

Making the EU Unfair Trading Practices Directive work in Global Value Chains

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Abstract

Power imbalances in EU agri-food value chains have led legislators to prohibit Unfair Trading Practices (UTPs). The EU adopted the UTP Directive in 2019 which formally extends to global value chains (GVCs) such as cocoa and banana. Yet, our research finds it has had little practical effects as no UTP cases involving non-EU operators have been brought to date. Key barriers include structural features of trade in GVCs, divergent provisions and enforcement across Member States, low awareness and fear of retaliation among suppliers, as well as the limited uptake of price-related provisions within the European UTP framework. This policy note outlines policy recommendations to strengthen the framework's effectiveness across GVCs, including expanding its scope, improving outreach, strengthening access to enforcement institutions, and integrating the international dimension into debates on price-related provisions.

Introduction

Unfair Trading Practices (UTPs), where a more powerful trading partner unilaterally imposes risks, costs, or obligations on another, became a focal policy concern in the EU in the 2000s. To counter the growing concentration of power among retailers and food processors in agri-food value chains, several EU Member States enacted national laws prohibiting UTPs. In 2019, the EU itself adopted the UTP Directive to establish a common legal basis (Directive 2019/633/EU), which has been evaluated in 2025 and is currently being reviewed by the European Commission.

The Directive formally covers transactions between non-EU and EU-based companies, thereby extending its scope to global value chains (GVCs) like cocoa and banana, where the EU is a major consumer. These products are sourced almost entirely outside the EU, yet they are often marked by unequal power and value distribution, low value capture for smallholders and poor working conditions. However, little research has examined the global dimension of the UTP framework so far.

This policy note summarizes the findings and policy recommendations of an in-depth Research Report "The Limited Reach of EU Unfair Trading Practice Legislation in Global Value Chains" that addresses these issues (see Papatheophilou, S. et al. 2026). First, it outlines the European UTP framework – consisting of the UTP Directive, the Regulation on cooperation among UTP enforcement authorities (Regulation (EU) 2026/697), and the national UTP laws – and highlights the heterogeneous national approaches to the provisions and their enforcement. Second, it assesses the factors limiting the framework's reach into GVCs.

Finally, it presents policy recommendations to strengthen the EU framework's impact on GVCs.

The European UTP framework

The UTP Directive prohibits certain practices in business-to-business (B2B) sales in the agri-food sectors. Practices on the "black list" are entirely prohibited and include, among others, late payments, last-minute cancellation of perishable orders, unilateral contract changes, transferring the risk of loss or spoilage to the supplier, refusing to confirm the contract in writing, and commercial retaliation (Art. 3 (1) UTP Directive). Other practices on the "grey list" like the return of unsold products, and certain payments demanded of the supplier, for example for listing or advertising the product, are prohibited, unless they are explicitly agreed beforehand (Art. 3 (2) UTP Directive).

As the aim of the Directive is the protection of weaker suppliers vis-à-vis more powerful buyers, the Directive only applies when the supplier has a significantly lower annual turnover than the buyer. For this purpose, Art. 1 (2) UTP Directive establishes concrete turnover thresholds.

Many of the practices listed in the UTP Directive are already prohibited under national civil law, but UTP-specific legislation adds a dedicated enforcement framework that allows anonymous complaints for actors that face unequal bargaining power in a value chain without the cost risks of court proceedings. Member States have designated enforcement authorities to receive UTP complaints, investigate them and impose fines and other measures to ensure compliance.

The current EU framework rests on the 2019 UTP Directive, the outcome of a decade-long policy process that began in 2008 with the European Parliament's concerns about growing retailer power and during which several Member States introduced national UTP legislation. The UTP Directive provides only minimum harmonisation, requiring all Member States to transpose its minimum requirements in national law. Member States may go beyond requirements, e.g. by prohibiting additional practices.

As a result, national UTP legislation remains highly differentiated across Member States. Only four Member States transposed the Directive's list of prohibited practices unchanged. Four further Member States introduced stricter provisions for the UTPs already listed in the Directive, without extending the list of prohibited practices. All other Member States have prohibited additional UTPs beyond those covered by the Directive.

One concern is that prohibiting certain business practices may lead powerful buyers to shift pressure onto prices. In order to combat the shift from prohibited UTPs to unregulated unfair prices, two approaches have been developed by Member States. On the one hand, five Member States include general clauses prohibiting "unfair behaviour" in their UTP laws to prevent actors from circumventing specific UTP prohibitions by adopting new practices with similar unfair effects (the so-called "waterbed effect"; Corbalán et al. 2022). On the other hand, seven Member States have included provisions related to prices in their UTP frameworks. This corresponds to the centrality of prices in determining whether a contract is ultimately fair to both parties (Eller 2025), which is also why prices are central to fair trade initiatives. Existing price-related provisions in national laws include prohibitions of buying below individual/average production costs, rules prohibiting retailers from selling private label products below production costs, and rules establishing that production costs must be reflected in the price.

