



An Roinn Talmhaíochta,  
Bia agus Mara  
Department of Agriculture,  
Food and the Marine

# Unfair Trading Practices Enforcement Authority

Activity Report 2023









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# Minister's Foreword

It gives me great pleasure to receive the third and final activity report of the Unfair Trading Practices Enforcement Authority. Since setting up the Enforcement Authority within my Department on an interim basis in 2021, their efforts were focussed on fostering a culture of compliance with the Unfair Trading Practices Regulations which has resulted in significant progress in relation to the awareness and understanding of unfair trading law. This engagement with stakeholders has also led to the development of key relationships, the details of which is outlined in this and previous annual reports.

In 2023, I was delighted to secure the agreement of my Oireachtas colleagues to the establishment of the new independent Office - An Rialálaí Agraibhia (Agri-Food Regulator) that will promote fairness and transparency in the agricultural and food supply chain while having particular regard to the specific circumstances and needs of primary producers and small businesses.

The Agri-Food Regulator was established on 13th December 2023 and, in doing so, became the designated enforcement authority for the purposes of the EU Directive on Unfair Trading Practices. The establishment of the Regulator is a major landmark in the history of Ireland's agri food sector, one which I have long advocated for and was one of my priorities during my time in office as Minister. The work carried out by the interim Enforcement Authority to date will, no doubt, act as a useful platform upon which the Agri-Food Regulator can build.



The interim Enforcement Authority carried out significant preparatory work for the establishment of An Rialálaí Agraibhia and I want to thank them for laying the groundwork for the new Office. The opening of this new Office marks a significant milestone for all those involved in the domestic and international agri-food sector.

A handwritten signature in black ink that reads "Charlie McConalogue". The signature is written in a cursive, flowing style.

**Charlie McConalogue TD**  
Minister for Agriculture, Food and the Marine

# 1. Overview of the UTP Regulations and Enforcement Authority

## About the Unfair Trading Practices Regulations

The Unfair Trading Practices Enforcement Authority was established in May 2021 within the Department of Agriculture, Food and the Marine to enforce Statutory Instrument No. 198/2021 – European Union (Unfair Trading Practices in the agricultural and food supply chain) Regulations 2021.

The Regulations are aimed at helping to balance the bargaining power between smaller suppliers and larger buyers with a supplier and a buyer respectively defined as any natural or legal person who sells or buys agricultural and food products.

The Regulations prohibit 16 specific Unfair Trading Practices (UTPs) – ten of which are prohibited in all circumstances (Black UTPs) with the remaining six practices prohibited unless explicitly agreed between the supplier and buyer beforehand (Grey UTPs). The Regulations offer protection for any supplier of agricultural and food products with a turnover of up to €350 million subject to the supplier's turnover being lower than the buyer's turnover within stated categories which are outlined in the Regulations.

The Regulations have been applicable since 1st July 2021 to all supply agreements established after 28th April 2021 and, from 28th April 2022, all supply agreements, including those that were in place before 28th April 2021, had to be in compliance with the Regulations.

## Role of the Enforcement Authority

**The Enforcement Authority in respect of UTPs is responsible for:**

- Enforcement of the UTP Regulations including the management of complaints from suppliers.
- Promoting awareness and understanding of the UTP Regulations and the role of the Enforcement Authority including the provision of guidance and advice to buyers with respect to compliance.
- Acting as the contact point for both co-operation among the enforcement authorities in place throughout the EU and co-operation with the European Commission.

In 2023, the Enforcement Authority continued to take a proactive approach to enforcement aimed at developing a culture of compliance with the UTP Regulations. These activities included meetings with stakeholder representative bodies for businesses operating throughout the supply chain as well as targeted and ongoing engagement with the largest buyers of agri-food products in the State to ensure compliance with the Regulations.

## Staffing

The Enforcement Authority is headed by a Principal Officer and was supported by two other full-time equivalent staff members – an Assistant Principal Officer and a Higher Executive Officer. The CEO-designate of An Rialálaí Agraibhia took over as Head of the Enforcement Authority in May 2023 pending the establishment of the new Office. A fourth full-time staff member, an Assistant Principal, commenced working with the Authority in Q4 2023, in advance of the establishment of An Rialálaí Agraibhia.

