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The Limited Reach of EU Unfair Trading Practice Legislation in Global Value Chains

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List of Abbreviations

AFCO	Agri-Food Chain Observatory
AgrarOLkG	Agrarian Organizations and Supply Chains Act Germany (Agrarorganisationen-und-Lieferketten-Gesetz)
ATP	Alternative Trading Practice
CAP	Common Agricultural Policy
CSDDD	Corporate Sustainability Due Diligence Directive
EC	European Commission
ECHR	European Convention on Human Rights
EU	European Union
FAO	Food and Agriculture Organization
FCC	Federation of Cocoa Commerce
FWBG	Fair Competition Act Austria (Faire-Wettbewerbsbedingungen-Gesetz)
GCA	Groceries Code Adjudicator
GSCOP	Groceries Supply Code of Practice (UK)
GVC(s)	Global Value Chain(s)
Int	Interview
JRC	Joint Research Centre
LI	Living Income
LW	Living Wage
MNC(s)	Multinational Corporation(s)
MSIs	Multi-Stakeholder Initiatives
SME	Small and Medium-sized Enterprise
UTP(s)	Unfair Trading Practice(s)
VAT	Value Added Tax
WFTO	World Fair Trade Organization

ABSTRACT

Power imbalances in EU agri-food value chains have prompted legislators to prohibit 'Unfair Trading Practices' (UTPs). The European UTP framework extends to global value chains (GVCs) such as cocoa and banana chains, where the EU is a major consumer and which are known for the application of UTPs. However, European UTP legislations have proven ineffective in addressing UTPs globally. Through comparative legal analysis, review of academic literature and Member States' UTP reports, and semi-structured interviews, we investigate factors contributing to the minimal uptake of UTP regulations in GVCs. Our findings identify key barriers: diverging regulatory and enforcement approaches across EU Member States, limited awareness and the fear factor among GVC actors, and the absence of price-related provisions. Targeted reforms to harmonize selected provisions and enforcement approaches provide options to strengthen the regulatory framework's capacity to mitigate power imbalances in agri-food GVCs.

***Keywords*:** Unfair Trading Practices, global value chains, cocoa, bananas, enforcement mechanisms

1. INTRODUCTION

Unfair trading practices (UTPs) are elusive but can generally be described as 'practices where one trading partner unilaterally imposes costs, risks, or difficulties on another trading partner' (Deconinck 2021; Sexton 2017). Research on global value chains (GVCs) – in which geographically fragmented production structures are controlled by lead firms in highly concentrated segments – has demonstrated that power imbalances between large corporations and other actors within these networks heighten the risk of rent extraction and unequal value distribution (Ponte et al. 2019). In this context, UTPs function as potential instruments through which larger actors that are more powerful exert leverage over comparatively small producers within these unevenly structured value chains.

UTPs such as unilateral contract changes, cancellations on short notice and late payments became a focal issue in agricultural and food policy discussions in the late 2000s as they are closely tied to the growing concentration of power among both processors and retailers in agri-food sectors (Swinnen et al. 2021). Attempts to regulate UTPs can be traced back to a series of structural transformations in the EU food regime. In particular, common agricultural policy (CAP) reforms in the 1990s and 2000s increased farmers' exposure to price fluctuations, while the food price volatility of 2007–2011 and rising retail concentration heightened concerns about farmers' vulnerability (Swinnen et al. 2016; Vandevelde et al. 2020). In 2008, the European Parliament tasked the Commission with proposing measures against the 'abuse of power by large supermarkets' due to the growing concerns about UTPs (European Parliament 2008).

While the Commission subsequently issued communications on UTPs (European Commission 2014; 2013; 2009), specialized legislation on UTPs in agri-food sectors was left to the Member States, some of which already adopted domestic UTP laws and enforcement mechanisms (European Commission 2016). In 2019, the EU UTP Directive (Directive 2019/633/EU, OJ L 111/59) was introduced based on the analysis of the occurrence and effects of UTPs in different agri-food value chains in the EU (Deconinck 2021; Di Marcantonio et al. 2020; Di Marcantonio/Ciaian 2017; Swinnen et al. 2021). Moreover, other countries such as the UK, Japan, New Zealand and Australia have introduced or discussed UTP regulations in various forms since then (FAO 2024). Recently, high food price inflation rates and farmers' protest have put UTPs on the current policy agenda in the EU again (European Commission 2025a).

The current European UTP framework, comprising the EU UTP Directive and its national transpositions, adopts a business-to-business transaction approach that also applies to transactions between non-EU and EU-based companies and thereby applies to global value chains of agri-food products. Selected GVCs of products sourced only from outside the EU – such as cocoa and banana, in which the EU represents the largest consumer market – are governed by multinational traders, processors and retailers on the one side, and characterized by low value capture for smallholders, poor working conditions, low wages for workers, and high levels of child labour on the other side (Alliot et al. 2017; Banana Link 2019; FAO/BASIC 2020; Grohs et al. 2023). Cocoa and banana are, therefore, core products of fair trade approaches using Alternative Trading Practices (ATP).

The occurrence and adverse effects of UTPs on smallholders and other actors in producer countries have been assessed in research and studies on cocoa and banana GVCs (BASIC 2015; Ben Lassoued et al. 2016; Helguero 2025; Motz 2025). These value chains often place suppliers in non-EU countries at an even greater disadvantage, as they face unequal negotiating conditions while having larger barriers to access legal remedies. In the European UTP framework non-EU actors are explicitly included (Art 1(2) UTP Directive). However, there is a limited understanding of the effects of UTP legislation on non-EU actors.

Against this background, this report aims to shed light on the applicability and the effectiveness of the European UTP framework in addressing UTPs within GVCs of products that are potentially exposed to such practices. To this end, we describe and analyse the current EU legal framework and enforcement mechanisms, and identify potential limitations to the applicability of UTP legislation to the global dimension of supply chains, with a focus on the banana and cocoa GVCs. Building on this, we explore options for adapting legislation and enforcement to include non-EU actors more effectively. It should be noted that this analysis does not seek to evaluate whether UTP legislation constitutes the most appropriate instrument for addressing UTPs in GVCs. Such a determination would necessitate further empirical research on the prevalence and effects of UTPs, as well as a systematic contextualisation of UTP legislation alongside other relevant policy instruments and regulatory frameworks.

The findings which are presented in the following sections are based on comparative legal analysis, review of academic literature and Member States' UTP reports, and semi-structured interviews with enforcement authorities, sector experts and corporations in the selected GVCs.[1] In our analysis and findings we also refer to insights gained from the recent evaluation of the UTP Directive by the European Commission (EC 2025a).

The findings show that, to date, no investigations on UTPs have been initiated in the selected GVCs or concerning products involving non-EU operators. Beyond the limited coverage of many international GVC transactions within the UTP framework, several factors appear to contribute to the missing uptake of European UTP regulations in GVCs. The most significant barriers include divergent national approaches to UTP regulation across EU Member States – resulting in variation in substantive provisions, enforcement mechanisms, and accessibility – alongside limited awareness of the framework and reluctance among GVC actors to report unfair practices due to perceived risks.

Certain provisions and enforcement mechanisms already applied by EU Member States – such as ombudsperson procedures and the removal of turnover thresholds – show the potential to broaden the reach of UTP regulations also within GVCs. Reforms of the current Directive and its application including harmonised enforcement approaches as well as renewed debates about price-related UTPs could further strengthen both the visibility of the regulatory framework and the capacity to mitigate power imbalances in agri-food GVCs.

This report is structured as follows: In section 2 we assess the development and the current structure and content of the European UTP framework itself, the enforcement mechanisms in the EU and provisions related to prices. In section 3 the application of the framework in the case of GVCs is assessed and we identify the limiting factors of the framework regarding the global dimensions of UTPs. In section 4 we present potential means for the enhanced application of the European UTP framework to UTPs in GVCs. Lastly, we conclude and outline prospects for further research and policy development.

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1 This report is based on 34 interviews conducted between December 2024 and May 2025, which were also the basis of a contribution to the evaluation process of the Directive in 2025. The interviews are referred to below by codes Int0 – Int33 (see Annex 1). Where consent was given, interviews were recorded. Transcripts and notes were analyzed in MAXQDA, maintaining full anonymity and confidentiality. The analysis is further based on documents up to January 2026.

2. The European UTP legal framework

2.1. Regulating UTPs

From a legal perspective, UTPs are prohibited, but they can be regulated in a wide variety of manners of legislations. They are addressed 'through general competition law, contract law, trade law, sector-specific legislation and/or self-regulation' (FAO 2024: p. 1). Generally, all UTPs included in the EU UTP Directive are already forbidden in civil law (i.e., the field of law governing contracts between private actors).[2] In other words, specific UTP legislations are not necessary to ban these practices in the first place.

However, UTP legislation defines certain UTPs and introduces specific complaint and enforcement mechanism considering the unequal bargaining positions of the contract partners in agri-food sectors. Whereas competition law classically focuses on situations of abuse of *market power*, i.e. the ability of an actor to raise prices above competitive levels in a profitable way, abuse of power in the agri-food sector often manifests differently (EC 2025a: p. 4–5). Here, abuse of *bargaining power* of stronger actors towards their contractual counterparts, in particular towards agricultural producers, is salient (ibid.: 5).

What differentiates UTPs as defined by the UTP Directive from other practices that are considered breaches of civil law is the UTP enforcement framework that actors can turn to anonymously in case of a UTP violation. Without a UTP legislation, a party must typically resort to bringing a civil claim before a court in the case of violations of the standard contract, which cannot be done anonymously, is costly and potentially affects the business relations with that partner. The aim of the UTP Directive is 'reducing the occurrence of UTPs in the food supply chain by introducing a minimum common standard of protection across the EU that consists of a short list of specific prohibited UTPs' (European Commission 2018b: p. 3). Despite possible fines for the applicant of UTPs, the framework is not intended to provide direct compensation for losses due to the application of UTPs in individual cases.

Nevertheless, the UTP Directive attempts to diminish UTPs in agri-food value chains through direct and preventive effects. The UTP framework has direct impacts on those individual actors against whom complaints about specific practices are raised. The enforcement authorities can order the offending operator to cease the practice, impose fines and take other measures to ensure future compliance with the UTP laws – in short, specifically deterring the operator from resorting to UTPs again.

As a UTP enforcement authority noted, the UTP Directive is built to protect individual contractual relationships from UTPs, thus cases always revolve around individual disputes (Int24: para. 43):

> 'This whole law is established on [the premise of] a bilateral relationship of two – a specific supplier against a specific buyer. It's not like class action lawsuits of consumer associations or something like that. That's not how this law is built. You always need this bilateral relationship. You can only look for if this relationship exists multiple times. But in the end, to issue a decision we always need one or more of those bilateral relationships.'

However, there are also indirect effects on the consequences of UTPs for all value chain actors as the ban of practices at one stage of the chain avoids cascading adverse effects along the chain (Recital 6, Directive 2019/633). In other words, as the effects of UTPs can be transmitted along value chains (Russo 2020), stopping a UTP at one part of the chain could have positive effects on other stages of the chain as well. Preventive effects further emerge through the risk of sanctions for the use of these prohibited practices leading actors to

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2 Prohibitions are found in the civil law in most Member States or for some UTPs even in EU law (e.g., the prohibition of disclosing trade secrets is forbidden in Directive (EU) 2016/943, OJEU L 157).

proactively avoid such practices to the benefit of all value chain participants (general deterrence effect).

Self-regulatory frameworks, implemented through industry standards, for instance exist in the cocoa value chain: The Rules of the Federation of Cocoa Commerce (FCC) in international cocoa trade regulates all aspects of the contract in such a detailed manner that any UTP committed by a party would constitute a violation of the contract (Federation of Cocoa Commerce 2023b, 2023a, 2021c, 2021b, 2021a, 2020, 2019, 2008; see for a similar assessment of Australian industry codes Australian Competition and Consumer Commission 2020). They thus aim to prohibit the use of UTPs, without mentioning UTPs or using a UTP framework. Any violations can be solved in an arbitration system, which is, however, costly and does not allow for anonymity vis-à-vis the other party (Helguero 2025).

