

Tackling unfair trading practices in the food supply chain

What are unfair trading practices?

Unfair Trading Practices (UTPs) are Business-to-Business practices that deviate from good commercial conduct and are contrary to good faith and fair dealing. They are usually imposed unilaterally by one trading partner on another. The food supply chain (FSC) is particularly vulnerable to unfair trading practices due to large differences in bargaining power.

Why regulate unfair trading practices now? Why aren't voluntary codes of conduct enough?

The European Commission has been looking into unfair trading practices (UTPs) in the food supply chain for several years already. There were [Communications](#) on the subject published in 2009 and 2014. In January 2016, the Commission took note in a [specific report](#) of positive developments to address unfair trading practices in the sector, both at national level and in the form of the voluntary "[Supply Chain Initiative](#)" initiated by the private sector. At the time, the need for EU legislation in this area was considered unnecessary but the Commission committed nevertheless to re-assess that need in the light of subsequent developments before the end of its mandate.

In November 2016, the Agricultural Markets Taskforce, an independent high-level group of experts created by the European Commission, presented its findings in a report entitled '[Improving Market Outcomes – Enhancing the Position of Farmers in the Supply Chain](#)'. It recommended, among other recommendations, that the EU legislate in the areas of unfair trading practices for agricultural products.

In early 2018, the Commission finalised a stock-taking of the developments related to unfair trading practices in the Member States and within the private sector, and it found that the expectations from 2016 were not met, as the earlier promising developments had slowed down with few recommendations being taken up. For instance, several Member States still had no or only limited UTP regimes in place, and key stakeholders had not joined the Supply Chain Initiative because of a weak governance structure that prevented effective investigation and enforcement of instances UTP cases.

As there are often significant differences in bargaining power between the different operators in the food supply chain, that still leads to situations where the weakest link, more often than not the agricultural producers, is being put in a vulnerable situation and subject to undue economic pressure.

A [EU-wide online public consultation](#) carried out in the second half of 2017 also confirmed that unfair trading practices in the food supply chain were still considered an issue by a majority of stakeholders, be it trade organisations, the farm sector and the food sector. 96% of the respondents to

the 2017 public consultation on the modernisation of the CAP agreed with the proposition that improving farmers' position in the value chain including addressing UTPs should be an objective of the EU's Common Agricultural Policy. The most recent [Eurobarometer survey of citizens across the EU](#) also shows that strengthening farmers' role in the food chain is supported by a majority of citizens.

The Juncker Commission is a Commission that protects and in the face of unbalance and unfair behaviour which could be corrected, we decided to act and for the first time ever submit legislative proposals to regulate unfair practices in the food supply chain.

Why did you choose these particular unfair trading practices to prohibit? What about the others?

There is a wide variety of trading practices covered by legislation at national level or by the private sector code of conduct. The UTPs selected by the Commission were widely seen as the most obviously unfair, affecting as they do in particular the weakest links in the food supply chain (namely farmers and small and medium-sized enterprises). There was also widespread consensus that these particular UTPs have a disruptive impact on the proper and efficient functioning of the food supply chain.

This consensus came from several sources: the [findings](#) of the [Agricultural Markets Task Force](#), an expert group set up by the Commission in 2016; the Supply Chain Initiative's [Principles of Good Practice](#); and the feedback the Commission received in response to various stakeholder consultations. For instance, in the Commission's [public consultation](#) on UTPs, respondents were asked to identify the practices they considered to be unfair and that had the most negative impact, while the Commission's [inception impact assessment](#) also received considerable feedback. The Commission also sent targeted questions to companies, consumer organisations and national authorities, hosted a workshop on UTPs and had numerous meetings with food supply chain stakeholders and civil society groups.

What are the products covered by the proposal?

Food products covered include agricultural products and products processed from agricultural products. Fishery products are included as agricultural products. The product coverage is in line with the occurrence of unfair trading practices in the food supply chain.

For the purpose of this proposal, how do you describe buyers and suppliers? Which stakeholders are targeted?

