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MEP Christian Doleschal, Vice-Chair of IMCO
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MEP Kamila Gasiuk-Pihowicz, Vice-Chair of IMCO

Cc: MEP Adnan Dibrani (rapporteur)
Cc: MEP Tomislav Sokol (Shadow-rapporteur)
Cc: MEP Anna-Maja Henriksson (Shadow-rapporteur)
Cc: MEP Elisabeth Dieringer (Shadow-rapporteur)
Cc: Gheorghe Piperea (Shadow-rapporteur)

Brussels, 22 April 2025

SUBJECT: Proposed Regulation on cross-border enforcement of unfair trading practices: call on the IMCO to preserve the integrity of the single market and the EU legal acquis on cross-border contracts

Dear Chair and Vice-Chairs of the IMCO Committee,

We write to you concerning the Commission proposal for a Regulation on cross-border enforcement of unfair trading practices (UTP) on which the IMCO Committee will provide an opinion. **We would like to bring to your attention that the Commission proposal (which was – unusually - not subject to any impact assessment or review by the Scrutiny Board), contains provisions which, if not clarified, put in jeopardy the integrity of the single market for food products, and risks to undermine the EU legal acquis related to the applicable law and competent jurisdictions in cross-border contracts.**

This Commission proposal is meant 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). Our member retailers have heavily invested in compliance with the UTP Directive, through the review of thousands of contracts and training programmes for their purchase and legal teams. Effective enforcement of the UTP Directive is therefore in their interest, to ensure a level playing field and avoid unfair competition. We are therefore not opposed to the strengthening of cross-border enforcement of the UTP Directive.

However, the Commission's text creates a major single market issue, as it proposes a cross-border cooperation mechanism to enforce rules that are not fully harmonised, without considering which law is applicable to the contract or practice at stake. This creates major legal uncertainty for economic operators, and undermines the single market for agricultural and food products.

In fact, the UTP Directive from 2019 does not fully harmonise the list of prohibited UTPs, as:

- Member States remain free to transpose more stringently the practices listed under article 3(2) of the UTP Directive (i.e. the so-called 'grey list': practices that are prohibited unless explicitly agreed beforehand in a clear and unambiguous manner).
- Member States remain free to ban at national level additional practices or contract terms not regulated by the UTP Directive (article 9 of the UTP Directive).

As a result, the lists of prohibited practices differ considerably between Member States, as found by the Commission in its report on the application of the UTP Directive¹. In this situation of legal fragmentation, the integrity of the single market for food products relies entirely on the proper application of the EU legal acquis

¹ See [COMMISSION STAFF WORKING DOCUMENT Unfair Trading Practices](#) (UTP) - Overview tables on Member States' transposition choices and enforcement activities, section 4.5

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 the law applicable to their cross-border contracts, therewith allowing to identify which national law –and therefore which national UTP law is applicable.

Unfortunately, the proposed Regulation on cross-border enforcement of unfair trading practices overlooks this fundamental aspect of EU contract law, as the proposed mutual assistance mechanism (art. 5, 6 and 7) fails to consider the issue of the applicable law in cross-border situations. As a result, a national authority would be able to obtain information and request enforcement measures against practices 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). **You will find in annex a concrete example.**

Sadly, this scenario is not hypothetical, as food operators are increasingly confronted in certain Member States with policies and legislation meant to renationalise the food supply chain, through the creation of barriers to the single market and the extra-territoriality of national UTP laws in cross-border situations, in flagrant violation of the EU single market acquis.

This is all the more problematic, as the EU single market is a cornerstone of EU food security and resilience. Food producers, manufacturers, wholesalers and retailers use the single market on a daily basis for the supply and purchase of food products. A well-functioning single market is critical to ensure the food system can provide enough food to all EU citizens at affordable prices. Without legal certainty in cross-border situations, the single market for food products is under threat. 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.

We therefore urge the European Parliament's IMCO Committee to stand firm in its role of guardian of the single market. In particular, we call on the IMCO Committee to ensure that its future opinion on the Commission proposal will include the necessary clarifications to ensure that the mutual assistance mechanism (articles 5, 6 and 7) cannot be used by a Member State to request information and/or enforcement measures in situations where the contract is regulated by the law of another Member State and is fully compliant with that law and the applicable EU acquis.

We thank you for your attention and count on your support on this crucial issue for the single market.

Yours sincerely,



Else Groen
Director General of Independent Retail Europe



Todor Ivanov
Secretary General of Euro Coop

[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.

ANNEX: Concrete examples of the issue raised by the lack of reference to the applicable law in the Commission proposal for a mechanism of mutual assistance in UTP enforcement.

Both examples show that the **absence of reference** to the applicable law in the mutual assistance mechanism foreseen in the Commission proposal creates major **legal uncertainty** and erects a huge **barrier** to cross-border contracts for the purchase/supply of agricultural/food products, if not clarified. **It is essential to ensure that articles 5, 6 and 7 of the Commission proposal cannot be used to request cross-border cooperation for cases where the practice is legal under the law applicable to the contract.**

Example 1:

A supplier from country A negotiates and concludes a contract with a buyer established in country B. Both parties agree (as per Rome I and Brussels I bis Regulations) that the law of country B will apply and that jurisdictions in country B will be competent in case there is a dispute between the parties.

Enforcement authority in country A considers that some aspects of the negotiations/contracts are in breach of provisions of its national UTP laws that are not regulated by the UTP Directive and requests information to country B on the basis of article 5(4) of the Commission proposal on cross-border enforcement of unfair trading practices. The aim of country A is to enforce its national UTP law on the buyer located in country B, even though the contract is subject to the law of country B (as per the Rome I Regulation) and is compliant with that law. **This completely erases all legal certainty for the cross-border purchase/supply of agricultural/food products, as parties cannot trust anymore legally compliant contracts.**

Example 2:

Country A transposed article 3(2)(a) of the UTP Directive literally in its national law, therefore allowing the return of unsold products if agreed beforehand in a clear and unambiguous manner. Country B transposed differently this provision, banning it in all circumstances. Buyer in country A agreed with a supplier in country B for a contract that explicitly allows the return of unsold products in clearly specified circumstances. The parties agreed that the contract is subject to the law of country A, where this practice/contract term is legal.

Authority of country B uses article 5, 6 or 7 to request cooperation from country A for breach of the national UTP law of country B transposing (more stringently) article 3(2) of the UTP Directive, while, the cross-border contract is regulated by the law of country A and is fully compliant with the law of country A. **This completely erases all legal certainty for the cross-border purchase/supply of agricultural/food products, as one cannot trust anymore legally compliant contracts.**