of having to refuse any commercial discount exceeding the 20% threshold.

3. **The prohibition on financial rebates and quality discounts** – the prohibition on applying financial discounts and commercial rebates (discounts granted for quality defects in products delivered by the supplier) provides no commercial advantage to suppliers; on the contrary:

   (i) the prohibition on rebates is equivalent to an obligation to reject non-conforming products (the only option being for the buyer not to accept those products upon reception, with the supplier being required to take the products back, bear the additional costs associated with return transport and, as a rule, bear in full the loss associated with the non-conforming products). In most cases, products with quality defects (which nonetheless do not present a food-safety risk), such as, for example, size/calibre differences, can no longer subsequently be sold on (especially for fresh product categories – fruit and vegetables), leading to a significant increase in food waste;

(ii) the prohibition on financial rebates causes cash-flow difficulties for the supplier, who in most cases has a legitimate interest and need to collect payment for delivered products within a shorter term.

4. **The imposition of a maximum 5% cap for advertising, marketing and secondary-placement services, including for the cost of promotional discounts organised by the buyer for the supplier's products** – similar to point 3.2 above, the UTP Law imposes a much stricter regulation of promotional services and discounts than the UTP Directive, also breaching Article 10 of the UTP Directive, which allows Member States to regulate stricter standards so long as they are consistent and compatible with EU rules on the functioning of the internal market. By imposing this cap, however, the parties' very freedom to negotiate and set the prices of the services provided is restricted.

   From an operational and commercial perspective, this limitation creates a significant disadvantage for suppliers who have an interest in stimulating the sale and promotion of their products (particularly given that such services and actions primarily increase the visibility and reputation of the supplier's brand). Given the value and complexity of marketing and promotion activities, imposing a 5% value cap on the amount received makes implementation practically impossible. It creates a clear disadvantage for UTP suppliers compared with non-UTP suppliers.

   Moreover, from the perspective of limiting the value of costs associated with promotional discounts, the disadvantage to consumers is evident – even in situations where the supplier has a legitimate commercial interest in stimulating the sale of a particular product and takes the initiative for certain promotional campaigns regarding its products, the buyer is limited in implementing and following up on such requests.

5. **The prohibition on returning unsold agricultural and/or food products**

   The UTP Directive expressly recognises the possibility of returning unsold UTP products where the supplier and buyer have agreed on their return. The UTP Law took over solely the prohibition on return, without giving the parties the freedom to negotiate and agree on the return of unsold products, regardless of the situation.

   From a practical standpoint, this prohibition eliminates the supplier's ability to request the return of underperforming products, as well as product replacement. Moreover, this provision runs counter to the principles set out in food-waste legislation by limiting the ability to use unsellable products (through conversion into other products, efficient redistribution to another buyer, etc.). In practice, the supplier and the buyer are limited in negotiating and agreeing on methods to reduce food waste and streamline supply flows.

6. **The prohibition on the supplier buying from or selling to a third party**

   Particularly in the case of private-label products, this provision runs counter to their very principle and nature – in practice, a supplier of the buyer's private-label products cannot benefit from a partnership with a third party chosen by the buyer, leading to additional effort for the supplier in ensuring product quality and to an evident lack of cost optimisation in the production process, affecting the efficiency of the supply chain and the benefits for consumers.

   Moreover, although it is a private-label product, the buyer is unable to indicate specific raw-material suppliers to ensure product quality, even though, under the law, it bears responsibility for that product in relation to consumers.

Even following the adoption of the UTP Regulation, this prohibition remains a genuine problem. Although Article 3(5) of the UTP Regulation brought a clarification in this respect by expressly excluding certification services from a specific third party in the case of suppliers of the retailer's private-label products, the prohibition on designating a specific third party relevant to the production process for private-label products continues to apply.

SALE OF GOODS DIRECTIVE (2019/771)

The primary basis is Directive (EU) 2019/771 on certain aspects of contract law relating to the sale of goods (Sales of Goods Directive). It expressly applies to sales contracts between consumers and sellers and harmonizes key requirements regarding the conformity of goods with the contract and rights in the event of defects in the B2C sector.

In addition, Directive (EU) 2024/1799 on common rules to promote the repair of goods (Right to Repair) has further developed the Sale of Goods Directive and, among other things, reinforced the reparability of a good as a relevant objective quality characteristic.

Greece

The gold-plating concerns Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods, as transposed into Greek law by Law 4967/2022. The relevant national measure is Article 64(4) of Law 4967/2022, which introduces additional obligations not expressly required by Article 17 of the Directive, including the automatic renewal of the commercial guarantee in case of replacement of the goods or spare parts, the consumer's right to request temporary replacement where repair exceeds 15 working days, and the obligation of producers and sellers of new durable consumer goods to ensure technical support and availability of spare parts for at least two years from delivery.

The measure was adopted by the Greek legislator, while enforcement falls within the remit of the competent consumer protection authorities, primarily the Ministry of Development / General Secretariat for Trade and Consumer Protection and the relevant market surveillance authorities.

Stricter deadlines: Greek Law 4792/2021 introduces a fixed **30-day notice period** for cancellation of orders of perishable products, whereas the Directive refers more generally to notice given "sufficiently in advance". Also, the Greek law introduces a fixed **15-working-day repair threshold**, after which the consumer may request temporary replacement.

Finland

Finnish Consumer Protection Act, Chapter 5

Article 10 of Directive (EU) 2019/771 establishes, as the EU baseline, a two-year period of legal liability on the part of the seller: the seller is liable for any lack of conformity which existed at the time of delivery and which becomes apparent within that period. With regard to second-hand goods, the Directive permits Member States to allow the seller and the consumer to agree on a shorter liability period, provided that such period is not less than one year. In addition, Article 10(3) permits Member States to maintain or introduce longer liability periods.

Finland has exercised this national discretion in a manner that gives rise to a substantially broader and less predictable liability regime. Finnish consumer law does not lay down a fixed two-year maximum period for the seller's liability for defects. Rather, the applicable assessment is linked to the expected durability and anticipated lifespan of the goods concerned. Consequently, sellers may, in practice, remain liable for defects for several years following the sale and, according to the case law of the

Finnish Consumer Disputes Board, the relevant expected lifespan may, in certain product categories, extend to as much as ten years.

This national approach entails significant legal uncertainty for both traders and consumers. Unlike a fixed statutory liability period, a model based on expected lifespan does not enable the parties to ascertain ex-ante the point in time at which the seller's liability in respect of a particular product will cease. The applicable period is dependent on the nature of the product and is ultimately subject to a case-by-case assessment.

For traders, this materially complicates the assessment and pricing of long-term liability exposure, the maintenance of appropriate documentation and financial provisions, and the determination of the period during which consumer claims may continue to be asserted after the relevant transaction.

The extended and inherently uncertain liability period is also liable to increase consumer prices. Traders must take into account the potential costs of defect claims, repairs, replacements and other remedies that may arise several years after the sale. Such long-term and difficult-to-quantify costs form part of the overall cost structure of placing goods on the Finnish market and are therefore reflected in the prices ultimately borne by consumers.

This is of particular relevance from the perspective of the Single Market. Traders offering goods in Finland are required to factor in a longer and less predictable liability exposure than traders operating in Member States that apply liability periods closer to the EU baseline. The Finnish regime therefore not only increases administrative and compliance costs, but also affects competitive conditions and the level of consumer prices in the Finnish market.

Netherlands

No fixed time limit. The guarantee lasts for the "expected lifespan" of the product (e.g., 4-5 years for a bicycle).

Impact: Legal uncertainty and impossibility to standardize claim processes at the European level.

Portugal

3-year guarantee. The burden of proof rigidly falls on the seller for the first 2 years.

Impact: Mandatory intensive training in stores and after-sales service regarding divergent burden-of-proof rules.

Romania

Strict obligation to repair or replace a defective good within a maximum of 15 days (the EU only requires a "reasonable timeframe").

Impact: Extreme pressure on the logistics chain and a retailer's local repair workshops to meet this deadline

Spain

Royal Decree-Law 7/2021 of 27 April

Spain extends the legal guarantee of conformity period **from two to three years** and lengthens certain periods for the presumption of lack of conformity, going beyond the minimum requirements laid down in the Directive.

In addition, the legislation requires spare parts to remain available for **10 years**, creating significant long-term storage and inventory management costs for businesses. These measures also increase warranty-related liabilities for retailers and manufacturers.

UCPD – UNFAIR COMMERCIAL PRACTICES DIRECTIVE (2005/29)

Denmark

The national authority (Ombudsman) applies exceptionally strict criteria on environmental claims (greenwashing).

Impact: High reputational and legal risk; need to create separate or heavily documented marketing campaigns for Denmark.

Spain

Consolidated Text of the General Law for the Protection of Consumers and Users and implementing legislation

In certain areas, Spain has introduced additional information requirements and a broader sanctions regime than the minimum harmonised framework established by the Directive.