2.2. Towards an EU UTP Directive

The current European UTP framework is based on the EU UTP Directive of 2019 and its national transpositions. The substantive and procedural provisions, addressing which practices are prohibited and how these prohibitions are enforced, are the result of a more than decade-long policy-making process in the EU. In 2008, the European Parliament tasked the Commission with proposing measures against the 'abuse of power by large supermarkets' based on the growing concerns about UTPs. The Commission subsequently issued communications on UTPs, but the explicit legislation of UTPs was left to the Member States.

Several Member States such as Hungary (Act XCV/2009), Czechia (Act on Significant Market Power and Unfair Trading Practices in the Sale of Agricultural and Food Products 395/2009 Coll), Lithuania (Law on the Prohibition of Unfair Practices of Retailers 2009), Romania (Lege 321/2009 privind comercializarea produselor alimentare) or the UK (Groceries Supply Code of Practice (GSCOP) 2009) prohibited UTPs in explicit laws already in 2009 based on the initial debate on the EU level. Other Member States applied general competition law or civil law prohibitions of practices contrary to good customs to cases of UTPs, but without the procedural specificities of the UTP framework which allows for anonymous complaints and ex officio investigations of authorities (European Commission 2018a). Due to the 'widening spread between farm and retail prices' (OECD 2013: p. 10) in the 2010s, the number of Member States prohibiting specific practices as UTPs, including more practices on their 'black lists', or considering specific UTP legislation, increased starkly. Prior to the adoption of the UTP Directive, Bulgaria, Croatia, Finland, Italy, Latvia, Poland, Portugal, Slovenia, and Spain adopted UTP laws.[3]

These domestic UTP laws showed 'considerable heterogeneity' of banned practices (Swinnen/Vandevelde 2017: p. 54). Some Member States relied only on general clauses to prohibit UTPs, others had lists of varying lengths (European Commission 2016: p. 5), and some included prices in their UTP regulations.[4] This heterogeneity at first deterred the Commission from proposing EU wide legislation on UTPs (European Commission 2016; Paredis et al. 2024). Instead, the Commission initially opted for a combination of the Member States' regulatory frameworks and voluntary framework of the Supply Chain Initiative[5] that the Commission had helped to create. However, the Agricultural Markets Task Force, installed by the Commission, concluded in 2016 that the effective ban of UTPs in agri-food sectors requires

3 Dinev 2024: p. 44; Ferrari/Iamiceli 2024: p. 256; Knapp/Piszcz 2024: pp. 355–356; Mutavdžić 2024: p. 60; Pirra 2024: p. 379; Weingerl 2024: p. 449; Elintarvikemarkkinalaki (1121/2018) (Finland); Negodīgas mazumtirdzniecības prakses aizlieguma likums 2015 (Latvia); Ley de medidas para mejor el funcionamiento de la cadena alimentaria 12/2013 (Ley de la Cadena) (Spain); Ley 16/2021 por la que se modifica la Ley 12/2013 (Spain).

4 This can be observed for Spain and France, which still use a price approach (see in detail Annex 2), but also for Latvia, which abandoned the price approach when it transposed the UTP Directive, see Mantrov 2024: p. 279–280.

5 The Supply Chain Initiative was a multi-stakeholder initiative active between 2013 and 2019 in promoting fair business practices in food supply chains. It was founded by the signatory organisations to the Principles of Good Practice for vertical relationships in the Food Supply Chain that the B2B Platform of the High Level Forum for a Better Functioning Food Supply Chain established by the European Commission had established in 2011 (Supply Chain Initiative 2011).

independent enforcement of regulatory instruments (Agricultural Markets Task Force 2016: p. 7). Lastly, another ‘reason for EU level intervention was the need to be able to address cross-border cases’ (European Commission 2025a: p. 19).

When the Commission finally decided to propose an EU-wide act of legislation, the UK Groceries Supply Code of Practice (GSCOP) 2009 served as a role model, even though the scope (the GSCOP is limited to large retailers) was changed in the UTP Directive (Ackermann 2020). Given the considerable variation in UTP frameworks across Member States, the legislative process was riddled with suggestions from various Member States and EU bodies to adopt minimalist approaches (i.e., ban as few practices as possible, see Swedish Parliament 2018) or maximalist approaches (i.e., ban a wide variety of practices, see European Committee of the Regions 2018; Romanian Chamber of Deputies 2018), include price-related clauses (European Committee of the Regions 2018; European Economic and Social Committee 2018; Italian Chamber of deputies 2018; Italian Senate 2018) or rely on general clauses (European Economic and Social Committee 2018). Moreover, the debate about UTP regulations also includes the definition of specific practices.

Hence, there is no one uniform definition of UTPs. Sexton's assessment that ‘economics literature does not provide a solid theoretical foundation for defining and analysing B2B UTPs’ (2017: p. 7), still stands true. As Sexton (2017) attests, so far, definitions are often tautological or rely on ultimately subjective concepts (such as ‘unfairness’). What is perceived as fair today, could very well be perceived as unfair tomorrow and vice versa. An expert pointed out that due to this dynamic and ultimately subjective nature of (un)fairness, most economists shy away from using this concept and instead rely on other more tangible concepts such as efficiency (loss) (Int16, para. 7). Deconinck (2021) employs a working definition using the elements that Sexton (2017) discerned and defines UTPs as ‘practices where one trading partner unilaterally imposes costs, risks, or difficulties on another trading partner – e.g. by delaying payment, by unilaterally changing contract terms, by shifting risks to the other party, or by terminating contracts or commercial relationships abruptly and without justification.’

The practice of oral contracts is a trading practice which best exemplifies the difficulties of defining whether a practice is indeed unfair: When the UTP Directive was written, it was decided to only include the refusal to adopt a contract in writing after being asked to do so as a UTP. Regardless, many Member States included provisions demanding the written nature of the contract and deeming oral purchase agreements about agri-food products UTPs. In 2024, five years after the original adoption of the UTP Directive, the Commission urges a new regulation requiring that purchase agreements of agricultural and food products with producers and their organisations be in writing, specifying the delivery period, price and amount (Dahm/Schirmacher 2024; European Commission 2024a). Yet, some farmers’ organization take issue with this (Int32: para. 47), arguing inter alia that the oral nature of a contract gives them the necessary flexibility, if e.g. the harvest does not fulfil expectations (Int32: paras. 59 ff.).

2.3. The EU UTP Directive in detail

In 2019, the UTP Directive was adopted, establishing an EU-wide minimum level of protection against UTPs that all Member States needed to transpose, without necessarily repealing their previous national laws. As in previous Commission communications, the UTP Directive defines UTPs as ‘practices that grossly deviate from good commercial conduct, that are contrary to good faith and fair dealing and that are unilaterally imposed by one trading partner on another’ (Art. 1(1) UTP Directive; European Commission 2016; 2014). This definition is declarative, since Article 3 of the UTP Directive lists banned UTPs exhaustively (see for a simplified list of the banned UTPs with examples Annex 3).

Completely prohibited – regardless of whether they were agreed to in ‘clear and unambiguous terms’ – are the following UTPs:

- Art 3 (1) lit a: The buyer must pay for products no later than 60 days (30 in the case of perishable products) after the date of delivery (in the case of a supply agreement for the delivery of products on a regular basis: the end of the agreed delivery period in which deliveries have been made, which shall be considered to not exceed one month) or 60 (for perishable products: 30) days after the date on which the amount payable (in the case of an agreement for regular supply: for that delivery period) is set, whichever of those dates is later. If the buyer sets the amount payable, the payment periods shall start to run from the date of delivery where the supply agreement does not provide for the delivery on a regular basis, and where the supply agreement does provide for regular deliveries from the end of an agreed delivery period in which deliveries have been made. Payments made after that time period are regarded as late payments, incurring the consequences for late payments of Directive 2011/7/EU, especially default interest. This UTP being prohibited does not prevent buyers and suppliers to agree on value sharing clauses in accordance to Art 172a of Regulation (EU) No 1308/2023, according to which ‘farmers, including associations of farmers, may agree with downstream operators on value sharing clauses, including market bonuses and losses, determining how any evolution of relevant market prices for the products concerned or other commodity markets is to be allocated between them.’ The UTP Directive makes some exceptions to the prohibition of late payments as detailed in Art 3 (1) lit a, when it comes to certain aid schemes for schools, health care or wine-related products.
- Art 3 (1) lit b: The Buyer may not cancel order of perishable products at such short notice (less than 30 days, unless Member States set shorter periods in duly justified cases) that a supplier cannot reasonably be expected to find an alternative means of commercialising/using those products.
- Art 3 (1) lit c: The Buyer may not unilaterally change the terms of a supply agreement concerning frequency, method, place, timing or volume of the supply or delivery of the products, quality standards, terms of payment or prices or the provision of one of the listed services (stocking, displaying or listing the products, discounting them as part of a promoting, advertising, marketing, fitting-out premises used for sale).
- Art 3 (1) lit d: They buyer may not require payments from the suppliers that are not related to the sale of the products of the supplier.
- Art 3 (1) lit e: The buyer may not require the supplier to pay for the deterioration and/or loss of products that occur on the premises of the buyer or after ownership has been transferred to the buyer, if it is not caused by negligence or fault of the supplier.
- Art 3 (1) lit f: The buyer may not refuse written confirmation of the terms of a supply agreement, if the supplier demands written confirmation, unless the supply agreement in question governs the supply from a member of a producer organisation (incl. a cooperative) to the producer organisation and the statutes of the producer organisation have similar effect to the terms of the supply agreement.
- Art 3 (1) lit g: The buyer may not disclose trade secrets of the supplier.
- Art 3 (1) lit h: The buyer may not threaten with or carry out acts of commercial retaliation against a supplier who uses their contractual or legal rights, e.g. by filing a complaint with enforcement authorities or cooperating with such authorities in investigations.
- Art 3 (1) lit i: The buyer may not require compensation from the supplier for costs of examining customer complaints, if the supplier has not been at fault or negligent.

Prohibited only if they have not been previously agreed on in the supply agreement or subsequent agreements in clear and unambiguous terms are the following UTPs:

- Art 3 (2) lit a: The buyer returns unsold products to the supplier without paying for them and for their disposal.
- Art 3 (2) lit b; d-f: The supplier is required to pay for stocking, displaying or listing the products or making them available on the market (lit b), for the buyer's advertising (lit d) or marketing (lit e) or the staff for fitting-out premises used for the sale of the products (lit f). Upon request of the supplier, the buyer must provide an estimate in writing of the payments per unit or overall payments as well as an estimate of the cost to the supplier and the basis for that estimate.
- Art 3 (2) lit c: The buyer requires the supplier to pay (part of) the cost of discounts on the products that the buyer sells as part of a promotion, unless the buyer before initiating the promotion specifies its period, and the expected quantity of the products to be ordered at the discounted price. Upon request of the supplier, the buyer must provide an estimate in writing of the payments per unit or overall payments.

Concerning the **territorial scope**, the Directive 'applies to sales where either the supplier of the buyer, or both, are established in the Union' (Art 1 lit 2). This means that a supplier based outside of the EU is covered by the Directive if the supplier sells to a buyer based in the EU.

With regard to the **personal scope** the UTP Directive sets the requirement that the use of UTPs is only forbidden if the buyer has a higher annual turnover than the supplier. The Directive defines the thresholds which need to be met in Art 1 lit 2:

- If the supplier has an annual turnover of below EUR 2 million, the buyer's turnover must be higher than EUR 2 million for the Directive to apply.
- If the supplier's turnover is between EUR 2 million and 10 million, the buyer's turnover must be higher than EUR 10 million.
- If the supplier's turnover is between EUR 10 million and 50 million, the buyer's turnover must be higher than EUR 50 million.
- If the supplier's turnover is between EUR 50 million and 150 million, the buyer's turnover must be higher than EUR 150 million.
- If the supplier's turnover is between EUR 150 million and 350 million, the buyer's turnover must be higher than EUR 350 million.

