

Revision of the UTP Directive – reflections from EuroCommerce

- The 2019 UTP Directive aimed to protect smaller farmers and processors, but its transposition resulted in significant national divergence and has restricted mutually beneficial agreements.
- EuroCommerce calls for a limited review to bring coherence and ensure the Directive focuses on improving the situation of small farmers and processors as intended.
- Before creating new rules, we must ensure that the existing ones are used and known by increasing awareness and guidance.
- The EU must maintain the focus of the Directive on those it was created to protect – SME farmers and processors – rather than empowering large multinationals with no benefit to farmers.
- Maintaining a concise and clear set of practices, which does not interfere with market and price setting mechanisms, is the best way to protect farmers without creating legal uncertainty, undermining competitiveness and burdening consumers.
- UTP rules cannot solve all challenges in farming. We need to adopt measures for farmers to invest, digitalise, cooperate and manage risks and promote value chain dialogue.

Introduction

In light of the upcoming revision of the EU [Directive on unfair trading practices in the agri-food chain](#) ('UTP Directive' or 'the Directive;') later in 2026, EuroCommerce would like to make a number of suggestions.

The role of retail and wholesale in the agri-food chain

During the various crises in recent years, retail and wholesale companies have shown how essential their role is in the economy and for citizens. Food retailers and wholesalers employ more than 8 million people in 1.2 million businesses across the EU. They form the essential link between food production and consumption. They are present across the whole of the EU, and their different business models, ensure proximity, affordability and access to food and services even in rural and remote areas.

While retail and wholesale has limited direct links to farmers, we call for an EU framework on commercial relations in the agri-food chain that protects small farmers, strengthens competitiveness, ensures the smooth functioning of the Single Market and provides consumers with a choice of healthy and sustainable products at competitive prices.

The UTP evaluation shows that a major overhaul is not warranted by evidence

A major revision of the UTP Directive is not warranted by the economic context or evidence collected through the evaluation process because:

a) Market instability makes it impossible to assess whether the Directive has worked

The first period of application of the UTP Directive (late 2021-2024) coincided with abnormal economic conditions in Europe, especially in agri-food supply chains – caused by supply chain bottlenecks, record-high prices for key commodities like energy and the Russian invasion of Ukraine in February 2022.

Such market instability renders it difficult to evaluate whether the UTP Directive has been effective in strengthening the position of farmers in the chain as it may be hard to determine if a change in the position of farmers since late 2021 is due to the Directive or the abnormal market conditions. In particular, it may not be possible to examine whether there has been a ‘trickle-down’ to farmers as anticipated.

This is confirmed by the Commission in its [Evaluation report](#) from December 2025, who lists among the difficulties it encountered for the evaluation of the UTP rules:

- The short time frame for evaluation (2022-2024);
- The extraordinary situation in agri-food markets; and
- The difficulty in separating the effects of the UTP Directive from the effects of national rules.

b) Limited enforcement and awareness so far do not call for a major overhaul of the rules

The [Evaluation Report](#) highlights only 223 complaints received by authorities in 2024. The report notes that 90% of investigations originated in 4 Member States only.¹

These are few complaints given the large number of contracts that are signed by retailers and wholesalers with suppliers across the EU every year.

In some countries who have set up enforcement authorities in 2021 (such as Denmark) no complaints have been received despite there being procedures to protect the identity of the complainant not to jeopardise their interests.

¹ [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2025\)728&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2025)728&lang=en).

The low number of complaints may also be due to the persistent limited awareness by small farmers and suppliers of the Directive, as indicated by the yearly survey conducted by the Joint Research Centre on UTPs:

- 38% of the respondents of the 2023-2024 survey were not aware of the Directive.
- 56% were not aware of the possibility to complain to a national enforcement authority – a percentage that increases to almost 70% for small suppliers (with a turnover below €2 million).²

To meet this challenge, the Strategic Dialogue for the future of Agriculture of the EU suggested making available *'ready-made informational material to farmers to improve the awareness of the UTP Directive among the sector'*.³

The 2025 Evaluation Report also confirms that there are few 'genuine new needs' in terms of combating unfair trading practices.⁴

Recent changes proposed to the Common Market Organisation Regulation (CMO) should also help smaller farmers improve their bargaining power and complement the aim of the UTP Directive. The Commission must show that these various instruments (the UTP Directive and its national implementation and the CMO) are improving the situation of farmers before creating new rules.

