



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

Unfair Trading Practices Enforcement Authority

Activity Report 2022



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Minister's Foreword

I am pleased to endorse the publication of the second annual activity report of the Unfair Trading Practices Enforcement Authority. I set up the Authority within my Department on an interim basis in 2021 to enforce the UTP Regulations, pending the finalisation of primary legislation establishing An Rialálaí Agraibhia (the Agri-Food Regulator).

Firstly, I wish to acknowledge everyone involved in the agri-food supply chain – from our farm families and fishers who are the bedrock of everything great in the sector, to those who work in food processing, logistics, retail, marketing and distribution. Each of these are dependent on each other and rely on each other to make a living and succeed.



The last few years have shown how our food supply chain can be impacted by events outside of our control, yet also demonstrated its resilience. Thus, it is important that everyone in the chain respects each other and shows fairness and transparency in their dealings with each other.

I have been very supportive of the Enforcement Authority's approach to developing a culture of compliance with the UTP Regulations. The 2022 activity report summarises the significant body of work undertaken, which included continued targeted engagement with the largest businesses in the agri-food supply chain with a view to bringing about beneficial change for all operators.

I received with interest the Enforcement Authority's baseline surveys of agri-food suppliers on UTP issues at the Authority's seminar in May 2022, when the survey results were published. At the seminar, I highlighted that the real value of conducting such comprehensive work lay in the actions that followed it. I am pleased to note from this annual report that the Authority used its findings to inform much of its subsequent activity in 2022.

There remains a significant job of work in building sufficient confidence among suppliers of agricultural and food products to report details of unfair trading practices. This remains one of the biggest challenges to effective enforcement of the UTP Regulations. I expect An Rialálaí Agraibhia to embrace and build on the Enforcement Authority's initial work in this area.

I am pleased that the Agriculture and Food Supply Chain Bill is now progressing through the legislative process. This Bill will establish An Rialálaí Agraibhia and expand powers to promote fairness and transparency in the agricultural and food supply chain beyond those currently provided for. I look forward to Oireachtas approval of the remaining steps in the journey from the UTP Enforcement Authority to An Rialálaí Agraibhia.

For now, I would like to thank the Enforcement Authority for the foundations it has laid in ensuring fair trading in the agri-food supply chain.

A handwritten signature in black ink that reads "Charlie McConalogue". The signature is written in a cursive style and is positioned above a horizontal line.

Charlie McConalogue TD
Minister for Agriculture, Food and the Marine



1. Overview of the UTP Regulations and Enforcement Authority

1.1 About the Unfair Trading Practices Regulations

The Unfair Trading Practices Enforcement Authority within the Department of Agriculture, Food and the Marine is responsible for enforcing the Unfair Trading Practices Regulations 2021 (S.I. No. 198/2021 – European Union (Unfair Trading Practices in the agricultural and food supply chain)).

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 agreed between the supplier and buyer beforehand (grey UTPs). The Regulations afford 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. The Regulations provide protection for five graduated levels of supplier turnover categories relative to the buyer up to the €350 million turnover limit.

The UTP Regulations have been applicable since 1st July 2021 to all supply agreements established after 28th April 2021. 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.

Under the Regulations, a supplier is defined as an agricultural producer or any natural or legal person who sells agricultural and food products. A buyer is defined as any natural or legal person or any public authority who buys agricultural and food products.

1.2 Role of the Enforcement Authority

The Enforcement Authority's role can be categorised into two main areas - Enforcement and Awareness Raising.

Enforcement

Enforcement of the UTP Regulations including dealing effectively with supplier complaints.

Awareness-raising

Promoting awareness of the UTP Regulations and the role of the Enforcement Authority including the provision of guidance and advice to stakeholders with a view to encouraging compliance with the UTP Regulations.

In undertaking its role, the Enforcement Authority has taken a proactive, modern, regulatory approach to enforcement aimed at developing a culture of compliance with the UTP Regulations. These activities are described in greater detail in section 2.1. In summary, this involved awareness-raising campaigns, meetings with stakeholder representative bodies 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.

