



Opinion of the European Economic and Social Committee

Proposal for a regulation of the European Parliament and of the Council on cooperation among enforcement authorities responsible of Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain

(COM(2024) 576 final – 2024/0318 (COD))

(C/2025/2970)

Rapporteur: **Émilie PROUZET**

Legislative procedure	EU Law Tracker
Referral	European Parliament, 20.1.2025 Council, 14.2.2025
Legal basis	Article 43(2) and 304 of the Treaty on the Functioning of the European Union
European Commission documents	COM(2024) 576 final Summary of COM(2024) 576 final
Relevant Sustainable Development Goals (SDGs)	SDG 2 – Zero Hunger SDG 8 – Decent Work and Economic Growth SDG 10 – Reducing inequalities SDG 12 – Responsible consumption and production
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	12.3.2025
Adopted at plenary session	27.3.2025
Plenary session No	595
Outcome of vote (for/against/abstentions)	188/0/3

1. RECOMMENDATIONS

The European Economic and Social Committee (EESC):

1.1. supports strengthening cooperation between national authorities within the internal market;

1.2. notes the extent to which seeking better communication, coordination and cooperation among national authorities is essential, whatever the sector, especially to provide complainants with better support for when they lodge complaints. In this context, the EESC once again highlights the crucial role played by interpreters and translators. Language is still a major obstacle that restricts access to procedures;

1.3. welcomes the Commission's decision to swiftly start incorporating the recommendations of the Strategic Dialogue on the future of EU agriculture into the legislative process;

1.4. supports the spirit of open dialogue between the various players in the food supply chain that has prevailed over the last few months, particularly as part of this strategic dialogue, and would like to see this continue within the recently created European Board on Agriculture and Food (EBAF);

1.5. understands why there is no impact assessment given that the proposed regulation in question only aims to clarify the arrangements for cooperation between national authorities that were already laid down in the Unfair Trading Practices Directive (UTP);

1.6. calls on the co-legislators to ensure that the proposed regulation remains a legislative act that seeks only to specify administrative and procedural measures;

1.7. asks the co-legislators to ensure that businesses which operate in the internal market benefit from legal certainty and remain free to choose the law and jurisdiction applicable to their contracts, while still complying with competition law.

1.8. therefore, given the lack of harmonisation between Member States, calls for the measures in the regulation to apply only to cooperation between the authorities responsible for enforcing the legislation on unfair trading practices and the thresholds harmonised at EU level under Articles 3 and 4 of the UTP Directive;

1.9. failing that, urges the co-legislators to ensure that the enforcement authorities have an absolute right to refuse requests for the exchange of information on national rules that are not harmonised by the UTP Directive – particularly since some of these rules could be incompatible with the internal market;

1.10. calls on the European co-legislators to preserve the internal market and to avoid proposing measures that could lead to renationalising supply in Europe and that could in this regard legitimise regional supply constraints that have serious consequences for consumers and for product sustainability.

2. EXPLANATORY NOTES

Arguments in support of recommendations 1.1 and 1.2

2.1. The EESC has repeatedly stated that coordination, cooperation and communication between national authorities must be improved. There is great potential for improvement in this regard ⁽¹⁾. Implementation that is in keeping with the rules and effective enforcement is vital for the sound functioning of the internal market and for better access to justice for complainants.

2.2. The EESC calls on the co-legislators to ensure that the regulation remains a legislative act on the administrative and procedural measures that only apply to cooperation between the authorities responsible for enforcing the UTP directive.

2.3. It also calls on the co-legislators to abstain from amending the UTP Directive and to avoid adding new rules to the proposed regulation before the results of the evaluation of the UTP Directive are known.

Arguments in support of recommendations 1.3 and 1.4

2.4. In its explanatory memorandum, this proposal builds on the recommendations of the report on the Strategic Dialogue on the future of EU agriculture, which was presented to the President of the European Commission in September 2024. This report is the result of several months of discussions between 29 stakeholder organisations from the agri-food sector. The EESC congratulates the various stakeholders on their work and encourages the Commission to maintain this spirit of good cooperation within the EBAF.

2.5. It also supports the recommendations of the report, which is the result of the spirit of good collaboration between all the players in the chain who had agreed to work together to support the transition to sustainability of the agri-food chain.

⁽¹⁾ Opinion of the European Economic and Social Committee on 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Digitalisation of justice in the European Union. A toolbox of opportunities (COM(2020) 710 final) (OJ C 286, 16.7.2021, p. 88).

Arguments in support of recommendations 1.5 to 1.8

2.6. The EESC highlights the importance of guaranteeing this proposal's coherence, proportionality and impact on legal certainty for the businesses in question (see the Draghi report ⁽²⁾, the Letta report ⁽³⁾ and the commitment made by Ms von der Leyen concerning the competitiveness check ⁽⁴⁾).

2.7. The EESC counts on the Commission to ensure that effective safeguards have been provided for businesses, particularly regarding respect for the contracting parties' choice of law and jurisdiction, while still complying competition law.