In addition to the differences in the lists of UTPs covered, nineteen Member States have altered the turnover thresholds of the Directive by either eliminating the turnover requirements altogether or changing how they are applied. Only eight Member States transposed these turnover thresholds without changes.

Importantly, it is the enforcement, rather than the underlying prohibitions, that distinguishes the legal approach in addressing UTPs in the context of unequal bargaining power. Across Member States, the authorities and their enforcement styles vary considerably including complaint-driven processes, ex officio investigations, sector inquiries, and "cluster cases" that aggregate multiple suppliers to safeguard anonymity. Spain alone accounts for 75-80% of EU-wide ex officio cases, owing to its mandatory contract registration regime. Also, ombudsperson models, used in Austria and Finland, substantially increase reporting compared with formal complaints alone.

The limited reach into GVCs

An analysis of enforcement reports from EU Member States, together with interviews with seven enforcement authorities, found no UTP cases brought by or against third-country operators in cocoa, banana, or any other sector. While even EU-based suppliers continue to be reluctant to file complaints with their national UTP enforcement authorities (cf. European Commission 2025: 95f.) and cross-border cases within the EU remain exceptional, several structural barriers further limit the reach of UTP regulation into GVCs.

Limited coverage in GVCs

The UTP Directive applies if at least one of the two parties of the sales contract is based in the EU (Art. 1 (2) UTP Directive). Thus, in GVCs of agricultural goods sold to the EU market, only third-country exporters to the EU are included. This leaves substantial parts of entire GVCs effectively uncovered, in particular almost all primary producers outside of the EU.

The limited application is further intensified by intra-company transactions between multinational subsidiaries and "transit trade". In intra-company transactions, the exporter and importer belong to the same multinational company, reducing incentives to report UTPs to enforcement authorities. In transit trade, the exporter's counterpart is not an EU buyer, but a commodity trading company based in a trading hub such as Switzerland or Singapore. The trading company then sells the product to the EU buyer, even though the physical product is shipped directly from the supplier to the EU. As a consequence, the exporter's transaction is not covered by the UTP Directive. Both types of international transactions are common in cocoa and banana GVCs. Turnover thresholds also contribute to the application gap of the UTP framework in GVCs.

Combined, these factors mean that substantial shares of imports to the EU are legally or effectively excluded from the scope of the UTP Directive. We estimate that almost 40% of banana imports and as much as 60% of cocoa imports to the EU fall outside the Directive's scope.

Practical limitations

The awareness of the Directive remains low. Roughly a third of surveyed EU actors report no knowledge of it, and non-EU operators exporting to the EU are almost entirely unaware. A study of the Ecuadorian cocoa sector found that exporting companies had no knowledge of the Directive, its enforcement authorities, or complaint mechanisms, despite experiencing UTPs themselves (Helguero 2025).

Further, the "fear factor" deters complaints even among suppliers that are aware of the Directive. UTPs are often endured without being reported, due to fear of jeopardising the commercial relationship (Ackermann 2020; Fairness-

Büro 2024). This is particularly the case where downstream sectors are highly concentrated so that suppliers have few alternative buyers. In such situations, suppliers have little to gain from complaints but face substantial risks. To seek compensation, they would need to disclose their identity, and in most Member States launch a court case.¹

The access to enforcement is further complicated by the heterogeneity of national UTP laws. This leads to legal uncertainty for multi-jurisdiction suppliers (Areté srl. 2025; van Ahee et al. 2022). The recently adopted regulation on co-operation among EU UTP enforcement authorities does not resolve this fragmentation and allows authorities to decline mutual assistance for UTPs not covered by the Directive (Art. 13 leg cit). Language barriers add a further obstacle as most enforcement authorities provide complaint forms only in their national languages.

Finally, the Directive in its current form does not address UTPs in relation to prices despite their key role in addressing uneven value distribution across value chains. For this reason, price has a key role in fair trade (as the principles of the World Fair Trade Organization and Fairtrade International), retailer-led multi-stakeholder initiatives, and other Alternative Trading Practices. In our research, prices were consistently identified by producers and experts alike as the central fairness concern.

Policy options to strengthen the global dimension of the UTP Directive

Based on the limitations identified above, we outline key policy areas to strengthen the UTP Directive as an instrument to reach global value chain actors. While the recommendations focus on GVCs, they would also enhance the effectiveness of the instrument overall.

Enlarging the scope of applicability

Three concrete changes could be made to the UTP framework to improve its application to non-EU suppliers in GVCs.

First, a removal of turnover thresholds, as many Member States have done, could expand the scope of transactions covered by the UTP framework. This would resolve issues raised by enforcement authorities as turnover thresholds have proven to be difficult to verify and not suitable for determining the actual bargaining power of a particular actor. They might even lead to adverse effects of buyers preferring suppliers that fall outside the scope of protection of the UTP Directive (BMEL 2023).

Second, while the territorial limits cannot be fully removed, since the EU has no jurisdiction over non-EU actors without a direct contractual link, the legal definition of “buyer” could be rephrased to include EU actors billing, ordering or receiving goods. This would ensure that the UTP framework is not bypassed via transit trade.

