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**Competition in the Food Supply Chain – Contribution from France**

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## *Competition in the Food Supply Chain*

### *- Contribution from France -*

1. In France, the food supply chain is composed of many operators of different sizes and with unequal economic powers. Upstream, there is a multitude of agricultural producers<sup>1</sup> of varying sizes, who can group themselves under different legal forms. Downstream, distributors are highly concentrated and have strong negotiating powers. Between these two links of the food supply chain, there are agro-industrialists who purchase the raw material, either in its raw state or after initial processing, modify it, and sell the finished products to the distributors. These industrialists can be of different sizes and many of them are small and medium-sized companies or intermediate-sized companies.

2. The French General Directorate for Competition, Consumer Affairs and Fraud Control (DGCCRF) and the French Competition Authority (FCA) share the competence to apply Competition Law to the agricultural sector, except for disposals on purchase agreements that belongs to the FCA<sup>2</sup>. Many horizontal and vertical practices have been sanctioned by the FCA in this sector<sup>3</sup>. To regulate Competition in the food supply chain, specific rules have also been created in France. These bodies of rules are enforced by the DGCCRF and aim to protect the consumers against price increases caused by distortions of competition on the supply chain. Another objective of these rules is to balance the relations between the different players and to protect the links that have the weakest bargaining power.

3. This contribution's aim is to present the measures implemented in France to improve the balance in commercial relations between the various players in the food supply chain. To apprehend this regulation, we need to look at the contractualization framework between the various players on the food supply chain (I) and the development of rules on unfair trading practices specific to the agri-food sector (II).

### **1. The framework of contractual commitments between players in the food supply chain controlled by the DGCCRF**

4. To balance commercial relations between the various players on the food supply chain, France has set a framework for contractual structures between producers (A) and

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<sup>1</sup> The French Chambers of Agriculture's report surveys 416,436 active farms in 2020, with a total of 761,300 workers : French Chambers of agriculture (September 30, 2024), *Les chiffres clés 2023 de l'agriculture française* [report], available at [chambres-agriculture.fr](http://chambres-agriculture.fr), accessed October 7, 2024.

<sup>2</sup> See, Decision 24-DCC-02 of the FCA, from January 11, 2024, on the acquisition of exclusive control of 61 Casino's shops by ITM ; Decision 24-DCC-210 of the FCA, from September 27, 2024, on the acquisition of exclusive control of Axérial Elevage and Centre Grains by Avril groupe de sociétés.

<sup>3</sup> Decision 11-D-17 on practices implemented in the sector of detergent ; Decision 13-D-03 on practices implemented in the sector of pork butcher ; Decision 18-D-06 on practices implemented in the commercialisation of Côtes du Rhône AOC wines ; Decision 19-D-24 on practices implemented in the commercialisation of fruits sold in bowls and gurd ; Decision 20-D-09 on practices implemented in the purchase and the sale of pieces of pork and charcuterie ; Decision 20-D-12 on practices implemented in the sector of wine from Alsace ; Decision 22-D-21 on practices implemented in the sector of fishing and aquaculture in La Réunion ; Decision 24-D-07 on practices implemented in the sector of Côtes de Gascogne IGP wines.

formal contractual obligations in the relations between producers and their purchasers (B) as well as between suppliers and distributors (C).

### 1.1. The key role of producer organisations in structuring agricultural markets

5. It is necessary for producers to be able to group themselves into organized structures to increase their bargaining power to negotiate with their buyers<sup>4</sup>. Under French Law, the main legal forms of producers' groups are agricultural cooperatives, producer organisations (POs) and associations of producer organisations (APOs). On the July 1, 2024, France recorded 614 producer organizations, a large part of them concerned the meat and eggs production sectors, as well as the fruits and vegetables sectors<sup>5</sup>, and 34 associations of producer organizations<sup>6</sup>.