## 2. Main activities of the Enforcement Authority in 2023

### 2.1 Enforcement

In 2023, the approach of targeted engagement with the largest buyer businesses in the agri-food supply chain was continued. The enforcement model deployed over the last two years targeted two key cohorts of the largest buyers in the agri-food supply chain:

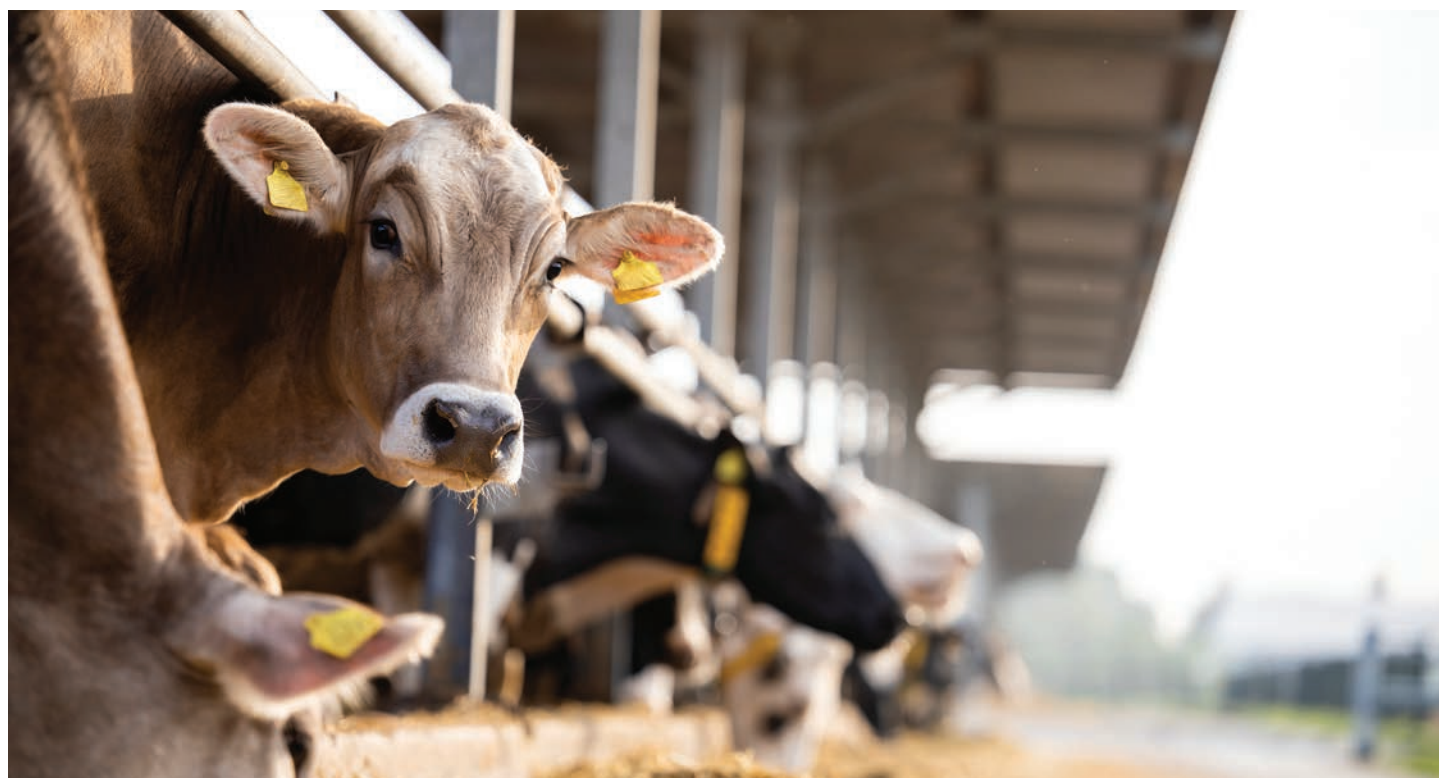
- Largest food retailers/wholesalers
- Largest direct buyers from primary producers

#### Engagement with the largest food retailers/wholesaler and primary producer buyers

In the latter half of 2023, the Enforcement Authority held meetings with each of the nominated Liaison Officers of the largest food retailers and food wholesalers in the State. These meetings allowed the Enforcement Authority to both continue engagement with respect to the retailer's and food wholesaler's approach to compliance with the UTP Regulations and to discuss the findings of the primary producer and downstream business supplier surveys.