This means that the Directive does not apply to cases where the supplier's turnover exceeds EUR 350 million, even if the buyer has a higher annual turnover.[6]

Turnover must be calculated as determined in the Commission Recommendation 2003/361/EC (OJ L 124/36). Annual turnover is the income of the enterprise from the enterprise's ordinary activities according to the last annual accounts minus rebates and without value added tax (VAT) or other indirect taxes. Neither is the geographical origin nor the type of business activity relevant. Three types of enterprises are differentiated when it comes to calculating turnover (European Commission 2020, with various exceptions and special rules).

- Autonomous enterprises: Those are either independent or have minority partnerships of less than 25 % (each) with other enterprises. Autonomous enterprises must take only their own data into account to calculate their turnover.
    - Ex: Company A owns 20 % of company B. A's turnover does not include B's turnover or vice versa.

[6] Only where the buyer is a public entity, the thresholds do not need to be met for the Directive to apply. The Directive would still not be applicable to cases where the supplier has an annual turnover above EUR 350 million.

- Partner enterprises: If one enterprise has a holding of at least 25 % but not more than 50 % of another enterprise, those two are considered partners. Partner enterprises must take each other's turnover into account in the proportion in which the holding exists.
  - Ex: Company A holds 35 % of company B. A's complete turnover is calculated as: A's turnover from their own operations + 35 % of B's turnover. B's turnover is calculated as: B's turnover from their own operations + 35 % of A's turnover.
- Linked enterprises: They hold more than 50 % of another enterprise or another enterprise holds more than 50 % of them. Linked enterprises must take 100 % of the turnover of their other linked enterprises into consideration for the calculation of their turnover.
  - Ex: Company A holds 75 % of company B. A's complete turnover is calculated as: A's turnover from their own operations + 100 % of B's turnover. B's complete turnover is calculated as: B's turnover from their own operations + 100 % of A's turnover.

2.4. Member States' UTP laws

2.4.1 Comparative analysis of UTP legislation in EU Member States

The UTP Directive has been fully transposed in all Member States. The minimum harmonization, on the one hand, avoided legal uncertainty arising from potential conflicts with Member States' existing provisions. On the other hand, the transpositions into both existing and new national UTP laws did not resolve the problem of diverging regulatory approaches to UTPs among Member States. Consequently, UTP regulations retained a predominantly national orientation.

Only four Member States – namely Denmark, Malta, the Netherlands, and Luxembourg – have stuck to the EU list of UTPs.[7] A few other Member States have not included additional UTPs, but made existing UTPs stricter, e.g., by transposing selected grey-listed UTPs as black-listed UTPs (Germany), by requiring not only clear and unambiguous agreements, but agreements at the supplier's initiative (Finland) or by applying the 30-day payment time also to non-perishable products (Sweden).[8] Another special case in this regard is Ireland, where the 2021 transposition of the Directive (Statutory Instrument No. 198/2021) was significantly amended in 2023 to give the Agricultural Minister the option to declare additional UTP provisions (Agricultural and Food Supply Chain Act 2023).

In total, 19 EU Member States included additional UTPs in their respective national legislations, namely Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Estonia, France, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, and Spain.[9]

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7 Lov om urimelig handelspraksis i relationer mellem virksomheder i landbrugs- og fødevareforsyningskæden (LOV 719 af 27/04/2021) (Denmark); Subsidiary Legislation 117.42 Unfair Trading Practices in the Food Supply Chain Regulations 2021 (Malta); Wet oneerlijke handelspraktijken landbouw- en voedselvoorzieningsketen (Statsblad 2021, 178) (Netherlands); Loi du 1er juin 2021 sur les relations entre entreprises au sein de la chaîne d'approvisionnement agricole et alimentaire (Luxembourg).

8 Gesetz zur Stärkung der Organisationen und Lieferketten im Agrarbereich, BGBl 2024 I Nr 327 (AgrarOLkG) §§ 12, 14, 17 (Germany); Elintarvikemarkkinalaki s 2f (Finland); Lagen (2021:579) om förbud mot otillbörliga handelsmetoder vid köp av jordbruks- och livsmedelsprodukter, § 5(1) (Sweden).

9 Faire Wettbewerbsbedingungen-Gesetz, BGBl 392/1977 as amended by BGBl I 239/2021 (FWBG) (Austria); Code de Droit Economique, Moniteur Belge, C-2021/22600 (Belgium); ЗАКОН за защита на конкуренцията, ДВ No 102 of 28.11.2008 as amended by No 17 of 26.02.2021 (Bulgaria); Zakon O Zabrani Nepoštenih Trgovačkih Praksi U Lancu Opskrbe Hranom (2017) (Croatia); Νόμος Αθέμιτων Εμπορικών Πρακτικών, ΕΕ 200(Ι)/2021 (Cyprus); Νόμος που τροποποιει τον περι των αθεμιτων εμπορικων πρακτικων στην αλυσιδα εφοδιασμου γεωργικωνπροιοντων και τροφιμων νομο του 2021, ΕΕ 32(Ι)/2023 (Cyprus); Act on Significant Market Power (Czechia); Act on Combating Unfair Trading Practices in the Agricultural and Food Supply Chain 2021 (Estonia); Code de commerce as amended on 17 July 2025 (France); Act

There are, however, wide variations in how far these countries go beyond the UTP Directive, with some (e.g., Estonia, Greece or Cyprus) including only one or two additional practices, while other Member States (e.g., Croatia, Slovakia or Italy) prohibit significantly more practices. What is prohibited additionally to the practices prohibited by the UTP Directive also varies considerably, reflecting the absence of a common approach across jurisdictions. Some recurring elements can be identified,[10] but a systematic comparison of how many UTPs each Member State has, is impossible due to the fact that what one Member State prohibits in one additional practice might be prohibited in several prohibited practices elsewhere.

There are considerably different viewpoints among the EU Member States about what makes a trading practice 'unfair', which translates into different regulatory approaches (Table 1):

Minimalist approach: The minimalist approach transposes the UTPs established in the Directive one-to-one or adjusts details. It preserves a maximum of freedom of contract at the expense of protection against unregulated practices, while preserving legal certainty. Based on their transpositions, Denmark, Malta, the Netherlands, and Luxemburg are qualified as following the minimalist approach. Due to their only small changes in the transposition of the UTP Directive, without increasing substantially the number of UTPs, we further classify Ireland, Germany, Sweden, and Finland as following the minimalist approach.

Maximalist approach: The maximalist approach codifies additional UTPs. It preserves legal certainty, while trying to establish greater protection against unfair behaviours at the expense of freedom of contract. This approach has more Member States adhering to it, albeit it – as explained above – to different degrees. Austria, Belgium, Estonia, France, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Spain, Bulgaria, Croatia, Cyprus, Czechia, Greece, Hungary, Slovenia can be qualified as following a maximalist approach.

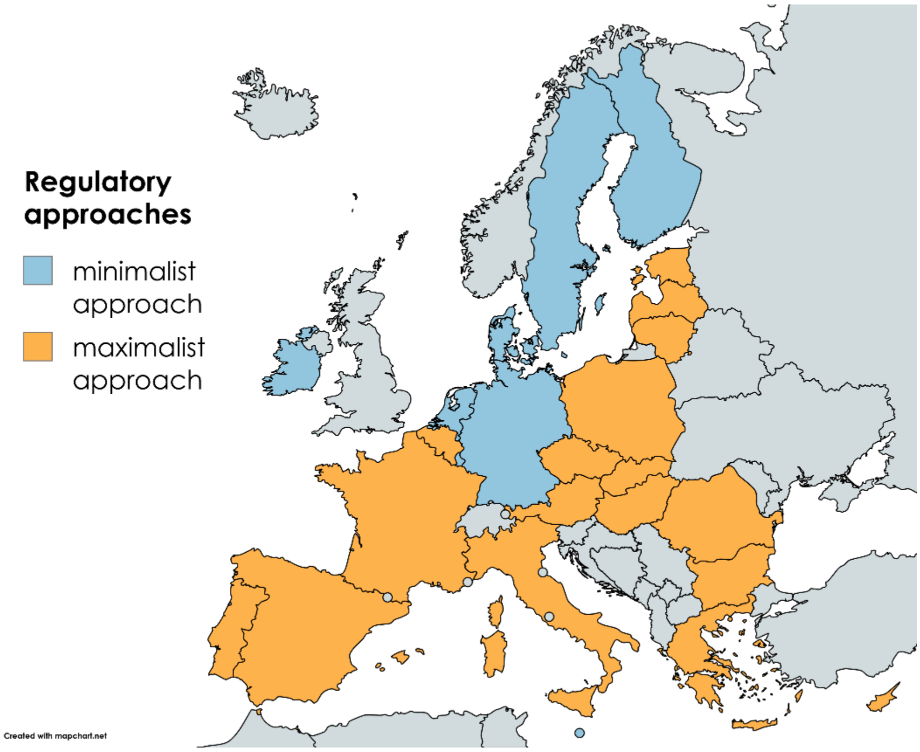
Prior to the Directive, most national UTP legislations (as well as the voluntary Supply Chain Initiative) used a general clause banning UTPs and then listed exemplary UTPs (European Commission 2018a). Reliance on general clauses incur a deficit of legal certainty compared to exhaustive lists (Int29: para. 38; Keirsbilck/Paredis 2024: p. 519) but establishes protection against the 'waterbed-effect', where actors shift from regulated UTPs to unregulated UTPs (Corbalán et al. 2022: p. 47). While the Directive instead relies on an exhaustive list, Italy, Latvia, Poland, Romania, and Slovakia include general clauses explicitly in their UTP laws. In other Member States which do not have general clauses in their UTP laws, UTP cases may additionally be prohibited by competition, commercial or general civil law.[11] Thus, the regulations in the Member States also display considerable heterogeneity regarding the use of general clauses against UTPs mirroring what has been observed with respect to their approaches to enumerating prohibited practices.

4792/2021, Official Gazette 54/A/09042021 (Greece); Act XCV/2009 (Hungary); Decreto Legislativo 198/2021 (taly); Negodīgas tirdzniecības prakses aizlieguma likums 2021 (Latvia); Law on the Prohibition of Unfair Practices of Retailers 2009 (Lithuania); Law on the Prohibition of Unfair Trade Practices in the Agricultural and Food Supply Chain 2021 (Lithuania); Ustawa z dnia 17 listopada 2021 r. o przeciwdziałaniu nieuczciwemu wykorzystywaniu przewagi kontraktowej w obrocie produktami rolnymi i spożywczymi (Dz. U. Poz. 1773) (Poland); Decreto-Lei n.º 76/2021, de 27 de Agosto 2021 (Portugal); Lege 81/2022 privind practicile comerciale neloiale dintre întreprinderi în cadrul lanțului de aprovizionare agricol și alimentar (Romania); Unfair Trade Terms in the Food Trade Act 91/2019 Coll as amended by 219/2021 Coll (Slovakia); Zakon o kmetijstvu 2008 as amended 2023 (Slovenia); Ley de la Cadena (Spain); Ley 16/2021 (Spain).

10 E.g., regulations of contractual penalties, the passing on of costs for packaging, transport or administrative fines as well as restrictions concerning contractual relations to third parties.

11 This includes Austria, Belgium, Estonia, France, Lithuania, Portugal, and Spain from the group of maximalists; and Finland, Sweden, and Germany from the minimalists. Germany added the prohibition of circumvention of UTPs (§ 23 (1) (h) AgrarOLkG) in the 2024 amendment of the German UTP law. This clause is not as broad as the Act against Unfair Competition (cf. §3 Gesetz gegen den unlauteren Wettbewerb) that could still be applied to UTP cases according to Glöckner (2024), but ensures that actors cannot circumvent the application of UTP prohibitions by slightly altering their behavior.

Figure 1: Diverging approaches to UTP Legislations in the EU Member States



Source: own elaboration; created with mapchart.net

Regarding the territorial scope, Luxembourg, Malta, Spain, Sweden, and Germany since the 2024 amendment of the AgrarOLkG (BGBl. 2024 I Nr. 327) have stated in their transposition laws that their national UTP frameworks only apply in cases where one of the contractual parties is established in the territory of their country. If e.g. Spanish law applies to a contract in principle, but neither seller nor buyer are based in Spain, the additional UTPs in force in the Spanish Ley de la Cadena do not apply to this contract.