6. Created in the 60's by the agricultural laws<sup>7</sup>, POs can be an agricultural cooperative<sup>8</sup>, an association or even a private law company<sup>9</sup>. There isn't specific Competition rules that apply to agricultural cooperatives but, several times, the FCA had to control the grouping of these structures that enhance the strengthening of the producers' offer. For instance, in September 2024, the FCA authorised without conditions the acquisition of Axéreal by Avril in the sector of pet food<sup>10</sup>. An APO is made up of several POs which can carry out all the activities and functions carried out by the POs. POs as APOs can be transnational allowing producers from different countries of the European Union to join together. Producers can decide to transfer ownership of all or part of their production to the organization to which they belong.

7. POs strengthen the agricultural producers' collective bargaining power. It also helps them to reduce their costs and to collaborate in transforming and commercializing their products. POs and APOs can also carry out a number of tasks listed in Article 152 of the European Regulation on the Common Organisation of Agricultural Markets<sup>11</sup> and thus help to strengthen the position of producers in the food supply chain. These tasks can be to : manage mutual funds, improve commercialization, plan production in order to correspond to the demand, ensure the management of by-products and risk management

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<sup>4</sup> Research Center of the Ministry of Agriculture, food sovereignty and forests, *Place des outils d'organisation économique dans les filières et impacts sur les revenus des agriculteurs*, August 2021, n°168, 4 pages.

<sup>5</sup> 42% of the POs concerned the meat and egg production sectors, 31% the fruits and vegetables sectors, 15% milk, 6% breeding animals, 4% other vegetal productions, 2% forestry sectors, see Ministry of Agriculture, food sovereignty and forests, *Organisation économique : les organisations de producteurs* [online], August 9, 2024, consulted on October 10, 2024, agriculture.gouv.fr ; In 2018, France was the country in the European Union with the highest number of producer organizations with 724 registered entities, see European Commission, *Organisations de producteurs et organisation interprofessionnelles* [online], europa.eu, consulted on October 15, 2024.

<sup>6</sup> 22 APOs concerned the fruits and vegetables sectors, 5 the milk production, 4 the production of beef, 1 oleiculture, 1 the pork industry, 1 the production of potatoes, see Ministère de l'agriculture, de la souveraineté alimentaire et de la forêt, see Ministry of Agriculture, food sovereignty and forests, *Organisation économique : les organisations de producteurs* [online], August 9, 2024, consulted on October 10, 2024, agriculture.gouv.fr

<sup>7</sup> In particular the Law n° 62-933 from August 8, 1962, complementary to the law on agricultural orientations.

<sup>8</sup> There are three forms of agricultural cooperatives under French Law : Agricultural cooperative companies, unions of agricultural cooperatives and companies of collective agricultural interests.

<sup>9</sup> Commercial companies or economic interest groups.

<sup>10</sup> Decision 24-DCC-210 of the FCA, from September 27, 2024, on the acquisition of exclusive control of Axéreal Elevage and Centre Grains by Avril groupe de sociétés.

<sup>11</sup> Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 on the common organisation of agricultural markets.

instruments available to their members, stabilize production prices, optimize production costs, promote good practices, provide technical assistance, concentrate supply or conduct research. OPs and APOs can aim to pool the production of their members, thereby enabling the aggregation of supply to increase their bargaining power with their buyers. OPs can request to be recognized by the administrative authorities, reinforcing the interest in organizing producers.

