

ENFORCEMENT POLICY OF THE UNFAIR TRADING PRACTICES ENFORCEMENT AUTHORITY



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1. INTRODUCTION

It is the legal responsibility of all buyers of agriculture and food products to ensure that they are fully compliant with the requirements of the Unfair Trading Practices (UTP) Regulations: S.I. No. 198/2021 – European Union (Unfair Trading Practices in the agricultural and food supply chain) Regulations 2021.

This document sets out to –

- inform buyers of agricultural and food produce how UTP law is enforced and
- provide assurance to suppliers of agricultural and food produce and the public that all non-compliance with UTP law will be dealt with effectively and appropriately.

2. WHO ENFORCES UTP LEGISLATION?

The Unfair Trading Practices Enforcement Authority (EA) in the Department of Agriculture, Food and the Marine currently has statutory responsibility for enforcing the UTP Regulations. Responsibility for UTP enforcement in Ireland will transfer from the EA to the Office for Fairness and Transparency in the Agri-Food Supply Chain when the Act that will establish the new Office is commenced.

Enforcement covers all activities of the EA which are aimed at promoting and ensuring compliance with the UTP Regulations. The EA aims to foster the development of a culture of compliance with the Regulations in order to bring about beneficial change for all operators but, in particular, primary producers, along with other small, medium and mid-range sized suppliers of agricultural and food products.

In this context, EA activities include industry engagement, providing support, advice and guidance, data collection and analysis of industry compliance actions reported on a voluntary basis. However, EA activities may also include regulatory inspections, audits of reported actions and taking enforcement actions where necessary to address any non-compliance matters.

3. ENFORCEMENT

The policy of enforcement of the UTP Regulations is based on promoting and on-going monitoring of compliance while also responding to any complaint received.

3.1 PROMOTION AND GUIDANCE

Promotion and guidance are considered to be a soft enforcement function, assisting many buyers with relevant information on their obligations under the UTP Regulations. Such engagement is an important function of enforcement efforts.

The EA uses strategic communications to promote voluntary compliance including through print and social media, webinars, individual meetings, the provision of resources for suppliers and others and through its website www.utp.gov.ie.

3.2 IMPLEMENTATION REPORTS

Annual Implementation reports are requested by the EA from the largest business buyers of agriculture and food products in the State to describe what measures they are taking to ensure compliance with the UTP Regulations.



While this reporting requirement is not included in Regulations, the EA considers the reporting of this information highly beneficial for the relevant businesses to enable their compliance, as well as providing a level of assurance to suppliers that they are taking appropriate actions.

3.3 MONITORING AND ASSESSING COMPLIANCE

Returns from businesses to the EA of their Implementation reports aids the monitoring of compliance efforts by the largest business entities with the Regulations.

The Implementation report returns inform a risk-based approach to inspections, including potential follow-up audits of claimed actions by buyers of agricultural and food products to ensure that they are compliant with the UTP Regulations.

3.4 COMPLAINTS

A screening process is applied to any complaint received where an individual supplier makes a specific complaint against a named buyer.

The screening process seeks to establish whether the complaint is within the scope of the Regulations. It will also establish whether all necessary information is available to the EA to allow for full consideration of whether the complaint is otherwise valid.

Once the validity of the complaint has been established, the EA will then assess the complaint to decide if the information provided is sufficient to indicate that a potential breach of the UTP Regulations may have taken place.

3.5 INVESTIGATION

Where the EA is satisfied that a potential breach of the UTP Regulations may have occurred, it will commence an investigation into the matter.

The EA may conduct investigations on its own initiative or on receipt of a complaint. The EA will use its powers in a way that is proportionate to the nature of complaints received and based on the attitude of the buyer to ending the unfair practice(s) in question.

The EA has the power to

- require buyers and suppliers to provide all necessary information;
- take decisions if infringement is found and require the buyer to bring prohibited trading practices to an end;
- initiate proceedings for the imposition of fines and
- publish decisions following investigation.

In addition to its investigative powers, the EA also has the power to carry out unannounced on-site visits.

3.6 COMPLIANCE NOTICE

If arising from an investigation, non-compliance with the Regulations is found, the EA will issue a compliance notice to the buyer in question identifying the actions which need to be remedied. The aim of the compliance notice is to remedy the impact of the prohibited trading practice on the supplier.



The actions which could be included in a compliance notice are extensive and can include:

- reimbursements of expenses incurred by a supplier;
- a document or record be dealt with in a specified manner and
- a specified operation or activity that should be ceased on a premises.

A compliance notice may be appealed within 7 days of serving to the District Court.

The overarching approach of the EA where breaches of Regulations occur is to:

- protect suppliers of agricultural and food products as required under the Regulations;
- be proportionate taking account of the nature and extent of the non-compliance;
- change the behaviour of the larger buyer and
- act as a deterrent to future non-compliance

3.7 PROSECUTIONS AND FINANCIAL PENALTIES

Taking prosecutions is the ultimate enforcement deterrent to future UTP non-compliance. Failure to comply with a compliance notice is an offence. For more serious offences, the EA may initiate court proceedings for the imposition of fines on non-compliant buyers. A person who commits an offence under the UTP Regulations is liable –

- on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or
- on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or to both

3.8 PUBLISHING OF DECISIONS

The UTP Regulations provide for the publication of details of complaints received by the EA and the outcome of investigations. In this regard, the EA may, subject to the confidentiality provisions of the Regulations, publish details of decisions relating to:

- infringement of the prohibited UTPs or where the buyer was required to bring such prohibited trading practices to an end, or
- the imposition of fines or the initiation of proceedings for the imposition of fines and other penalties.

In addition, the EA is required to report on the number of complaints received and the number of investigations opened or closed during the previous year and, for each closed investigation, a summary description of the complaint, the outcome of the investigation and where applicable, the decision taken.

These details will be published at www.utp.gov.ie



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