Concerning the turnover thresholds, there are considerable differences among Member States: Bulgaria, Ireland, Lithuania, Luxembourg, Malta, Netherlands, Romania and Slovenia transposed the turnover thresholds as detailed above. The other Member States chose to not apply the turnover thresholds or only apply them in modified forms. Estonia, France, Hungary, Italy, Slovakia and Spain do not impose any turnover requirement to protect operators from UTPs. Denmark and Portugal only apply the turnover thresholds to certain UTPs, while others apply regardless of turnover. Croatia, Czechia, Greece and Poland use different turnover thresholds.

Austria, Belgium, Germany have applied higher turnover sums, thus protecting more suppliers form potential UTPs: Austria's Fair Competition Act (FWBG) covers also suppliers with a turnover higher than EUR 350 million, but below one billion against buyers with an annual turnover higher than EUR 5 billion. Belgium covers producer organizations, even if their annual turnover exceeds EUR 350 million (Art VI.109/4 General Economic Law Act). Latvia and Sweden only use a minimum turnover threshold of EUR 2 million for buyers; as does Finland, but only for certain UTPs and as does Cyprus, but only for one UTP. Germany's AgrarOLkG transposes the turnover thresholds, but also includes suppliers in the dairy, meat, fruit, vegetable and horticulture sectors, if their annual turnover in the respective sales segment in Germany does not exceed EUR 4 billion and if their total annual turnover does not exceed 20 % of the buyer's turnover. Moreover, some of the Member States have additional practices that are regarded as UTPs or additional obligations, which only apply to operators of a certain size, market power, in the case of a certain degree of dependency or based on the specific position of the operator in the value chain (e.g. Hungarian Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices; Finnish Act on the Regulation of Contract Terms 1062/1993; obligation of contract registration according to the Spanish Ley de la Cadena).

2.4.2 Price-related provisions in national UTP laws

A notable tendency has been the inclusion of provisions related to price as an element of the UTP framework. As of 2025, seven Member States have taken up such provisions in their UTP laws (see Table 2 and Annex X for more details).

By including price-related elements, the regulation prevents operators from circumventing the ban on unfair practices by simply shifting to unfair pricing instead – a ‘waterbed effect’ where restrictions in one area push abusive behaviour into another. This can also be understood in Grabosky’s typology of counterproductive regulation as the problem of displacement, where the problem is ‘displaced into other areas within or beyond a regulatory jurisdiction or policy domain’ (Grabosky 1995: pp. 347, 351; also cited in Daskalova 2020: p. 23). It is likely that operators seeking an unfair advantage over their partners would also manipulate prices to achieve their goals (Daskalova 2020). As Glöckner explains, the more side agreements and practices relating to the essentials of the contract are prohibited, the more buyers will ‘make perfectly lawful use of pricing pressure instead’, which ‘will inevitably be passed upstream the market, finally burdening the market participants that the UTP Directive expressly aims to protect: the agricultural community’ (Glöckner 2024: p. 186). Including price-related elements comes, however, at the cost of limiting freedom of contract.

Table 1: Approaches to pricing in UTP laws

How prices are included in UTP Laws	Which jurisdiction(s)
Prohibition of buying below individual production costs (calculation based on generalized/average production costs)	Belgium[12], Italy, Spain
Prohibition of selling private label products below production costs for retailers	Croatia, Hungary
Production costs must be a factor in the price	France, Spain
Rules on who has the right to initiate/demand price negotiations	France, Romania
Minimum margins for each step in the value chain	France
Prohibition of buying below average production costs, if product is not traceable	Romania

Sources: own elaboration

Member States, therefore, use a variety of mechanisms to prevent sales or purchases below cost, aiming to protect producers. Some countries, like Croatia, France, Hungary, and Spain, focus on prohibiting retailers or distributors from selling products below their purchase or production cost, often including private label goods and operating expenses. Others, including Belgium, Italy, Romania, and Spain, target buyers, preventing them from purchasing products at prices below the producer’s production cost. Production costs are determined in different ways: through official indices or statistical averages, legally defined formulas, or general

[12] Only as a grey-list UTP; The production costs are the individual production costs of the producer, but an assumption is made that they must be as high as the production cost indices of official sector organizations. However, no such indices exist yet.

economic justification. Certain countries also distinguish between product types, applying stricter rules for fresh or perishable products or for food in general.

To strengthen enforcement, some systems include automatic price substitution if the legal minimum is violated, or contractual and negotiation requirements to give suppliers leverage, such as mandatory pricing clauses, the duty to renegotiate, or access to legal remedies. The territorial scope of these rules also varies. Some apply only domestically, while others extend to cross-border transactions if effects occur locally or if one party is in the respective Member State.

A more detailed explanation of the various Member State approaches is included in Annex 2.

2.5. Enforcement of UTP legal frameworks

The enforcement mechanism is at the heart of the UTP Directive, as many UTPs codified in the Directive had already been outlawed in civil law in most Member States or even in EU law (e.g., regarding trade secrets: Directive 2016/943/EU, OJ L 157/1). What differentiates UTPs in the Directive from other practices that are considered breaches of civil law is the enforcement framework:

Member States must designate enforcement authorities (Art. 4 UTP Directive). Just as Member States differ in how they define UTP prohibitions, they also differ in how they organize enforcement – particularly regarding which national authority is responsible for enforcing the rules (see Table 2). Affected parties have access to the national enforcement authority of their own Member State (if they are based in a Member State) as well as the one of the buyer (Art. 5(1) UTP Directive).

Table 2: Enforcement authorities

Number of Member States	Designated as major[13] enforcement authority
11	Competition authority
6	Food market authority
5	Ministry of agriculture
2	Dedicated UTP authority
2	Ministry of Economy/Finance
1	Consumer and market authority

Source: Keirsbilck/Paredis 2024

There is also a wide variety of provisions on enforcement and ways to detect UTP cases among EU Member States. The most prominent channels are direct complaints of affected parties. Such complaints can also be brought by producer organisations, organisations of suppliers, and associations of such organisations, and by non-profit organisations on behalf of suppliers (Art. 5(2), recital 31 UTP Directive).

Where an enforcement authority finds sufficient grounds for acting on a complaint, it shall 'initiate, conduct and conclude an investigation of the complaint within a reasonable period of time' (Art. 5(6) UTP Directive). Authorities are given the power to require buyers and suppliers to provide all necessary information in order to conduct investigations and to carry out unannounced on-site inspection (Art. 6(1)(c–d) UTP Directive). If they find the usage of

[13] Several Member States have given certain competences to other entities (e.g., Austria to the Fairness-Büro, Slovenia to the Ombudsman, the Netherlands to the mediation entity Geschillencommissie).

prohibited UTPs, they must ‘require the buyer to bring the prohibited trading practice to an end’ (Art. 5(7) UTP Directive) and may impose fines and ‘other equally effective penalties and interim measures’ and publish its decision (Art. 6(1)(e–f)). Fines foreseen in the Member States’ UTP laws differ considerably, with some establishing a range of fines in fixed terms (e.g., for Bulgaria see the discussion on the settings of fines in Gerginov/Westerhoven 2021), while other Member States calculate the fine based on the annual turnover of the operator using the UTP (e.g., development of fines in Cyprus: Agricultural Department (Cyprus) 2024). Some Member States also have different fines for natural and legal persons (Agencija za zaštitu tržišnog natjecanja n.d.; § 14 Act on Combating Unfair Trading Practices in the Agricultural and Food Supply Chain (Estonia)). Should authorities decide not to act on a complaint, then they must inform the complainant and state reasons for their decision (Art. 5(c)).

There is, however, little correlation between the number of complaints and cases handled by enforcement authorities and the number of listed UTPs across Member States (see survey results of JRC 2025). This is due to the use of other provisions on enforcement and investigative powers by several Member States, also with the intention to circumvent the fear factor and safeguard anonymity. Countries often rely on *ex officio* investigations and investigation based on informal tips rather than formal complaints. Some countries, such as Croatia, Spain or Hungary, which established UTP frameworks and enforcement mechanisms in the 2000s and 2010s, typically handle a higher caseload (AICA 2024; Croatian Competition Agency 2024, 2023, 2022, 2021; Nébih 2024; Petrányi/Boros 2021).

Spain stands out with a requirement to register contracts and very concrete requirements as to what needs to be specified in those contracts. In the Spanish legal framework, there are no thresholds for turnover, however the obligations to formalize contracts (including the provisions related to price) and register the contracts only apply:

- if one of the operators in the transaction is a small or medium-sized enterprise (SME), while the other is not;
- or if one of the operations in the transaction is a primary producer (or group thereof), while the other is not;
- or if one of the operators in the transaction is economically dependent on the other, meaning that the turnover generated from the relationship with the other contractor accounted for at least 30 % of the previous year’s turnover.

While this naturally created a lot of work for the Spanish enforcement authority AICA, it has made a sizeable impact: In total in the past two years, 285 operators have been fined for the usage of UTPs (or very seldomly for obstructing UTP-investigations). In the first half of 2024 alone, AICA conducted 619 inspections and controlled 6.845 commercial relations between operators in the food supply chain (AICA, 2024, p. 7). Spain thus accounts for 75-80 % of *ex officio* UTP cases and investigations EU-wide (European Commission 2024: p. 30).

Several Member State apply pro-active approaches to detect UTP cases (e.g., Agricultural Department (Cyprus) 2024; ICQRF 2024). This includes sector inquiries (also referred to as market investigations or market monitoring), i.e. *ex officio* investigations of enforcement authorities in a particular part of a value chain (e.g. producers of milk, pork, or olive oil). These do not primarily aim at establishing whether a certain actor has used a UTP, but at establishing the exposure of actors in this sector to UTPs overall. They are a major source of UTP cases (Agricultural Department (Cyprus) 2024; Commission on Protection of Competition (Bulgaria) 2024; Houthoff 2024; Office for the Protection of Competition (Czechia) 2024; sekcia kontroly a obchodného dozoru 2024; Waterbley 2024; Int25: para. 16; Int28: para. 47f.; Int29: para. 18).

In contrast to sector inquires with a focus on a particular step of the value chain, one enforcement agency tracked a product through the different stages along the value chain and investigated potential UTPs throughout the entire value chain, which also included supplier in other EU countries.

> 'It was one of our strategies to pick a random product listed in the annex and then go down the chain like: 'Who's the farmer? Who's the wholesaler? Who's the retailer?', you know, go through the entire process.' (Int32: para. 35)

> 'We did then an investigation in the meat sector, where we just took randomly pieces of meat from supermarkets and then we traced the food chains. So, we asked the supermarkets to get us the contract to the supplier. And then we did every piece of the chain, so that was also very interesting to see like how the piece moves on, and most contracts are all behind just till the farmer.' (Int32: para. 73)

Moreover, cluster cases have successfully been used to bring UTPs to an end that were used in a widespread manner against many suppliers. In such constellations, the authority first learned about a potential violation – either through an ombudsperson, a complaint or a sector inquiry – and then used their investigative competences to require the buyer's contracts with all suppliers in the field in question or the contact information of all suppliers (Int29: para. 41; Int22: para. 7; Int24: para. 41). This allows to uncover that the UTP in question had indeed occurred in relation to many suppliers and simultaneously allows to bring a UTP case against the buyer without disclosing all suppliers' identities.

Finally, the examples of Finland and Austria show that instituting ombudsperson procedures (also called 'guidance procedures') or an independent ombudsperson successfully prompts actors to report UTP concerns to authorities by offering a lower threshold alternative to official complaints. In Member States with ombudspersons, this institution 'was judged positively by respondents across different categories' (EC 2025a, 29).

While Austria reported two complaints to the enforcement authority in the first two years of implementing the UTP Directive, the number of complaints submitted to the ombudsperson rose from 21 in the first year to 235 in the second year to 239 in 2024 (Bundeswettbewerbsbehörde (Austria) 2024; Fairness-Büro 2025, 2024).