8. Under which conditions are these agreements between producers compatible with Competition Law? French and European Competition Law prohibit cartels and abuses of a dominant position<sup>12</sup>. Each entity that is part of the PO may be considered as an undertaking and be subject to Competition Law. Therefore, a PO could also be subject to Competition Law and be qualified as an association of undertakings and an APO as an association of associations of undertakings. According to Article 42 of the Treaty on the functioning of the European Union and the primacy of the Common Agricultural Policy over the Competition Policy, exemptions and derogations to Competition Law have been granted in the agricultural sector<sup>13</sup>. It is the Regulation establishing a Common Organization of the Markets in agricultural products<sup>14</sup> that provides these exemptions and derogations. Article 152 §1 Bis of the Regulation gives an express derogation to POs and APOs to negotiate collectively prices and quantities. According to article 209 of the Regulation, agreements that are necessary for the realisation of the objectives of the Common Agricultural Policy can be exempted from the prohibition of anti-competitive practices. Finally, in the event of a crisis, article 222 provides for a derogation to stabilize the affected sector. These derogations and exemptions from Competition Law only concern POs and APOs that conform to the Regulation on the Common Organization of the Markets in agricultural products and these derogations are strictly framed. Therefore, in the “Endive cartel”, the French Competition Authority has sanctioned practices relating to a collective price fixing and discussions on quantities between different POs, APOs and other entities not recognized by the administrative bodies<sup>15</sup>. The DGCCRF published guidelines on the application of Competition Law to the agricultural sector to provide guidance<sup>16</sup>.

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<sup>12</sup> Under European Law, articles 101 and 102 of the Treaty on the functioning of the European Union ; Under French Law, articles L.420-1 and L.420-2 of the commercial code.

<sup>13</sup> Judgment of the Court of Justice of the European Union of November 14, 2017 on a request by the President of the French Competition Authority, Case C-671/15, paragraph 37 : « *in pursuit of the objectives of introducing a common agricultural policy and establishing a system of undistorted competition, Article 42 TFEU recognises that the common agricultural policy takes precedence over the objectives of the Treaty in the field of competition and also recognises the EU legislature’s power to decide to what extent the rules on competition are to be applied in the agricultural sector* ».

<sup>14</sup> Regulation (EU) n°1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products.

<sup>15</sup> Decision of the French Competition Authority from March 16, 2012, regarding practices in the endive production and marketing sector, case 12-D-08 ; Fines were reduced by a decision of the Paris Court of Appeal from July 1, 2021, 19/00595 ; A request for a preliminary ruling had previously been submitted to the Court of Justice of the European Union regarding the possibility to exempt the practices in question, see the Decision of the CJUE from November 14, 2017, on a request for a preliminary ruling by the President of the French Competition Authority, case C-671/15 ; Since this case, the French Competition Authority published on May 3, 2018, an opinion on the application of Competition Law to the agricultural sector, n° 18-1-04.

<sup>16</sup> Guidelines by the DGCCRF on Competition Law and the agricultural sector, published on July 2020, accessed October 16, 2024, [economie.gouv.fr](http://economie.gouv.fr)

9. Last but not least, the agreements between producers that pursue sustainability objectives can be qualified as “sustainability agreements”. The new guidelines by the European Commission on the application of article 101 to horizontal agreements precise the application of Competition Law to these specific agreements<sup>17</sup>. Also, article 210 bis of the CMO Regulation allows for the exemption of certain vertical and horizontal initiatives that promote sustainability<sup>18</sup>. The FCA has published a notice on the provision of informal guidance to companies with questions on the compatibility of their projects with a sustainability objective with competition rules<sup>19</sup>.

10. By grouping together in POs and APOs, producers also benefit from a protective framework governing their contracts with their buyers<sup>20</sup>.

## 1.2. The protective formal obligations in contracts between producers and their purchasers

11. The Law of October 18, 2021 on the protection of farmers’ remuneration, known as “EGAlim 2”<sup>21</sup>, has strengthened formal obligations in the contracts between the producers and their buyers. The new article L.631-24 of rural and maritime fishing code (CRPM) , now requires that any contract for the sale of agricultural products delivered within the French territory to be in written form. This new article also requires a number of mandatory clauses in contracts between producers and their first buyers.

12. In principle, since January 1, 2023, written contracts have been required in all agricultural sectors. However, according to article L.631-24-2 of the CRPM, article R.631-6 of the CRPM sets out a long list of agricultural products that are not subject to compulsory written contracts. Moreover, article R.631-6 of the CRPM requires a minimum turnover threshold of 10 000€ to be included in the scope of application of the compulsory written contracts. Therefore, a producer who is not concerned by the obligatory written contracts can freely decide to conclude a written contract with its buyer. In this situation, the same rules apply as for the mandatory written contracts.

