



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

The Unfair Trading Practices in the Agricultural and Food Supply Chain Regulations

Suppliers: Know your rights

Buyers: Know your obligations



An tÚdarás um Fhorfheidhmiú Cleachtais Trádála Éagóracha
Unfair Trading Practices Enforcement Authority
www.utp.gov.ie

THE UNFAIR TRADING PRACTICES (UTP) REGULATIONS

The UTP Regulations: S.I. No. 198/2021 – European Union (Unfair Trading Practices in the agricultural and food supply chain) Regulations 2021 transposed EU Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain into Irish law on 28th April 2021. The Regulations protect weaker suppliers against unfair trading practices by stronger buyers in the agricultural and food supply chain.

KEY POINTS OF THE REGULATIONS

- Protect farmers, farmers organisations, and other weaker suppliers of agricultural and food products against stronger buyers
- Prohibit ten 'black' UTPs in all circumstances
- Prohibit six 'grey' UTPs unless the parties agree clearly and in an unambiguous manner beforehand
- Established an Unfair Trading Practices Enforcement Authority in the Department of Agriculture, Food and the Marine
- Apply only to business-to-business relationships in the agricultural and food supply chain
- Applicable since 1st July 2021 to all new supply agreements established since 28th April 2021.
- From 28th April 2022, all supply agreements, including those that were in place before 28th April 2021, must be in compliance with the Regulations

AGRICULTURE AND FOOD PRODUCTS

The UTP Regulations apply only to agricultural and food products which are listed in Annex I to the Treaty on the Functioning of the EU (TFEU) as well as products not listed in that Annex but processed for use as food using products listed in that Annex. The list of such products is very extensive and can include:

- Food products such as tomatoes or apples, cereals, fish or shrimp, ham, milk, cheese
- Products processed from Annex I TFEU products for use as food, such as prepared meals or sauces, and processed dairy products

Also within the scope of the Regulations are non-food products such as live animals, live trees, cut flowers supplied for planting or for ornamental use and animal feed.

PROHIBITED UNFAIR TRADING PRACTICES

The UTP Regulations prohibit 16 specific unfair trading practices. In doing so, it distinguishes between 'black and 'grey' practices.

BLACK UTPS – THESE ARE PROHIBITED IN ALL CIRCUMSTANCES

1. Payment later than 30 days for perishable agricultural and food products
2. Payment later than 60 days for other agricultural and food products
3. Short-notice cancellations of perishable agricultural and food products
4. Unilateral contract changes by the buyer
5. Payment not related to a specific transaction
6. Risk of loss and deterioration transferred to the supplier
7. Refusal of written confirmation of a supply agreement by the buyer, despite request of the supplier
8. Misuse of trade secrets by the buyer
9. Commercial retaliation by the buyer
10. Transferring the costs of examining customer complaints to the supplier



GREY UTPS - THESE ARE PROHIBITED UNLESS THE PARTIES AGREE CLEARLY AND IN AN UNAMBIGUOUS MANNER BEFOREHAND

1. The buyer returns unsold products to the supplier without paying for those unsold products
2. Payment by the supplier for stocking, display and listing
3. Payment by the supplier for promotion
4. Payment by the supplier for marketing
5. Payment by the supplier for advertising
6. Payment by the supplier for staff of the buyer, fitting out premises



PROTECTION OF WEAKER SUPPLIERS AGAINST STRONGER BUYERS

UTPs are less likely to occur when the parties to a transaction have symmetric bargaining power. Asymmetry in bargaining power may lead to the imposition of unfair trading practices on suppliers. Due to their weaker position, suppliers can be forced to accept unfair practices in order to continue to sell their products and maintain commercial relations with buyers in the supply chain.

A supplier is defined as an agricultural producer or any natural or legal person, including producer organisations, organisations of suppliers and associations of such organisations 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.



Examples of Suppliers

- ✓ Farmers and fishers and their organisations
- ✓ Processors (food industry)
- ✓ Distributors/wholesalers
- ✓ Producer organisation, including co-operatives
- ✓ Plant Nurseries

Examples of Buyers

- ✓ Processors
- ✓ Distributors/wholesalers
- ✓ Producer organisation, including cooperatives when they buy from their farmer members
- ✓ Retailer or retail association
- ✓ Public authorities
- ✓ Nursery garden centres, florists



The Regulations only apply if either the supplier or the buyer are located in Ireland. The provisions of the Regulations do not apply to end consumers.

SUPPLIERS PROTECTED UNDER UTP REGULATIONS – CATEGORIES OF TURNOVER

The UTP Regulations protect suppliers with relatively weaker bargaining power. It is not absolute size that matters, only the difference in size between supplier and buyer. The UTP Regulations use a 'step-up' approach based on turnover figures as illustrated in the Bar chart graphic.

For example, a supplier with an annual turnover of less than €2 million is protected against buyers with a turnover exceeding €2 million. Suppliers with a turnover above €2 million and not exceeding €10 million are protected against buyers which have a turnover higher than €10 million.

The protective effect covers suppliers having turnovers of up to €350 million. Suppliers having turnover of greater than

€350 million are not protected by the UTP Regulations, as they are considered to have sufficient financial clout to negotiate trading terms without the need for regulatory intervention.

The relevant turnover is established according to the criteria of the SME recommendation 2003/361/EC. This means that, in order to establish the turnover of a supplier or buyer, the turnover of any linked or partner enterprise/s of which they may be members, should also be taken into account.

A supplier who sells to a public authority can rely on the protection against unfair behaviour of the public authority regardless of turnover considerations.



SIZE OF ENTERPRISE BY ANNUAL TURNOVER



ENFORCEMENT

The Enforcement Authority has the power to

- Conduct investigations following receipt of complaint or on its own initiative
- Require buyers and suppliers to provide all necessary information
- Carry out unannounced on-site inspections
- Take decisions if infringement found, and require the buyer to bring prohibited trading practice to an end (compliance notice)
- Initiate proceedings for the imposition of fines
- Publish decisions following investigation



Where the Enforcement Authority considers that there are sufficient grounds for acting on a complaint, it will, subject to any request for confidentiality, initiate, conduct and conclude an investigation of the complaint within a reasonable period of time.

The Enforcement Authority may also initiate and conduct investigations on its own initiative.

If, following an investigation, the Enforcement Authority is of the view that the UTP Regulations are not being or have not been complied with, it may issue a compliance notice requiring the buyer to take appropriate action. Failure to comply with such a notice is an offence.

A person who commits an offence under the UTP Regulations is liable –

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



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COMPLAINTS AND CONTACT

If you are a supplier and feel that you have been the subject of an Unfair Trading Practice, please contact the Enforcement Authority.

Website: www.utp.gov.ie

Email: utp@agriculture.gov.ie

Phone: +353 (0) 1 5058607