The meetings also afforded an opportunity for the CEO-designate of An Rialálaí Agraibhia acting as Head of the Enforcement Authority to provide an update on progress with the establishment of the new Office. Further, it was discussed with the Liaison Officers that the request for a final Implementation Report in respect of the 2021 Regulations would be deferred given the impending establishment of the Agri-Food Regulator as revised Regulations were expected.

The Enforcement Authority also held a webinar for the nominated Compliance Officers of the largest primary producer buyers where the Enforcement Authority provided an overview of buyers' responsibilities in respect of the UTP Regulations and provided an update on the upcoming establishment of the new office of the Agri-Food Regulator. A question-and-answer session was facilitated. It was noted that the Frequently Asked Questions (FAQs) on the website are a useful resource as the Enforcement Authority keeps these under continual review.





## Engagement with the largest food service operators

During 2023, the Enforcement Authority held two information webinars for the largest food service operators in the country. An overview of the Unfair Trading Practices legislation in place was presented along with how the Enforcement Authority's approach to fulfilling its functions had evolved in respect of promotional activities and surveys conducted. The future of the Office was outlined in respect of establishment and the proposed functions of An Rialálaí Agraibhia.

The Enforcement Authority reminded attendees of their responsibilities to suppliers under the Regulations and answered many questions during the question-and-answer sessions during both webinars.

## Engagement with EU Commission and other Enforcement Authorities

The UTP Directive requires that Member State enforcement authorities co-operate effectively with one another and with the EU Commission and that they provide each other with mutual support and assistance.

Over the course of 2023, the Enforcement Authority participated in five online Enforcement Network Meetings as part of its ongoing collaboration at EU level. Among the topics covered in these meetings were the turnover thresholds and cross-border enforcement of the prohibitions outlined in the EU Directive.

The Head of the Enforcement Authority attended the in-person meeting of the Heads of Unfair Trading Practices Enforcement Network in Brussels on 7th November. Further discussion took place at this meeting in relation to cross-border enforcement. Work is ongoing to develop recommendations on strengthening co-operation and mutual assistance in cross-border enforcement. The Commission also outlined their high-level plans for the five-year review of the EU Directive due by end 2025.



## Complaints

An integral aspect of the Enforcement Authority's 2023 operations was the use of complaint handling processes which have been enhanced over time.

A secure online complaints submission form on the Enforcement Authority's website allows suppliers or certain organisations on behalf of a supplier or group of suppliers to submit a complaint in confidence to the Enforcement Authority. This helps streamline the process of making a complaint under the UTP Regulations, while suppliers also retained the option of email, phone or postal contact with the Authority to make a complaint.

A screening assessment process is used to progress reviews of complaints received from any supplier making a specific UTP-related complaint about the buyer of their product. This involves a detailed examination of the facts of the case to determine if it falls within the scope of the UTP Regulations before the complaint is escalated to the level of an investigation.

Determination of the annual turnover of the respective parties to the complaint is a critical part of the scoping assessment which requires detailed and, in some cases, complex financial checks to verify annual business turnover. Due to the specialist nature of this work, the Enforcement Authority uses a specialist financial consultancy firm to assist in the examination of these matters and has established robust safeguards to ensure confidentiality of data as part of this process. The EA continued to avail of the services of this firm on a case-by-case basis as required in 2023.

In 2023, the Enforcement Authority received three complaints, two of which were found not to be within the scope of the UTP Regulations. The other complaint received in 2023 was found to be within scope and remains under consideration by the Enforcement Authority.