1.3 Staffing

The Enforcement Authority is headed by a Principal Officer and, for all of 2022, was supported by two other full-time equivalent staff members – an Assistant Principal Officer and a Higher Executive Officer. A fourth full-time staff member, an Agricultural Inspector, commenced working with the Authority in late Q3 2022.

1.4 Training

Staff completed specialist training in 2022 to enable the Authority more effectively undertake its role. This training covered general enforcement issues such as powers of authorised officers, the principles of natural justice as well as conducting interviews and producing case reports.

2. Main activities of the Enforcement Authority in 2022

2.1 Enforcement

In 2022, the approach to enforcement was to continue with targeted engagement with the largest buyer businesses in the agri-food supply chain. The objective was to help bring about beneficial change for all operators in particular, primary producers, along with other small, medium and mid-range sized suppliers of agricultural and food products.

Sections 2.1 (a-c) provide an overview of the enforcement model deployed over the year for two key cohorts of buyers in the agri-food supply chain:

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

Notwithstanding the engagement described, in its ongoing contact with the largest industry buyers, the Enforcement Authority made it clear that any business-specific complaints of alleged unfair trading practices would be dealt with in a more formal manner through the Authority's complaint screening assessment process – section 2.1 (f) refers.

Sections 2.1 (d-f) provide information on the other main enforcement-related activities undertaken in 2022 including cereal sector engagement, coordination at EU level and complaints.

2.1 (a) Largest food retailers/wholesalers buyer engagement

In 2022, the Enforcement Authority has continued its targeted engagement with the largest food retailers and food wholesalers in the State.

In Q4 2021, at the Enforcement Authority's request, these businesses nominated a Liaison Officer to deal with the Authority on any compliance-related issue with the UTP Regulations. Through the UTP Liaison Officers, the Enforcement Authority also required these businesses to submit a UTP implementation report which outlined

the measures they had taken, and intended to take, to ensure compliance with the UTP Regulations.

The baseline information received in the UTP implementation reports helped inform the Enforcement Authority's follow-up engagement with these businesses.

Over the course of 2022, the Enforcement Authority scheduled three rounds of meetings with the UTP Liaison Officer for these retailers and wholesalers to ensure on-going compliance with the UTP Regulations by the respective businesses.

Each round of meetings with the respective business' UTP Liaison Officer had a particular thematic focus. The first round of meetings focused on the UTP implementation report submitted by the business with additional information and clarifications sought on compliance actions taken or planned to be undertaken.

The second round of meetings focused primarily on the key findings of the business-to-business survey of suppliers on the UTP Regulations that the Enforcement Authority published in May 2022 (reference section 2.2 (a) for more details) and how the largest food retailers/wholesalers were ensuring that they were remaining compliant with the Regulations in the context of concerns raised by suppliers in the survey.

In the final round of scheduled meetings in 2022 with UTP Liaison Officers, the Enforcement Authority sought to better understand how the largest food retailers/wholesalers were ensuring that they were remaining compliant with the conditionally prohibited trading practices (Grey UTPs) that they engaged in with suppliers.





2.1 (b) Largest direct buyers from primary producers

As the enforcement model of engagement with the largest retailers and food wholesalers was found to be working effectively, the Enforcement Authority adopted this model to promote compliance with the UTP Regulations by the largest agri-food buyer businesses who purchase product directly from primary producers across the various sub-sectors of primary production of agriculture and fisheries.

In Q1 2022, these businesses were asked to submit implementation reports to the Enforcement Authority outlining the actions they had taken or planned to take to ensure full compliance with the UTP Regulations.

Following receipt of these implementation reports, some of which indicated that businesses did not fully understand their obligations as agri-food buyers, the Enforcement Authority hosted an online information webinar event in early April 2022 to provide further guidance on UTP Regulations and to provide a clear overview of what the Regulations require of buyer businesses. The Enforcement Authority also provided general feedback on the areas that warranted priority attention to ensure compliance with the Regulations in light of the content of some of implementation reports received.

