

**Section 1: company obligations**

<i>Company obligations under the EU Voluntary Framework</i>	<i>Obligations under national scheme</i>	<i>Assessment of compatibility</i>	<i>Suggested resolution</i>
<p><u>Registration</u>  <i>Company registration by executive(s) having the power to commit the whole company in the EU including all subsidiaries in the EU.</i></p>	<p>GSCOP applies automatically to a list of 10 named retailers</p>	<p>There is no mechanism in GSCOP for participants to register or “sign up” as GSCOP is not a voluntary system</p>	<p><b>Individual retailers covered by GSCOP should register through a declaration of commitment to the principles of the voluntary code.</b></p>
<p><u>Geographical scope</u>  <i>“Registered companies are expected to implement the principles throughout their organisations independently of the geographical origin of their business counterpart provided that the obligations under the contract are to be performed in the EU”;</i>  <i>“SMEs based outside the EU may resort to the dispute resolution options (...) as long as the obligations under the contract are to be performed in the EU”</i></p>	<p>“Supplier means any person carrying on a business in the direct supply to any Retailer of Groceries for the resale of groceries in the United Kingdom and includes any such person anywhere in the world.</p>	<p>Although the provisions are constructed differently, they are compatible. The geographical coverage of GSCOP and the voluntary agreement vis-à-vis suppliers to UK retailers is the same.</p> <p>However, the provisions of GSCOP do not apply to retail supply contracts outside the UK.</p>	<p>There is total compatibility of scope in relation to groceries supply to <u>UK</u> operations.</p> <p>However, <b>where a UK retailer has retail operations elsewhere in the EU, that retailer would need to put in place all of the specific provisions of the voluntary agreement in those non-UK markets in order to be compliant with the Code.</b></p>
<p><u>Product scope</u>  <i>“This framework applies only to food (fresh and processed) and drink products.”</i></p>	<p>“Groceries means food, pet food, drinks, cleaning products, toiletries and household products, but excludes petrol, clothing, DIY products, financial services and pharmaceuticals etc.”</p>	<p>The product coverage of GSCOP includes all those products covered by the voluntary code as well as some products not covered by the voluntary code.</p>	<p><b>No action required.</b></p>
<p><u>Self-assessment</u>  <i>“Before registering companies must carry out a self-assessment by reviewing their internal procedures</i></p>	<p>There are no self-assessment provisions in GSCOP.</p>	<p>There is no compatibility between the provisions in GSCOP and the voluntary code on self-assessment</p>	<p><b>No action required.</b> Retailers covered by GSCOP have been bound by its provisions and disciplines that are at least as</p>

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<p><i>to ensure compliance with the principles” including training, dispute resolution options, communication, internal contact person</i></p>			<p>strict as the voluntary agreement since 2010. Therefore, any requirement for GSCOP-retailers to self-assess for their compliance with the voluntary agreement would be a superfluous exercise.</p>
<p><u>Designated contact point</u>  <i>“Each registered company will also designate a contact person for any follow-up actions such as monitoring.”</i></p>	<p>“A designated Retailer must appoint a suitably qualified employee as the Code Compliance Officer”</p> <p>The Code Compliance Officer:</p>	<p>The role and responsibilities of the Compliance Officer under GSCOP cover substantially the same areas as those described for the designated contact points (information and resolution of disputes) in the voluntary code.</p>	<p><b>No action required</b></p>
<p><u>Compliance officer</u>  <i>“Participating companies will be required to prepare for the dispute resolution procedure.....and to designate a contact point at the moment of registration.</i></p> <p><i>The designated contact point must be independent from the commercial negotiation and is responsible for issues related to the resolution of disputes.</i></p>	<p>“will be available as a point of contact for Suppliers and any authority or other body making enquiries in relation to the Code.....”</p> <p>“will be independent of, and must not be managed by, any member of the Buying Team....”</p>		
<p><u>Training buyers</u>  <i>“Participating companies will be required to set-up and/or adapt training to ensure compliance with the principles of good practice.”</i></p>	<p>“Any person who becomes part of the Designated Retailer’s Buying Team after 4 February 2010 must be provided with:</p> <p>“A copy of the Code within one week of becoming part of the.....Buying Team”</p>	<p>The provisions on training under GSCOP are compatible with the provisions on training under the voluntary agreement. Indeed, the provisions on training under GSCOP are rather more specific than those of the voluntary agreement.</p>	<p><b>No action required</b></p>