The scope of application should be restricted and harmonised at EU level

The UTP Directive has the goal of protecting smaller farmers and processors against the alleged unfair trading practices of larger buyers. For these reasons, it provides a scope of application based on the turnover of the supplier and buyer.

The scope of application based on turnover thresholds should be lowered to ensure the focus on small and medium-sized farmers and producers who are in need of protection

The UTP Directive was intended to contribute to ensuring a fair standard of living for farmers and SME producers. This original intention of the EU legislator speaks against an extension of the scope of application beyond the current requirements of the UTP Directive, because this approach does not create any benefit to farmers but further strengthens the position of large suppliers and risks increasing retail prices to the detriment of consumers.

Extending the scope at national level and in EU discussion is justified by those who propose it on the basis of a 'cascade effect' along the supply chain to the benefit of farmers; as illustrated by the European Commission (see below), such cascading effects is hypothetical and has not been demonstrated, either at national level or by the European Commission. In fact, investigations in the food supply chain in Germany (see below) demonstrate the opposite, i.e. that the cascading effect does not exist.

In his contribution to the Commission Impact Assessment, the then DG COMP Chief Economist Tommaso Valletti warned against interfering in negotiations between large sellers and large buyers,

² https://datam.jrc.ec.europa.eu/datam/mashup/FOODCHAIN_UTP_4/. The Commission should note the low number of respondents (around 1,500) in comparison to the millions of farmers and suppliers in the EU.

³ https://agriculture.ec.europa.eu/document/download/171329ff-0f50-4fa5-946f-aea11032172e_en?filename=strategic-dialogue-report-2024_en.pdf

⁴ [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2025\)728&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2025)728&lang=en).

claiming that *'regulating commercial transactions between such large players could reduce the pressure that large customers can exert on large manufacturers to reduce their margins and imply significant market disturbance because of their broad impact on the market and, ultimately, on consumer prices. Besides, it is not obvious that farmers or other parties higher up in the supply chain would benefit from a regulation of UTPs that would give large processors or manufacturers greater margins.'*⁵

This was confirmed in November 2025 by the German Monopolkommission, which, after a year-long investigation in agri-food supply chain, concluded that *'it is assumed that the application of the UTP rules leads to the market levels downstream of agriculture – e.g., the producer level – passing on the resulting advantages through the supply chain to primary producers. However, **it is not apparent that the legislator has examined whether this cascade effect actually exists in the various supply chains [...] strengthening the producer level appears to lead to a margin shift between producers and food retailers that does not benefit agriculture or consumers.'***

The Monopolkommission notes that *'there is little justification for including downstream stages in the scope of protection of the UTP rules'* because *'it is neither evident from the available data nor theoretically plausible that agricultural businesses benefit when producers prevail in legal disputes with retailers'*.

The Monopolkommission advises that *'to make the UTP rules more manageable in practice, their scope should be limited in the future to supply relationships in which agricultural businesses or their associations are directly involved.'*

The 'cascade effect' is unlikely because the focus of large companies in the food industry on profit optimisation, which has been proven by studies, clearly speaks against this hypothesis. Any extension of scope of application to larger suppliers therefore only benefits global manufacturers' margins and does not lead to any benefit to farmers.

Removing thresholds creates the absurd situation where global multinational suppliers are 'protected' against practices of much smaller retailers and wholesalers – even SMEs.

In relation to the practices listed in the UTP Directive, this could mean the following:

- *Unilateral contract changes* would be legal if implemented by a global multinational vis-à-vis a SME retailer, but against UTP rules if made by a SME retailer; and
- *Short term cancellations*: it would be legal if a global multinational cancels a delivery at the last minute, but illegal for a SME wholesaler to do the same.