OMNIBUS DIRECTIVE (2019/2161)

Belgium

- EU legal act: Price Indication Directive 98/6/EC, as amended by Directive (EU) 2019/2161 (Omnibus Directive)
- National measures:
    - Book VI, Articles VI.3 – VI.6 + VI.18 of the Belgian Code of Economic Law
    - Royal Decree of 30 June 1996 on the indication of prices of products
- More detailed rules regarding unit-price indications, with additional labelling requirements
- Burden is frequent but limited. The law is clear, but is a bit stricter than EU laws (e.g. displaying unit prices for more products than required by EU laws)

Croatia

National implementation of the Art 6a PID Directive and the Commission Notice 2021/C 526/02:

Consumer Protection Act and the implementing ordinance setting the reference date, Ministry of Economy and State Inspectorate.

In Croatia, price indication rules exceed Directive 98/6/EC. The derogation for goods on the market for less than 30 days under point 4 of Commission Notice 2021/C 526/02 is not used, so price reductions may generally only be applied after a product has been on sale for 30 days. Next to the reduced price, only the lowest price of the preceding 30 days may be shown, and displaying the regular price in addition, that is a third price, is not permitted. Traders must publish valid price lists on their websites. In administrative practice, additional units of quantity are not accepted, for example a per 100g price alongside the per kilogram price, and prices obtained by specific consumer groups through loyalty programmes may only be communicated as a percentage reduction rather than as an actual price. Neither the Directive nor the Notice supports that reading.

Greece

The gold-plating concerns Directive (EU) 2019/2161 (Omnibus Directive), in particular as regards amendments to Directive 98/6/EC on price indications, as transposed into Greek law by Law 4933/2022. The relevant national measures are the Greek provisions that introduce more detailed compliance obligations and stricter sanctions in relation to price reductions, promotions and the obligation to maintain and evidence the prior reference price, as well as additional consumer information requirements for online marketplaces. The gold-plating therefore takes the form of increased compliance burden and stricter enforcement consequences compared with the minimum EU framework. The measures were adopted by the Greek legislator, while enforcement is primarily the responsibility of the competent consumer protection and market surveillance authorities, including the Ministry of Development / General Secretariat for Commerce and Consumer Protection and the relevant control authorities.

Poland

Extremely rigid visual format and typography rules for displaying promotional discounts.

Impact: Need to adapt e-commerce platforms and point-of-sale (POS) signage exclusively for the Polish market.

Sweden

Price Indiciation Directive and Prisinformationslagen as well as proposed national regulation issued by Konsumentverket/Consumer Agency (Konsumentverkets föreskrifter om prisinformation (KOVFS 2012:1))

In the Prisinformationslagstiftning the exemption regarding products that are deteriorate rapidly has not been clearly implemented, which in principle has made it difficult or impossible to apply in practice when it comes to prior price. The wording of the exemption in the national legislation (Prisinformationslagen 2004:347, section 7a §, third paragraph) is not identical to the wording in the Directive, which causes great confusion in how to assess what products are covered in the material scope.

There has recently been a national public consultation of a proposed regulation (issued by the Consumer Agency/Konsumentverket) revising the old regulation on Price Information (föreskrifter om prisinformation KOVFS 2012:1). The proposed amendment would now include prior price as stated in Article 6a PID but would be a very sharp limitation of what can be used in marketing practices. The notion of prior price along with four other stipulated notions are the only ones that can be used in marketing materials. The proposal in its current form is not supported, as it is considered overly restrictive and not necessarily proportionate or sufficiently justified, and appears to constitute a national practice that goes beyond the requirements of the Directive. These national regulations (föreskrifter) are legally binding.

CONSUMER RIGHTS DIRECTIVE (2011/83)

Finland

Finnish Consumer Protection Act, Chapter 6, Section 2(11)

Finland has adopted an exclusion from the rules governing distance and off-premises contracts in respect of foodstuffs and other goods intended for current consumption which is narrower than the exclusion permitted under EU law.

Article 3(3)(j) of Directive 2011/83/EU on consumer rights permits Member States to exclude from the scope of the Directive contracts concerning "the supply of foodstuffs, beverages or other goods intended for current consumption in the household, and which are physically supplied by a trader on frequent and regular rounds to the consumer's home, residence or workplace."

The Finnish provision contains an additional limitation relating to individual deliveries. Consequently, the national exclusion is more limited in scope, with the result that a broader range of consumer contracts falls within the Finnish rules on distance and off-premises selling.

This amounts to stricter national regulation and gives rise to additional administrative obligations for traders compared with the level of regulation required under the Directive.

Finnish Consumer Protection Act, Chapter 6, Section 3(1)

Article 3(4) of Directive 2011/83/EU permits Member States not to apply the Directive to off-premises contracts where the payment to be made by the consumer does not exceed EUR 50. Finland has, however, set the corresponding national threshold at EUR 30.

As a result, the Finnish provision brings a larger number of low-value consumer transactions within the scope of the rules on off-premises contracts than would be required under EU law.

For traders, the application of the full set of consumer-law requirements to very low-value transactions may give rise to administrative costs that are disproportionate to the value of the transaction concerned.

Finnish Consumer Protection Act, Chapter 6, Section 3(1)

Finnish legislation applies the rules on off-premises contracts without any monetary threshold where the contract concerns the continuous or recurring supply of goods to the consumer. This national rule brings a broader category of consumer contracts within the scope of the off-premises selling rules than would result from the application of the EUR 50 threshold permitted under Article 3(4) of Directive 2011/83/EU. Accordingly, the national approach gives rise to additional administrative burden and regulatory complexity.

Finnish Consumer Protection Act, Chapter 6, Section 12a

Finnish legislation imposes specific formal requirements in respect of telephone sales. Following a telephone call, the trader is required to provide the consumer with its offer in writing or on another durable medium, and the consumer must accept the offer on a durable medium in order to become legally bound by it. Additional information obligations also apply. These requirements are based on the national regulatory option provided for in Article 8(6) of Directive 2011/83/EU. Although the Directive permits Member States to introduce such requirements, the Finnish implementation illustrates how reliance on national regulatory options may lead to divergent requirements within the Single Market. For traders, the Finnish requirements entail additional administrative processes and compliance costs in relation to telephone sales.

Finnish Consumer Protection Act, Chapter 6, Section 12b

Finnish legislation requires traders to present available payment methods in a prescribed order when consumers conclude contracts online. This constitutes a national requirement that goes beyond EU-level consumer protection requirements. The provision has generated additional costs for traders in developing and maintaining their online interfaces. It also affects payment service providers, whose technical solutions must be adapted specifically to comply with Finnish regulatory requirements.

In practice, not all international payment service providers offer functionality enabling payment methods to be displayed in the order required by Finnish legislation, nor do they necessarily permit their standard technical solutions to be customised accordingly. Finnish traders may therefore be required to change payment service provider or to operate within a more limited pool of available service providers.

This provides an example of national regulation which not only entails direct compliance costs, but may also restrict traders' access to cross-border services within the Single Market.

Finnish Consumer Protection Act, Chapter 6, Section 12c

Finnish legislation requires traders to verify the identity of consumers in certain online transactions where the consumer selects a payment method involving deferred payment. Traders are also required to retain identification data for a period of five years after the relevant claim has fallen due. This constitutes an additional national regulatory requirement. The obligation also applies to traders that do not offer payment methods falling within the scope of payment services legislation but, for example, permit consumers to pay by invoice. Consequently, even small traders may be required to implement strong customer identification solutions and retain identification data for an extended period. Particularly for small traders, the costs of implementing and maintaining such systems may be disproportionate to the benefits achieved.

Netherlands

Consumer protection – proposed three-day cooling-off period for doorstep sales

This example concerns the Dutch proposal to introduce a mandatory three-day cooling-off period before a contract may be concluded following certain unsolicited sales visits outside business premises. At EU level, the Consumer Rights Directive (Directive 2011/83/EU, as amended by Directive (EU) 2019/2161) provides a largely fully harmonised framework for off-premises contracts. This includes extensive pre-contractual information obligations and a 14-day right of withdrawal after the contract has been concluded. The Directive also expressly allows Member States, in certain circumstances involving unsolicited visits to a consumer's home, to extend the withdrawal period from 14 to 30 days in order to protect legitimate consumer interests relating to aggressive or misleading marketing or selling practices. The Dutch proposal would go a step further by introducing a separate three-day period during which no contract may be concluded at all. This would operate in addition to the existing EU right of withdrawal.

Such measure could raise serious concerns from an internal-market and maximum-harmonisation perspective, as the EU framework deliberately harmonises the rules applicable to off-premises contracts and already provides specific options for Member States to address aggressive or misleading doorstep-selling practices.

The measure could have significant practical consequences for legitimate retailers and other businesses using personal sales channels. Where a consumer wishes to purchase during the visit, the transaction could nevertheless not be completed. The trader would instead need to return after three days, contact the consumer through another channel or wait for the consumer to take the initiative. This may result in additional customer-acquisition costs, legal uncertainty as to the nature of the eventual contract, and disproportionate effects on bona fide businesses.

This proposed measure provides a clear example of a proposed national add-on in an area already subject to extensive EU harmonisation.

EMPOWERING CONSUMERS FOR THE GREEN TRANSITION DIRECTIVE (2024/825)

Greece

The gold-plating concerns Directive (EU) 2024/825 on empowering consumers for the green transition, as transposed into Greek law by Law 5317/2026. The relevant national measure is the immediate application of the Greek transposing provisions from the date of publication of the law in the Government Gazette, i.e. 10 July 2026, despite the Directive requiring Member States to apply the relevant provisions from 27 September 2026. The gold-plating therefore takes the form of early application, reducing the adjustment period for businesses. The measure was adopted by the Greek legislator, while enforcement is expected to fall within the competence of the competent consumer protection/control authorities, primarily the Ministry of Development and the relevant market surveillance authorities.