In Finland, the Food Market Ombudsman (who also acts as enforcement authority) received only one formal complaint leading to a case, handled two more cases based on (informal) tips, and initiated three ongoing investigations, while it handled 35 'guidance cases', i.e. cases, in which it acts strictly as an ombudsperson and does not initiate formal proceedings (The Food Market Ombudsman 2024). Despite the limited availability of guidance procedures, they are more common than formal complaints. Overall, in 2022 and 2023, Member States handled over 1,400 guidance cases[14], while only just under 450 official complaints have been received (European Commission 2024c: p. 31).

[14] Guidance cases refers both to cases handled by a separate ombudsperson as well as procedures handled as guidance procedures by enforcement authorities.

3. APPLICABILITY OF EUROPEAN UTP FRAMEWORK TO GVCS

An analysis of all published reports of the UTP enforcement authorities in the EU Member States for 2024 (see Annex 4) as well as interviews with seven enforcement authorities confirmed that no cases have been brought before an UTP enforcement authority by or against an operator from a third country in the selected sectors of banana and cocoa or in other sectors.

This outcome is consistent with the broader pattern of only a small number of cross-border cases within the EU (EC 2025a). Only one of the seven enforcement authorities had handled transnational cases pertaining to EU-actors (Int32: para. 17). As transnational cooperation in enforcing the UTP Directive has remained extremely limited (Int. 24 para 23; Int. 32: para 17), the European Commission proposed a Regulation on cooperation of UTP enforcement authorities in December 2024 (European Commission 2024b). In 2026, the Council adopted the regulation (Council of the EU 2026).

Based on this, we assess potential barriers to the applicability of the European UTP framework to the global dimension of UTPs. The focus on lacking awareness, the fear factor, lacking access to enforcement, in particular due to language barriers, and the limited scope of applicability of the Directive, in particular relating to the turnover thresholds, is consistent with the findings of the evaluation support study that contended that these elements are barriers particularly for third-country suppliers (Gentile et al. 2025: 22).

3.1. Lack of awareness and information regarding UTPs and legislation

For a legislation to have a general effect of deterrence from unwanted behaviour, the actors need to be aware of that practices are illegal and that there are options for complaints in the first place.

In the field of UTPs, creating awareness is an uphill battle, as many practices are so common in certain sectors that there is little awareness of those practices being in fact illegal to use (JRC 2025). In other cases, actors may be aware that a practice is illegal to use, but tolerate the practice nonetheless (Daskalova 2020), especially in the case of so-called ‘systemic’ UTPs, which are embedded in the supply chain governance and affect many actors (ibid.: p. 14).

The UTP evaluation EC (EC 2025a) indicates low levels of awareness regarding the Directive, with roughly one third of surveyed actors reporting no knowledge of it. Studies reveal that non-EU operators in global agri-food chains exporting to Europe are almost entirely unaware of the UTP Directive (Helguero 2025; Motz 2025). A recently published study on the cocoa sector in Ecuador concludes that sourcing practices have not changed and UTPs are still used by European buyers after two years of full implementation of the Directive in all EU Member States (Helguero 2025: 3). The study found no cocoa exporting company to the EU being aware either of the UTP Directive or of the existence of enforcement authorities or of the complaint mechanisms, while experiencing various UTPs (ibid.: 15).

Respondents in our research confirmed the impression that the Directive and national UTP-related laws are largely unknown, especially among upstream actors (Int9: para. 11; Int16: para. 28).

> ‘No. Most of them [non-EU operators] are not aware of this.’ (Int13: para. 26)

The low level of awareness was particularly striking in contact with banana export companies, but also with company representatives from EU-based companies. Experts familiar with the legislation also highlighted the problem that actors may not recognize everyday business practices (in both cocoa and banana GVCs) as ‘unfair’ or ‘illegal’:

> 'Most suppliers would never complain about it because it is normal. It's a normal practice. (...) in the everyday banana business it is – unfortunately- normal.' (Int19: para. 2)

This aligns with literature and reports by enforcement authorities, reporting that some practices, despite being illegal, are so entrenched in certain sectors that nobody speaks out against them (Daskalova 2020; Fairness-Büro 2024).

The difference in bargaining power between buyer and supplier, which enables the use of UTPs, also manifests in a knowledge asymmetry – not unlike other contractual relationships, where laws are used to mitigate unequal power, such as consumer contracts or labor contracts.

> 'With this economic imbalance [between buyer and supplier] often also comes an information asymmetry. This means that many affected persons do not know anything about their rights. As this has now come on the agenda, we do notice – and we find this to be very positive – that suppliers who put effort into grappling with this in part find the courage to speak out against their buyers with more confidence than they would have maybe done previously.' (Int24: para. 14)

3.2. Fear Factor

Research on UTPs addressed the 'fear factor' as a key barrier to complaints against such practices. The fear factor describes the phenomenon whereby businesses subjected to unfair trading practices refrain from asserting their legal rights, despite being aware of them, out of fear of jeopardising the commercial relationship with their trading partner or suffering other forms of retaliation (Ackermann 2020).

The preparatory studies for the UTP Directive showed that this effect of the fear factor is the decisive factor for the effectiveness of UTP regulations (Sexton 2017). Several studies identified the fear factor as the most important reason for actors affected by UTPs to not reach out to enforcement authorities and that power imbalances in value chains increases the likelihood of a fear factor (see in detail Ackermann 2020; European Commission 2018a: p. 14). As Ackermann (2020: p. 221) points out, actors are more likely to use UTPs when they are aware that their contractual partners have few alternatives.

The enforcement authorities themselves agree to the role of the fear factor on the limited number of UTP claims (Int22: para. 6; Int24: para. 10; Int25: para. 30; Int28: para. 28; Int32: para. 64). Also, sector experts and companies agree:

> 'The main point is that we don't want to alienate our customers.' (Int18: para. 40)

> 'The power relations mean that you don't dare complain'. (Int19: para. 3)

This concern was also expressed in our interviews with sector experts and banana companies, who consistently pointed to fear of retaliation as a key reason for the reluctance to file complaints, particularly because even formally anonymous complaints can often be traced back to the submitting company. As one interviewee explained:

> 'I'm calling the guy: I've been a victim of this. Immediately, the authorities go to the retailer and say they received an anonymous complaint. But you just had a claim with [supplier], so I know this anonymous is [supplier]. Next year [supplier] will not be part of the tender. Of course, officially [they] will participate, but I will never give [them] one box of bananas anymore. So, it's the reality. [Int34].'

To address this concern, the UTP Directive includes provisions allowing complainants to request 'the appropriate protection of the identity of the complainant' (or the affected member in the case of a producer association filing the complaint). The complainant can request confidentiality of any information disclosed to the authority.

However, if finding a buyer guilty of using a prohibited UTP and obliging them to stop using that UTP would risk revealing the identity of the complainant or disclose other information that the complainant deems harmful to their interests, the authority may abstain from taking its decision. Interviews with enforcement authorities show that this often translates to a decision between safeguarding anonymity at the cost of dropping the case or proceeding with legal action but compromising their anonymity (Int22: para. 7; Int29: para. 27, 30; Int32: para. 66 f.).

Moreover, the lack of a direct economic benefit could act as a barrier for affected parties when considering whether to exercise their legal right to complain. Since a resolution results (at most) in penalties paid to the state rather than compensation to the complainant, they could weigh up whether the effort and the risks are in their favour. They might also consider that the other party will not change their behaviour even if they pay a fine.

For the complainant to achieve compensation, a civil law case would need to be brought in most cases (although some jurisdictions have allowed enforcement authorities to order the buyer to pay compensation to the supplier; see European Commission 2025a: 31). In either case, this is virtually impossible without disclosing the identity of the supplier. The European Convention on Human Rights (ECHR) – which applies in all EU Member States – in its Art 6 entitles everyone to fair trial. It applies in civil cases, where a supplier demands compensation from the buyer. The right to fair trial entails inter alia the right to have access to all evidence, respect of the adversarial principle – which means that both parties must have the right to make statements, offer evidence, ask questions of each other (and witnesses), etc. (Muzak 2020). In short, both parties must have what lawyers refer to as ‘equality of arms’. A claim could therefore not be brought anonymously, as it would collide with the right to effectively defend oneself (Int30: para. 7; Int. 29: para. 30; Int24: para. 40).

3.3. Access to enforcement authorities

As shown in section 2.4 and 2.5, the UTP laws and enforcement mechanisms in the single EU Member State show a wide variation. Thus, non-EU actors, often supplying under multiple jurisdictions, need detailed knowledge about the specific laws to correctly recognize the occurrence of UTPs or file a complaint. For all operators working in EU countries, the heterogeneity of the UTP legal frameworks in the various Member States means that they ‘have to re-assess – on a Member State-by-Member State basis – whether their practices and agreements in the Member States in which they are active comply with all the (different) applicable legal requirements’ (van Ahee et al. 2022: p. 7). For operators from third countries, this means considerable effort to know which laws they need to comply with and which laws their contractual counterparts need to comply with. The evaluation support study of the UTP Directive found that the heterogeneity of UTP laws across Europe contributed to legal uncertainty in transnational trade (Gentile et al. 2025: p. 31).

The recently adopted new rules for cross-border enforcement of UTPs do not eliminate the heterogeneity of UTPs in Member States and allow enforcement authorities to refuse mutual assistance where a UTP is not regulated in the UTP Directive (Art. 13 in European Parliament 2026)[15].

An interviewee from an enforcement authority explained that whenever the authority was confronted with suppliers from abroad, all of which were from other EU Member States, they were not confronted with complaints, but rather with questions about the Member States’ UTP laws, which the foreign suppliers did not understand (Int24: para. 24).

In addition, the linguistic variety in the EU can be a further hurdle for non-domestic suppliers. Experts discussed a potential language barrier (Bundesministerium für Ernährung und

15 The here-quoted European Parliament legislative resolution was approved by the Council (Council of the EU 2026) and signed by the President of the European Parliament and the President of the Council on 11 March 2026. It has thus been adopted and will be published in the Official Journal of the EU in the days following the publication of this report.

Landwirtschaft 2023; Helguero 2025), a concern supported in our interviews and the support study by Gentile et al. (2025). Of all EU Member States, only three – Italy, Belgium and Cyprus – make complaint forms available in English.[16]

3.4. Coverage of the UTP framework in GVCs

3.4.1 Territorial scope of the UTP framework

The Directive 'applies to sales where either the supplier or the buyer, or both, are established in the Union' (Art. 1(2) UTP Directive). This means that suppliers outside of the EU are covered if they sell to buyers in the EU, while all other actors beyond the exporters in the upstream segments of GVCs in producer countries are excluded. The business-to-business transaction approach in the current UTP framework excludes the coverage of the entire value chain that the European Commission urged Member States to provide in their UTP frameworks in 2016: 'Member States should also ensure that their legislation covers operators from non-EU countries (for example, primary producers from Africa or Latin America).' (European Commission 2016: p. 5). Non-EU primary producers fall within the scope of the Directive only when they sell directly to an EU buyer – a structure that is more likely in fair trade value chains.

Two key factors limit the application of the UTP legislations in GVCs. First, imports to the EU are often operated by multinational corporations (MNCs) involving complex networks between different units and subsidiaries. This includes transactions in which MNCs use their own subsidiaries in non-EU countries as exporting firms from which their import subsidiaries in the EU receive products. International trade conducted through such intra-company transactions is *de jure* covered by the UTP framework, but not relevant, as it remains highly unlikely that subsidiaries of the same company would employ legal instruments against each other.

> 'So, the factory [of Company A] buys its cocoa from [Company A's] own Sourcing unit, and they find that the beans that Sourcing are providing them are below specification. Then words will fly within [Company A]. Nobody else will hear anything about it and they will sort it out.' (Int17: para. 4)

Further, 'transit trades' are commonly used in international commodity trade. Transit trade refers to international goods trade in which companies based in one country (A) purchase goods from an exporting country (B) and resell them to another country (C), without the goods ever being imported into or exported from the intermediary country (A). These intermediary countries such as Switzerland and Singapore are known as trading hubs where international commodity trading companies have their headquarters (Swiss Academies 2016). Transactions between exporting companies (in country B) and buyers in the non-EU transit countries (C) are not covered by the UTP framework, as no EU actor is involved as buyer or seller in such transactions.