	<p>“training on the requirements of this order and the Code within one calendar month of becoming part of the Designated Retailer’s Buying Team”</p>		
<p><u>Information to suppliers</u>  <i>“Registered companies are required to inform business partners of their participation in the framework. Companies are free to choose the means by which this is done”.</i></p>	<p>Prior to entering into a contractual agreement, Designated Retailers are required to provide specific information to retailers covering:</p> <ul style="list-style-type: none"> <li>• The retailers substantive obligations under GSCOP</li> <li>• The identity and contact details of the senior buyer</li> <li>• Dispute settlement provisions</li> <li>• The identity and contact details of the compliance officer</li> <li>• The mechanism for providing supplier feedback on the retailer</li> <li>• Procedures relating to de-listing</li> </ul>	<p>The provisions about informing suppliers are constructed differently under the voluntary agreement and GSCOP. Nevertheless, they achieve the same outcome; suppliers must be made aware of the obligations under which retailers operate. In fact, the specific obligations under GSCOP are rather stricter than those under the voluntary agreement because they:</p> <ul style="list-style-type: none"> <li>• List specific information that must be provided to suppliers.</li> <li>• State explicitly that such information must be supplied in advance of any Supply Agreement</li> </ul>	<p><b>No action required.</b> Provided that the governance group accepts that GSCOP is equivalent to the voluntary agreement, then it should be considered sufficient for GSCOP retailers to provide relevant information on GSCOP to their suppliers.</p>
<p><u>Dispute settlement</u>  <i>The voluntary agreement envisages four modes of dispute settlement:</i></p> <ul style="list-style-type: none"> <li>• Commercial track</li> <li>• Contract options</li> <li>• Internal dispute resolution</li> <li>• Mediation</li> <li>• Arbitration</li> <li>• “Jurisdictional” methods.</li> </ul>	<p>GSCOP explicitly provides for in-house resolution of disputes and for arbitration. No mention is made of mediation nor of other “jurisdictional methods”.</p> <p>GSCOP says that in the first instance a complaint must be raised with the relevant Compliance officer.</p>	<p>The dispute settlement provisions under GSCOP and the voluntary agreement are broadly equivalent, but not entirely. The main point of difference is that the voluntary agreement explicitly provides for mediation, GSCOP does not. However, mediation is essentially non-binding arbitration and can therefore be considered as a less</p>	<p><b>The governance group should explicitly recognise that the dispute settlement procedures established under GSCOP and the Adjudicator fully and exclusively meet the dispute settlement requirements envisaged in the voluntary framework</b></p>

<p><i>The complainant may choose the method. However</i></p> <ul style="list-style-type: none"> <li>• <i>There is a presumption that complainants “are expected to resort first to the options that are less adversarial and costly”.</i></li> <li>• <i>Mediation and arbitration require the consent of both parties.</i></li> </ul> <p><i>Disputes should be settled within 4 months “with the exception of disputes solved through mediation, arbitration and traditional jurisdictional methods”.</i></p>	<p>GSCOP allows 21 days for a dispute to be resolved internally, after which the Designated retailer must agree to an arbitration request made in writing by the complainant within 4 months of the date of the original complaint.</p> <p>The Groceries Code Adjudicator Act 2013 (GCA) legally establishes an Adjudicator to arbitrate on disputes raised under GSCOP.</p>	<p>attractive channel for resolving disputes than arbitration.</p> <p>On the other hand, the voluntary agreement says that both parties have to agree to mediation or arbitration if it is properly requested by the supplier. This provides a higher-level of protection to the complainant than that provided by the voluntary code.</p> <p>Although it is not mentioned specifically, there is nothing in GSCOP which affects the wider rights of a supplier to pursue a complaint through the courts (i.e. the “jurisdictional method2 described in the voluntary agreement).</p>	
<p><u><i>Aggregated disputes (see section#2 below)</i></u></p>			
<p><u><i>Breaches of process commitments</i></u>  <i>“A permanent procedure will enable companies to flag issues with process commitments arising with registered companies. The governance group will deal with these issues”.</i></p>	<p>GSCOP endows the Competition Commission with powers of direction in relation to the operation of GSCOP by designated retailers. In particular:</p> <p>“directions to take such actions as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order”</p>	<p>Neither GSCOP nor the Adjudicator Act refer to compliance with “process commitments” specifically. However, it is clear that GSCOP provides broad “powers of direction” to the Competition Commission to ensure that Designated Retailers not only meet their substantive obligations under GSCOP but also their process commitments.</p>	<p><b>The governance group should explicitly recognise that the UK Competition Commission has powers of direction to ensure compliance with “process commitments” of GSCOP and that the CC is the sole competent authority for considering such breaches of process commitments.</b></p>