CONSUMER CREDIT DIRECTIVE (2008/48)

Netherlands

Broader Dutch scope and additional requirements

A final example potentially relevant to retailers offering point-of-sale credit or other forms of consumer financing concerns the Dutch implementation of the previous Consumer Credit Directive. Under Directive 2008/48/EC (Consumer Credit Directive – CCD), Article 2(2)(c) excluded credit agreements involving amounts below EUR 200 or above EUR 75,000 from the Directive's scope. The Directive explicitly allowed Member States to apply corresponding national rules to credit outside that scope.In the Netherlands, the consumer-credit regime was applied more broadly. The relevant national provisions are primarily contained in Book 7 of the Dutch Civil Code (*Burgerlijk Wetboek*), Article 7:57 et seq., together with the *Wet op het financieel toezicht* (Wft) and the *Besluit Gedragstoezicht financiële ondernemingen Wft* (BGfo).

The Dutch rules also contain more specific requirements concerning creditworthiness assessments. At EU level, Article 8(1) of Directive 2008/48/EC required creditors to assess creditworthiness on the basis of sufficient information and, where necessary, consultation of the relevant database. The EU rule did not itself impose a fixed monetary threshold at which a credit register had to be consulted. In the Netherlands, Article 114 BGfo requires a credit provider, before entering into a consumer-credit agreement with a total credit amount exceeding EUR 250, to consult the data held in the credit-registratio system in which it participates. Article 113 BGfo contains additional requirements concerning the collection and recording of information on the consumer's financial position for the purposes of preventing over-indebtedness. Our inventory also identifies examples where the Dutch regime has extended consumer-credit requirements to categories that were outside the scope of the previous CCD. This could be relevant for retailers offering or intermediating point-of-sale credit, instalment products or other forms of consumer financing. However, there should be a clear distinction between national additions under Directive 2008/48/EC and the requirements resulting from the revised Directive (EU) 2023/2225 (CCD II), which is currently replacing the previous framework.

RIGHT TO REPAIR DIRECTIVE (2024/1799)

France

L.111-4-1: Obligation of spare parts availability for 5 or 7 years on product types other than those provided by Directive 2024/1799.
Impact:

- Spare parts storage obligation, and development to precisely track the concept of placing on the market
- Technician training

L.224-113: Obligation to supply circular economy (used) parts to any repairer for sports and leisure equipment, including bicycle repairer.
Impact:

- Obligation to set up sourcing for second-hand spare parts, including building
- a dismantling channel
- Quality control process creation for second-hand parts
- IT developments
- Technician training
- Logistics pressure to store these parts

L.111-4-1: Obligation to provide 3D printing blueprints when a part is no longer available on the market. This obligation goes beyond requirements under Directive 2024/1799.
Impact:

- Indirect obligation to have 3D printing blueprints available (technical burden for manufacturers)
- Obligation to design a workflow to receive and process requests
- Increased burden due to short deadlines to supply the blueprints

Spain

Directive (EU) 2024/825 (Empowering Consumers for the Green Transition) and Directive (EU) 2024/1799 (Right to Repair)

Spanish measure: Draft Sustainable Consumption Act (under TRIS)

Competent authority: Ministry of Social Rights, Consumer Affairs and Agenda 2030

Potential gold-plating: The draft legislation introduces additional obligations concerning environmental claims, sustainable consumption and commercial practices that may go beyond the minimum requirements established by the Directives. It also includes price caps under extraordinary circumstances.

ESPR - ECODESIGN FOR SUSTAINABLE PRODUCTS REGULATION (2024/1781)

Belgium

Implementation of the ESPR and the Right to Repair - Introduction of a Belgian Repairability Index:

The objective behind the Belgian repairability index is understandable and inherently valuable: to better inform consumers, encourage sustainable choices, and foster growth in the repair sector by actively promoting repair. Businesses acknowledge the importance of clear, reliable information regarding repairability, product lifespan, and quality. However, in practice, the current index suffers from significant shortcomings:

- It imposes high and disproportionate administrative burdens on businesses without offering demonstrable added value for consumers.
- Moreover, the index offers no guarantee of actual repair in practice, as it overlooks factors such as product lifespan, the actual availability and affordability of spare parts, the presence of a sufficient number of qualified repairers, and actual repair costs.
- Additionally, the index creates confusion and fragmentation due to a proliferation of labels and scores, even though a harmonized European approach is currently in development.
- Finally, an isolated national measure in a small, open economy has a very limited impact while undermining the competitiveness of Belgian businesses.

Summary: In terms of content and methodology, the Belgian index is not aligned with European initiatives (ESPR, European sustainability index) and risks creating confusion rather than facilitating preparation.

Proposal: As a national measure in a small, open economy, the index fails to create a competitive advantage and instead imposes additional burdens on Belgian businesses. Only a European approach can ensure a level playing field. This European approach focuses on a combination of product-specific requirements—including lifespan, repairability, and quality—that will effectively ban lower-quality, cheap products from the EU market. Associated indices (covering aspects such as durability and repairability) will provide consumers with additional information, enabling them to make informed choices.

France

Repairability index

Repairability index (Article L541-9-2 of the French Environmental Code) in France going far beyond and in shorter deadlines than requirements stemming from the ESPR regulation. It requires producers/importers of covered EEE products to determine a repairability index and requires sellers to display that index to consumers at the point of sale. Under the Ecodesign framework, manufacturers must provide certain repair-related information for specific product categories, but there is no EU-wide mandatory repairability score label applicable at point of sale.

Impact: Evaluation of affected products. IT development. Creation of merchandising to communicate information to customers. Compliance costs to adapt to an evolving regulatory landscape, from existing national obligations to forthcoming European rules.

Netherlands

Manufacturers are required to have environmental data for construction products assessed and registered twice: once via the European EN 15804-EPD and additionally via supplementary Dutch requirements of the National Environmental Database. This leads to extra costs, administrative burdens, delays in innovation, and an uneven playing field within Europe.

PPWR (2025/40) & PPWD DIRECTIVE (2019/770)

Austria

National rule: Waste Management Act (AWG), section 14b, and the national ban on plastic carrier bags in force since 2020, same ministry.

On packaging, Austria imposes a 25% reuse quota as of 2025 under section 14b of the Waste Management Act, whereas the Packaging and Packaging Waste Regulation requires 10% only from 2030, and Austria banned plastic carrier bags in 2020, years ahead of EU law.

Belgium

PPWR and the Belgian Interregional Cooperation Agreement (ICA) on Packaging:

The linkage between European waste prevention objectives and extended producer responsibility obligations, including potential financial penalties, may be considered a form of gold-plating. The Belgian Interregional Cooperation Agreement goes beyond the requirements set out in Article 43 of the PPWR through:

- Additional producer registration mechanisms.
- Enhanced monitoring and supervision requirements.
- Sanctioning mechanisms.
- The potential introduction of a prevention levy if packaging waste prevention targets are not achieved.
- Responsibility for achieving European targets is placed more directly on producers and producer responsibility organisations than is explicitly required under the PPWR itself.

Croatia

National implementation of the PPWR, Single-Use Plastic Products and Fishing Gear Containing Plastic, Environmental Protection and Energy Efficiency Fund.

Under the Croatian Regulation on Packaging and Packaging Waste, manufacturers and traders must hand over non-hazardous packaging waste such as cardboard, paper and plastic film free of charge to collectors under contract with the Environmental Protection and Energy Efficiency Fund, while private operators are limited to hazardous packaging waste. This reserves a valuable secondary raw material stream to a closed circle of operators and is not required by Directive 2018/851 or Directive 2008/98/EC.

France

The legal option to go beyond the SUP Directive and the PPWR should not automatically lead to the setting of additional national targets. PPWR must now serve as the reference framework, and any additional national ambitions must be justified and proportionate.

The reuse of packaging is already governed by several sets of regulations: the AGEC Act, the Climate and Resilience Act, EPR schemes, and now the PPWR. These regulations still differ in scope, timelines, and methodology, and these discrepancies must be resolved before any new complementary national targets are set.

It hinders the capacity of stakeholders to reach the objectives set in PPWR at EU level, because it dilutes the efforts into many different segments.