13. According to article L.631-24 III of the CRPM, the contract offer, the framework agreement proposal and the final contract, must contain the following clauses. A clause must indicate the price and the automatic price revision, up or down, according to a formula determined by the parties. Another one must stipulate the quantities, the origin and the quality of the product to be delivered, collection and delivery arrangements, payment procedures and payment deadlines. The duration of the agreement must also be specified and may not be less than three years, barring exceptions. Parties must also include a force majeure clause. At last, the notice period and indemnities are subject to a mandatory clause

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<sup>17</sup> European Commission, *Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements*, July 21, 2023.

<sup>18</sup> See the communication from the European Commission, *Commission guidelines on the exclusion from Article 101 of the Treaty on the Functioning of the European Union for sustainability agreements of agricultural producers pursuant to Article 210a of Regulation (EU) No 1308/2013*, December 8, 2023.

<sup>19</sup> FCA, *Notice on informal guidance from the Autorité in the area of sustainability*, May 27, 2024, 6 pages, [autoritedelaconurrence.fr](https://autoritedelaconurrence.fr)

<sup>20</sup> The French Competition Authority called to increase contractualization in the milk sector to encourage the producers to group together, see : Opinion of the French Competition Authority from October 2, 2009 regarding the milk sector, n°09-1-48.

<sup>21</sup> Law n°2021-1357 from October 18, 2021, to protect the agricultural producers’ revenues.

that must specify a reduction of the indemnity in case of a modification of the production process, for example, in the event of an exceptional health or climatic hazard.

14. The french approach of a price construction “*forward driving*”<sup>22</sup> is that the price must be induce by the farmers’ costs of production. This strategy is based on the obligation to consider indicators made by the interprofessional organisations to fix the price in the contract offers and the framework agreements<sup>23</sup>. Price formulas must contain indicators on the costs, prices on the markets on which the buyer operates, composition, quality, origin and traceability. There also exists benchmark indicators published by interprofessional organizations and listed on the website of the *Food prices and margins observatory*<sup>24</sup>. Nevertheless, parties remain free to select the indicators they want and to weigh the selected indicators<sup>25</sup>. If the parties fail to indicate one of the above-mentioned type of indicators, they risk an administrative penalty<sup>26</sup>.

15. Furthermore, the contract must, under penalty threat, contain the renegotiation clause of the article L.441-8 of the French commercial code if the conditions are fulfilled<sup>27</sup>. The article L.441-8 sets a mandatory clause for the contracts with a period of execution of more than 3 months concerning the sale of agricultural products and foodstuffs that are significantly impacted by the evolution of the prices of agricultural raw material, food, energy, transport or packaging. The stipulation must precise the thresholds of renegotiation if there is a modification of the general economy of the contract because of a significant evolution of the price production. The contract must specify that, if the conditions of renegotiation are fulfilled, the renegotiation must start within a period of less than one month. The absence of a renegotiation clause or a breach of this clause is subject to an administrative penalty<sup>28</sup>.

### 1.3. The mandatory formalism in the contracts between suppliers and distributors

16. The negotiation period between suppliers and distributors is framed. The deadline of the annual commercial negotiations for national-brand products has been set at March 1, since the 2008 law on the modernisation of the economy<sup>29</sup>. The discussion period between agro-industrialists and retail companies runs from November 30, of year n, to March 1, of year n+1. The setting of a deadline for the conclusion of agreements was deemed necessary, first to ensure that required elements to establish the sale at a loss price are determined as soon as possible, secondly to avoid that the strongest parties in the negotiations, who the

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<sup>22</sup> Ministry of Agriculture, food sovereignty and forests, *Tout comprendre de la loi EGalim 2* [online], April 13, 2023, consulted on octobre 10, 2024, agriculture.gouv.fr

<sup>23</sup> Article L.631-24 III paragraph 15 of the CRPM.