Following this webinar, at the Enforcement Authority's request, these businesses nominated a UTP Compliance Officer as a contact point for the Authority to deal with any compliance-related issues in relation to the UTP Regulations. At the end of May, a further webinar was held for all nominated Compliance Officers where the Enforcement Authority outlined, in general terms,

the common shortcomings observed in some of the implementation reports submitted.

The Enforcement Authority engaged in a round of targeted bilateral meetings in Q4 2022 with selected UTP Compliance Officers where issues of concern were identified in submitted implementation reports. These meetings were not formal compliance-check inspections but rather were a continuation of the Enforcement Authority's broader approach of working with industry to provide guidance on appropriate actions to ensure full compliance with the Regulations.

2.1 (c) Effectiveness of enforcement approach with the larger buyers

In general, the Enforcement Authority has found its enforcement approach with the largest food retailers/wholesalers and largest agri-food buyer businesses who purchase product directly from primary producers to be very effective. It has enabled quick responses/feedback to help clarify any compliance-related issues and has helped accelerate strategic compliance-related initiatives and actions in the businesses targeted.

2.1 (d) Clarification provided to key cereal sector stakeholders

Arising from contact from various parties operating in the cereal sector, it was apparent to the Enforcement Authority that there was confusion for some stakeholders around how certain aspects of the UTP Regulations were being interpreted. Thus, in June 2022, the Enforcement Authority issued specific written guidance to all key stakeholders in the industry and to the relevant UTP Compliance Officers covering the following three areas:

- clarification on the definition of perishable agricultural and food products in the context of the cereal sector.
- calculation of the relevant payment period where price has not been agreed before delivery and
- payments to suppliers where grain crop inputs are purchased from the grain buyer.

2.1 (e) Engagement with EU Commission and other Enforcement Authorities

The UTP Directive requires that Member States enforcement authorities cooperate effectively with one another and with the EU Commission and that they provide each other with mutual assistance in investigations that have a cross-border dimension.

The EU Commission through DG Agri organised an in-person meeting in Brussels in September 2022 for the first meeting of the Heads of the UTP Enforcement Authorities in all Member States at which the Enforcement Authority presented to the group on Ireland's approach to enforcement. At this meeting, it was agreed that other more focused meetings covering specific enforcement related topics/challenges would be arranged at regular intervals, with the Heads of Enforcement Authorities to continue to meet annually.

Separate to the DG Agri coordinated initiatives, over the course of 2022, the Enforcement Authority arranged bilateral meetings with its counterparts in Denmark, Germany, the Netherlands and Poland for technical exchanges on interpretation of aspects of the UTP Directive and discuss practical approaches to enforcement and other issues of mutual interest.

2.1 (f) Complaints

A secure online complaints submission form was created on the Enforcement Authority's website in Q1 2022 where suppliers could submit a complaint in confidence to the Enforcement Authority. This helped make the process of making a complaint under the UTP Regulations more straightforward but suppliers also had the option of email, phone or postal contact with the Authority to submit a complaint.

A screening assessment process was established by the Enforcement Authority to progress reviews of complaints received from suppliers 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 is within the scope of the UTP Regulations before the complaint can be 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, in Q4 2022, the Enforcement Authority appointed a specialist financial consultancy body, following a public procurement tender process, to assist in the examination of these matters and has established robust safeguards to ensure confidentiality of data.

In 2022, the Enforcement Authority received ten complaints, six of which were found not to be within the scope of the Regulations. One complaint was withdrawn and, as a result, no further action was warranted. At year end, the other three complaints remained under examination as part of the Authority's complaint screening assessment process to establish if they fell within the scope of the Regulations and to determine if sufficient evidence was available to investigate the matter in detail.

In 2022, no investigation was opened by the Enforcement Authority in relation to prohibited practices covered by the UTP Regulations.

Separate to the examination of complaints received, the Enforcement Authority also dealt with seven queries during 2022 from individual suppliers who sought clarifications and/or advice on the provisions of the UTP Regulations with a view to possibly making a complaint to the Authority.