Examples of more stringent rules in France:

- Art. 28§5 PPWR requests that large retail points of sales dedicate at least 10% of their surface to refill stations by 2030. The 2021 **French climate law sets this obligation at 20%** by 2030;
    - The tests carried out by FCD and the retail association for technical issues Perifem show that only a minority of stores have reached the 15% dedicated space target and that there is limited room for improvement even for the most advanced stores. The other stores remain well below this threshold.
    - The limitations are of different nature: sanitary reasons, economic difficulties (theft, low profitability of the refill stations, consumers abandoning products), more limited and expensive offer, reluctance from consumers. There is a direct economic impact in being forced to develop low-profit activities at a different pace than in other countries.
- In France, this obligation to dedicate 20% of surface to refill applies to retail stores where FMCG represents over 5% of annual turnover. However, it means that some specialized stores such as sport retailers have the obligation to dedicate 20% of the surface dedicated to FMCG to refill stations, which does not suit their activity.
- The 3R strategy under discussion would also set targets for reuse and refill at 25% in both hygiene and beauty departments.
    - Such obligations at French level ignore the European dimension of supply chain. It will not incentivize manufacturers to develop solutions for retailers to sell products in bulk. It thus places a disproportionate burden on French retailers.
- France could adopt an objective of 10% reusable containers in the deli section, that is not set in PPWR.
    - Retailers should be allowed to prioritize their own initiatives. Experiments conducted by certain retailers show a lack of consumer acceptance of this system. There are also technical issues related to sealing and lidding machines; at this stage, the costs of replacing the machines are prohibitive.
- Pursuant to art. 29 PPWR, 10% of beverages packaging must be reusable within a reuse scheme by 2030 and 40% by 2040. France is in the process of setting sectorial targets for beverages sold outside of the horeca sector (e.g. 35% for cider and beer, 10% for juice). The sectorialisation of targets goes beyond beverages (e.g. 10% for caterer).
    - The sectorial logic makes it difficult to comprehend who is responsible for the targets, the additional reporting that will be required, etc.
    - For retailers, who operate across all product categories, the proliferation of sector-specific goals poses a unique management challenge. It risks leading to a dispersion of efforts, even though scaling up reuse requires concentrating resources on the segments that are most mature, most easily standardized, and most widely accepted by consumers.
- **The French specified sorting signals for products subject to an extended producer scheme:** the Triman logo and info-tri. The Commission ruled that these obligations were breaching EU law, but they stayed in place for years before that.
    - Now, the stakeholders have called on French lawmakers to make sure they only have to update their packaging once, when the PPWR EU-wide sorting signals will be applicable (August 12th, 2028).

Germany

Gold-plating by member states usually results in a significant increase in administrative burdens, even if the two circumstances do not automatically coincide. Nevertheless, additional national requirements, differing interpretations of European regulations or additional administrative procedures often lead to further documentation, reporting and monitoring burdens for businesses. Gold-plating is therefore regularly not only an obstacle to the harmonisation of the Single Market, but also a major driver of additional administrative costs.

Short transition periods for new regulatory requirements, which necessitate extensive adjustments to IT systems, processes and packaging - Packaging Law Implementation Act (VerpackDG):

The planned amendment to Section 26 of the Packaging Law Implementation Act (VerpackDG) to introduce eco-modulation of packaging charges, taking into account in particular recyclability and, where applicable, the use of recycled materials, highlights the challenges posed by national pre-emptive measures in relation to ongoing European regulatory processes. As the European Packaging Regulation (PPWR) is expected to comprehensively and directly regulate the same issue within a few years, there is a risk of double the transition costs for the companies concerned due to the application of different methodologies (including the assessment of recyclability).

Mindeststandard (Minimum Standard for Recyclability):

There may be differing interpretations between the German Mindeststandard and the EU Packaging and Packaging Waste Regulation (PPWR, Regulation (EU) 2025/40). The German measure requires that packaging must be recyclable within existing sorting and recycling systems.

Netherlands

High intensity and high frequency. Stricter Dutch packaging requirements create ongoing compliance and administrative burdens for supermarkets. These requirements affect a large volume of products and packaging, resulting in additional monitoring, reporting and producer-responsibility costs.

Packaging Management Decree 2014 and the extended producer responsibility system.

Gold-plating element: Dutch extended producer responsibility goes beyond the minimum requirements of the Packaging Directive in practice, through extensive registration, reporting and financing obligations via Verpact/Waste Fund.

Verpact (the Dutch organisation responsible for coordinating and implementing extended producer responsibility (EPR) for packaging) provided a collective compliance solution by handling producer-responsibility obligations, including registration, reporting, financing and the organisation of packaging collection and recycling.

Spain

Royal Decree 1055/2022 on packaging and packaging waste

Competent authority: Ministry for the Ecological Transition and the Demographic Challenge

It introduces additional obligations for producers and distributors, including labelling, consumer information, reuse targets and organisational requirements, which in several respects exceeded the EU framework applicable at the time of adoption.

Implementation of the plastic packaging tax as an excise duty applicable at the border

Spain applies a national tax on non-reusable plastic packaging, creating additional financial and administrative obligations for companies placing packaged products on the Spanish market, in the absence of an equivalent harmonised EU-wide tax.

SUPD – SINGLE USE PLASTICS DIRECTIVE (2019/904)

Germany

How does the German implementation go beyond this?

Germany has transposed the Single-Use Plastics Directive into a standalone fund, registration, and levy system through the Single-Use Plastics Fund Act (EWKFondsG). Furthermore, in enforcement practice, the criterion "intended for immediate consumption" is sometimes interpreted based on suitability for immediate consumption, thereby allowing for a broader range of products to be covered. Such a broad interpretation expands the range of products subject to the levy and creates significant demarcation problems.

Furthermore, the German system does not provide for a general de minimis threshold for the plastic content. Consequently, even small amounts of plastic can, in principle, lead to a product being classified as a single-use plastic product. Another national extension is the inclusion of fireworks in the product catalogue of the EWKFondsG, even though they are not covered by the Single-Use Plastics Directive. The German regulation provides for separate registration, reporting, and levy obligations for these products starting in 2026/2027, including specific deadlines for registration, data reporting, and levy payment.

Furthermore, Germany has opted for an independent fund with separate registration, reporting, and fee collection procedures. For companies, this creates an additional administrative process on top of existing extended producer responsibility systems.

What problem does this create?

For manufacturers and retailers, the German framework creates additional registration, reporting, verification, and fee obligations, as well as significant costs associated with the legally compliant classification of individual products. Particularly problematic is the legal uncertainty regarding which food packaging actually falls within the scope of the regulation. A broad enforcement practice could result in more products and companies being subject to the special fee and require additional verification and documentation processes.

Belgium

Littering tax

- EU legal act: Single-Use Plastics Directive (EU) 2019/904 (SUP), Article 8
- National legislation: the interregional cooperation agreement on the Extended Producer Responsibility for certain waste streams and litter
- Summary of gold-plating: the amount of the tax, proportionally higher than in neighbouring countries
- Financial impact: higher contribution
- Complex implementation and allocation to type of products
- Impact on competitivity of Belgian retailers – potentially leading to higher consumer prices stimulating cross-border shopping

Restrictions on placing on the market of certain single-use products

- EU legal act: Directive (EU) 2019/904 on the reduction of the impact of certain plastic products on the environment (Single-Use Plastics Directive), Articles 4 and 5.
- National legislation: Royal Decree of 25 May 2024 on limiting the placing on the market of certain single-use products and increasing the recycled content of certain products.
- Summary of gold-plating: Belgium extends the restrictions provided for in the SUP Directive by prohibiting the placing on the market of additional categories of single-use plastic food and beverage packaging (including certain rigid food containers and beverage cups intended for immediate consumption), whereas EU legislation only requires consumption reduction measures for these products.

Netherlands

Dutch deposit-return obligation for small PET bottles and metal beverage containers.

High intensity and high frequency. The Dutch deposit-return system creates an ongoing operational and administrative burden for supermarkets, including handling deposit packaging, return points, storage, sorting and reconciliation of deposits. The impact is frequent because these activities are part of daily supermarket operations.

Gold-plating element: The SUP Directive sets collection targets but does not require a deposit-return system; the Netherlands introduced a mandatory national deposit-return system, including registration and return infrastructure.

Verpact (through Statiegeld Nederland) helped address the requirements by providing the infrastructure and operational framework for the deposit-return system. This includes registration, deposit administration, collection and return infrastructure, and guidance on compliance with the Dutch deposit-return obligations.

Finland

Finland has expanded the producer responsibility requirements of the Single-Use Plastics Directive to include nicotine pouches. Finland has also extended producer responsibility for fishing gear to inland waters, even though the EU Directive only applies to marine waters.

France

See PPWR chapter.

The French rules have extended the scope of the plastic wipes EPR schemes provided for in the SUP directive.

Spain

The Spanish draft Royal Decree extends EPR obligations to certain plastic-free wet wipes falling outside the scope of the SUP Directive. It also imposes financial obligations on producers for wet-wipe clean-up, including sewerage-related costs, without sufficiently defined ex-ante cost attribution and calculation methodologies.

WASTE FRAMEWORK DIRECTIVE (2025/1892), WASTE, EPR

Fragmented Extended Producer Responsibility (EPR) systems

Although based on common EU legislation, EPR schemes differ significantly between Member States regarding producer definitions, reporting requirements, registration systems, fee structures, and product scope. This creates substantial administrative burden and compliance costs for companies operating across multiple markets.

Austria

National implementation: Waste Management Act (AWG), section 11a, Federal Ministry for Agriculture, Forestry, Climate and Environmental Protection, Regions and Water Management.

On food waste, only food retail is obliged to report spoilage quarterly under section 11a of the Austrian Waste Management Act. No other stage of the value chain is covered. The data are published at company level, whereas the Eurostat reporting obligation would only require an aggregated national figure per stage of the value chain. Both the quarterly frequency and the level of granularity go well beyond what the EU methodology requires.