<sup>24</sup> observatoire-prixmarges.franceagrimer.fr

<sup>25</sup> Opinion of the French Competition Authority on the application of Competition Law to the agricultural sector, n° 18-1-04, May 3, 2018, paragraphs 204 and following.

<sup>26</sup> Article L.631-25 of the CRPM.

<sup>27</sup> Article L.631-24 III of the CRPM.

<sup>28</sup> Article L.441-8 of the commercial code, paragraph 4.

<sup>29</sup> Law n° 2008-776 of August 4, 2008, on the modernisation of the Economy.

most often are the distributors, negotiate for months retroactive adjustments of their commitments. An administrative fine is imposed for failure to meet the deadline<sup>30</sup>.

17. In the relations between suppliers and distributors, the general terms and conditions of sale, which constitute the single basis of the negotiation, are also regulated. Article L.441-1 of the commercial code states that, for any commercial negotiation, the general terms and conditions of sale must contain the terms of payment and the factors used to determine the price, such as the price per unit and any price reductions. Other formal obligations were created by the EGAlim Laws<sup>31</sup> to ensure transparency in the pricing of agricultural raw materials and to enable professionals to consider benchmark indicators for prices. Thus, the general terms and conditions must also mention the benchmark indicators used in the contract between the producer and the first buyer<sup>32</sup>. The goal is for every operator to take account of the benchmark indicators on the price of raw agricultural products.

18. The principle of transparency on the price of agricultural raw materials aims to guarantee that the agricultural raw materials price remains unchanged throughout the food supply chain, from upstream to downstream. New article L.443-8 of the commercial code prohibits negotiations on agricultural raw materials. When drawing up the general terms and conditions of sale, the supplier has several options to enable transparency on the price of agricultural raw materials. The first option is for the supplier to present, for each processed product included in the composition of the final product and composed of more than 50% agricultural raw materials, its percentage in the composition of the product and its percentage in the price of the product. The second option consists for the supplier to present, as a percentage of the volume and a percentage of the tariff, the aggregated share of the agricultural raw materials and processed products used to make the final product. The third option is to involve, at the supplier's expense, an independent third party in the event of a change in the supplier's price, who can certify at the end of the negotiation that the parties didn't negotiate the price of raw agricultural materials or of the processed products. The objectives of such a legislation is to protect the price of agricultural raw materials and to promote renegotiations and price revisions according to the costs of the raw materials and some production costs.

19. There are special commitments defined in article L.441-17 of the french commercial code for products sold under distributor brands. These commitments secure price transparency and annual renegotiations, forecast sales and clauses on automatic price revisions depending on the costs of raw materials or transformed products.

20. A part of the conventions between suppliers and distributors, subject to the above-mentioned obligations, results from purchase agreements that permit to the distributors to regroup to negotiate lower prices. At the European level, the guidelines on horizontal cooperation agreements precise the application of European Competition Law to purchase

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<sup>30</sup> In 2024, the DGCCRF imposed a fine of 38 067 000 € to Eurelec Trading SCRL (Leclerc) for 62 breaches of the negotiations deadlines set on January 15, and January 31.

<sup>31</sup> Law n° 2018-938 from october 30, 2018, for a balance in commercial relations in the agricultural sector and accessible and sustainable food for all the consumers and Law n° 2021-1357 from october 18, 2021 to protect farmer's revenues.

<sup>32</sup> Article L.632-24-1 of the CRPM.

agreements<sup>33</sup>. Under French Law, since 2015<sup>34</sup>, these agreements must be notified *ex ante*, under threshold conditions<sup>35</sup>, to the French Competition Authority<sup>36</sup>. Several joint purchasing projects lead to a notification to the competition authority's investigation services. The Authority can conduct investigations on its own initiative or at the request of the French Minister of the Economy, and can take conservatory measures imposing to undo the concentration or to modify the agreements. These provisions permit to the Authority to control the relations between suppliers and distributors to an unprecedented level. For instance, in two conservatory proceedings<sup>37</sup>, the FCA expressed serious competition concerns regarding purchase agreements for products sold under distributor brands. Corrective measures were adopted to end the competition concerns. These remedies reduced the perimeter of the agreements by product category (fruits and vegetables, milk, eggs) and by purchase volumes, which may not exceed 15% of the total market volume. This *ex ante* assessment by the Autorité de la concurrence, at its own initiative or at the request of the Minister of the Economy, allows for the rebalancing of the negotiations between the suppliers and the distributors.