The proposal applies to anyone involved in the food supply chain, be it a retailer, a food processor, a wholesaler, a cooperative or producers' organisation, or a single producer who would be engaging in any of the unfair trade practices identified. The proposal aims specifically at empowering the weakest partners with little bargaining power so the supplier has to be of small and medium size according to the [definition](#) set at EU level.

Will this be an additional administrative burden for Member States? Will stakeholders in the food supply chain have to bear a financial cost?

Most Member State administrations already have structures in place to monitor and enforce legislation on UTPs, and in this case additional costs are expected to be marginal. Where such structures do not exist, the enforcement could be carried out by existing bodies such as competition authorities or consumer protection agencies which highly limit the costs.

In addition, evidence from those Member States that have recently established new structures to regulate UTPs under their national legislation shows that this is possible with a relatively low financial commitment.

Since most Member States already have some form of regulation of UTPs, businesses are likely to be well prepared and face only limited costs as a result. In any case, any additional costs are likely to be more than offset by the expected benefits of the policy in addressing particularly damaging UTPs.

Will there be any sanctions in case of non-compliance? If so, what will they be?

Yes. One of the principal reasons for creating an EU-wide unfair trading practices regime is to complement the private sector initiative, known as the Supply Chain Initiative, with an enforceable minimum level of protection across Member States. The proposed Directive therefore requires Member States to designate a public authority to enforce the ban on the listed practices. This authority must be able to carry out investigations – upon request but also under its own initiative -, to impose fines, and to publish its decisions.

What is the expected impact for farmers, processors, retailers?

Prohibiting the use of the UTPs identified as the most damaging for farmers and small and medium-sized suppliers in the food industry will increase trust within the supply chain, as well as compensating for the relative lack of bargaining power that these smaller operators have compared to their larger buyers. This should provide them with greater certainty (for example, they will no longer need to worry about finding a new buyer, due to last minute order cancellations) and reduce the need for them to manage risks over which they have little or no control.

Will the price of food products increase for consumers?

No. There is no reason why this EU legislation should lead to price increases for consumers: in the public consultation carried out by the Commission, there was no evidence presented to suggest that the unfair trading practices targeted lead to lower consumer prices or that prohibiting them would lead to higher prices. Consumer organisations in fact tend to encourage the regulation of these practices because they have a negative effect on consumers in the longer term.

The legislation also allows for a report by the Commission on the application

of the rules after three years, including on any impact on prices.

How does this proposal relate to the High Level Forum for a Better Functioning Food Supply Chain and to the Supply Chain Initiative?

The proposed Directive complements – but does not replace – the voluntary code of conduct from the Supply Chain Initiative, which itself is a result of the High Level Forum set up by the Commission in 2010 to investigate issues across the food supply chain. The decision to propose a common minimum standard of protection in the EU enables those Member States that already apply tougher standards against unfair trading practices to continue to do so.

Will Member States be allowed to go further and take their own measures? Will this duplicate or replace efforts of Member States?

Today's proposal, in the form of a Directive, is complementary to regulation at Member State level. Member States can go further in legislating, and many have more ambitious regulations already in place. Action at EU level creates a basic level of protection for operators in the food supply chain across the EU, through a minimum harmonisation of rules, shared rules on enforcement, and coordination of enforcement efforts.

Will these rules apply to non-EU suppliers and/or buyers?

Yes, they will apply to non-EU suppliers. This is for reasons of fairness and to avoid unintended distorting effects. For instance, if only suppliers in the EU were protected from UTPs, but not suppliers from third countries, buyers might have an incentive to buy from these third-country suppliers (where they would be free to impose UTPs).

Why is the Commission not taking action on price transparency?

The next step is indeed to turn to the issue of market transparency. The Commission will continue to work on this topic and we can expect to see the first results of this work in the second half of 2018. In parallel, the High Level Forum on the Better Functioning of the Food Supply Chain has a work strand dealing with this.

This work has to be seen as being undertaken on top of the transparency measures the Commission has already enacted such as the launch and working of the [market observatories](#) managed by DG AGRI.

For More Information

[The Agricultural Markets Taskforce](#)

[Basic facts and figures on the food supply chain](#)