Finland

EPR national guidance

Supervisory authority guidance on producer organisation administrative fees, 2023
National guidance on the maximum level of administrative costs. EU producer responsibility regulation does not set detailed upper limits for administrative costs. In a small country, in a producer responsibility sector where the number of producers is not large, many administrative costs are fixed in nature. If these costs cannot be charged to the members of the producer organisation in accordance with the cost-causation principle, large producers end up paying for the increasing administration attributable to all small producers.
Impact on the Finnish market: The allocation of costs does not correspond to the cost-causation principle; some producers pay the costs of other producers.

Supervisory authority guidance on the maximum costs covered by producer organisation joining fees and on the tiering of joining fees, 2025
A producer organisation may cover through a joining fee only the costs directly arising from the act of joining. The detailed requirements concerning the determination, upper limits and transparency of joining fees are not directly based on explicit requirements in EU legislation.
The guidance does not treat producers equally, because when a new producer joins a producer responsibility system, it gains access to all the investments that have been made to develop the system. According to the guidance, these must be made available to the new producer free of charge.
If this guidance is followed, producers that have participated in the system for a long time have paid for the investments, whereas under the principle of equal treatment, a small share of those costs should apply to all participating producers.
Impact: The guidance supports producers that have long been free riders and favours foreign producers.

Guidance on external audits of producer organisations' self-monitoring plans / Guidance 2024

Producer organisations have been required to have a self-monitoring plan since 2022. Regular audits of the plan by a third party independent of the producer organisation have been required nationally since 2026. A producer organisation has no possibility to demonstrate the coverage and control mechanisms of its self-monitoring through internal work. The availability of third-party auditors independent of producer organisations is limited, because the activities of producer organisations differ from many other activities and require specialised expertise. The 2024 guidance on external audits of producer organisations' self-monitoring plans contains national administrative requirements for which no direct equivalent was found in the EU minimum requirements for extended producer responsibility.

Impact: Additional administration and direct costs arising from the work and onboarding of external auditors.

France

Fast-fashion law

The European Commission has engaged with French authorities throughout the examination of the bill, to make sure significant non-compliances would be withdrawn from the final version. It appears that the fast-fashion law adopted in 2026 takes much of the comments into account. It is key that the law can apply to French and non-French players alike.

Several issues still require closer scrutiny to ensure that the French system is properly aligned with European law:

- The proposed methodology for eco-modulation of EPR fees is based on elements closely linked to the French system for environmental labelling and for calculating the environmental cost of textile products. It is important to ensure that the terms and conditions adopted for the penalty do not lead, directly or indirectly, to making mandatory the use of a methodology whose voluntary nature has been reaffirmed at the European level.
- In addition, European work on the environmental footprint, the ESPR regulation and the implementation of the 2025 revised waste framework directive is still ongoing. The objective of European harmonization—aimed at preventing any fragmentation of rules regarding extended producer responsibility within the internal market—is clearly set forth in these texts, so alignment is key.
- The new requirement regarding the origin of textile products needs to be precised, taking into account Commission's observations, and existing French rules (AGEC law). The European Commission has announced a review of the textile labelling regulation, that could impose a.o. harmonization on the "made in" criterion for textiles.

Netherlands

Circular companies still have to prove on a case-by-case basis that recycled materials are no longer waste. This leads to varying assessments, lengthy procedures, unnecessary regulatory burden, and the delay of investments in circularity. Establish generic end-of-waste rules for more (many) material flows, set up a national raw materials authority for uniform assessments, and ensure mutual recognition of raw material declarations and end-of-waste decisions within the EU. In principle, the Netherlands should also accept raw materials that have already been recognized as products or raw materials in other Member States.

The ceramics industry is facing a disproportionate interpretation of waste regulations regarding lime split residue, the lime-containing flue gas cleaning residue released during the production of ceramic building materials. While this material is used as a secondary raw material in other European Member States, including in cement production and the fertilizer industry, in the Netherlands it is considered hazardous waste by the Human Environment and Transport Inspectorate (ILT), meaning that controlled landfill is often the only permitted disposal route.

Spain

Draft Royal Decree on textile and footwear products and the management of their waste:

The draft introduces national targets, planning obligations, traceability and identification requirements, eco-modulation criteria and other obligations that anticipate or exceed the level of harmonisation provided for in the Directive, potentially creating additional administrative burdens and market fragmentation.

Directive 2008/98/EC on waste, as amended by Directive (EU) 2018/851, and Commission Delegated Decision (EU) 2019/1597 on food waste measurement:

Spanish Law 1/2025 on the prevention of food losses and food waste introduces company-level obligations going beyond the requirements established under the EU Waste Framework Directive, including a mandatory food-waste prevention plan, a legally prescribed hierarchy for the management of food surpluses and requirements related to food donation. The exemption for establishments below 1,300 m² does not apply where stores operating under the same tax identification number exceed this threshold in aggregate, meaning that practically all stores belonging to large retail groups fall within the obligation irrespective of their individual size or food-waste generation.

For operators active in several Spanish regions, a single integrated prevention plan is possible, but it must incorporate the specific requirements established by each Autonomous Community where the company operates, creating additional administrative complexity and a risk of internal market fragmentation.

These requirements go beyond Directive (EU) 2025/1892, which requires Member States to adopt measures to prevent food waste and achieve EU reduction targets but does not impose mandatory prevention plans on individual retailers, aggregated floor-space thresholds or region-specific compliance requirements.

The forthcoming implementation of Directive (EU) 2025/1892 should therefore be used as an opportunity to simplify the Spanish framework, avoid additional national and regional requirements and move towards a proportionate, outcome-based approach focused on actual food-waste reduction rather than prescriptive company-level administrative obligations.

Sweden

This concern relates to the application of the Waste Framework Directive by the Swedish Environmental Protection Agency (Naturvårdsverket). While the reporting requirements appear to be formally transposed in line with the Directive, the competent authority reportedly applies the rules in an excessively stringent manner, particularly regarding the reporting and documentation of hazardous waste. Companies face extensive information and reporting requests that may go beyond what is necessary to achieve the objectives of the legislation. Although this may not constitute gold-plating in the strict sense, it could serve as an example of **over-application or overly burdensome enforcement by a competent authority**, resulting in additional administrative costs and compliance burdens for businesses.

FOOD RULES; GENERAL FOOD LAW REGULATION (178/2002)

Netherlands

Four-hour notification requirement for potentially unsafe food

A particularly relevant example for food retail concerns the Dutch implementation and interpretation of the notification obligation for unsafe food. At EU level, Article 19(1) and (3) of Regulation (EC) No 178/2002 – the General Food Law Regulation – requires food business operators to inform the competent authorities "immediately" where they consider or have reason to believe that food does not comply with food-safety requirements or may be injurious to human health. For retailers and distributors specifically, Article 19(2) sets out their responsibilities in relation to withdrawal, traceability and cooperation with producers and competent authorities. The Regulation itself does not define "immediately" as a fixed four-hour deadline.

In the Netherlands, this has been further specified through the *Beleidsregel nadere invulling Verordening (EG) 178/2002*. In particular, Article 4(1) and (2) of that Dutch policy rule requires the relevant procedures to be initiated and the NVWA to be informed within four hours. Article 2(2) also requires traceability systems to be capable of providing the relevant information to the NVWA within four hours. The NVWA furthermore instructs companies to notify within four hours once they have reason to believe that there may be an unsafe food product, including where not all information is yet available.

This national specification and its enforcement can create considerable administrative burden without a corresponding improvement in food safety. In practice, companies may have to report cases before they have had sufficient time to establish whether there is in fact a food-safety risk.

This is particularly relevant for retailers and other food business operators dealing with large numbers of products and suppliers. It should therefore be examined as an example of possible gold-plating through national specification, interpretation and enforcement of Article 19 of Regulation 178/2002, rather than through the transposition of a Directive.

Denmark

Non-harmonized interpretation amongst EU-countries of what is included in the definition of "processed cereal-based food" intended for infants and young children as defined in Regulation 609/2013 of 12 June 2013.

The Danish authorities have conducted a study on the interpretation of which products are included in Regulation 609/2013 of 12 June 2013.

The study showed three different interpretations in EU Member States. Responses were received from national experts who are members of the Commission's expert group on food intended for infants and young children, food for special medical purposes and total diet replacement for weight control in 16 EU/EEA countries. **Denmark is among the countries with the strictest interpretation**:

- Seven countries, including Denmark, always classify extruded products as ordinary food, while two countries may possibly classify them as ordinary food, but it is determined on a on a case-by-case basis.
- Three countries always classify the extruded products as 'processed cereal-based food', while four countries classify them as 'processed cereal-based foods' on a case-by-case/state-by-state basis. Of these seven countries, five specify that: When the products are considered as 'processed cereal-based food' they fall under the category "rusks and biscuits which are to be

used either directly or, after pulverization, with the addition of water, milk or other suitable liquids”.

- Three countries always classify the extruded products as "baby food", while three other countries classify them as "baby food" on a case-by-case/state-by-state basis.

France

Origin labelling

France, as several other countries, has experimented around origin labelling going beyond the FIC regulation. This advances consumer information and support to EU farmers, but increases fragmentation of the Single Market.

Nutrition labelling

Although the Nutri-Score is voluntary at the European level, the regulatory framework surrounding it and the debates in France over its evolution and whether to make it mandatory create discrepancies compared with the legislation in most other Member States. Any further discussions on FoP nutrition labelling would need to take place at the European level.