21. There exist other tools than to regulate contractualization to find a balance between the various players of the food supply chain. France has also developed a body of rules for unfair trading practices and created specific rules governing the commercial relations between the players (II).

## 2. The emergence of specific rules on unfair trading practices for the food supply chain

22. In order to balance the commercial relations on the food supply chain, France has developed a body of rules for unfair trading practices that applies to relations between a supplier and its buyer concerning agricultural and food products (B) or fast-moving consumer goods (C). These special regimes complete the general framework for unfair trading practices that already exists in France (A).

### 2.1. The existing general framework on unfair trading practices

23. Title IV of Book IV of the commercial code frames the transparency of commercial relations and forbids behaviours qualified as restrictive competition practices and a number of other practices. This Title IV aims to prevent unfair trading practices. The Law of March 30, 2023 to strengthen the balance in commercial relations between suppliers and distributors, known as “Descrozaille”<sup>38</sup>, affirmed that these public order provisions can

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<sup>33</sup> European Commission, *Guidelines on the applicability of Article 101 of the TFEU to horizontal co-operation agreements*, July 17, 2023, 186 pages, pages 76 to 93.

<sup>34</sup> Law n°2015-990 of August 6, 2015 for growth, activity and economic equality ; Article L.462-10 of the commercial code ; This article was modified in 2018 by the Egalim Law.

<sup>35</sup> Article R.462-5 of the commercial code.

<sup>36</sup> Law n° 2015-990 of August 6, 2015, for growth, economic activity and equal opportunity ; Article L.462-10 of the commercial code ; The control was precised by the Law EGALim from 2018.

<sup>37</sup> Decision n° 20-D-13 from October 22, 2020, on practices in the mass-retail sector for food products by Auchan, Casino, Metro and Schiever.

<sup>38</sup> Law n° 2023-221 of March 30, 2023, to balance the commercial relations between suppliers and distributors.

apply to “every agreement between a supplier and a buyer relative to products or services marketed on the French territory”<sup>39</sup>.

24. French Law on restrictive competition practices is essentially based on three infractions<sup>40</sup>. The first consists in subjecting its co-contractor to contractual obligations that create a significant imbalance between the parties’ rights and commitments. The offence of significant imbalance requires both the proof of submission and of a significant imbalance. The second infraction consists in obtaining, or trying to obtain, an advantage from another operator that doesn’t correspond to the counterpart or that is manifestly disproportionate regarding the value of the counterpart given. The advantage that doesn’t correspond to the counterpart requires an objective and quantitative analyse without the need to prove a submission. Lastly, the commercial code prohibits the sudden termination, or partial termination, of an established business relation without a reasonable written notice period<sup>41</sup>.

25. An experimental framework was set for three years to govern the situation in which the parties haven’t reached a single agreement before the deadline of March 1<sup>42</sup>. The supplier can end the commercial relation with the distributor, with no risk to be sanctioned for a brutal termination, or ask for the application of a notice period that conforms to the disposals of article L.442-1 II of the commercial code. The parties may also refer the matter to the Agricultural Trade Relations Mediator or to the Business Mediator to reach, under their guidance and before April 1, an agreement setting the terms of the notice period, considering, in particular, the economic conditions of the market on which they operate. If the parties find an agreement in accordance with the notice, the price applies retroactively to the orders placed after March 1. In the situation where the parties can’t find an agreement, the supplier can end the commercial relation with the distributor, without the risk to commit a brutal termination, or request the application of a notice period of eighteen months or more. This new disposal corrects the previous situation in which the supplier was obliged to deliver, during the notice period, at the price agreed in the single agreement concluded the year before even if there were significant upward fluctuations on upstream markets.