2.2 Awareness-raising

Promotion and awareness-raising activities allow the Enforcement Authority to assist suppliers and buyers by providing relevant information on their protections and obligations under the UTP Regulations. Such engagement is an important function of enforcement efforts of the Enforcement Authority.

During 2022, the Enforcement Authority's strategic approach to promoting compliance and awareness of the Regulations encompassed surveys, public communication campaigns, webinars, the provision of guidance resources to suppliers and buyers and through its dedicated website www.utp.gov.ie. Further information on these activities is outlined in sections 2.2 (a-e).

The Enforcement Authority also conducted numerous stakeholder engagements on UTP compliance-related matters through 2022 holding meetings with key supplier and buyer stakeholders including farming representative bodies, retail/industry representative bodies as well as representatives from the fisheries sector.

2.2 (a) Survey of suppliers of agricultural and food products

In March 2022, over 3,400 agri-food businesses and farmers were consulted as part of market research surveys commissioned by the Enforcement Authority. These surveys sought to establish 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.

The Enforcement Authority is greatly indebted to and would like to record its sincere thanks to the many farmers, fishers and small supplier businesses of agricultural and food products who took the time to complete the survey and provide valuable feedback.

A key insights summary of the surveys is provided below. A more detailed summary of the survey findings is published on the Authority's website www.utp.gov.ie.



A notable finding of the survey respondents who claimed they were subjected to an unfair trading practice, was that only half stated that they would report the matter to their buyer, the Enforcement Authority or another body, with fear factor included as a main stated reason for not reporting.

The survey finding aligns with EU analysis in this area which has also found that fear of retaliation from buyers has been consistently pointed out by suppliers as a significant concern in stakeholder consultations.

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.

Key Insights Summary of Supplier Surveys

1. 50% of primary producers and business-to-business (B2B) suppliers claim to have heard of the UTP Regulations.
 - a. Half of primary producers surveyed claim that they understand that the UTP Regulations protect against unfair trading practices.
 - b. 44% of B2B suppliers surveyed had just heard the name.
2. Only 14% of primary producers surveyed and 20% of B2B suppliers surveyed were aware that, as a supplier of agri-food product, they have legal protection against 16 specific unfair trading practices.
3. 1 in 4 primary producers & over half of B2B suppliers surveyed claim to have been subjected to a Black UTP in the past two years.
4. 40% of primary producers and 30% of B2B suppliers surveyed were subjected to a Grey UTP.
5. About half of primary producers and B2B suppliers surveyed that were subjected to a Black or Grey UTP raised the issue with the buyer. Main reason for not raising the issue is fear of retaliation from the buyer & that the practices would be considered common practice.

2.2 (b) Communication campaigns

Informed by the findings of the supplier surveys, the Enforcement Authority arranged for two extensive communication campaigns during 2022 across multiple media platforms to raise awareness of the UTP Regulations and to address key issues raised in the surveys.

The initial campaign in July/August 2022 was directed primarily at buyer's responsibilities and obligations under the Regulations – the campaign also sought to create greater awareness of the Enforcement Authority establishment to enforce the Regulations.

July/August 2022 Awareness Campaign

A Government of Ireland initiative brought to you by the Department of Agriculture, Food and the Marine.



Have you taken stock of the Unfair Trading Practices Regulations?

If your business buys agriculture or food products, it is your legal obligation to ensure that your supply agreements and associated trading practices are compliant. The Regulations ensure a fairer trading environment for suppliers in the agri-food supply chain.

The Unfair Trading Practices Enforcement Authority has been established to enforce the regulations, to ensure rules are upheld and to investigate complaints.

For more information, including guidance on the steps to take to ensure compliance, visit www.utp.gov.ie

The Unfair Trading Practices Enforcement Authority



Rialtas na hÉireann
Government of Ireland

The second campaign in November/December 2022 was targeted at improving awareness of the Regulations for suppliers and aimed to provide reassurance that the Enforcement Authority will deal forcefully with non-compliant buyers.

November/December 2022 Awareness Campaign

A Government of Ireland initiative developed by the Department of Agriculture, Food and the Marine.



Are you a supplier of agriculture or food products?

If yes, then you need to know about the Unfair Trading Practices Regulations.