FCM - FOOD CONTACT MATERIALS REGULATION (1935/2004)

Germany, Italy, Netherlands, Belgium

Several Member States maintain national requirements for food contact materials that go beyond, or supplement, EU harmonised legislation:

- **Germany (BfR Recommendations):** Germany's Federal Institute for Risk Assessment (BfR) publishes recommendations for food contact materials such as paper and board, silicones, rubber, printing inks etc. Although not legislation, these recommendations are widely treated by enforcement authorities as the benchmark for market access in Germany. Substance restrictions can be tighter than those found in EU harmonised measures.
- **Italy (Ministerial Decree 21 March 1973):**
    - Contains positive lists and composition requirements beyond EU harmonised legislation.
    - Article 6(1) of Italian Legislative Decree No. 29/2017 requires economic operators active in the FCM sector to notify their establishments to the competent health authority with an exemption only for distributors selling directly to final consumers. As a result, wholesalers are also subject to this notification requirement, even where their activity is limited to the resale of materials and they are not involved in their manufacture. This requirement may be disproportionate for wholesale distributors, particularly in the light of Regulation (EU) 2017/625 and its risk-based approach to official controls.
- **Netherlands (Warenwet):** Regulates paper and board, metals, rubber, wood, cork, textiles and coatings, which are materials that the EU has not fully harmonised regulation for.
- **Belgium (Royal Decree of 17 February 2021 on Metals & Alloys):** Sets specific limits above EU requirements.

CSDDD (2024/1760)

Germany

Implementation of the EU Directive on Corporate Sustainability Due Diligence (CSDDD) through the Supply Chain Due Diligence Act (LkSG)/CSDDD

What does the EU regulation stipulate?

At the EU level, Directive 2024/1760 on corporate sustainability due diligence (CSDDD) applies. It was significantly simplified in 2026 by EU Directive 2026/470. According to the current version, it generally applies only to companies with more than 5,000 employees and more than 1.5 billion euros in net revenue. The requirements are set to take effect on July 26, 2029.

How does the German implementation go beyond this?

The German Supply Chain Due Diligence Act (LkSG) preceded the CSDDD; it was enacted in 2021 and has been in effect since January 1, 2023. Since 2024, it has applied to companies with at least 1,000 employees in Germany, without requiring an additional revenue threshold of 1.5 billion euros.

Under the CSDDD—which has since been significantly scaled back—considerably fewer companies fall directly under the European thresholds than currently fall under the LkSG. Germany thus currently imposes supply chain due diligence obligations on companies that would not be directly covered under the future European regulation.

What problem does this create?

German companies have been bearing the associated compliance, risk analysis, and supply chain costs for years before the EU-wide implementation. In addition, companies are currently covered that would not be directly subject to the CSDDD under the now significantly higher European thresholds. Internationally active trading companies, in particular, may thus face earlier and more extensive burdens compared to competitors from other member states.

Note: As of August 2026, the LkSG will remain in effect; the federal government plans to replace it with a new law as part of the subsequent implementation of the CSDDD.

CHEMICALS, REACH REGULATION (1907/2006)

Austria

The national transposition of Title VIII of REACH Regulation 1907/2006 shows three main gold-plating cases:

- “Chemikaliengesetz 1996”, BGBl. I Nr. 53/1997 Section III ('Special Provisions on the Handling of Poisons'), §§ 35 to 49 and the entire Poison Ordinance the “Giftverordnung 2000“, BGBl. II Nr. 24/2001.
- “Selbstbedienungsverordnung”, BGBl. II Nr. 251/2015.
- “Chemikalienverbotsverordnung 2003”, BGBl. II Nr. 477/2003.

The use, manufacture, and marketing of chemicals are comprehensively regulated by EU law and are banned or restricted in critical areas and especially when there is an unacceptable risk. In particular, the restrictions/bans in Annex XVII of the REACH Regulation are a comprehensive set of such harmonised rules. A national legal framework practically regulates the same matter, but addresses partially other chemicals. This establishes another layer of regulation on top and should be considered as a variant of Gold-Plating.

Consequence: These restriction measures mainly burden Austrian companies and reduce their competitiveness on the domestic and internal market.

Germany

Ban on Permanent Baiting Independent of Infestation (BUD, product level) with Anticoagulants without an EU-Wide Ban on Permanent Baiting (substance level)

Type of gold plating: Stricter national requirements and removal of an exemption available under EU substance approval rules

Description: Since 1 July 2026, permanent baiting independent of infestation levels with anticoagulant products for rodent control has been prohibited in Germany, although the active substances remain approved at EU level and the European re-evaluation process has not yet been completed. Germany therefore goes beyond the current European regulatory framework before the EU reassessment of the active substances has been concluded.

Impact: Significant risk to the long-term safeguarding of food safety; in the worst case, an increase in rodent infestations; greater health risks.

France

Consumer information on environmental aspects of products, including substances of concern

Obligation to inform consumers about a products' environmental qualities and characteristics, including the incorporation of recycled material, the use of renewable resources, durability, compostability, repairability, opportunities for reuse, recyclability, and the presence of substances of concern, precious metals, or rare earth elements. (art. 13 AGEC law which led to art. L. 541-9-1 environmental code).

The articulation with ESPR will have to be carefully assessed as ESPR delegated acts unroll, to make sure the framework is consistent.

Among the obligations, consumers should be informed of the presence of dangerous substances or endocrine disruptors that could have an impact on health and the environment. The requirements for consumer information go beyond EU rules (REACH and regulation for classification, labelling and packaging of substances CLP):

- providing information upfront rather than on-demand;
- providing information on substances of very high concern (SVHC) but also substances having a comparable concern which are not on the SVHC list,
- no concentration threshold, etc.

Finland

Chemicals legislation is largely EU-level legislation, mostly based on regulations. It is highly detailed and constantly evolving; for example, the classification of substances and the preparation of restrictions on their use are ongoing processes. Compliance with legislative requirements is technically demanding and requires deep expertise from companies. Information submitted to authorities must be updated relatively often, such as chemical notifications and so-called poison centre notifications submitted to ECHA. EU legislation in this field has increased, while overlapping national requirements have remained in force, for example the harmonized poison center notification versus chemical notification to Tukes (Finnish security and chemicals agency). National additional requirements create a significant administrative burden and costs. What would need to be changes is the lack of acceptance of harmonized poison center notifications under Article 45 of the EU CLP Regulation in English. Another example where changes could be made is in reducing the information requirements for national chemical notifications with regards to entering classification information on the components of a mixture.

When it comes to chemical mixtures classified as hazardous to health that are placed on the Finnish market, submitting notifications is fully manual and must be done using the cumbersome IUCLID-based tool provided by ECHA. Finland requires notifications on chemicals placed on the market to be submitted to the database maintained by ECHA **in both Finnish and Swedish; notifications in English are not accepted.** The language requirement is a significant challenge for companies operating in Finland where chemicals data is managed centrally at group level outside Finland. The language of international trade is English — translation work increases the risk of errors. Technical documents, however, submitted to authorities and similar bodies are widely accepted in English. And when it comes to cosmetics, Act on Cosmetic Products allows product information for official use to be provided in Finnish, Swedish or English.

Netherlands

Hazardous substances – detailed registration and exposure assessment

A related example concerns the Dutch requirements and enforcement practices for hazardous substances. At EU level, the relevant framework includes Directive 98/24/EC on chemical agents at work. Article 4 requires employers to assess the risks arising from hazardous chemical agents, including the level, type and duration of exposure. The Directive expressly provides that the assessment may include a justification that, because of the nature and extent of the risks, a further detailed risk assessment is unnecessary. Articles 5 and 6 subsequently establish the hierarchy of prevention and protection measures.

In Dutch legislation, these requirements are elaborated principally in Chapter 4 of the *Arbeidsomstandighedenbesluit*, and particularly Article 4.2 Arbobesluit. Article 4.2 requires an employer, as part of the RI&E, to determine the nature, degree and duration of workers' exposure to hazardous substances. The Dutch rules require, among other things, identification of the substances concerned and assessment of the level of exposure. The Dutch Labour Inspectorate uses this legal basis for its four-step approach: inventory, exposure assessment, measures and assurance. The concern relates particularly to the level of detail and evidence expected in the Dutch implementation and enforcement, rather than to the principle of carrying out a risk assessment. In practice, sectors report that businesses can be expected to carry out extensive inventories and exposure assessments, sometimes down to component level. This can also affect retail businesses handling cleaning products, paints, maintenance products and other chemical mixtures. For smaller and lower-risk users, a more proportionate approach could make greater use of product categories, safety data sheets and validated safe-working procedures rather than requiring detailed individual exposure calculations in all situations. This issue can be principally characterised as a potential implementation/enforcement gold-plating issue under Article 4.2 Arbobesluit, rather than a straightforward legislative addition to the EU Directive.