A number of countries eliminated turnover thresholds to no apparent benefits to farmers but with

⁵ UTP Impact Assessment, Annex H Section 2: *'there can be unintended negative consequences of regulating practices in the food supply chain. This concerns notably regulating the trading relationships between (mostly brand) manufacturers holding a significant share of the market of the sales of food products in a particular product category in a given Member State (hereafter designated in a simplified way as "large manufacturers") and their "large customers" (e.g. modern retailers holding a significant share of the food retail sales in a given Member State). Regulating commercial transactions between such large players could reduce the pressure that large customers can exert on large manufacturers to reduce their margins and imply significant market disturbance because of their broad impact on the market and, ultimately, on consumer prices. Besides, it is not obvious that farmers or other parties higher up in the supply chain would benefit from a regulation of UTPs that would give large processors or manufacturers greater margins. A large manufacturer that would leverage a regulation of UTPs to pressurize the retailers to increase prices at which retailers buy from the manufacturer has no obligation or incentives and is unlikely to share with its own suppliers the extra benefits it would obtain from such regulation.'*

evidence of damage to smaller retailers and consumers.

An example of the risks of unilateral protection of large suppliers:

- The extension e.g. of the 30-day payment term to all agricultural products to cover large manufacturers in a number of countries led to several issues:
- Large manufacturers selling sweets, snacks, drinks, including sweetened soft drinks and alcohol, etc. are in a significantly stronger position than national retailers, especially smaller ones.
- Local small producers already had reasonable sales conditions before the UTP Directive, so the changes only benefited large suppliers – with no change in the position of farmers.
- Some large producers of goods with long shelf life were not seeking to shorten payments, but retailers and suppliers had to do so because of the new extended rules.
- A large manufacturer may sell both agri-food products falling under the UTP Directive and other non-food products. However, a retailer's contract and invoices with that manufacturer may be the same for simplicity reasons. This means that the retailer's ability to negotiate with that large manufacturer may be limited also for products that have nothing to do with farmers – with consumers getting a worse deal at the end of the day.

Therefore, the scope of application of the Directive should be limited to small and medium-sized farmers and processors. This scope of application should be harmonised **across the EU**.

The clauses in the Directive protecting the Single Market must be reinforced

Article 9 of the 2019 Directive provides that Member States can maintain or introduce stricter rules provided these rules are compatible with the Single Market.

For each stricter national measure, Member States are already required to carry out an impact assessment to assess the impact on the Single Market and mitigate this, for example by finding the most proportionate means to achieve the same objective. To ensure compliance with this requirement, Member States should be required to provide a copy of that impact assessment to the Commission before the rules are adopted and ensure notification (e.g. via TRIS, the Internal Market Information System or other means) so other Member States or stakeholders can comment.

Certain national rules going beyond the UTP Directive may be contrary to EU law, but as of mid 2024 the Commission had not yet completed its 'conformity check' to assess whether national implementing measures are compatible with the UTP Directive. EuroCommerce itself has filed complaints on the compatibility of national rules with the Single Market which have not been addressed by the Commission so far.

The Commission must prioritise enforcement of EU law on the Single Market against national measures which do not comply with Article 9 of the Directive. The compatibility of national measures with the Single Market should be discussed regularly by Member States, UTP enforcement authorities and the Commission at least annually, with specific projects taken up by the Single Market Enforcement Task Force to seek solutions to overcome Single Market barriers.

The scope of application should be limited to relationships with SME farmers

In order to ensure the Directive achieves its goal of protecting SME farmers and limit inefficient and unintended misallocations in the supply chain, the scope of the Directive should be limited to relationships where SME farmers and producers are directly involved.

