

Proposed Regulation on cross-border enforcement of Unfair Trading Practices in the food supply chain – EuroCommerce views

EuroCommerce supports better enforcement against unfair trading practices, but the co-legislators must ensure there are safeguards to preserve the Single Market for sourcing and legal certainty.

Key messages

We call on the co-legislators to:

- Keep the proposed Regulation focused on cooperation between enforcement authorities based on the existing unfair trading practices and thresholds in Directive (EU) 2019/633 ('UTP Directive').
- Ensure enforcement authorities can refuse requests to cooperate or exchange information on national rules that go beyond the UTP Directive – especially since some of those rules may be incompatible with the Single Market.
- Not amend the UTP Directive or add new rules in the proposed Regulation ahead of the results of the evaluation of the UTP Directive.
- Not permit stricter national laws or interpretations of national unfair trading practices rules outside their jurisdiction. Upholding the choice of law and jurisdiction in contracts is critical to preserve the Single Market for sourcing and the benefits consumers derive from it – like wider choice and more affordable prices.

General considerations

1. **EuroCommerce supports better enforcement of EU rules against unfair trading practices but calls for safeguards to preserve the Single Market and companies sourcing cross-border** in the proposal for a Regulation on Cross-Border Enforcement of the UTP Directive¹.
2. We ask the co-legislators to ensure that:
 - The proposed Regulation is limited in scope and substance to cooperation between enforcement authorities based on the unfair trading practices that are unlawful in all Member States.
 - National enforcement authorities cannot use these rules to enforce stricter unharmonised national law outside their territory; requests for cooperation in relation to stricter national rules can be refused.
 - The proposed Regulation remains a procedural complement to the UTP Directive. This means this proposal must not amend the UTP Directive, for example by adding new rules.
3. The preservation of legal certainty and freedom to choose the law and jurisdiction applicable to contracts is critical to ensure that consumers can continue to reap the benefit of choice and affordability that result from the use of the Single Market for sourcing by retailers and wholesalers.
4. Allowing Member States to apply unharmonised national rules beyond their borders and undermining this choice of law risks re-nationalising sourcing to the Member State. This results in a reduction of cross-border opportunities and the continued stagnation of Single Market integration identified in 2025 Annual Single Market report.²

The importance of the Single Market for Sourcing

5. Retail and wholesale is a key sector in the agri-food chain, serving consumers and business customers every day with a wide range of safe, healthy, nutritious and sustainable products at affordable prices.
6. The economic advantage of the EU Single Market enables retailers and wholesalers to source a wider choice of products at better conditions. Cost efficiencies gained from optimal sourcing within the Single Market are passed on to consumers as competition is intensive between retailers and wholesalers and this enables them to provide their customers with a wider choice of products for more affordable prices. This is important as food affordability is a key concern for EU consumers³.
7. Sourcing in the Single Market is facilitated by the parties being able to choose the law and jurisdiction applicable to their transaction. There may be many reasons for this choice, ranging from familiarity, the national specificities, the legal clarity associated with definitions and national interpretation, speed or ease of access to justice, or the benefits/profits that may stand to be gained from the transaction.
8. If Member States were allowed to enforce their unharmonised national rules on contracts legally concluded in another EU country or, for reasons of public policy, to overrule the choice of law or jurisdiction made by businesses, it would become very complicated and legally uncertain for buyers to understand what rules are applicable to them or how they can resolve their disputes. This may push them to return to national sourcing as a more legally certain option. If the buyer is not yet sourcing cross-border, this will be a further barrier to them sourcing in the Single Market.

¹ [Commission proposal for a Regulation on Cross-Border of Directive \(EU\) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.](#)

² https://single-market-economy.ec.europa.eu/publications/2025-annual-single-market-and-competitiveness-report_en.

³ See for example [The State of Grocery Retail - EuroCommerce](#).