Intra-company and transit transactions are common in both banana and cocoa GVCs, as key GVC actors carry out international transactions within MNC structures. Global banana trade is still dominated by large multinational fruit companies, while the top grinder-traders in cocoa source and trade the large majority of cocoa beans and products, both operating subsidiaries in countries like Switzerland. Moreover, turnover thresholds potentially limit the applicability of UTP legislation in GVC.

3.4.2 Personal scope of the UTP framework

The UTP Directive sets the requirement that the use of UTPs is only forbidden if the buyer has a higher annual turnover than the supplier and sets concrete thresholds as described in section 2.2. The effectiveness of thresholds is however debated among the EU Member States, of which most have not transposed the thresholds from the Directive or adjusted them

[16] The European Commission lists the links to the websites and annual reports of all enforcement authorities on an accessible and multilingual webpage.

(see section 2.4.1.), among the enforcement authorities as well as among stakeholders (EC 2025a).

According to surveys, operators with a turnover between EUR 350 million and EUR 4 billion are not less likely to experience UTPs compared to operators with lower turnover (Bundesministerium für Ernährung und Landwirtschaft 2023: p. 43). UTPs between large entities such as retailers and major chocolate manufacturer are possible as the disputes between Rewe and Edeka with major food companies such as Nestlé and Mars over prices showed in recent years (Kolf/Brächer 2018). These business-to-business transactions are not covered by European UTP framework due to the turnover thresholds.

Several industry representatives asked by the German enforcement authority stressed that the cut-off turnover sums were inconvenient or irrational (Bundesministerium für Ernährung und Landwirtschaft 2023: p. 58). The German Federal Cartel Office's 2020 survey among 350 suppliers also showed no relation between turnover and likelihood to experience UTPs (ibid.: 65).

The turnover thresholds also have contributed to an adverse reaction: 27 % of buyers in Germany claimed to find it more attractive to conduct business with suppliers not covered by the UTP legal framework, which has prompted the Federal Statistical Office in Germany (Statistisches Bundesamt) to argue that the turnover thresholds can cause a distortion of competition (Bundesministerium für Ernährung und Landwirtschaft 2023). An enforcement authority of a Member State, where the turnover thresholds were transposed without change also expressed that the turnover thresholds had proven counterproductive. They had to stop a proceeding even though UTPs were clearly present 'because the supplier had an annual turnover of more than 350 million.' (Int25: para. 10).

Multiple enforcement authorities expressed that there were issues pertaining to the calculation of turnovers (Int24), the use of UTPs being unregulated due to the turnover thresholds not being met (Int25) and fears of operators about sharing their turnover with the authority (Int29). Furthermore, no country without turnover thresholds has raised concerns about the lack of turnover thresholds in their reports or interviews.

3.4.3 Coverage in the cocoa and banana GVC

To assess the coverage of the regulation, we examine two sectors in greater detail: cocoa and banana. Based on trade data (UN Comtrade, Trase.earth[17]), company financial statements and industry reports, we estimate that a substantial part of imports of cocoa and banana is not subject to the UTP regulations. For the cocoa GVC, we estimate that 50 % of all cocoa bean imports to the EU are legally covered by the EU UTP regulations, but factually outside the scope of the regulations due to intra-company and transit trade by the dominant 'grinder-traders', four of which account for 75 % of all cocoa beans traded globally. The turnover thresholds restrict the applicability for an additional 10 % of cocoa bean imports in the EU. This means that a total of about 60 % of the EU's cocoa bean imports could effectively remain outside the scope of the European UTP framework.

For the banana GVC, we estimate that 27% of exports to the EU fall within the scope of EU UTP regulations only *de iure*, but effectively remain outside their reach This is because a significant share of exports from all major exporting countries to the EU is traded within fruit multinational corporations or large producer-exporters. In addition to the trade excluded due to intra-company transactions, we estimate that a further 10 % of banana trade to the EU is not covered due to the turnover thresholds. This means that approximately 37 % of EU banana imports to the EU remain effectively outside the scope of the European UTP framework.

[17] https://trase.earth/

3.5. Missing relation to prices

The UTP Directive in its current form does not consider UTPs in relation to prices. On the contrary, the EU Directive states that '[s]uppliers and buyers of agricultural and food products should be able to freely negotiate sales transactions, including prices' (recital 22). However, in a survey evaluating Germany's UTP law (AgrarOLkG), almost half of the suppliers experience the price-setting practices as unfair (Bundesministerium für Ernährung und Landwirtschaft 2023). Several sector experts and stakeholders raised the issues of prices with regard to the potential importance of the UTP regulations in the sector:

> 'The main issue that producers have with European buyers, principally retailers, is price. Yeah, that's, let's be clear, that's the main issue.' (Int19: para. 2)

> 'The power to negotiate the price is […] not regulated in the UTP Directive. Often, the negotiation of the price and the fact that I have to accept the price is one of the difficulties. And it's just the other unfair practices next to it that fall within the scope of the UTP Directive. So, I think it [the UTP Directive] has improved the position of suppliers. I think there's a first effect, but it didn't change the fact that, of course, sometimes they are price takers.' (Int32: para. 107).

> 'We (...) thought and still believe that it is not useful to focus on UTPs. They are a symptom of asymmetrical power structures. The discussion should be about governance structure and the price structure.' (Int6: para. 13)

The inclusion of price-related UTPs is fiercely debated (European Coordination Via Campensina 2025; Table Media 2024), especially since many Member States have already included such UTPs in their laws (see section 2.4.2). In the evaluation of the UTP Directive, it is stated:

> 'Moreover, action must be taken to avoid farmers being forced to systematically sell below their production costs, as mentioned in the Vision for Agriculture and Food. Specific new tools for these purposes must be examined further, alongside the possible expansion of the list of UTPs.' (EC 2025b: p. 9)

These debates and measures are to be attributed to the centrality of prices to the question of (un)fairness of a contract to its parties. Prices determine how value is distributed along the value chain. Eller argues that prices are not determined by 'a natural market order but designed as a consequence of a strategic play with legal niches and the blind spots of legal institutions' (Eller 2025: 7). While the UTP framework was designed to address power imbalances in value chains, there are concerns that its effectiveness will remain constrained so long as it does not adequately engage with pricing as a core regulatory issue (Eller 2025; Musselli et al. 2025).

Voluntary sustainability standards (as the principles of the World Fair Trade Organization: WFTO n.d.) and multi-stakeholder initiatives promoting fair trade and other Alternative Trading Practices (ATP) focus on fair pricing mechanisms (Kister 2019). Core elements of fair trade standards are the setting of a minimum price anchored to production costs and the joint payment of additional premiums for producers. In addition, the more recent calculation of a living wage or living income (LW/LI) according to Fairtrade's method (Anker Research Institute 2024; Weber et al. 2024) extends ATPs to aim for a 'decent living' beyond simply avoiding UTPs. According to many interviewees, this explicit discussion of the price issue for producers is one of the few options towards improving producers' living conditions.

These principles are not confined to alternative trade circuits. Also, multi-stakeholder initiatives (MSIs) involving key GVC actors underscore that the aim of improving the living conditions of the agricultural communities cannot be reached without increasing wages and incomes for those cultivating agricultural commodities. Two examples of ATP instruments implemented in conventional banana GVCs are the 'Living Wage Banana' of German retailer Lidl, and Aldi Süd's sourcing and pricing model taking up elements of the Fairtrade methodology.

4. Regulatory options for the international dimension of the UTP framework

Based on the identified key barriers for the missing uptake of the UTP framework in GVCs, we derive potential options for adjustment in the legislative framework and enforcement mechanisms to extent the applicability of the UTP framework towards an international dimension of GVCs.

4.1. Extending the scope of the European UTP framework

The territorial scope and turnover thresholds *de lege* limit the applicability of the UTP Directive in GVCs, while the prevalence of intra-firm trade *de facto* limits its applicability further. The limits imposed by turnover thresholds can entirely be overcome by removing them from the UTP Directive. Enforcement authorities expressed that there were issues pertaining to the calculation of turnovers (Int24), UTPs remaining unregulated if turnover thresholds are not met (Int25), and fears of operators about sharing their turnover with the authority (Int29). Officials of countries without turnover thresholds did not raise concerns about their lack in reports or interviews.

Moreover, if UTPs are transmitted down the value chain (as the Directive refers to in recital 6), it can be assumed that bigger operators are more likely to tolerate being subjected to UTPs, because they can pass them on easier. Particularly non-EU actors in GVCs might be affected by such UTP transmission effects.

The barriers created by territorial boundaries can be addressed only to a limited extent. Not all suppliers in GVCs can be protected by the EU's UTP framework, as no obligations for non-EU actors without contractual relationship with EU actors can be established (see on the limits of jurisdiction: Kau 2023). However, an adaptation of the UTP Directive's definition of 'buyer' to include EU actors ordering, billing or receiving goods, – as demanded by an enforcement authority (Int32: para. 120) – could include transactions in the scope of the Directive where the contractual partner of the non-EU supplier is a sourcing unit in a third country, but is buying with the explicit aim of supplying associated or subsidiary EU companies. By using a wider definition, the scope of protection offered against UTPs would be better adapted to the common structures of international commodity trade in GVCs.

Another possibility of ensuring better coverage for non-EU producers would be to strengthen the ties between the UTP Directive and the other EU legal instruments, which have a tangible effect on producers' incomes: The human rights protected by the Corporate Sustainability Due Diligence Directive (CSDDD) include 'an adequate living income for self-employed workers and smallholders, which they earn in return from their work and production, a decent living' (Annex I pt. 1(6) Directive 2024/1760/EU, OJ L 2024/1760). While it falls outside the jurisdiction of the EU to oblige non-EU actors to uphold EU laws, it falls within the EU's competences to oblige EU actors to keep track of their human rights records, including reporting obligations concerning the prices paid to producers, not just by themselves, but also by subsidiaries or business partners. Strengthening the ties with reporting duties established in other pieces of EU legislation could support the ban of UTPs in reaching producers that are not direct beneficiaries of the UTP Directive.

4.2. Raising awareness and enhancing information for non-EU actors

The actions by enforcement authorities and policy makers to increase awareness about the ban of UTPs in the EU are focused primarily on national actors. However, the example of the UK shows that awareness can be spread internationally, if measures are designed to this end.

The UK's Groceries Supply Code of Practice (GSCOP) 2009 prohibits bigger retailers from using trading practices that are substantively akin to the UTPs in the UTP Directive. The GSCOP applies also to suppliers in third countries, unless in the case of intra-firm trade (Stefanelli/Marsden 2014: p. 10). Retailers are obliged to conduct their purchase agreements in writing and explicitly inform their suppliers about their rights under the GCOSP, about the retailers' obligations under the same act, as well as to provide contact information and information about possible courses of action in case that a retailer does not fulfil its obligations (Art. 6 Groceries (Supply Chain Practices) Market Investigation Order 2009).

The GSCOP enforcement authority, the Groceries Code Adjudicator (GCA) conducts yearly surveys about the occurrence of UTPs, with the latest data show that one in three grocery suppliers is affected (Groceries Code Adjudicator 2024). The fact that – contrary to the EU survey on this topic – the survey taker can be based in a third country, already points to how serious the UK takes the scope of the regulation to include non-UK based suppliers. We were informed by the GCA that 20 % of the respondents to last year's survey were in fact overseas suppliers. In order to facilitate their participation, retailers are included in the promotion of the survey to suppliers. Upon requesting more information, we were informed by the office of the GCA that trade bodies representing overseas suppliers had previously attended the yearly GCA conference.

As a result, non-UK-based suppliers are making use of their protection under the Code: One of two formal investigations, which the GCA has conducted, has included a non-UK-based supplier (Groceries Code Adjudicator Tacon 2016: p. 19).