	<p>and:</p> <p>“.....”actions” includes steps to introduce and maintain arrangements to ensure any director, employee or agent of a Designated Retailer carries out, or secures compliance with, this Order.”</p>		<p><b>In extreme cases of non-compliance with process commitments, the governance group would retain the power to remove any named GSCOP retailer from the voluntary agreement.</b></p>
<p><u>Reporting requirements</u>  <i>“there will be a simple survey (...) to serve as a basis for evaluation and compliance”. It will be based on:</i></p> <ul style="list-style-type: none"> <li>• <i>Training</i></li> <li>• <i>Reporting on dispute resolution options (#complaints lodged and received, principles allegedly breached, method for dispute resolution, satisfaction)</i></li> <li>• <i>Communication</i></li> </ul> <p><i>Reporting is national</i></p>	<p>GSCOP contains provisions that require Designated Retailers to provide information on their compliance with GSCOP to the Office of Fair Trading. However, GSCOP itself is rather vague on what these reporting requirements are.</p> <p>All GSCOP retailers provide summaries of their performance under GSCOP in their annual reports.</p> <p>The GCA is more specific:</p> <p>“After the end of each reporting period the Adjudicator must prepare and publish a report describing what the Adjudicator has done during this period. The report must include a summary of</p> <ul style="list-style-type: none"> <li>• Disputes referred to arbitration under GSCOP</li> <li>• Investigations carried out by</li> </ul>	<p>The reporting requirements are framed rather differently. Nevertheless, they aim at the same thing – an assessment of performance of those companies covered by GSCOP/voluntary agreement against the substantive provisions of the respective codes.</p>	<p><b>The governance group should accept that GSCOP retailers can meet their reporting obligations under the voluntary code through a combination of responses to the on-line questionnaire, together with a copy of the Adjudicator’s annual report on GSCOP.</b></p>

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	<p>the Adjudicator</p> <ul style="list-style-type: none"><li>• Cases in which the Adjudicator has used ..... enforcement measures.”</li></ul>		
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**Section 2: national platforms**

*“Signatories (...) will encourage the establishment of similar procedures involving stakeholder associations at national level”*

*Countries where there is a national platform are asked to fill in this table; where there is no platform, associations may use existing guidelines from the EU level model as they see fit according to their national circumstances and based on the key requirements set out below.*

EU level requirements	Obligations under national scheme	Assessment of compatibility	Suggested resolution
<p><u>Composition of EU Governance Group</u></p> <ul style="list-style-type: none"> <li>• <i>Farmers and agri-cooperatives</i><sup>1</sup></li> <li>• <i>Agricultural traders</i></li> <li>• <i>Food and drink industry</i></li> <li>• <i>Brands</i></li> <li>• <i>Retail</i></li> <li>• <i>SMEs</i></li> </ul>		<p>The requirement to establish a “national platform” in the UK has been fully met through the establishment of GSCOP and the Adjudicator.</p> <p>Not only does GSCOP/Adjudicator establish a framework a set of disciplines applying to retailers’ contractual behaviour, they also establish a legal framework to ensure the implementation and enforcement of these disciplines.</p>	<p><b>The governance group should explicitly recognise GSCOP/the Adjudicator as the “national platform” for resolving issues relating to concerns about GSCOP-designated retailers’ contractual practices.</b></p>
<p><u>National platforms</u></p> <p><i>Purpose is to analyse disputes regarding a serious breach of the principles that affects several members of an interest group represented in the EU level governance group. (see definition of aggregated disputes).</i></p>		<p>The GCA says:</p> <p>“The Adjudicator may investigate whether a large retailer has broken the Groceries Code if the Adjudicator has reasonable grounds to suspect that...the retailer has broken the Code.”</p>	<p><b>The governance group should recognise that in principle the Adjudicator will have the power to consider aggregated complaints. The governance group will be invited to confirm this understanding once the Adjudicator’s guidance has</b></p>