The regulations provide legal protection against 16 unfair trading practices, such as unilateral contract changes or late payments.

The Unfair Trading Practices Enforcement Authority has been established to enforce these regulations.

If you have been subjected to an unfair trading practice, you can contact the Authority about your complaint in confidence.

Know your rights. For more information, visit utp.gov.ie




The Unfair Trading Practices Enforcement Authority



Rialtas na hÉireann
Government of Ireland

These campaigns resulted in a very significant increase in traffic to the UTP website with over 35,000 visits recorded over the course of both campaigns. Aside from the basic awareness messaging that benefited all suppliers of agricultural and food products, the campaigns greatly helped to broaden the awareness-base of businesses that need to take specific actions to ensure ongoing compliance as well as providing assurance to suppliers that non-compliance will have repercussions for their buyers.

2.2 (c) Breakfast Seminar: 'Ensuring Fair Trading in the Agri-Food Supply Chain'

On 5th May 2022, the Enforcement Authority hosted a Breakfast Seminar entitled 'Ensuring Fair Trading in the Agri-Food Supply Chain'. The seminar, which was held in-person and was also live streamed to registered attendees, marked the first anniversary of the signing of the Unfair Trading Practice (UTP) Regulations and was aimed at raising awareness of the Regulations.

Over 330 people - 260 online from 20 different countries and 70 in-person - attended the Seminar, at which the Minister for Agriculture, Food and the Marine, Charlie McConalogue TD was the keynote speaker.

The Enforcement Authority outlined the work it had undertaken since establishment and highlighted to buyers and suppliers of agri-food products their respective obligations and rights under the Regulations. The seminar also communicated the main findings of the supplier surveys referenced in section 2.2 (a).



Speakers at the Breakfast Seminar Left-right:

Noel Collins - Head of the UTP Enforcement Authority

Bernie Coyne - Managing Director, Coyne Research

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

Sinéad McPhillips - Assistant Secretary-General, Department of Agriculture, Food and the Marine

2.2 (e) Anonymous reporting platform

The Enforcement Authority also created a separate confidential online reporting platform on its website in Q3 2022 which enables suppliers of agricultural or food products or employees and former employees of a business that purchases agricultural food products to transmit information anonymously about a business that may have breached the UTP Regulations. The creation of the platform formed part of Authority's approach to addressing the "fear factor" which can impact the reporting of official complaints in relation to buyers engaging in prohibited practices covered by the UTP Regulations.

3. Transition to An Rialálaí Agraibhia

The Agricultural and Food Supply Chain Bill was approved by Government for presentation to the Houses of the Oireachtas in November 2022 and, at the time of publishing of this report, was still progressing through the legislative approval process.

This Bill, when enacted, will establish a new independent statutory Authority to be known as An Rialálaí Agraibhia (The Agri-Food Regulator). The enabling provisions in the Bill will provide for the transfer of responsibility of UTP enforcement functions to the remit of the Regulator, which is expected to occur at the time of commencement of the Act. The Bill will also grant the Regulator additional powers to promote fairness and transparency in the agricultural and food supply chain.

In 2022, the Enforcement Authority provided advice and input, based on its operational level experience in UTP enforcement, to help inform the preparation of the draft Agricultural and Food Supply Chain Bill prior to the publication of the initiated version of the Bill in December 2022. The Head of the Authority also attended a meeting of the Joint Committee on Agriculture, Food and the Marine in June 2022 alongside the Minister and other senior Department officials at the commencement of Pre-Legislative Scrutiny of the General Scheme of the Agricultural and Food Supply Chain Bill.

The Enforcement Authority has made clear in its communications with buyers and their stakeholder representative groups throughout 2022 that case files in relation to any active complaints under assessment or investigations opened, along with any other compliance-related information it has garnered, will be handed over on a strictly confidential basis and secure manner for appropriate follow-up action and use by the new Regulator at the time of transfer of UTP enforcement functions.

The Enforcement Authority looks forward to working closely with the new Regulator to ensure an orderly transfer of functions when the legislative approval process is completed.





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