26. At last, the legislator has reinforced the good faith requirement in commercial negotiations. If there is no single agreement by the deadline of March 1 due to bad faith, the parties risk civil sanctions.

27. Specific rules have been enacted when business relations involve agricultural products and foodstuffs.

## 2.2. The creation of specific rules for agricultural products and foodstuffs

28. In the negotiations between suppliers and distributors, the portion of the price of agricultural products in the final price cannot be negotiated<sup>43</sup>. The aim of these provisions

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<sup>39</sup> Article L. 444-1 A of the commercial code.

<sup>40</sup> Article L. 442-1 I. 1°, 2° and II. of the commercial code.

<sup>41</sup> This termination notice must be conformed to the trade usages or the interprofessional agreements and, to define the price that apply during the notice period, to the economic conditions of the market on which the parties operate. At present, any termination notice of more than 18 months excludes the liability of its author for sudden termination of commercial relations.

<sup>42</sup> Law n°2023-221 of March 30, 2023, article 9.

<sup>43</sup> Articles L. 443-8 II and L.441-7 paragraph 6 of the commercial code.

is to safeguard this portion of the tariff. However, this part is always minor or even excessively minor<sup>44</sup>, except for the products that are minimally processed or unprocessed, such as milk. Consequently, a price decrease can be presented as a drop in the supplier's margin or a diminution of its production cost without risking to violate the agricultural raw material protection.

29. The buyers of agricultural products or foodstuffs are held liable if they force their suppliers to set an abusively low sale price<sup>45</sup>. To characterize an abusively low sale price, one needs to refer to production cost indicators. The infraction is characterized only if the buyer has imposed this abusively low price to his supplier. The appreciation is close to the submission criteria required in the significant imbalance. The clearance operations during overproduction crises are not likely to be classified as a breach of the prohibition.

30. Finally, since the amending finance law of July 2, 1963<sup>46</sup>, sale at a loss is prohibited in France, with the exception of a limited list of provisions. The EGAlim Law<sup>47</sup> has risen, on an experimental basis, the threshold for sale at a loss of 10%<sup>48</sup> for foodstuffs and pet food sold as it to consumers<sup>49</sup> (the minimum sale price by a distributor is 1.1 x purchase price). The objective is to revalue the price of agricultural and food products and to prevent large retailers from turning them into loss leaders and variables for price adjustments.

31. A framework on promotions, both by volume and by value, was also adopted. Initially applicable for two years and limited to food fast-moving consumer products, the framework was extended for a longer period to non-food fast-moving consumer goods. Indeed, the EGAlim Law has set an experimental framework for food products promotions to fight against food products deflation. However, as the distributors were constrained by this regulation, they started aggressive promotions on the products that were not concerned by the experimental framework, leading to higher food prices. In reaction to these behaviours, the Descrozaille Law extended the experimental promotions framework to all fast-moving consumer goods.

32. The enhancement of sale at a loss of 10% and the framing of promotion are still experimental. Seized by the Minister of the Economy in 2018, the French Competition Authority issued an opinion on the elevation of sale at a loss and the experimental framework on promotions<sup>50</sup>. The authority expressed serious concerns about the elevation of sale at a loss and the framework on promotions by value and was against the framework on promotions by volume. Despite the Authority's analyse and the absence of demonstration of the positive effects of these measures<sup>51</sup>, some players request that the experimental frameworks be made permanent.

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<sup>44</sup> The agricultural raw materials represent 10 to 50% of the upstream tariff.

<sup>45</sup> Article L. 442-7 of the commercial code.

<sup>46</sup> Amending Finance Law n° 63-628 of July 2, 1963, to maintain the economic stability. .

<sup>47</sup> Law n° 2018-938 of October 30, 2018, to balance the commercial relations in the agri-food sector and for accessible and sustainable food for all the consumers.