This was also a recommendation arising out of the recent German Monopolkommission's enquiry into the agri-food supply chain, who advised that *'in order to make the UTP rules more manageable in practice, the scope of application should in future be limited to supply relationships in which agricultural businesses or their associations are directly involved. For the remaining relationships in the supply chain, antitrust law offers sufficient protection.'*

Companies who want protection under the UTP Directive should be obliged to disclose their turnover

Since the entry into force of the UTP Directive (and its national implementation) between 2021 and 2022, retailers and wholesalers ensured compliance with the new rules by training their buyers, reviewing the list of their suppliers and adapting their contracts accordingly.

For several large suppliers, it is clear whether they fall within the turnover-base scope of the UTP Directive (and related turnover-based national rules). However, there are a number of companies for which it may be unclear whether they fall under the scope of the Directive.

In some instances, buyers asked for turnover information from suppliers to adapt contracts and comply with legislation, but those suppliers have refused to provide it. There are also suppliers who provide misleading information on their turnover, for example by only providing national turnover (whereas the applicable turnover is EU-wide) or exclude certain products from their turnover calculations.

In those instances, buyers are often forced to err on the side of caution and adapt their contracts to comply with the UTP Directive, even though this is not necessary by law. In those cases, therefore, retailers and wholesalers would limit their possibility to negotiate with suppliers to obtain win-win deals which could benefit all actors involved, including consumers.

Therefore, any revised Directive should oblige companies to provide correct turnover information to their buyers so that they can properly assess whether that supplier falls within the scope of the UTP Directive. Should they refuse to do so, those suppliers should not be entitled to the protection under the Directive.

As suggested by the German Monopolies Commission, the European Commission should consider limiting the scope of the UTP Directive to contracts concluded between farmers and their direct customers on the other.

The UTP Directive should prohibit a concise and clear list of practices

Maintain the grey list to preserve win-wins

The reasons identified in 2019 underlying the creation of the grey list remain relevant.

Grey practices, if mutually agreed upfront and in clear and unambiguous terms, can bring win-wins for both parties to a commercial transaction.

Limiting the possibility to negotiate certain terms can lead to companies missing out on beneficial clauses or more favourable conditions – or other tradeoffs that match the personal circumstances of the buyer or supplier.

Several Member States have abolished the grey list or restricted its application (e.g. in Romania, grey-listed practices can only be requested by suppliers and not buyers). **The Commission should preserve the principle behind the grey list – i.e. preserve situations which are mutually beneficial which can serve consumer welfare.**

As the Commission has explained, *‘defining certain business-to-business practices as UTPs instead of ordinary competitive behaviour intended to promote transaction efficiency, can reduce the surplus to a transaction and can harm both parties to it.’*⁶

An example of loss of win-wins of the grey list:

In Germany, the ban of returns of agricultural and food products including free replacement of perishable goods whose best-before date had run out or was close to expiry was moved from the grey to the black list. This stopped small suppliers who had built their business model on returns or who attached great importance to a constantly fresh assortment to compete with large brands from being able to do so. Those suppliers also developed secondary markets for the returned ‘less fresh’ products (HoReCa, further processing) and the products were removed from retail shelves were reused in manufacturing facilities for other products (also minimising food waste). The transfer of this practice from the grey to the black list even prompted a group of smaller suppliers to ask the German UTP authority to reinstate this mutually agreed take-back practice in the form of an exception.

Maintain a concise and clear set of practices which are workable

A number of Member States have included a ‘general unfairness clause’ in their UTP legislation banning all practices which are unfair.

We oppose this approach for a number of reasons:

- Such clauses create serious issues with legal certainty for all parties involved.
- In a context where suppliers lament insufficient enforcement, we do not see how such a broad prohibition could favour investigations, as it would be difficult to enforce.
- Vague terms can lead to more misunderstandings and disputes, which make it more difficult to resolve problems amicably, a goal the Strategic Dialogue endorsed⁷ (and that the Commission took up for example by promoting mediation in the context of the 2024 CMO reform).⁸
- A general unfairness clause could deter parties from engaging in negotiations which may bring win-win practices.
- Such clauses would have a wide scope for divergent interpretation in the Single Market at a time where clearer rules across the EU are necessary. These likely differences in national interpretation of a general clause would create further obstacles to cross-border trade in the Single Market.