9. The recent Letta report explicitly warned against such renationalisation of sourcing, which will *'affect ultimately the benefits that consumers derive from the Single Market.'*⁴
10. It would further enable the use of territorial supply constraints, enabling large multi-national suppliers to justify the barriers they impose on retailers and wholesalers that mean they are refused the ability to source from other countries⁵. This would worsen the existing fragmentation of the Single Market currently costing EU consumers €14 billion per year and undermine any action that the European Commission may take at the request of many Member States.⁶
11. Fragmentation of the Single Market also has a negative impact on sustainability as it distorts free movement of goods, undermines the effectiveness of an EU-wide approach and resilience.
12. It also runs contrary to recommendations of the Draghi report⁷ that notes that competitiveness and new industrial strategy rests on the full implementation of the Single Market.

Preserving the Single Market for Sourcing

Limit the scope of the proposed Regulation to the harmonised unfair trading practices and thresholds within the meaning of the UTP Directive.

13. We call on the co-legislators to ensure that the proposed Regulation remains a procedural piece of legislation that only applies to cooperation between enforcement authorities relating to the **unfair trading practices** and the **thresholds** which are **harmonised** at EU level in Articles 3 and 4 of the UTP Directive.
14. These are unlawful in all Member States and are the only harmonisation agreed by co-legislators when the negotiations of that Directive were concluded in 2019.
15. The UTP Directive was a follow up to the 2015 Agricultural Markets Task Force, which recommended a baseline regulatory framework at EU level for tackling unfair trading practices.⁸ As explained by the Commission⁹, the UTP Directive provides a minimum and uniform layer of protection across the EU, noting that Member States can go beyond that minimum harmonisation because of the *'principle of subsidiarity and in view of existing laws in many Member States.'*
16. Most Member States transposed the UTP Directive in a stricter way, for example by adding new practices or amending turnover thresholds of application. This means **national legal regimes on UTPs remain very different in scope and content**:
 - For the 6 grey practices in Article 4 of the UTP Directive, certain Member States allow them if agreed upon beforehand, whereas other countries ban them outright.
 - Some Member States changed or removed the turnover thresholds established in the UTP Directive.
 - Several Member States have added new practices to the grey and/or black lists the UTP Directive or made practices stricter (e.g. by further shortening the payment terms).
 - There are also variations in how those unfair trading practices are interpreted nationally, e.g. the national jurisprudence relating to terms such as 'reasonably', 'delivery', 'later than'¹⁰.

⁴ [Enrico Letta - Much more than a market \(April 2024\)](#).

⁵ Territorial supply constraints are barriers imposed by large brand manufacturers to prevent retailers and wholesalers from sourcing in other EU countries. For example, suppliers may give instructions to their sales offices in various countries not to supply foreign retailers or wholesaler.

⁶ [Study on territorial supply constraints in the EU retail sector - Publications Office of the EU](#).

⁷ [EU competitiveness: Looking ahead - European Commission](#).

⁸ [Agricultural markets task force - European Commission](#).

⁹ [292c98d9-5df5-4c9e-b92f-090b5b171afd_en](#)

¹⁰ See the Commission's implementation report: [EUR-Lex - 52024DC0176 - EN - EUR-Lex](#).

17. The problem this creates can be illustrated with an example. Estonian UTP rules protect suppliers of all sizes (having removed all thresholds in the UTP Directive). Estonia requests cooperation from the Netherlands on a cross-border unfair trading practice alleged by a large supplier. However, the Netherlands has preserved the thresholds of the UTP Directive for reasons linked efficiencies or potential win-wins.¹¹ This means practices in the black list are not illegal vis-à-vis a large supplier in the Netherlands. Obtaining information on whether the unfair trading practice occurred or is occurring from the Netherlands would be irrelevant as the practice is not illegal. For this reason, it must remain outside the scope of the proposed Regulation.

In this context, we call for **additional safeguards in the Regulation** to ensure that:

- The scope of the proposed Regulation is limited to coordination of enforcement on the unfair trading practices within the meaning of the UTP Directive (and therefore enforcement authorities can refuse requests from other authorities based on unharmonised rules).
- The scope of the proposed Regulation is limited to the turnover thresholds within the meaning of the UTP Directive (and therefore enforcement authorities can refuse requests from other authorities based on unharmonised scope).