Thus, the dissemination of information on European UTP regulations to non-EU suppliers could be improved by: First, requiring buyers to inform their suppliers about UTPs and provide the contact details of the relevant enforcement authority. Second, including non-EU actors in UTP surveys and actively promoting such surveys to non-EU stakeholders. Third, targeting non-EU suppliers with dedicated information and outreach activities, for instance by engaging unions, sector or trade associations. Finally, accessibility to information should be ensured for non-EU participants, for example through online participation options and translation of materials.

4.3. Facilitating UTP complaint and enforcement mechanisms

The fragmentation of UTP legislation across Member States, combined with the risks that suppliers face when submitting complaints, can be addressed through more accessible and coherent enforcement mechanisms that enable effective application of the UTP framework in transnational transactions.

Two future measures that would require legal reform (*de lege ferenda)* could improve access to enforcement mechanisms for suppliers located outside the EU. First, the establishment of a European UTP authority could significantly reduce institutional barriers. Such an authority could take on different potential forms, ranging from an authority with the competence of handling UTP cases that affect third country-based suppliers, to a one-stop contact point connecting the complainant to the relevant Member State authority, or an appellate authority for UTP procedures. Second, the creation of ombudspersons on an EU-level, following the examples of Austria and Finland, could lower the informational and procedural burden for suppliers. Under this model, suppliers would not need to determine whether the conduct they experience constitutes an infringement under UTP legislation or another type of contractual violation. This is important because, in some Member States, cases have been rejected for this reason (Bundesanstalt für Landwirtschaft und Ernährung 2024). An ombudsperson with a broader mandate could guide suppliers in asserting their rights, even where the problem falls outside the strict scope of UTP rules. Such an approach would be particularly valuable in the context of GVCs, where suppliers often face practices originating outside their own legal order.

In practice, enforcement authorities already act more often as *de facto* ombudspersons rather than traditional enforcers: Penalties are an absolute rarity in the field of counter-UTP enforcement. In 2023, one single case in Poland incurred a EUR 20 million fine. All other fines imposed in the EU in 2023 in relation to UTP amounted to only EUR 2 million in total (European Commission 2024c: p. 30). In many cases, enforcement authorities consider it more effective to refrain from imposing fines and instead to close cases on the basis of behavioural changes (Houthoff 2024; Konkurrensverkets 2024). Even Poland, which is responsible for the majority of fines imposed, states that it launched many more ‘explanatory’ procedures than actual administrative procedures, and often concluded the latter without imposing fines (Urząd Ochrony Konkurencji i Konsumentów 2023). The establishment of EU-level ombudspersons would benefit from additional Commission guidance on interpretation, transposition, and enforcement of the UTP Directive across Member States.

Several Member States offer practical examples of procedures that help safeguard complainant anonymity, namely contract registration, extensive investigation into anonymous complaint-based cases, cluster cases, and value chain tracing already based on the current legal framework *(de lege lata)* (see section 2.4).

Investigating UTPs by third-country operators and imposing sanctions on them would pose challenges in the absence of cooperation agreements with non-EU states. The new Regulation on the cross-border enforcement of UTPs remedies this situation to a degree by allowing enforcement authorities of Member States to require buyers established outside the EU to designate a contact person for the UTP investigation. This contact person (which can be a natural or legal person) must be established in the EU (Art. 27 in European Parliament 2026). However, in practice many agri-food global value chain concern suppliers from outside the EU delivering products to the EU and not the other way around. Thus, cross-border scenarios would consider a non-EU supplier and an EU-buyer. As the buyer would be within the EU in such a constellation, there would be no additional difficulty in investigating the buyer and/or enforcing sanctions against them. From an enforcement-perspective, this constellation would be relatively unproblematic (see Int29: paras. 59, 63), notwithstanding technical issues that transnational cases (almost) always entail, such as no access to foreign databases and not speaking the same language as the supplier (Int32: para. 28).

4.4. Considering price-related provisions in the UTP Directive

Including ‘[t]he issue of low prices, the main issue in global supply chains’ (Corbalán et al. 2022: p. 47) and, according to survey and interview data, an element of unfair trading practices in the agri-food sectors, offers the possibility to increase awareness and make EU UTP legislation more relevant to many GVC actors.

Currently, provisions regarding prices taken up in UTP laws in seven Member States differ considerably pertaining to the mechanisms they rely on, the question of who is covered as well as whether they are effectively applicable for non-EU suppliers. This calls for a debate on a harmonized EU approach to UTPs related to prices as emphasized in the evaluation report of the Directive (EC 2025a).

The provisions in place have not been in force long enough to assess their impact with a reasonable degree of confidence (S&P Global Commodity Insights (Agra CEAS Consulting S.A.) et al. 2025). It should be noted that the implementation and effectiveness of the price-related regulations to balance distributive imbalances in value chains is up to debate as the application is highly complex in reality (Forstner 2023; S&P Global Commodity Insights (Agra CEAS Consulting S.A.) et al. 2025; Int24: para. 20; Int29: para. 53; Int32: para. 87). The concerns raised about the effects of such regulations on market behavior and structure (see Forstner 2023) warrant more research.

Part of such a debate would be transparency regarding the prices, costs, and margins. In the EU, the newly established Agri-Food Chain Observatory (AFCO) focuses ‘on improving price transparency and a better understanding of cost structures as well as how margins and added value are distributed’ (European Commission 2025b). In the context of GVCs, the production costs for agricultural goods produced outside the EU could be an additional input for such an analysis. The fair trade principles for calculating minimum prices can be considered in the debate about regulations of UTPs on prices, as existing examples for mastering the complex challenge of calculating production costs (S&P Global Commodity Insights (Agra CEAS Consulting S.A.), Areté 2025).

4.5. Supporting good business practices in UTP laws

The European UTP framework bans UTPs, but does not prescribe any positive trading behaviours, norms, or practices as established by international ATP value chains and their sector actors as, for example, the World Fair Trade Organization (WFTO n.d.). A notable exception with positive and negative regulative frames is the Italian UTP law: Italy lists all UTPs in Article 5 of its UTP Law (Decreto 198/2021), while Article 6 defines ‘good business practices’. Contracts can obtain the status of being ‘good business practices’ by being concluded with the assistance of recognized professional organizations and lasting for a determined period. Products sold under those agreements can be marketed as ‘compliant with good commercial practices in the agricultural and food supply chain’. If a product is marketed as such, the enforcement authority may investigate this claim.

To support such a positive approach to avoid UTPs, the Directive (or UTP laws of other Member States) could specify key contractual elements – such as minimum contract duration or minimum price – and encourage both suppliers and buyers to actively uphold the principles of good faith, fairness, and transparency during both the negotiation and execution of contracts. Following the example of Italy, the use of good business practices could be incentivized by allowing actors to claim these practices for marketing purposes.

5. CONCLUSIONS

UTPs were identified already in the 2000s as a major concern in the European Union’s agricultural and food supply chains. The problem was driven largely by the increasing concentration of market power in highly integrated value chains, particularly in the downstream segment where large retailers and processors exercise significant bargaining power over suppliers. UTPs are not only a challenge within European value chains but also in GVCs of products such as cocoa or bananas that are largely produced outside the EU but consumed predominantly in Europe. These structures often place suppliers in non-EU countries at an even greater disadvantage, as they face unequal negotiating conditions while having little access to legal remedies.

In response, the EU adopted dedicated UTP legislation to strengthen the position of weaker or smaller business actors by enabling them to seek redress for unfair practices without resorting to court proceedings. The UTP Directive explicitly includes non-EU operators within its scope. We show, however, that this inclusion has not translated into cases brought forward by non-EU actors, and the framework has not effectively mitigated UTP-related risks along agricultural GVCs.

Our assessment identifies several barriers that restrict the impact of the current European UTP regulatory system, affecting both global and intra-EU supply chains. This is because of its jurisdictional and transactional constraints, as national UTP laws apply only to direct exporters into the EU and do not cover upstream actors in the value chain. Turnover thresholds, frequently used to define protected suppliers, further narrows the eligible supplies. In addition, common trade practices such as intra-company and transit transactions – widely used by commodity traders – fall outside the enforcement scope.

These legal and structural limitations are compounded by obstacles faced by non-EU suppliers. Awareness and information of prohibited practices remain low, and foreign suppliers are often not informed about their rights or the remedies available to them. Filing complaints also involves practical and other obstacles, including fear of negative effects for the business relations with buyers and problems arising from the legal fragmentation across Member States. The exclusion of price-related provisions in the Directive further reduces its relevance, given the centrality of prices and price determination in unequal value distribution in agricultural GVCs.

While the specific characteristics of GVCs in terms of production structure, actors, governance and transactions contribute to limiting the applicability of the European UTP framework, changes to the UTP framework and enforcement mechanisms provide options to improve both the visibility of the regulatory framework and the capacity to mitigate power imbalances in agri-food GVCs. We identify potential means to adapt the European UTP framework towards a more transnational dimension by (i) expanding the territorial and personal scope of the EU UTP Directive, (ii) adopting new strategies for raising awareness, (iii) changing the institutional set-up of enforcement mechanisms to ensure anonymity and accessibility, and (iv) considering the inclusion of UTPs that affect prices at EU level, to address the pivotal factor in the unfair distribution of value in GVCs. Furthermore, good business practices (v) could be supported in the EU UTP Directive. The impact of such policy options would be strengthened when they are not only targeting the international dimension, but simultaneously the EU context and consider the long-standing experiences of fair trade approaches.

It should be noted that the effectiveness of the UTP framework to counter distributive imbalances in value chains remains subject to debates as the application is highly complex and entails many challenges in reality. The concerns raised about the effects of such regulations on market behaviour and structure underline the need for further empirical research, particularly with respect to price-related provisions (Forstner 2023). In addition, the occurrence and consequences of UTPs within GVCs require more research in order to design regulations that effectively address these dynamics. This is especially relevant given that European UTP legislation has so far been developed and applied primarily within national contexts in the EU, and its consistent and transnational implementation will require adjustments in the coming years.

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ANNEX

Annex 1: List of Interviewees

No.	Interviewee	Date	Mode of Interview
Int0	Experts and value chain actors at Fruit Logistica	04.-06.02.2025	In-person
Int1	Expert on alternative trading practices	06.12.2024	Online
Int2	Expert on sustainable consumption	10.12.2024	Online
Int3	Experts on agricultural value chains	11.12.2024	Online
Int4	Expert on banana value chain	11.12.2024	Online
Int5	Representative of banana multi-stakeholder initiative	12.12.2024	Online
Int6	Experts on banana and cocoa value chains and UTPs	12.12.2024	Online
Int7	Expert on banana value chain	16.12.2024	Online
Int8	Experts on alternative trading practices	16.12.2024	Online
Int9	Expert on banana value chain and UTPs	17.12.2024	Online
Int10	Expert on cocoa value chain	18.12.2024	Online
Int11	Expert on banana value chain	18.12.2024	Online
Int12	Expert on cocoa value chain	19.12.2024	In-person
Int13	Expert on banana value chain	08.01.2025	Online
Int14	Expert on alternative trading practices	10.01.2025	Online
Int15	Expert on banana value chain	17.01.2025	Online
Int16	Expert on agricultural value chains	20.01.2025	Online
Int17	Expert on cocoa value chain	22.01.2025	Online
Int18	Expert on agricultural value chains	22.01.2025	Online
Int19	Expert on banana value chain	23.01.2025	Online
Int20	Representative of banana multi-stakeholder initiative	27.01.2025	Online
Int21	Expert on banana value chain	27.01.2025	Online
Int22	Enforcement authority	03.02.2025	Online
Int23	Company representative banana sector	04.02.2025	Online
Int24	Enforcement authority	05.02.2025	Online
Int25	Enforcement authority	13.02.2025	Online
Int26	Representative fruit MNC	20.02.2025	Online
Int27	Expert on sustainable purchasing practices (banana & cocoa)	26.02.2025	Online
Int28	Enforcement authority	26.02.2025	Online
Int29	Enforcement authority	26.02.2025	Online
Int30	Enforcement authority	28.02.2025	Online
Int31	Representative fruit MNC	07.03.2025	Online
Int32	Enforcement authority	20.03.2025	Online
Int33	Expert on alternative trading practices	27.03.2025	Online
Int34	Representative of banana producer	27.05.2025	Online