2.8. The proposal for a regulation would not pose any problem if the rules were the same throughout the European Union. However, since the 2019 UTP Directive [(EU) 2019/633] ⁽⁵⁾ only provided for minimum harmonisation, Member States have adopted very different rules on the subject.

2.9. However, the second paragraph of Article 2(1) provides that the 'requests for information' referred to in the regulation may be used in relation to national rules (adopted pursuant to the UTP Directive). Article 5(4) reiterates the possibility set out in Article 2 of extending this right to include national measures. This paragraph includes a provision that allows the 'requested enforcement authority' to refuse to provide information.

2.10. In practice, ten unfair trading practices are illegal in all Member States. This is the only harmonisation that has been achieved. As regards the six 'grey' practices set out in the UTP Directive, some Member States permit them if they are subject to a prior agreement, while others prohibit them altogether.

2.11. National measures that differ from those provided for by the directive or that complement the practices of the directive, may reflect a national response to a national context and are therefore outside the scope of the proposed regulation in question.

2.12. In addition, most Member States have amended or removed the turnover thresholds stipulated in the directive. Several have added new practices to the 'grey' and 'black' lists.

- However, some national rules that go beyond the UTP Directive could run counter to EU legislation, considering that last April the Commission had not yet completed its compliance check to assess whether the national enforcement measures are compatible with the UTP Directive ⁽⁶⁾.
- Stricter national rules have not been subject to a 'request for information or further investigation' in order to assess their compatibility with the internal market pursuant to Article 9 of the UTP Directive ⁽⁷⁾.
- Lastly, complaints concerning the compatibility of national rules with the internal market have not yet been dealt with by the Commission.

2.13. The EESC is concerned that legal certainty for businesses may be jeopardised by the abovementioned provisions. It calls for safeguards to ensure that these provisions do not open the way for rules to be applied on the choice of laws and jurisdictions other than those set out in the contract, while still complying with competition law.

⁽²⁾ The Draghi report on EU competitiveness: https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en.

⁽³⁾ Much more than a market: <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>.

⁽⁴⁾ https://commission.europa.eu/topics/eu-competitiveness_en.

⁽⁵⁾ Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (OJ L 111, 25.4.2019, p. 59, ELI: <http://data.europa.eu/eli/dir/2019/633/oj>).

⁽⁶⁾ COM(2024) 176 final.

⁽⁷⁾ COM(2024) 176 final.

2.14. To guarantee the legal certainty of the scope, the EESC asks for Article 2 of the proposed regulation to specify that the regulation applies within a limited framework, namely:

- (a) to the UTPs listed in Article 3(1) and (2) of the UTP Directive; and
- (b) on the basis of the turnover thresholds laid down in Article 1 of the Directive.

2.15. The EESC also calls for traders' rights of defence to be specified, particularly with regard to proceedings brought against a company and the grounds for such proceedings. The companies concerned should be notified of the proceedings. Specifically, these notifications should allow for an assessment of compatibility with the internal market, without creating additional administrative burdens. However, the obligation to inform the buyer must be subject to national rules that govern the disclosure, in order to ensure that this disclosure does not undermine the investigation or the preservation of evidence.

Arguments in support of recommendation 1.9

2.16. Moreover, this insecurity could be exacerbated by certain Member States who try to apply their own national rules to contracts legally concluded in another EU country, while still complying with competition law.

2.17. However, the proposed regulation explains that the rules laid down therein are without prejudice to the provisions of the EU's and its Member States' private international law⁽⁸⁾. It is not enough to merely indicate that a regulation is without prejudice.

2.18. The Committee highlights the fact that strengthening cross-border enforcement and coordination should in no way reinforce any country's efforts to apply its national law extra-territorially.

2.19. This is why it calls on the requested authorities to maintain the absolute right to refuse to respond to a request when this concerns non-harmonised national measures.

Arguments in support of recommendation 1.10

2.20. The EU internal market gives retailers and wholesalers access to a wider choice of products under better conditions. The savings made thanks to an optimal supply within the internal market are passed on to consumers as a result of intense competition between retailers and wholesalers, allowing them to offer their customers a wider range of products at lower prices⁽⁹⁾. Food accessibility remains a major concern for EU consumers, despite the stabilisation of inflation.

2.21. In his report on the internal market, Enrico Letta confirms that renationalisation of the internal market when it comes to sourcing is detrimental to consumer welfare⁽¹⁰⁾.

2.22. The more complicated or uncertain that sourcing is for buyers in the internal market, the more likely they are to return to domestic sourcing.

2.23. The European Commission has already established that territorial supply constraints imposed on retailers by large multinationals cost European consumers EUR 14 billion per annum⁽¹¹⁾. Many Member States have asked the European Commission to take urgent action here⁽¹²⁾.

⁽⁸⁾ Recital 4 of the draft regulation.

⁽⁹⁾ JRC 2020 Study on territorial supply constraints in the EU retail sector.

⁽¹⁰⁾ 'the renationalisation of sourcing and trading is bounded to affect ultimately the benefits that consumers derive from the Single Market'.