As part of the Authority's complaint screening assessment procedure, two complaints received in 2022 continued to be examined in 2023 to determine whether they fell within the scope of the regulations and whether there was sufficient information to conduct a more thorough investigation of the matter. After due process, the complainants were advised that the EA had closed its review of the cases as they did not fall within the scope of the UTP Regulations. The complainants were given the opportunity to submit additional evidence in support of their claims and did not do so.

The Enforcement Authority continues to receive anonymous information through the online tip-off form and any such information received is retained by the Authority for possible future investigation if considered appropriate.

In addition to the processing of complaints and tip-offs received, the Enforcement Authority responded to a number of inquiries seeking guidance and/or clarifications regarding the terms of the UTP Regulations and how the legislation may be relevant to particular situations.





## 2.2 Awareness-raising

The Enforcement Authority continued its support for suppliers and buyers of agri-food produce by providing significant information and advice about their rights and responsibilities under the UTP Regulations. This interaction forms an integral part of the Enforcement Authority enforcement activities.

During 2023, the Enforcement Authority built on its strategic approach to promoting compliance and awareness of the Regulations by conducting surveys, webinars as well as the provision of updated resources for suppliers and others and through its dedicated website **[www.utp.gov.ie](http://www.utp.gov.ie)**.

Throughout 2023, the Enforcement Authority met with key stakeholders, such as representatives from the farming, retail and fisheries sectors and conducted multiple stakeholder engagements on issues relating to UTP compliance.

### Survey of suppliers of agricultural and food products

In May 2023, over 3,000 farmers and agri-food businesses were consulted as part of market research surveys commissioned by the Enforcement Authority. These surveys sought to establish data to build on the previous year's baseline awareness and knowledge of the protections available to suppliers under the UTP Regulations and to hear about any UTP-related issues that suppliers encounter in business dealings with their buyers.

In line with 2022 benchmark study, over half of all primary producers surveyed were beef farmers, followed by dairy (19%) and sheep (15%). The main downstream buyers of agri-products from these producers were meat processors and dairy co-ops.

Encouragingly, more of the survey respondents were aware of the Enforcement Authority (primary producers +12% and downstream businesses +11%) than in 2022. Only 30% of respondents were aware of the legislative plans to establish a new office to promote market transparency.

When suppliers were asked why they hadn't raised possible UTP-related issues with anyone, two common responses were fear of retaliation from the buyer and a lack of trust in the existing mechanisms in place to address their concerns. Not knowing what Authority to address an issue with was another recurrent theme for suppliers. Another finding of concern was that suppliers said that unfair practices are "common practice in the sector". Fear of retaliation from the buyer had decreased. There was a reduction in the instances of claims to have been subjected to an Unfair Trading Practice and in the instances of short notice cancellations.

Detailed summary of the survey findings is published on the Authority's website **[www.utp.gov.ie](http://www.utp.gov.ie)**.

Similar to last year's finding, a key takeaway from the survey results was the need for the Enforcement Authority to reinforce awareness of the basic message that protection against designated unfair trading practices is available for farmers and fishers along with other small business suppliers.







## 2023 Key summary findings of supplier surveys

- 1.** Nearly 2 in 3 primary producers claim to have heard of the unfair trading practices regulations (+12% increase versus 2022).
  - Over half of primary producer respondents understand that the UTP Regulations protect against unfair trading practices.
  - 4 in 10 business-to-business suppliers are aware that they have protection against unfair trading practices.

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- 2.** 1 in 4 primary producers & 45% business-to-business suppliers claim to have been subjected to an unfair trading practice.

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- 3.** When prompted, 25% primary producers & 40% business-to-business suppliers claim to have been subjected to a Black UTP in the past 12 months.

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- 4.** 7% primary producers and 20% business-to-business suppliers reported being subjected to a Grey UTP.

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- 5.** Half of the business-to-business suppliers that claimed to have been subjected to a Black or Grey UTP raised the issue with the buyer. Fear of retaliation and noting it is common practice has fallen back versus 2022.