<u>F-gases – additional requirements in the Dutch certification system</u>

The Netherlands has implemented the European certification requirements for F-gases through a national certification system based on the BRL 100 and BRL 200 schemes. At EU level, Regulation (EU) 2024/573 on fluorinated greenhouse gases, and in particular Article 10, establishes certification and training requirements for natural persons and undertakings performing specified activities involving F-gases and relevant alternatives. The detailed minimum certification requirements are further developed in EU implementing legislation, including Commission Implementing Regulation (EU) 2024/2215. In the Netherlands, the legal framework consists of the *Besluit gefluoreerde broeikasgassen en ozonlaagafbrekende stoffen* and the *Regeling gefluoreerde broeikasgassen en ozonlaagafbrekende stoffen*. Following the December 2025 amendment, Article 1 of the Dutch Regulation expressly defines BRL 100 as the *Beoordelingsrichtlijn voor het certificaat voor ondernemingen in overeenstemming met Verordening (EU) 2024/573, version 3.0*. BRL 100 version 3.0 therefore forms part of the Dutch national implementation of the EU company-certification obligation. Input from our sectors indicates that aspects of the BRL 100 system create additional administrative requirements, audits and certification costs compared with what is necessary to demonstrate compliance with the underlying European requirements.

This is particularly relevant for the retail sector because refrigeration, cooling and air-conditioning installations are widely used in supermarkets, food retail, distribution centres and other commercial premises. Additional certification costs for installation and maintenance companies ultimately also affect retailers through higher installation and maintenance costs. The Commission shall therefore examine whether specific requirements under BRL 100 version 3.0 go beyond the minimum requirements established by Article 10 of Regulation 2024/573 and Implementing Regulation 2024/2215.

LABELLING

Belgium

Sale of mobile phones - Transparency for consumers

Mobile phones use radio waves and therefore fall under European Directive 2014/53/EU (Radio Equipment Directive). This legislation is transposed in Belgium as follows:
https://www.ejustice.just.fgov.be/eli/besluit/2016/03/25/2016011168/justel

According to the Belgian law, the SAR value ("Specific Absorption Rate") must be clearly visible next to the price at the point of sale and in advertising. In addition to the SAR value, the letter A, B, C, D or E must be shown, indicating the category in which this SAR value falls. This information should help consumers to make informed choices, especially when they want to limit exposure to radiation

Germany

<u>Honey Labelling – Non-use of Regulatory Flexibility Provided by EU Law</u>

The revised Honey Directive allows Member States, for blends of honey originating in more than four countries, to limit origin labelling to the four largest countries of origin together with their respective percentage shares. Germany has chosen not to make use of this flexibility and instead requires the indication of all countries of origin and their respective percentage shares in the principal field of vision. This represents the most stringent labelling option available under EU law.

Beef Labelling Regulation (RiFlEtikettV)

Type of gold plating: Stricter national requirements, over-implementation

Description: The national regulation requires significantly greater documentation and verification efforts. At the same time, according to industry information, the rate of non-compliance findings is very low.

Impact: High administrative burden; extensive documentation obligations; resources tied up without any apparent added value for enforcement activities; additional costs.

Poland

Mandatory use of country-of-origin flags for fresh fruit and vegetables

Polish legislation introduced an additional requirement to display the **national flag of the country of origin** for fresh fruit, vegetables and bananas sold to consumers in certain forms, including unpackaged products.

EU legislation, in particular the CMO Regulation (EU) No 1308/2013 and Commission Delegated Regulation (EU) 2023/2429, requires retailers to provide information on the **country of origin**, but does not prescribe a graphical representation of this information in the form of a national flag.

The Polish requirement therefore goes beyond the EU standard by introducing an additional national labelling obligation. For retailers, this entails additional operational and administrative work, including adapting price-label and product-information systems, preparing appropriate graphical markings and updating them whenever the origin of individual product batches changes.

This measure presents a clear example of **additional national labelling requirements going beyond EU legislation**.

France

Label on emissions for certain construction and decoration products

The decree implements a mandatory emission classification label of all construction products and other products used, exclusively or otherwise, indoors, based on emission testing, starting in 2012.

The decree introduces an obligation to indicate on a label, placed onto the product or its packaging, the volatile emission pollutants when the product has been incorporated into the building or applied on a surface.

The label on the products includes a large letter indicating the highest (worst) emissions class of the listed individual substances and the TVOC.

The label must be 15 mm x 30 mm minimum, coloured or black & white. It includes a mandatory wording, in French: “Indoor air emissions” (“émissions dans l’air intérieur”).

Impact

- Products need to be relabelled specifically for the French market, increasing costs without clear benefits to consumers.
- It is burdensome and costly for businesses to provide such information on a label and not via modern digital technologies. It can also overload consumers with information they cannot absorb.
- It may contradict the information existing in other countries, making it less relevant or even confusing for consumers in other countries.

Spain

Leather Labelling Requirements:

Spain expects accurate labelling designation of leather materials in accordance with the national definitions established in Real Decreto 769/1984. EU harmonised rules primarily concern footwear component labelling and are simplified.

Italy

Judicial interpretation concerning the labelling of defrosted products

A relevant Italian example concerns the interpretation and enforcement of EU food labelling requirements in relation to the indication that a food product is “defrosted”.

Under Regulation (EU) No 1169/2011 on the provision of food information to consumers, the indication that a food has been defrosted is subject to specific rules and expressly provides for certain derogations, as set out in Annex VI to the Regulation. These provisions are also reflected in the Italian national implementing framework, including Legislative Decree No 231 of 15 December 2017.

However, Italian case law has interpreted Article 515 of the Italian Criminal Code, concerning fraud in the exercise of trade, as giving rise to a general obligation to inform consumers that a product is “defrosted”. This approach has raised concerns insofar as it does not appear to take sufficient account of the derogations expressly provided for under the EU legislation and reflected in the relevant national implementing provisions.

The case may therefore represent an example of possible gold-plating arising not from the formal transposition of EU legislation, but from its judicial interpretation and enforcement at national level. This would be particularly relevant in the context of the Commission’s consideration of whether gold-plating should also encompass regulatory guidance, interpretation and enforcement practices, rather than being limited to measures adopted through formal legislative transposition.

It should be noted that, following the recent reform of the Italian Criminal Code, offences concerning food fraud have been brought within the scope of the new offence of *food fraud* under Article 517-sexies of the Italian Criminal Code, introduced by Law No 75/2026. It will therefore be necessary to monitor the case law that develops under the new provision. Nevertheless, prior to this recent legislative change, the established judicial interpretation was as described above.

GEOGRAPHICAL INDICATIONS

France

French authorities do not interpret regulation 2024/1143 on geographical indications in the same way as the European Commission and oblige retailers to provide the name of the producer/ operator for products with geographical indications sold in bulk (e.g. fruits and vegetables) without flexibility on the means. Without the flexibility recommended by the European Commission, French retailers have to change the name of the producer frequently, up to several times a day.

In fact, the EU labelling rules were primarily designed for prepacked food. For loose products, only the objective of the rule needs to be fulfilled, namely ensuring the visibility of the producer to consumers, and there are no prescriptive requirements on how this information must be displayed for loose products. Therefore, according to the EU labelling rules, retailers have flexibility to choose practical solutions, such as shelf labels, nearby notices, or other appropriate methods.

EUDR

Poland

Concerns have been raised regarding the Polish draft legislation implementing Regulation (EU) 2023/1115 on deforestation-free products (EUDR), currently proceeding under reference **UC101**.

The draft legislation appears to introduce certain national information and administrative requirements that go beyond those explicitly set out in the EUDR, without reflecting the simplification and deregulatory approach introduced at EU level in 2025–2026.

In particular, it would require the **reference number of the due diligence statement (DDS), or the identifier of a simplified due diligence statement, to be included in commercial offers, including those made through electronic systems**.

Such a requirement is not expressly provided for under the EUDR and could create additional compliance burdens for businesses. For retailers, particularly those operating large e-commerce platforms or managing extensive product portfolios and supplier networks, this may require significant adaptations to IT systems and commercial processes to ensure that DDS identifiers are systematically linked to and updated in commercial offers.

This may therefore constitute an example of **national implementation introducing additional information and administrative obligations beyond those required under EU legislation**, thereby increasing compliance costs and administrative complexity for businesses operating across the Single Market.

DIGITAL CONTENT DIRECTIVE (2019/770)

Spain

Royal Decree-Law 7/2021

The Spanish transposition introduces additional information and liability obligations concerning updates and conformity, beyond the minimum harmonisation established by the Directive.

CUSTOMS

Germany

Use of national extensions to commodity code classifications, creating additional administrative complexity beyond the standard EU framework.

Netherlands

Restrictive implementation of customs processes, including the use of I2 messages and limited use of waivers of presentation, despite provisions within the Union Customs Code that allow greater flexibility. While this may reflect national interpretation rather than formal gold-plating, it results in additional administrative burdens for businesses.

Spain

Additional national product compliance and border control requirements, including supplementary inspections, testing, certification and labelling requirements that go beyond harmonised EU legislation. As a result, products that comply with EU requirements can still face delays, additional administrative burdens or difficulties at the border.

Implementation of the plastic packaging tax as an excise duty applicable at the border. See more in the PPWR/PPWD chapter.

GDPR - GENERAL DATA PROTECTION REGULATION (2016/679)

Germany

GDPR Implementation and Enforcement – Additional Complexity Through Divergent National and Regional Practices in Germany

Although the General Data Protection Regulation (GDPR) aims to ensure a harmonised framework for data protection across the EU, differing interpretations and administrative practices among supervisory authorities create additional regulatory burden for companies operating across jurisdictions. Examples include varying notification procedures for Data Protection Officers (DPOs) and personal data breaches, which differ between competent authorities. More broadly, fragmented competences and divergent interpretations of EU rules can undermine the consistent application of EU legislation and should be taken into account when designing future EU regulatory frameworks.