We call for **clarifications in the upcoming Staff Working Document by the Commission**:

- Transparency on the exact nature and examples of problems that were the driver behind the proposal.
- In the absence of an Impact Assessment and to enable assessment of the relevant safeguards necessary to understand how the unfair trading practices should be interpreted, given the national variations, the Commission should transparently share its analysis on what ‘any unfair trading practice within the meaning of Directive (EU) 2019/633’ captures.
- The Commission should also explain what happens until such time as the Court of Justice of the EU interprets the unfair trading practices in the UTP Directive and what weight is given to national jurisprudence or interpretation of the terms ancillary to the description of the unfair trading practice (e.g. ‘delivery’).

Preventing Member States from enforcing their unharmonised national rules on contracts legally concluded abroad

18. The proposed Regulation cannot allow Member States to request information or other enforcement measures on the basis of their unharmonised national laws beyond their borders on contracts concluded in another Member State and legal under EU law.

We call for **additional safeguards in the Regulation**:

- Enforcement authorities should be clearly able to refuse to cooperate if a request relates to national unharmonised rules.

Ensuring the proposed Regulation does not facilitate the application of rules that breach the Single Market

19. Certain national rules going beyond the UTP Directive may be contrary to EU law, but the Commission may not be aware of this because as of April 2024¹²:

¹¹ See Annex H of the Commission’s 2018 [impact assessment on the UTP Directive](#).

¹² [EUR-Lex - 52024DC0176 - EN - EUR-Lex](#).

- the Commission had not yet completed its ‘conformity check’ to assess whether national implementing measures are compatible with the UTP Directive;¹³ and
 - Stricter national rules have not been ‘subject to request for information or further investigation’ to assess their compatibility with the Single Market under Article 9 of the UTP Directive.¹⁴
20. Complaints on the compatibility of national rules with the Single Market have not been addressed by the Commission so far. For example, a year after the Commission has received a complaint submitted by EuroCommerce against France, the Commission is unable to answer whether there is a breach of EU law.¹⁵
21. The proposed Regulation cannot facilitate the application of rules that breach the Single Market or where there is good reason to believe they are infringing the Single Market (e.g. where a complaint has been submitted).

We call for **additional safeguards in the Regulation** to ensure that:

- The Commission should be able to intervene by its own initiative or at the request of a Member State to prevent enforcement of national rules that may be incompatible with the Single Market in the period when the Commission is still assessing compatibility.

Ensuring the proposed Regulation preserves fundamental rights for businesses

22. Businesses should be informed about the requests made for cooperation in investigations targeting their conduct.

We call for **additional safeguards in the Regulation** to ensure that a party alleged to have engaged in an unfair trading practice with a cross-border dimension:

- Is informed after the request is made, identifying what information has been required.
- Has a right to request access to the documents on the basis of which the enforcement authority reached a conclusion to make a request for mutual assistance.
- Has the right to express their views on the cross-border dimension and the opportunity to share their views on the truth and relevance of the facts, objections and circumstances, thereby enabling them to exercise their rights of defence, in accordance with national law.
- Has the right to make submissions on the incompatibility of rules with the Single Market.
- Has its trade secrets or other confidential information protected.

Ensuring the proposed Regulation remains without prejudice to private international law.

23. For the reasons explained above, preserving the Single Market for sourcing is key to ensure consumers can reap the benefits of choice and affordable products. The proposed Regulation must not create a *lex specialis* and remain without prejudice to private international law and therefore must remain concerned with administrative matters only.

¹³ [EUR-Lex - 52024DC0176 - EN - EUR-Lex.](#)

¹⁴ [EUR-Lex - 52024DC0176 - EN - EUR-Lex.](#)

¹⁵ The 2023 Annual Report on monitoring the application of EU law notes that the average time for handling complaints through an EU Pilot dialogue or an infringement procedure was 68 weeks in 2023. The average time for handling complaints that were further investigated under EU Pilot or infringement procedures and closed in 2023 was 84 weeks.

