

# Unfair Trading Practices – Remedies in the Single Market

Caroline Hobson



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# What are UTPs?

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Contractual  
issues (e.g.  
retrospective  
changes)

Unfair use of  
information (e.g.  
private label  
relationship)

Payment issues  
(e.g. late payment,  
deductions)

Unfair transfer of  
commercial risk  
(e.g. shrinkage)

Unfair termination  
of a commercial  
relationship (e.g.  
delisting)

Supply obligations  
(e.g. unjustified  
listing fees)

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## A thorny issue...

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- Freedom of contract
- A consolidated retail sector vs a fragmented supplier base
- Significant pricing pressures:
  - from consumers
  - from commodity markets
  - from discounters
- Direct and indirect suppliers
- Private label competition from the retail customer base
- The fear factor?
- No one-size fits all

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# Legal tools

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# The approach so far – a patchwork of national solutions

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# The regulatory and enforcement landscape

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- Significant developments in the last 5 years
- More than 20 Member States have introduced/are planning legislation
- A broad consensus on the issue
- But no consistency in the approach taken
  - expansion of competition law beyond scope of the EU competition law framework
  - a mix of legislation and self regulation
  - scope of OTP coverage varies
  - increase in enforcement bodies
  - nature and powers of enforcement bodies differ considerably
  - enforcement mechanisms vary widely

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# The Supply Chain Initiative

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- Established in 2013 by 7 EU level associations
- Principles of Good Practice – contracting parties:
  - should take into account consumer interests and sustainability of the supply chain
  - are free to set their own strategy and determine whether to enter into any agreement
  - should deal with each other responsibly, in good faith and with professional diligence
- Jointly agreed voluntary framework

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# Supply Chain Initiative – Specific Principles

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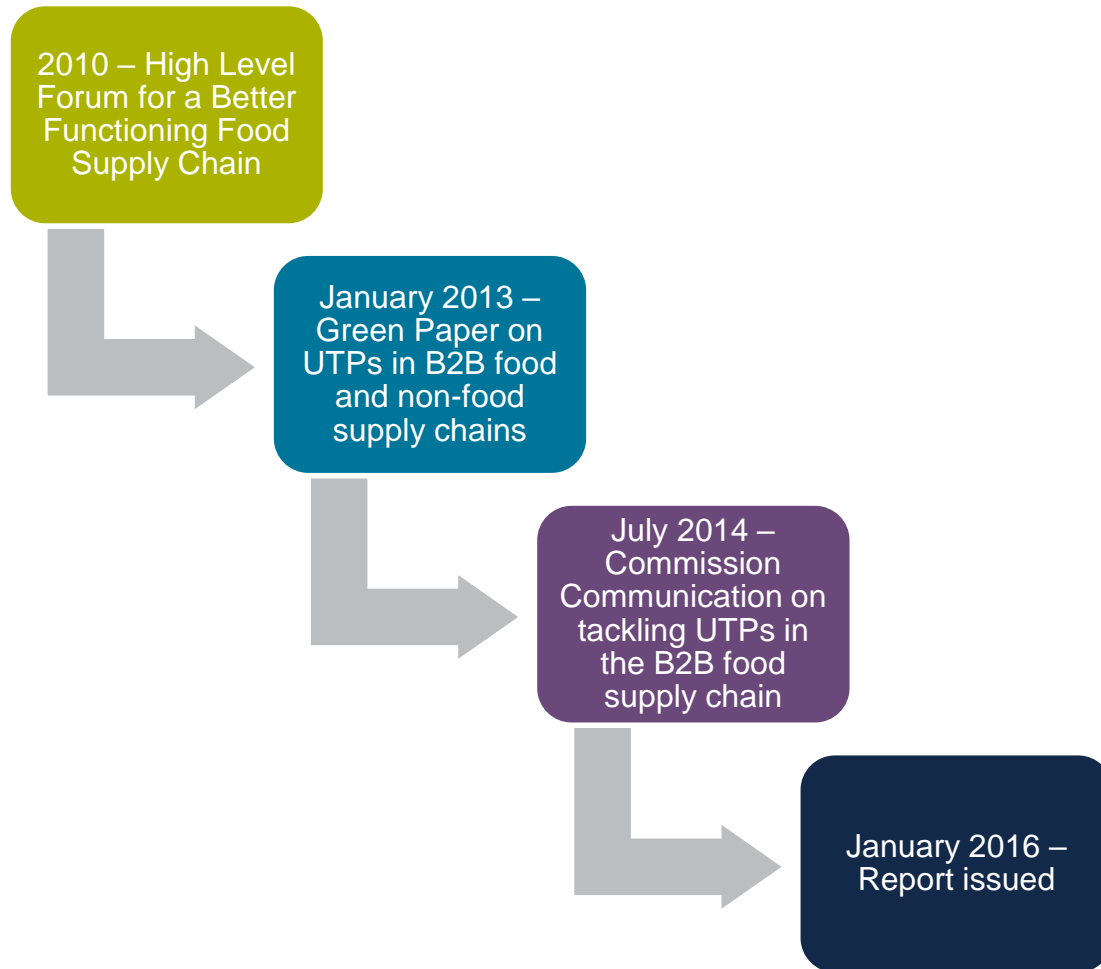




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# What has been the role of the European Commission?

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# The European Commission's 2016 report

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- Report undertaken against backdrop of intense price pressure on agricultural products and significant member state pressure
- National measures have developed significantly
- 5 key elements for effective regulatory frameworks to address UTPs:
  - Coverage in the supply chain
  - 4 core types of UTPs:
    - Unfair transfer of risk
    - Advantages/benefits requested in absence of a related service;
    - Unilateral/retroactive changes to a contract
    - Unfair termination (or threat of) of a contractual relationship
  - Enforcement frameworks to incorporate rigidity and flexibility
  - Confidentiality of complaints and possibility of own initiative investigations
  - Deterrent effect

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# The Commission's recommendations

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- All Member States to consider introducing legislation that covers the entire B2B food supply chain
- Legislation to cover operators from non-EU countries
- Member States to exchange information and best practice concerning national legislation and enforcement experiences
- National measures to be proportionate and to prohibit only certain core categories of UTPs; others to be assessed on the facts
- More national investigations
- Penalties should be high enough to outweigh any gain from imposing the UTP whilst being proportionate
- No EU-wide regulation
- Instead promotion of the Supply Chain initiative, although 'room for improvement'

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## Commission's recommendation for the SCI

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- Increase awareness of the SCI, especially among SMEs
- Ensure impartiality of SCI's governance structure
- Ensure confidential complaints
- Grant investigatory and sanctioning powers to independent bodies
- Enhanced monitoring of compliance and dispute resolution

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## What does this mean for national measures and enforcement?

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- A converged EU approach without the need for hard-fought EU legislation?
- Or a weak framework without a clear EU-wide incentive for change?
- How to overcome the ‘fear factor’?
- Will the existing approach promote a cultural change in the food supply chain?
- A risk of over-regulation?
- An increase in enforcement?
- European Commission is to continue to monitor the situation

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Thank you for your attention

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## Contact Details

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