Annex 2: Details on price-related UTP provisions

- **Belgium**, which first had a minimalist transposition of the UTP Directive (see the Belgian Transposition in Moniteur Belge/Belgisch Staatsblad, C - 2021/22600), later reviewed its UTP legislation and included more practices, including a new grey-list UTP of buying below production cost (FOD Belgium 2024). It's on the grey list, meaning that it is prohibited, unless explicitly agreed on in advance by the parties. The production costs are the individual production costs of the producer, but an assumption is made that they must be as high as the production cost indexes of official sector organizations, unless proven that they are lower. However, no such official indexes exist currently.
- **Croatia**, which follows a maximalist approach included in its UTP Act a prohibition of the sale of a product under the price which is lower than any other purchase price in the product purchase chain (Agencija za zaštitu tržišnog natjecanja undated). In detail, this means a mere prohibition of selling below cost-price i.e. preventing retailers from selling below the price that they themselves paid for the product, unless the product is of the buyer's brand (also known as private labels). If the product is sold under the brand of the buyer, the buyer must pay a price covering the cost of production for this product. The Croatian provisions apply, if one of the parties is in the EU, even if the other is outside the EU.
- In **France**, the price approach has always prevailed over attempts to regulate just non-price related aspects of contractual relationships. The first ÉGalim Act (in 2017) established that distributors must sell food at prices at least 10 % higher than what they paid for them and that supermarkets may not offer discounts of over 34 % on food items (Henshell 2024). The content of sales contracts with primary producers must be proposed by the primary producers (as opposed to the buyer) and must contain a pricing formula, which must include production cost as a factor of the pricing. However, other factors can prevail (Forstner 2023). The later amendment through the ÉGalim 3 Act ensured, if suppliers and buyers do not manage to agree on the prices and potential discounts/promotions between December 1st and March 1st, the supplier may terminate the commercial relationship. The parties may also transfer the dispute to a mediator, to reach an agreement before April 1st (and if this fails, the supplier may still revoke the commercial relationship). Furthermore, failure to reach an agreement on the price until March 1st can lead to a fine for the buyer of up to EUR 200.000 for natural persons and EUR 1 million for a legal person (with the possibility of higher sanctions in case of repeated offence). All of the ÉGalim Laws apply also to foreign imports (Forstner 2023), however none of them apply in the case of export outside of France. Furthermore, vegetables and fruit are exempt from the obligation of each step in the value chain paying at least 10 % more than the proceeding step (Forstner 2023).
- **Hungary**, which was one of the first movers introducing national UTP regulations in the EU in 2009, also includes a prohibition of sales below cost (Kovács 2020). Similar to the Croatian rule on the matter, the prohibition encompasses both the sale of products to the end consumers below production cost as well as the sale below the cost price including general operating expenses in the case that the product was produced by the trader himself (private label products) (Csirszki 2024: p. 223). Initially, Hungary's wider system to protect farmers included an additional obligation of retailers to have the same margin on agricultural and food products regardless of the country of origin, was challenged in Court by the European Commission. The Court of Justice of the EU found those provisions to be infringing on the free movement of goods within the EU as well as on fair competition (Judgement of March 11, 2021, *European Commission v Hungary*, C- 400/19, EU:C:2021:194).

- **Italy** has a generalist and maximalist approach to UTPs and since 2021 includes a prohibition of the buying below production cost of fresh and perishable agricultural and food products (Art. 7 of the Legislative Decree 8.11.2021, No. 198). In the event of violation of this provision, the price established by the parties shall be replaced by law by the price resulting from the purchase invoices or, if it is not possible to match the purchase invoices, by the price calculated on the basis of the average production costs recorded by the Institute of Services for the Agricultural and Food Market (ISMEA) or, in the absence of the latter, by the average price practiced for similar products in the reference market. Italy only applies its prohibition against buying below production costs to agricultural or food products from Italy. Imported goods from abroad are not included (Forstner 2023).
- **Romania** which follows a maximalist approach included a prohibition of purchasing products without verifying their traceability if the price is lower than the average production cost practiced on the relevant market during the purchase period, according to official statistics at the level of the European Union (Law No. 81/2022 on unfair trading practices between businesses in the agricultural and food supply chain, Official Gazette No. 363 of 12 April 2022). Furthermore, if the supplier requests a renegotiation of the price, the buyer must grant a renegotiation within ten days of the request. The law applies to transactions made in Romania or producing an effect within Romania, i.e. transactions where the product is sold from or to Romania (Art 1 (1) lit a leg cit).
- **Slovakia** already followed a maximalist approach before transposing the UTP Directive, having codified 30 black-list UTPs. In Law 91/2019, Slovakia included a prohibition of buying food products for a lower purchase price than the economically justifiable costs of the supplier (Lučivjanský 2019). According to § 16 leg cit, this also applied if the entities in question are foreign, if the effect occurred in Slovakia. In the course of amending Law 91/2019 to transpose the UTP Directive, Slovakia repealed the prohibition of buying below purchase practices (Law 219/2021; S&P Global Commodity Insights (Agra CEAS Consulting S.A.) et al. 2025).
- **Spain**, similar to France, has used a price approach to regulating behavior in the food supply chains from the start. Already in Law 12/2013, Spain established that sales contracts of food products needed to state all the factors on which the price was based, including as such a factor the action production costs of the seller. Since the novella of Law 16/2021 (Food Supply Chain Law, LAC), it is further mandated that the sales price must be higher than the production cost. The law lists all the factors which must be included in the production costs. The transposition of the UTP Directive in the LAC also added a prohibition of buying below the seller's production costs at all levels of the value chain. To control this as well as the prohibition of other UTPs, all food product sales contracts since July 2023 with a volume above EUR 2.500 must be registered at the online registry (Forstner 2023). The Spanish price-related laws apply to foreign imports as well as products meant for exports (Forstner 2023).

Some other Member States include prohibitions of selling below cost-price, i.e. preventing retailers from selling below the price that they themselves paid for the product, in their jurisdiction, but outside of the UTP framework (e.g. in Germany in § 20 (3) Competition Act, Gesetz gegen Wettbewerbsbeschränkungen, BGBl. I S. 1750, 3245, as amended by Article 6, BGBl. 2024 I Nr. 400). Prohibitions of selling below cost-price such as the prohibition found in § 20 (3) of the German Competition Act aim to protect competitors at the same level of the value chain from unfair competition. This contrasts with the European UTP framework that aim at protecting suppliers from unfair conduct of their buyers by preventing 'a cascading of the consequences of the unfair trading practices […] that negatively affects the primary producers in the chain' (Recital 6, UTP Directive).

Annex 3: Simplified list of UTPs according to the EU Directive

- **Late payment (after 30/60 days)**
  Explanation: Payment after 30 days for perishable goods, or after 60 days for all other agri-food goods.
  Examples: A buyer pays for bananas 45 days after delivery. A buyer of cocoa beans pays 90 days after delivery.
- **Last-minute cancellation of perishable orders**
  Explanation: Cancelling a perishable goods order less than 30 days before delivery.
  Example: A buyer cancels an order of bananas 2 days before delivery.
- **Unilateral contract changes by the buyer**
  Explanation: Changing of terms (price, delivery, quantity) by the buyer without the supplier's agreement.
  Example: The buyer reduces the volumes or the agreed price per unit.
- **Payments not related to a specific transaction**
  Explanation: Charging the supplier fees that aren't directly linked to a specific sale.
  Example: A buyer charges payments for its personnel and overhead costs.
- **Transferring risk of loss or spoilage to supplier**
  Explanation: Making the supplier bear the cost for deterioration of goods post-delivery
  Example: A buyer receives goods that have spoiled after delivery and holds the supplier accountable for the loss.
- **Passing on costs of customer complaints**
  Explanation: Making the supplier pay for the buyer's handling of customer complaints.
  Example: A buyer bills a supplier for the labor costs of handling a refund claim.
- **Refusing to confirm the contract in writing**
  Explanation: The buyer refuses to provide written confirmation after a verbal agreement, despite request from the supplier.
  Example: A buyer only gives verbal orders and avoids written terms.
- **Misuse or disclosure of trade secrets**
  Explanation: Using or sharing confidential supplier information without permission.
  Example: A buyer shares a supplier's pricing model with a competitor.
- **Commercial retaliation**
  Explanation: Threatening or punishing the supplier for asserting their rights.
  Example: A retailer delists a supplier's product after a complaint about late payments.
- **Return of unsold goods (unless agreed upon in advance)**
  Explanation: Returning goods without paying. This is only allowed if both sides agree on it beforehand.
  Example: A retailer returns unsold products without prior agreement – this is not allowed.
- **Charging for listing, stocking, marketing, advertising or staff for fitting-out premises (unless agreed upon in advance)**
  Explanation: Charging for listing products, in-store marketing, or advertising, or staff to fit-out the premises where sales occur. This is only allowed if agreed upon in advance.
  Example: A buyer demands a marketing fee after the contract – this is not allowed.

Annex 4: UTP reports of Member States

Austria: Bundeswettbewerbsbehörde (2024): Bericht gemäß § 5h Absatz 3 FWBG für den Zeitraum vom 1.1.2023 bis zum 31.12.2023.

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Austria: Fairness-Büro (2025): Tätigkeitsbericht 2024.

Belgium: Waterbley, Séverine (2024): Annual report on unfair trading practices in business-to-business relations in the agricultural and food supply chain - 2023. Brussels: FPS Economy.

Bulgaria: Commission on Protection of Competition (2024): Extract from the Annual report of the CPC for 2023 - Report for the Unfair trading practices. Commission on protection of competition.

Croatia: Croatian Competition Agency (2021): Summary Annual Report of the Croatian Competition Agency for 2020.

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Cyprus: Agricultural Department (2024): ΕΤΗΣΙΑ ΕΚΘΕΣΗ ΔΡΑΣΤΗΡΙΟΤΗΤΩΝ ΕΤΟΣ 2023

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Denmark: The Danish Competition and Consumer Authority (2023): The Danish UTP Act. Annual report on enforcement activities.

Finland: The Food Market Ombudsman (2024): Elintarvikemarkkinavaltuutetun toimintakertomus 2023.

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Germany: Bundesanstalt für Landwirtschaft und Ernährung (2024): Verbot unlauterer Handelspraktiken in der Lebensmittellieferkette. Tätigkeitsbericht der Durchsetzungsbehörde für das Jahr 2023.

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Italy: ICQRF (2024): 2023 Report.

Latvia: Competition Council (2024): Latvia Annual Report 2023.

Luxembourg : Autorité de la Concurrence (Luxembourg) (2024): Pratiques Commerciales Déloyales Dans La Chaîne d'Approvisionnement Agro-Alimentaire.

Luxembourg: Autorité de la Concurrence (Luxembourg) (2023): Unlautere Handelspraktiken in der Agrar- und Lebensmittelversorgungskette.

Netherlands: Autoriteit Consument & Markt (2024): 2023 ACM Annual Report.

Poland: Urząd Ochrony Konkurencji i Konsumentów (Office of Competition and Consumer Protection) (2023): Sprawozdanie prezesa uokik.

Slovakia: Sekcia kontroly a obchodného dozoru (2024): Výročná Správa Podľa Zákona Č. 91/2019 Z. Z. O Neprimeraných Podmienkach V Obchode S Potravinami A O Zmene A Doplnení Niektorých Zákonov V Znení Neskorších Predpisov Za Rok 2023.

Slovenia: Javne agencije Republike Slovenije za varstvo konkurence (2024): Letno poročilo Javne agencije Republike Slovenije za varstvo konkurence o aktivnostih na področju nedovoljenih ravnanj v verigi preskrbe s kmetijskimi in živilskimi proizvodi za leto 2023.

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