<sup>48</sup> Sale at a loss minimum rate = Effective purchase price + 10% of the effective purchase price.

<sup>49</sup> This threshold doesn't apply to fruits and vegetables.

<sup>50</sup> Opinion n° 18-A-14 of November 23, 2018, on the enhancing of sale at a loss and the framework on promotions for food products.

<sup>51</sup> Conclusions of the parliamentary mission on the perspectives of evolution of the framework for negotiations and commercial relations in the agri-food sector.

### 2.3. The creation of specific rules for fast-moving consumer goods

33. The EGalim law<sup>52</sup> created new rules governing the relations between suppliers and distributors regarding fast-moving consumer goods. This type of goods is defined as a non-durable product that is consumed regularly and frequently<sup>53</sup>. On December 19, 2019<sup>54</sup>, the government has established a list of fast-moving consumer goods including, in particular, foodstuffs and non-alcoholic drinks<sup>55</sup>. When there are agreements between suppliers and distributors regarding these sorts of products, special rules intend to prohibit unfair trading practices.

34. The principle of non-discrimination was initially relative to foodstuffs conventions. The Descrozaille Law<sup>56</sup> extended the principle to conventions on fast-moving consumer goods. The supplier must offer the same conditions, understood in a broad way and not only regarding to the tariffs, to different distributors that are in identical conditions or highly similar conditions. However, this prohibition is not absolute, discriminations may be justified by the existence of counterparts in the convention, for example price reductions granted regarding the purchase volume.

35. The deadline of commercial negotiations for 2024 regarding fast-moving consumer goods has been brought forward to January 2024 by a law from November 17, 2023<sup>57</sup>. For little or middle-sized industrialists<sup>58</sup> and for large industrialists<sup>59</sup>, the deadline of the annual negotiation period for fast-moving consumer goods has been set respectively to January 15, 2024 and January 31, 2024. The goal is to lower the shelf prices for consumers and to struggle against inflation.

36. Finally, in addition to the European law, France has developed a national regulatory framework structuring with precision the contractual relations, both upstream and downstream, and the commercial practices on the food supply chain. Nevertheless, the effects of the EGalim Laws<sup>60</sup>, in particular on the agricultural producers' revenues, are difficult to evaluate. These incomes can change in reaction to multiple factors that are complex to isolate. There are interrogations whether to sustain provisions such as the mandatory automatic price revision clause in upstream conventions. Likewise, the efficiency of the protection of the agricultural raw materials is complex to estimate but suppliers indicate that it permits to enhance protection of the agricultural raw materials. A

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<sup>52</sup>Law n° 2018-938 of October 30, 2018, to balance the commercial relations in the agri-food sector and for accessible and sustainable food for all the consumers.

<sup>53</sup> Article L.441-4 I of the commercial code.

<sup>54</sup> Décret n° 2019-1413 of December 19, 2019, setting the list of fast-moving goods mentioned at the article L. 441-4 of the commercial code ; Modified by Décret n° 2021-211 of February 24, 2021, modifying the commercial code and ensuring consistency of the regulatory provisions..

<sup>55</sup> Article D.441-1 of the commercial code.

<sup>56</sup> Law n° 2023-221 of March 30, 2023, to balance the commercial relations between suppliers and distributors.

<sup>57</sup> Law n° 2023-1041 of November 17, 2023, setting emergency measures to fight against the inflation of fast-moving consumer goods..

<sup>58</sup> Turnover under 350 million euros.

<sup>59</sup> Turnover over or equal to 350 million euros.

<sup>60</sup> Law n° 2018-938 of October 30, 2018, to balance the commercial relations in the agri-food sector and for accessible and sustainable food for all the consumers and Law n°2021-1357 from October 18, 2021, to protect the agricultural producers' revenues.

parliamentary mission launched in the spring of 2024 delivered a report on October 10, 2024, with several propositions to improve or to simplify the existing framework regulating competition on the food supply chain. This report could potentially contribute to future legislative works.