⁶ [Staff Working Document accompanying the Retail Communication 2018.](#)

⁷ The Strategic Dialogue encouraged ‘*promoting mediation between commercial partners as a way to solve disputes*’.

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52024PC0577>.

Avoid interfering in price setting

A number of countries have experimented with measures which interfere with price setting (e.g. by prohibiting buyers from buying below the production costs of the farmers or capping promotions/discounts/services thresholds).

The German government has looked into this and concluded that *'a government-mandated cost orientation of prices is not an appropriate measure to improve farmers' income'*. This reflects other independent assessments such as the French "Institut national de recherche pour l'agriculture, l'alimentation et l'environnement (INRAE)", which told the European Parliament it was not possible to conclude whether French laws on prices in the agri-food chain have worked.⁹

The European Commission also examined a number of these national measures and has concluded that these schemes are highly complex but that their effects are not clear.¹⁰ The study concludes that countries implementing such ban faced considerable challenges in the implementation of the rules given their complex frameworks and that it was not possible to distinguish the effects of the rules from those of the economic context of the 2021-2023 high inflation period.

In addition, and as set out in our dedicated paper, a ban on purchasing below production costs would be difficult to implement for stakeholders and to enforce for authorities.

The Directive should not include an EU-wide ban on purchasing below production costs or prohibit practices which may have negative effects on consumer prices.

A number of exemptions from competition law for the farming sector (and the agri-food chain) to improve the negotiating position of farmers and subsequently their income are already available to use or will be approved shortly (e.g. rules on producers' organisation, art. 210a on sustainability cooperation). The Commission must ensure these tools are used to their full potential instead of further regulating commercial relations in the agri-food chain.

The Commission (and several Member States) are also working to improve transparency in the chain, i.e. by defining average production costs to help farmers. The Commission should continue developing these tools and provide that Member States need to ensure that financial literacy training is available and accessible to small farmers, including methodology, access to data and the use of digital tools to enable their understanding of production costs and the prices they can command.

Enforcement

More could be done to ensure awareness of the possibility of complaining to enforcement authorities and the rules around protecting the confidentiality of such complaints

As noted above, enforcement activity remains limited in Europe. This is often attributed to an alleged 'fear factor' – i.e. that the limited enforcement activity by national enforcement authorities is due to farmers being unwilling to complain as they fear commercial retaliations by their larger and more

⁹ <https://www.europarl.europa.eu/cmsdata/294173/Bonnet-agri-supply-chain.pdf>.

¹⁰ <https://op.europa.eu/en/publication-detail/-/publication/ae60facb-cb3d-11f0-8da2-01aa75ed71a1/language-en>.

powerful buyers.

However, the reason for a limited number of complaints is mainly due to the fact that the UTP Directive regulates what can and cannot be put in a contract. Retailers and wholesalers have taken this onboard, changing their contracts and training buyers on the new rules.

'Fear factor' cannot be the reason for a low number of complaints. There is a lack of complaints even where anonymous complaints are possible. It needs to be understood why this is. If it is a lack of awareness, adding new rules or increasing scope or administrative burden will not resolve this. In Belgium, almost 33% of the survey respondents say they do not complain because of fear of retaliation by the buyer. However, under Belgian law anonymous complaints are possible.

Additionally, awareness of the Directive and its procedures (e.g. possibility to complaint to a national authority, possibility of anonymous complaints) is low. This may explain the lack of complaints and hence enforcement activity.

Suggestions around reinforcing a 'name and shame' approach should also be assessed with caution. In several instances, decisions of national enforcement authorities have been annulled or substantially amended by the courts.

More should be done to ensure farmers and small suppliers are aware of the possibility offered by the Directive (and related national implementation) to complain anonymously (and/or through their producers' organisation) to enforcement authorities. This possibility should be reinforced while preserving the rights of defence of companies accused of wrongdoing, a key constitutional requirement for the EU and Member States.

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EuroCommerce is the principal European organisation representing the retail and wholesale sector. It embraces national associations in 27 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 business 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.