France

Retail is built around contact with the consumers and the ability to fulfil their needs. In the online environment, this requires companies to manage personal data safely and responsibly, both to preserve customer trust and to improve the shopping experience (e.g. marketplaces are sought after by consumers for the depth of their offer, which requires personalisation to be able to guide the person to the relevant products).

However, the interpretations of the French Data Protection Authority (CNIL) have raised concerns on regulatory complexity and competitiveness. A few examples:

- The French Data Protection Authority(CNIL) adopted in April 2026 a recommendation setting a framework for « tracking pixels » contained in emails. Tracking pixels allows a company to know whether emails are open and are widely used to assess the impact of a marketing campaign and adapt the practices depending on whether the client/prospect is interested or not. The recommendations create a separate framework, and companies will now have to request consent for most uses of such pixels. The recommendations allegedly complement EDPB guidelines on cookies and tracking through extensive interpretation (e.g. expanding scope to pixels; using a notion of « related purposes » diverging from the notion of « compatible purposes », etc.).
    - The recommendations impinge on the discussions being held by the EU co-legislators as part of the digital omnibus (the proposal could exclude cookies).
    - The indirect costs are very high. Given there is no solution for gathering consent to pixels available on the market, the recommendations amount to a prohibition from using said pixels. It is unlikely that IT solution providers will want to carry out complex work to provide IT solutions for the French market only, plus knowing the French

framework could be repelled soon. If any solution could be developed, there are high costs associated with it.

  - The framework is both legally and technically difficult, and companies will have to train their workforce (legal teams, marketing teams, customer service) to it.

- Cookie walls: In 2019, the CNIL adopted guidance taking a restrictive approach to cookie walls. In 2020, the French Council of State held that the CNIL could not derive a general prohibition from EU consent requirements and could not impose such a prohibition through soft-law instruments.
- Payment-card retention: France historically adopted a stricter approach to the retention of payment-card details for online purchases. In 2014, the French DPA decided that companies could not save banking card numbers for online shopping except with express consent, which led to a long-lasting differentiation between e-merchants established in France. Subsequent EDPB recommendations helped clarify the conditions under payment-card detail may be retained. . In the meantime, French companies suffered from a competitive disadvantage.

NIS2 DIRECTIVE (2022/2555) - CYBERSECURITY

Czech Republic, Hungary, Poland, Ireland

There are concerns that some national NIS2 transposition measures may go beyond the requirements expressly set out in the Directive. Examples cited include:

Czech Republic (Zákon o kybernetické bezpečnosti (Cybersecurity Act transposition))

- Mandatory reporting of ALL incidents (not just "significant")
- Government power to ban products/vendors
- Mandatory segregated cybersecurity roles

Hungary (NIS2 transposition)

- Data localisation through cybersecurity law (HU)

Ireland (National Cyber Security Bill 2024)

- State vulnerability scanning without consent (IE)

Poland (Amendment to KSC Act)

- Extended scope via national critical infrastructure designations (PL)
- Extension of 5G Toolbox High-Risk Vendor procedure to ALL 18 NIS2 sectors and all network generations — capturing ~38,000 entities (PL — the most extreme example in any MS)
- Sanctions exceeding EU caps: PLN 100M (≈EUR 23M) fine for "direct and serious cyber threat" with immediate enforceability, vs. EU cap of EUR 10M/2% turnover (PL)

Why this is a systemic gold-plating issue: NIS2's broad scope covering essential and important entities across 18 sectors with a minimum-harmonisation approach creates maximum opportunity for national divergence. While national flexibility may be justified in certain circumstances, there are concerns that some transposition measures introduce obligations that are only indirectly linked to NIS2 core objectives, creating additional complexity for organisation operating across multiple member states.

Recommendation: NIS2 should be a priority instrument for Toolkit guidance. The Commission should issue specific benchmarks on what constitutes proportionate transposition vs. gold-plating for: incident reporting thresholds, scope of "important entities," and the boundary between legitimate discretionary measures and unrelated national security add-ons.

EPRIVACY DIRECTIVE (2002/58)

Finland

Finnish Act on Electronic Communications Services (917/2014)

Finland has implemented the ePrivacy Directive (2002/58/EC) at national level in a manner that extends significantly beyond the scope required under EU law.

Pursuant to Article 3 of the ePrivacy Directive, the Directive applies to the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks within the Union. In particular, the confidentiality obligations relating to communications and traffic data under Articles 5(1) and 6 primarily concern providers of such electronic communications services. Finland has extended these obligations at national level in two stages. First, in 2004, the rules applicable to telecommunications operators were extended to “corporate or association subscribers” (yhteisötilaaja). This category includes companies and other organisations that subscribe to communications or value-added services and process users’ communications, traffic data or location data in their own communications networks.

Secondly, in 2014, the scope of application was further extended to “other communications intermediaries” (muu viestinnän välittäjä). This concept covers, in addition to telecommunications operators and corporate or association subscribers, other entities that transmit electronic communications for purposes other than personal or comparable customary private purposes.

Consequently, obligations originating in the ePrivacy Directive apply in Finland to a considerably wider category of undertakings and organisations than is required by the Directive. In practice, companies operating their own communications systems may therefore become subject to confidentiality and data-processing obligations derived from sector-specific telecommunications regulation, notwithstanding that they are not providers of publicly available electronic communications services falling within the scope of the Directive.

This constitutes a clear example of national gold-plating through the extension of the personal scope of EU legislation. It increases regulatory complexity and compliance obligations for Finnish undertakings, including SMEs, and creates national requirements to which undertakings in other Member States are not necessarily subject.

France

Pattern: National supervisory guidance and enforcement may introduce detailed compliance expectations that go beyond the level of specificity contained in the ePrivacy Directive itself, creating practical gold-plating effects through regulatory interpretation and enforcement rather than legislative transposition.

France (CNIL): Cookie guidance and enforcement have resulted in prescriptive requirements regarding consent presentation, renewal and the use of cookie walls. While intended to support implementation of Article 5(3) ePrivacy Directive, these requirements create additional compliance obligations for businesses operating across multiple Member States and contribute to divergent consent architectures across the Single Market.

Why this is systemic: Additional compliance burdens can arise through regulatory guidance and enforcement practices rather than national legislation. Such measures require businesses to adapt products, interfaces and compliance processes at national level. As these requirements are not contained in legislative transposition measures, they are more difficult to identify and address through traditional gold-plating monitoring tools. The Commission's toolkit should therefore also consider regulatory guidance and enforcement practices that create material Single Market fragmentation and additional compliance burdens.

DIRECTIVE ON IMPROVING THE GENDER BALANCE AMONG DIRECTORS OF LISTED COMPANIES (2022/2381)

Lithuania

In transposing **Directive (EU) 2022/2381 on improving the gender balance among directors of listed companies**, Lithuania extended the scope of the national implementing measures beyond that required under EU law. While the Directive applies specifically to listed companies, the corresponding provisions in the Lithuanian **Law on Equal Opportunities for Women and Men** also cover certain large companies whose securities are **not admitted to trading on a regulated market**.

As a result, private companies falling within the extended national scope are subject to additional obligations relating to gender balance objectives, monitoring, data collection, disclosure and reporting. The legislation also provides for annual reporting to the Equal Opportunities Ombudsperson and introduces the possibility of sanctions for non-compliance. These requirements entail additional administrative and compliance burdens for businesses and further limit companies' flexibility in determining the composition of their governing bodies.

This may therefore constitute an example of gold-plating, as the national legislation goes beyond the minimum requirements established by Directive (EU) 2022/2381 and imposes obligations on categories of companies that are not covered by the Directive itself.

FDI – PRIOR AUTHORISATION OF INVESTMENTS

Romania

Under **Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union**, the EU framework is designed to address investments originating from non-EU countries on grounds of security and public order. Romania implemented the Regulation through **Emergency Ordinance No. 46/2022**, subsequently amended by **GEO No. 108/2023**, which significantly broadened the scope of the national screening regime.

Romania's legislation extends screening requirements beyond the EU framework by subjecting not only non-EU investors, but also **EU and domestic investors**, to prior authorisation requirements for investments exceeding EUR 2 million in broadly defined "strategic domains". The lack of clear definitions and legal certainty regarding the scope of these sectors has led many businesses to seek approvals as a precautionary measure, even for routine commercial investments.

For retailers, this may affect the opening of new stores, acquisition of land, construction of warehouses, expansion of logistics networks, and investments in renewable-energy installations. The resulting administrative burden, compliance costs and delays to investment go beyond what is envisaged under the EU FDI framework and risk discouraging investment and business expansion within the Single Market.

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EuroCommerce is the principal European organisation representing the retail and wholesale sector. It embraces national associations in 28 countries and 5 million companies, including leading global players and many small businesses. Over a billion times a day, retailers and wholesalers distribute goods and provide an essential service to millions of businesses and individual customers. The sector generates 1 in 7 jobs, offering a varied career to 26 million Europeans, many of them young people. It also supports millions of further jobs throughout the supply chain, from small local suppliers to international businesses. EuroCommerce is the recognised European social partner for the retail and wholesale sector.