Third, although contracts between non-EU actors (e.g., between non-EU producer and non-EU exporter) cannot be governed by EU law, these actors can be contractually required not to use UTPs by EU actors. Other EU laws that aim to have an extraterritorial effect, such as the Corporate Sustainability Due Diligence Directive (CSDDD; Directive 2024/1760/EU) make use of this. They require EU actors to ensure compliance with EU law throughout the value chain, *de facto* relying on EU actors to contractually ensure that the contracts along the value chain adhere to the rules of EU law. Amendments to the UTP Directive could be made to strengthen the ties with existing obligations in other laws, particularly the CSDDD's living-income provisions and associated reporting duties, to ensure a further territorial effect of the UTP Directive's provisions.

Tackling practical barriers to access of UTP enforcement

The UK's UTP framework, the Groceries Supply Chain Practices Market Order (GSCOP), provides a working example of how awareness for rules on UTPs can be created. It requires buyers to inform their suppliers of their rights under the GSCOP in the sales contract. As a result, one in three UK grocery suppliers report being affected by UTPs, including a meaningful share of overseas respondents, and non-UK suppliers have already used the mechanism in formal investigations. Comparable EU measures could include obliging buyers to inform suppliers of their rights under the UTP framework, inclusion of non-EU actors in UTP surveys and targeted outreach through trade associations.

On accessibility, the language barrier could easily be overcome: Several Member States such as Italy, Cyprus and Belgium now provide complaint forms in English. Spanish or French versions could follow. Further, selected Member States have installed alternative complaint procedures and established ombudspersons, which helps suppliers report concerns without first establishing whether their case meets the strict legal definition of a UTP and overcome the pervasive fear factor. An ambitious step could be the establishment of an EU enforcement authority to handle cases of exporters affecting more than one Member State.

On enforcement, authorities in many Member States proactively investigate UTPs in the agri-food sector. To do so, they conduct sector inquiries, *ex officio* investigations covering particular parts of a value chain or entire value chains. In particular, *ex officio* investigations throughout the entire value chain are measures that have uncovered the first UTPs cases in (intra-EU) transnational trade and can be seen as potentially beneficial to tackle UTPs in GVCs.

Considering new provisions in the Directive

The effectiveness of price-related provisions in UTP laws such as the ban of purchasing prices below production cost is subject to an intense debate (Forstner 2023; S&P Global Commodity Insights (Agra CEAS Consulting S.A.) et al. 2025). In any case, the increasing number of Member

States that have already taken up price-related provisions requires consideration of whether there is need for Union action. As the debate evolves, the possible implications for non-EU GVC actors should not be neglected, in particular in sectors such as banana, where prices are not reflecting the increasing costs of production. Complementary transparency efforts, such as the EU's new Agri-Food Chain Observatory, should potentially be extended to non-EU production costs. As the gathering of data on prices, margins and production costs is notoriously difficult, the fair trade principles for calculating minimum prices, premiums and living incomes can serve as examples in this regard.

Finally, the UTP framework only prohibits *unfair* practices without incentivising fair trading practices. In the early days of UTP regulation, the EU supported a dual approach of voluntary sustainability initiatives, in particular the Supply Chain Initiative, and regulatory efforts on behalf of the Member States (European Commission 2014). Currently, Italy's UTP law offers an exception, defining "good business practices" alongside its UTP list and allowing certified contracts to be marketed accordingly (Art. 6 Decreto Legislativo 198/2021). Such approaches could be adopted in other Member States as well, combining the advantages of positive approaches (e.g., voluntary use, and marketability) together with the advantages of state regulation (e.g., control through state powers that are more far reaching than private initiatives, creating a level playing field).

Conclusions

The occurrence of UTPs in agri-food supply chains is closely related to concentrated market power. Although the UTP Directive as the legal instrument to ban these practices formally covers non-EU exporter, this has not translated into practice: no cases brought by third-country actors have emerged, and GVC-related barriers to the regulations remain largely unaddressed.

Key barriers include the narrow jurisdictional and transactional scope (excluding certain upstream actors and intra-company/transit trade), turnover thresholds, low awareness among non-EU suppliers, fear of retaliation, legal fragmentation across Member States, and the Directive's exclusion of price-related provisions, despite price being central to uneven value distribution.

We propose five directions for reform to strengthen the global dimension of the UTP framework: expanding the territorial and personal scope, raising awareness among non-EU actors, strengthening enforcement institutions (anonymity, accessibility), addressing price-related UTPs at EU level, and incentivizing good business practices. These would be most effective if pursued alongside parallel reforms of the Common Market Order (European Commission 2024) and draw on existing experiences from fair trade and Alternative Trading Practices.

More generally, it is important to note that the effectiveness of current and new UTP provisions remains debated and calls for further empirical research on UTP dynamics in GVCs, in particular as the application of the framework has so far taken place primarily in national context.

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- 1 For the Member States allowing compensation without judicial proceedings, see: European Commission 2025: 31.

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