<sup>1</sup> These seats will be reserved for the associations representing farmers and agri-cooperatives if and when they join the EU level framework

		<p>This formulation is sufficiently broad to allow for aggregated complaints, anonymous complaints and for complaints from 3<sup>rd</sup> parties.</p> <p>The details of the investigative powers of the Adjudicator will be laid out in a guidance note that the Adjudicator is obliged to issue within 6 months of the entry into force of the Adjudicator Act.</p>	<b>been issued.</b>
<p><i><u>Issuing guidance and interpretation</u></i>  <i>National platforms must communicate to the EU governance group any guidance and interpretation (on the principles) within 10 working days.</i></p>		<p>The Adjudicator is required by the terms of the GCA to issue guidance within 6 months of the publication of the GCA Act. The BRC will ensure that any published guidance is communicated to the governance group within the timeframes stipulated.</p>	
<p><i><u>Relations between EU and national levels</u></i>  <i>“The governance group will only appreciate issues that have an EU cross-border dimension or issues with a national scope as long as there is no national equivalent option to deal with it in an aggregated and anonymous way.”</i></p>			<p><b>The governance group should explicitly recognise that the Adjudicator has the sole power to consider aggregated/anonymous complaints against any GSCOP-designated retailer.</b></p>



**Section 3: principles of good practice**

EU level Principles of good practice	Substantive obligations under national scheme	Assessment of compatibility	Substantive requirements of the EU level principles not covered by national scheme
<u>Consumer interest</u>			
<u>Freedom of contract</u>			
<u>Fair dealing</u>			
<p><u>Written agreements</u>  <i>“Agreements should be in writing, unless impracticable, or where oral agreements are mutually acceptable and convenient. They should be clear and transparent, and cover as many relevant and foreseeable elements as possible, including rights and procedures for termination.”</i></p>	<p>“A Designated Retailer must ensure that all the terms of any agreement with a Supplier for the supply of Groceries....are recorded in writing, as well as any subsequent contractual agreements or arrangements made under or pursuant or in relation to that agreement”</p> <p>“A Designated Retailer must not enter into a Supply Agreement with a Supplier unless the Supplier has a written copy of the Supply Agreement and of all the terms and conditions which are intended by the Retailer and Supplier to be incorporated, but are not fully documented, in the Supply Agreement.</p> <p>“Prior to de-listing a Supplier, a Retailer must provide Reasonable Notice to the Supplier of the Retailer’s decision to de-list, including written reasons for the Retailer’s decision.”</p>	<p>The provisions of GSCOP are at least as strict as those in the voluntary agreement.</p> <p>The GSCOP provisions are more specific in nature than those in the voluntary code.</p>	

	A Retailer may only de-list a Supplier for genuine commercial reasons.”		
<p><u>Predictability</u>  <i>“Unilateral change to contract terms shall not take place unless this possibility and its circumstances and conditions have been agreed in advance. The agreements should outline the process for each party to discuss with the other any changes necessary for the implementation of the agreement or due to unforeseeable circumstances, as provided in the agreement.</i></p>	<p>“...a Retailer must not vary any Supply Agreement retrospectively, and must not request or require that a Supplier consent to retrospective variations of any Supply Agreement.</p> <p>“A Retailer may make an adjustment to terms of supply which has retroactive effect where the relevant Supply Agreement sets out clearly and unambiguously;                  Any specific change of circumstances (such circumstances being outside the Retailer’s control) that will allow for such adjustment”</p> <p>“Detailed rules that will be used as the basis for calculating the adjustment to the terms of supply.”</p> <p>If a retailer has the right to vary a Supply Agreement unilaterally, it must give Reasonable Notice of such variation to the Supplier.”</p>	<p>The two sets of provisions relating to predictability appear to be entirely compatible.</p> <p>GSCOP merely provides greater detail on the specific procedures that a Designated retailer must observe.</p>	
<p><u>Compliance</u>  <i>“Agreements must be complied with.”</i></p>	<p>“A Retailer must at all times deal with its Suppliers lawfully and fairly. Fair and lawful dealing will be understood</p>	<p>The voluntary code’s formulation of “compliance” is rather different to the GSCOP principle of “fair dealing”.</p>	

