

Cross-border enforcement of the Directive on Unfair Trading Practices:

Extraterritoriality of non-harmonised national UTP laws is an existential threat to the single market for food products

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As the AGRI committee of the European Parliament will vote on 15 July on the Commission proposal on cross-border enforcement of the unfair trading practices (UTP) Directive, our organisations warn that amendments tabled in AGRI which open the door to the extra-territorial application of non-harmonised national UTP laws represent an existential risk for the single market for food products, with far reaching negative consequences for *all actors* in the supply chain, including farmers and consumers.

We therefore urge the AGRI Committee to reject these amendments and follow the opinion of the IMCO Committee, which clarifies that the Regulation applies to stricter national laws only if they are prohibited in both, the Member State of the requested enforcement authority and the Member State of the applicant enforcement authority.

Background

The goal of the Commission proposal is to facilitate cross-border cooperation between national authorities when enforcing [EU Directive 2019/633](#) on unfair trading practices in the food supply chain (the UTP Directive). The UTP Directive does not fully harmonise UTP laws, as Member States remain free to transpose more stringently the practices listed under article 3(2) and/or to regulate additional contractual practices (article 9). As a result, national UTP laws differ considerably between Member States.

In this context of divergent national UTP laws, the integrity of the single market for food products relies entirely on the proper application of the EU legal acquis related to the applicable law and competent jurisdiction in cross-border contracts, as laid down in the Rome I and Brussels I bis Regulations. To ensure legal certainty, suppliers and buyers in the single market rely on these fundamental EU rules to choose and agree on the law applicable to their cross-border contracts, therewith allowing to identify which national law – and therefore which national UTP law – is applicable and must be complied with.

Extraterritoriality leads to dismantlement of the single market

Many amendments tabled in the AGRI Committee propose to allow Member States to use the cross-border cooperation mechanism created by the Commission proposal to enforce their non-harmonised national UTP laws on cross-border contracts, without considering which national law actually applies to the contract, resulting in the extraterritoriality of national laws. **This extraterritoriality would result in the absurd situation where Member States would be able to enforce their national laws on cross-border contracts that are not subject to their jurisdiction and which are in full compliance with the applicable law** chosen by the contractual parties (in application of the EU acquis related to cross-border contracts).

Such a situation would **cancel all legal certainty** in cross-border supply and purchase of food products. This would be a lose-lose result for every actor in the food supply chain, including farmers and consumers, as food operators would refrain from buying from and selling to countries which UTP laws they are not familiar with (and which may even contradict each other), resulting in a dismantlement of the single market for food products. A well-functioning EU single market is not only critical to ensure farmers and manufacturers can

sell their products across the EU but also that the food system can provide enough food to all EU citizens at affordable prices, and is therefore the cornerstone of EU food security and resilience.

The solution: follow the IMCO Committee opinion on the scope of the Regulation and reject extraterritoriality

The IMCO Committee recognises the threat that extraterritoriality of non-harmonised national laws poses to the single market. In its opinion adopted on 25 June, the IMCO recommends to clarify the scope of the Commission proposal to ensure that it applies to stricter national legal provisions on UTPs only if these prohibitions exist “*in both the Member State of the requested enforcement authority and the Member State of the applicant enforcement authority*” and “*are compatible with the rules on the functioning of the internal market*”.

We urge the AGRI Committee to adopt the same amendment as adopted in the IMCO opinion, which clearly rejects any form of extra-territoriality of non-harmonised national UTP laws, in full alignment with the EU legal acquis related to the applicable law and competent jurisdiction in cross-border contracts.

Recommendation to the AGRI Committee: adopt the IMCO amendment to article 2 (scope)

Article 2(2.a.) This Regulation applies to unfair trading practices that are prohibited by Article 3 of Directive (EU) 2019/633, as well as to stricter national rules as provided in Article 9 of Directive (EU) 2019/633 if they are, at a minimum, prohibited in both the Member State of the requested enforcement authority and the Member State of the applicant enforcement authority, provided that such national rules are compatible with the rules on the functioning of the internal market.

Recital (10a) To ensure the consistent application of Union and international rules on private international law, and to protect the integrity of the internal market, this Regulation applies to unfair trading practices that are prohibited by Article 3 of Directive (EU) 2019/633 and stricter national rules as provided in Article 9 of Directive that are prohibited, at a minimum, in both the Member State of the requested enforcement authority and the Member State of the applicant enforcement authority, provided that such national rules are compatible with the rules on the functioning of the internal market

[Independent Retail Europe](#) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors. Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers. Independent Retail Europe represents 24 groups and their over 501.000 independent retailers, who manage more than 764.000 sales outlets, with a combined retail turnover of more than 1.411 billion euros and generating a combined wholesale turnover of 621 billion euros. This represents a total employment of more than 6.440.000 persons. Find more information on [our website](#), on [X](#), and on [LinkedIn](#).

[Euro Coop](#) unites 19 national organisations of consumer co-operatives in Europe, representing 30 million consumer-members, 7,000 local co-operatives, 700,000 employees and operating 94,000 points of sale. Consumer co-operatives are enterprises with a distinct model of ownership and governance, which, since 1844, have been operating according to the co-operative principles such as voluntary and open membership (Principle 1) and democratic member control (Principle 2) based on the rule of 1 member-1 vote. Being owned and managed by their members, consumer co-operatives have an inherent responsibility far-reaching past the cash register, such as care for the community (Principle 7) and all its social, economic and environmental facets.