⁽¹¹⁾ JRC 2020 Study on territorial supply constraints in the EU retail sector.

⁽¹²⁾ At the start of the year, the emergency had already clearly been declared by several stakeholders: BEUC - The European Consumer Organisation, European Commission, Movement of French Enterprises.

3. PROPOSED AMENDMENTS TO THE LEGISLATIVE PROPOSAL OF THE EUROPEAN COMMISSION

Amendment 1

linked to recommendation 1.8

Text proposed by the European Commission	EESC amendment
Article 2	Article 2
Scope	Scope
1. This Regulation applies to the enforcement of the prohibition of unfair trading practices in business-to-business relationships in the agricultural and food supply chain laid down in Article 3(1) and (2) of Directive (EU) 2019/633 with a cross-border dimension.	1. This Regulation applies to the enforcement of the prohibition of unfair trading practices in business-to-business relationships in the agricultural and food supply chain laid down in Article 3(1) and (2) of Directive (EU) 2019/633 with a cross-border dimension, and on the basis of the scope set out in Article 1 of Directive (EU) 2019/633.

Reason

Article 2(1) specifies that the regulation only applies to unfair trading practices laid down in Article 3(1) and (2) of the Unfair Trading Practices Directive. This addition is crucial to limit risks of extra-territoriality.

Amendment 2

linked to recommendation 1.9

Text proposed by the European Commission	EESC amendment
Article 5	Article 5
Requests for information	Requests for information
[...]	[...]
4. Member States may decide that enforcement authorities can make use of the possibilities referred to in this Article in relation to national rules within the meaning of Article 9 of Directive (EU) 2019/633.	4. Member States may decide that enforcement authorities can make use of the possibilities referred to in this Article in relation to national rules within the meaning of Article 9 of Directive (EU) 2019/633.
When an applicant enforcement authority makes use of the possibility provided in subparagraph 1, the requested enforcement authority may refuse to provide information, indicating the reasons for the refusal.	When an applicant enforcement authority makes use of the possibility provided in subparagraph 1, the requested enforcement authority may refuse to provide information, regardless of the provisions of Article 10.

Reason

Article 5 states that enforcement authorities can make use of the possibilities referred to therein with regard to stricter national rules that go beyond the UTP Directive, but that the requested enforcement authority may refuse to provide such information. As already explained, in the spirit of the text, this right of refusal is an absolute right that is independent of Article 10. It is necessary to specify this.

Amendment 3

linked to recommendation 1.9

Text proposed by the European Commission	EESC amendment
<p>Article 10</p> <p>Refusal to comply with a request for mutual assistance</p> <p>1. A requested enforcement authority may refuse to comply with a request for information under Article 5 only if one or both of the following applies:</p>	<p>Article 10</p> <p>Refusal to comply with a request for mutual assistance</p> <p>1. A requested enforcement authority may refuse to comply with a request for information under Article 5(1) only if one or both of the following applies:</p>

Amendment 4

linked to recommendations 1.9 and 1.10

Insert new recital.

Text proposed by the European Commission	EESC amendment
	<p>Recital X</p> <p>The obligation to inform the buyer is subject to national rules, which could restrict the disclosure of information, where such disclosure may undermine the investigation, in order to preserve the evidence.</p>

Amendment 5

linked to recommendations 1.9 and 1.10

Insert new chapter V with a new article (Article 21).

Text proposed by the European Commission	EESC amendment
	<p>Article 21</p> <p>The applicant enforcement authority must provide a buyer that is under investigation either for an unfair trading practice with a cross-border dimension, or for a widespread unfair trading practice with a cross-border dimension, with the following, in accordance with national law:</p> <p>a) access to documents on the basis of which the applicant enforcement authority, or the coordinator appointed pursuant to Article 13(2), has deemed the submission of a request for mutual assistance to be necessary;</p> <p>b) information about the steps and measures taken by the applicant enforcement authority in accordance with Article 6(3);</p> <p>c) access to documents on the basis of which the applicant enforcement authority has determined that the buyer does not have sufficient assets in accordance with Article 7(2);</p>

Text proposed by the European Commission	EESC amendment
	<p><i>d) notification of the refusal or acceptance of a request by the requested authority and the explanation of the right to obtain additional information;</i></p> <p><i>e) notification within XX days of an alert submitted in accordance with Article 19;</i></p> <p><i>f) the possibility to express their point of view before a decision adversely affecting them is taken, in particular by clarifying questions relating to a potential breach of Directive (EU) 2019/633; and</i></p> <p><i>g) the possibility to submit comments where there are reasonable grounds to believe that the national rules referred to in Article 9 of Directive (EU) 2019/633 are incompatible with the rules governing the functioning of the internal market.</i></p>

Reason

To strike a balance between rights of defence and the rules on the disclosure of information during an investigation. In this regard, national legislation should be referred to.

Brussels, 27 March 2025.

The President
of the European Economic and Social Committee
 Oliver RÖPKE