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	<p>as requiring the Retailer to conduct its trading relationships with Suppliers in good faith, without distinction between formal and informal arrangements, without duress and in recognition of the Supplier's need for certainty as regards the risks and costs of trading, particularly in relation to production, delivery and payment issues.</p>	<p>However, they have broadly the same effect. In particular, the effect of both "compliance" and "fair dealing" is that the supplier will have certainty that the retailer is bound to honour the terms of the agreement they have reached with the supplier.</p>	
<p><u>Information</u>  <i>"Where information is exchanged, this shall be done in strict compliance with competition and other applicable laws, and the parties should take reasonable care to ensure that the information supplied is correct and not misleading.</i></p>	<p>There is no equivalent provision in GSCOP.</p>	<p>Although there is no explicit provision in GSCOP that mirrors the "information" principle in the voluntary code, it is taken for granted in GSCOP that all activities undertaken by retailers will need to comply with the legal requirements of the jurisdiction within which they operate.</p> <p>The duty of care that is described in the second part of the voluntary code's "information" provision is implicit in the requirement for "fair dealing" (described above) in GSCOP.</p>	
<p><u>Confidentiality</u>  <i>Confidentiality of information must be respected unless the information is already in the public or has been independently obtained by the receiving party lawfully and in good faith. Confidential information shall</i></p>	<p>There is no equivalent provision in GSCOP.</p>	<p>GSCOP is silent on the issue of confidentiality, although arguably, the general provision for "fair dealing" would cover this point.</p>	

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<p><i>be used by the recipient party only for the purpose for which it was communicated.</i></p>			
<p><u>Responsibility for risk</u>  <i>All contracting parties in the supply chain should bear their own appropriate entrepreneurial risk”.</i></p>	<p>GSCOP includes specific provisions that limit significantly the ability of retailers to transfer risk to their contractual partners. These cover retrospective changes to contract term, restrictions on requesting contributions to marketing costs, prohibitions for supplier payments for “shrinkage”, compensation for forecasting errors, restriction on contributions towards promotions, restrictions on the tying of third party of goods, no unjustified payments for consumer complaints, significant restrictions on listing fees.</p>	<p>Although formulated differently, the specific provisions of GSCOP cover all the main elements of entrepreneurial risk that are likely to be encountered in supplier/retailer relations.</p>	
<p><u>Justifiable request</u>  <i>“A contracting party shall not apply threats in order to obtain an unjustified advantage or transfer an unjustified cost.”</i></p>	<p>The principle of fair dealing says that retailers must not apply “duress” to their suppliers.</p> <p>In addition, in its interpretation of the term “require”, GSCOP says that “a Retailer will “Require” actions on the part of a Supplier if the relevant Supplier does not agree, whether or not in response to a request or suggestion from a Retailer, to undertake an action in response to ordinary commercial pressures. Where those ordinary commercial pressures are partly or wholly</p>	<p>The safeguards in the voluntary agreement against duress, coercion and retaliation are formulated slightly differently in GSCOP. Nevertheless, the safeguards in GSCOP give at least an equivalent level of protection to suppliers As those in the voluntary agreement.</p>	

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	<p>attributable to the Retailer they will only be deemed to be ordinary commercial pressures where they do not constitute or involve duress (including economic duress).</p> <p>In relation specifically to delisting GSCOP says:</p> <p>“For the avoidance of doubt, the exercise by the Supplier of its rights under any Supply Agreement (including this Code) or the failure by the Retailer to fulfil its obligations under the Code or this Order will not be a genuine commercial reason to de-list a Supplier.</p>		
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**Section 4: examples**

Examples - Illustrations	Substantive obligations under national scheme	Assessment of compatibility	Substantive requirements of the EU level principles not covered by national scheme
<u>Agreements – written/unwritten</u>			
<u>General terms and conditions</u>			
<u>Termination</u>			
<u>Contractual sanctions</u>			
<u>Unilateral actions</u>			
<u>Information</u>			
<u>Entrepreneurial risk allocation</u>			
<u>Listing fees (upfront access payment)</u>			
<u>Threatening business disruption</u>			
<u>Tying</u>			
<u>Delivery and reception of goods</u>			