We call for **clarifications in the upcoming Staff Working Document by the Commission:**

- In the absence of an Impact Assessment, the Commission's assessment as to why the proposal is without prejudice to private international law and what should be done in the legislative process to preserve this. This should include:
 - Why the Commission considers that the proposed Regulation contain 'administrative matters' only.
 - Examples of the types of amendments which could be proposed which would change the character of the proposed Regulation and create a *lex specialis* by moving the Regulation beyond 'administrative matters' because they would affect the rights of those in the scope of the UTP Directive (e.g. if the amendment could imperil legal certainty or undermine the choice of law or jurisdiction in the contract).

No substantive amendments to the UTP Directive ahead of its evaluation

We call on the co-legislators not to preempt the results of the ongoing evaluation of the 2019 Directive and permit the changing or addition of new rules to the UTP Directive.

24. The Commission has explained that the proposed Regulation does not interfere with the ongoing evaluation of the UTP Directive. The evaluation of the UTP Directive is due by 1 November 2025 and this evaluation has been started. These separate tracks must remain, not least because:

- As of April 2024, the Commission had not yet completed its 'conformity check' to assess whether national implementing measures are compatible with the UTP Directive;¹⁶ and
- Complaints on the compatibility of national rules with the Single Market have not been addressed by the Commission so far.¹⁷
- Stricter national rules have not been the 'subject to request for information or further investigation'.¹⁸
- As far as we are aware, the Commission has not prepared an economic assessment in accordance with the impact assessment¹⁹, that stated that *'the European Commission should also directly carry out or commission economic studies aiming at measuring the impact of the different practices concerned by national rules and voluntary initiatives at micro- and macro-economic level.'* This is critical before a revision of rules on unfair trading practices can be discussed to ensure that practices are only considered unfair trading practices when it is proven that this will effectively improve the position of farmers, in line with the original aim of the rules to protect smaller weaker suppliers in their negotiations with a larger stronger player and its legal base (Article 43 TFEU).

Absence of an Impact Assessment

25. We are concerned that one of the first proposals to be adopted by the Commission after the new College took office was not accompanied by any stakeholder consultation or impact assessment.

¹⁶ [EUR-Lex - 52024DC0176 - EN - EUR-Lex.](#)

¹⁷ EuroCommerce submitted to the Commission that the French Descrozaile law of March 2023 is incompatible with EU law in December 2023. The Commission has not taken any formal action on such complaint (registered under number CPLT(2024)00230

¹⁸ [EUR-Lex - 52024DC0176 - EN - EUR-Lex.](#)

¹⁹ See Annex H of the Commission's 2018 [impact assessment on the UTP Directive](#).

26. The reason for the lack of impact assessment is explained in the Explanatory Memorandum as relating to urgency and lack of options, but:

- The urgency is not apparent, given the relatively few cases brought under the UTP Directive, the lack of a complete set of annual reports from Member States' enforcement authorities, and the non-completion of the conformity check. Additionally, Article 12 of the UTP Directive asked the Commission to evaluate by 1 November 2025 '*the effectiveness of cooperation among competent enforcement authorities*'. The Commission has not explained why it brought forward that date when the general review of UTP Directive is less than a year away.
- The lack of options is unclear, as the Explanatory Memorandum refers to the recommendation of the Strategic Dialogue on the future of Agriculture in the EU that suggested alternatives (for example a platform for the exchange of information). There was no explanation as to why this was dismissed or the cost benefit analysis that identified why this was not the preferred option.

27. The Commission has taken a patchwork approach to resolving problems that arise in cross-border transactions, proposing specific legislation (e.g. procedural rules related to Regulation (EU) 2016/679²⁰) or using collaboration tools (e.g. the creation of a P2B Wiki²¹).²² These different approaches were possible options which should have been considered, not least to ensure coherence and the avoidance of multiple procedures.

For our further views, please refer to our earlier position paper: [eurocommerce-views-on-utps-cross-border.pdf](#)

²⁰ [EUR-Lex - 52023PC0348 - EN - EUR-Lex](#)

²¹ The [Report on the Implementation of the Platform to Business Regulation](#) notes that a P2B Wiki was set up to support the exchange of information and coordinate enforcement activities and organise joint monitoring and enforcement actions.

²² For more examples of the different approaches, please see: [eurocommerce.eu/app/uploads/2024/11/eurocommerce-views-on-utps-cross-border.pdf](#)

