

Two months left to transpose the EU Unfair Trading Practices Directive

Only two months are left before the deadline for EU Member States to transpose the 2019 EU rules on Unfair Trading Practices in the Agricultural and Food Supply Chain. While some Member States have already put on the table draft laws with innovative solutions to protect agri-food suppliers, including seafood producers and fisher persons, in the EU and abroad, others still have to catch up to meet their obligations. This is the last chance to learn from examples of best practices across the EU and grasp the opportunity to put in place an ambitious law transposing the Directive in every single EU Member State.

Agri-food supply chains are characterised by widespread imbalances of power along the supply chain, which inevitably lead to abuses exerted upon weak actors. To mitigate these abuses that smaller producers face, the EU approved in 2019 the [EU Directive 2019/633 on Unfair Trading Practices in Business Relationships between Businesses in the Agricultural and Food Supply Chain](#) (Unfair Trading Practices Directive, briefly the “UTP Directive”). The EU Member States are required to transpose the Directive into their national legal framework by the 1st May 2021.

The UTP Directive bans a set of 10 trading practices - black practices - that will no longer be allowed under any circumstance, and 6 additional ones - grey practices - which shall only be allowed when explicitly mentioned in a written contract. While the Directive sets the minimum requirements, it is possible for Member States to transpose it in a way that offers suppliers additional protection against unfair trading practices. Civil Society Organizations have advocated since the approval of the UTP Directive for a more ambitious transposition by individual Member States¹.

For example, Member States can expand the list of forbidden UTPs by prohibiting some of the practices that the Directive does not forbid but only limits (grey UTPs). They can also include abusive practices beyond the ones listed in the directive or better yet, institute a general ban on UTPs. And finally, they can expand the scope of their laws so that they do not only prevent UTPs in agri-food supply chains, but also in other supply chains, such as textiles.

The signatory Civil Society Organisations are glad that several Member States have taken up this opportunity to increase the level of ambition. This is the case, for example, of existing legislative proposals, in countries such as Spain or Italy, which forbid or set limits to buying below production cost. As this can help to tackle the root cause of many abusive practices, other countries should

¹ See, among others, Oxfam International, Traidcraft Exchange, SOMO, IFOAM-EU, FTAO, The Unfair Trading Practices Directive: a transposition and implementation guide (2019). In: <https://fairtrade-advocacy.org/wp-content/uploads/2019/07/The-Unfair-Trading-Practices-Directive.pdf>

include the buying below production cost prohibition as an UTP as well. Other Member States are considering improving the capacity of their national law to respond to future challenges faced by suppliers by allowing it to modify the list of forbidden UTPs by ministerial decree instead of requiring a new law. Germany has also taken a step frontwards by adding two “grey UTPs” to the list of prohibited ones; in particular, the return of unsold goods at the supplier's expense, and the assertion of storage costs after delivery. However, it would be preferable to adopt an even more ambitious approach by adding all “grey UTPs” to the list of prohibited ones and introducing a general ban on UTP in order to avoid circumvention strategies.

Other innovations that are currently under negotiation in different Member States and that would further contribute to rebalance the relations between buyers and suppliers are the creation of a database of contracts to make it easier for the enforcement authorities to investigate; forbidding double-race auctions; or expanding the role of the ombudsperson for consumer disputes to include also UTPs-related issues.

Of critical importance is that the EU Directive requires non-EU suppliers which are part of an EU-bound supply chain to be included in the scope of the legislation. This will ensure that they enjoy the same protection as EU-based suppliers, while preventing the loophole through which EU buyers could otherwise prefer to source from suppliers not based in the EU to circumvent the additional protection that the new laws offer. Enforcement authorities should therefore take steps to proactively engage with non-EU suppliers, making sure that they are aware of the protections that the Directive offers and that they are confident in how to raise a complaint.

A law is as good as its effective implementation. The UTP Directive instructs the EU Member States to designate an authority to monitor compliance, be able to initiate investigations ex-officio, and impose sanctions. EU Member States are called upon to ensure that this authority is accessible not only to suppliers, but also to suppliers’ associations, and Civil Society Organizations, including trade unions, acting on their behalf; and that it guarantees effective remedy and anonymity of specific suppliers filing complaints. As mentioned before, it is in the interest of everyone that these authorities monitor and enforce the law also when the affected party is a non-EU actor.

[More information on the EU UTP Directive and guidelines for transposition and implementation available from: https://fairtrade-advocacy.org/our-work/eu-policies/unfair-trading-practices/](https://fairtrade-advocacy.org/our-work/eu-policies/unfair-trading-practices/)

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