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- 6.** 3 in 10 primary producers and 17% business-to-business suppliers are aware that legislation is being progressed that will see the establishment of a new Statutory Authority to take over the enforcement of unfair trading rules.

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## National Ploughing Championships 2023

In September, the Enforcement Authority hosted an exhibition stand within the Government of Ireland marquee at the National Ploughing Championships held at Ratheniska, Co. Laois. This presented a further opportunity for in-person interactions with a large number of attendees of the event, many of whom were primary producers and their representative bodies. The Unfair Trading Regulations and the imminent establishment of An Rialálaí Agraibhia were among topics discussed with visitors to the stand.

## Publishing of website resources

Throughout 2023, the Enforcement Authority updated its Frequently Asked Questions (FAQs) on the UTP Regulations in response to stakeholder engagement and queries.

### 3. An Rialálaí Agraibhia (Agri-Food Regulator)

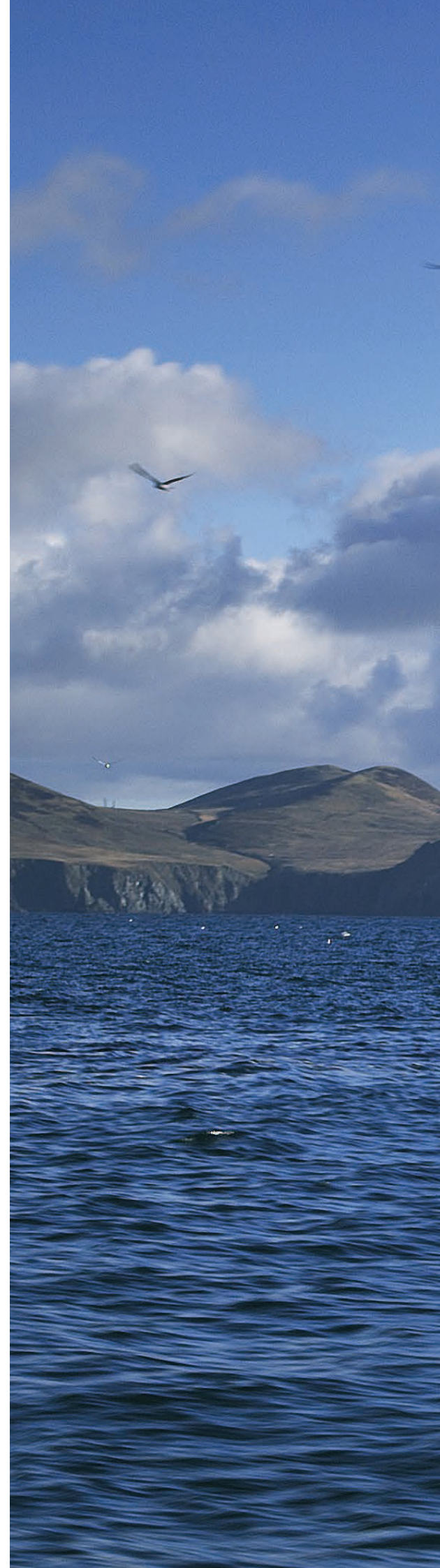
The Agricultural and Food Supply Chain Act 2023 was passed by the Houses of the Oireachtas and signed into law by President Higgins in July 2023.

The passage of this legislation will see establishment of the new independent Office - An Rialálaí Agraibhia (Agri-Food Regulator) that will, on commencement, promote fairness and transparency in the agricultural and food supply chain having regard to the specific circumstances and needs of primary producers and small businesses.

The enabling provisions of the Act will see the transfer of responsibility of UTP enforcement functions to the remit of the Regulator.

The Enforcement Authority has worked closely with the CEO-designate of An Rialálaí Agraibhia to ensure that a comprehensive transfer of all UTP compliance-related data that the EA had collected since its foundation will take place. Additionally, it ensured that all available information in relation to open investigations, complaints and legal processes were made available to the staff of An Rialálaí Agraibhia.

In 2023, the Enforcement Authority continued to provide advice based on its operational level experience in UTP enforcement to Department colleagues to assist the passage of the legislation through the Oireachtas process.











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