



**Opening Statement by IFA President Joe Healy
to the Joint Oireachtas Committee on Agriculture, Food & the Marine
on Directive of the European Parliament and the Council, COM(2018)173,
on unfair trading practices in business-to-business relationships in the food supply chain**

Chairman and Members of the Committee,

Thank you for inviting IFA here today to discuss with you the area of Unfair Trading Practices (UTPs) in the food supply chain and the draft EU Directive on this area.

I am joined here by Damian McDonald IFA Director General and Elaine Farrell IFA Oireachtas and Retail Executive.

At the outset, I want to acknowledge the initiative by Phil Hogan EU Commissioner for Agriculture and Rural Development in prioritising the imbalance in the food supply chain and recognising the vulnerability of producers in it.

Some of you may be asking what is a UTP.

Every day examples of UTPs are:

- Late payment
- Cancellation at short notice of perishable food product orders
- Changing terms of a contract without any notice
- Retailer charging the supplier for wastage of food products incurred on the shop floor

And these are just a sample.....

IFA has campaigned for many years both at home with Governments and in Europe, for a rebalancing of power in the food supply chain, to deliver a viable price for farmers, and a return on their work and investment.

In November 2016, the Agricultural Markets Task Force (AMTF) made **recommendations** on how to improve the position of farmers in the agri-food supply chain, including, that the European Commission:

- would take steps to introduce a **harmonised baseline of prohibited UTPs in Member States**. This aims to reduce the occurrence of UTPs in the food chain by introducing a minimum common standard of protection across Member States;
- would foresee effective enforcement of UTPs, by an **independent public body**, to be set up by Member States; and
- would further increase **market transparency of processors and retailers' prices** especially in the meat, dairy, fruit and vegetable sectors by collecting and reporting such data in the chain.

In Brussels, as Chairman of the COPA¹ and COGECA² Group on the Food Supply Chain, I have been leading the campaign on behalf of European farmers on retail dominance and UTPs.

The 2017 CAP Consultation³ showed that 97% of EU consumers are in favour of the farmer getting a better share of the retail price.

¹ COPA – European Farmers' Organisation

² COGECA – European Agri-Cooperatives' Organisation

³ Modernising and Simplifying the CAP - European Commission DG AGRI 2017

To quantify the economic impact of UTPs in the agri-food sector, COPA and COGECA commissioned an independent study⁴ which showed that 94% of farmers and 95% of agri-cooperatives had been exposed at least once to UTPs. But the most striking finding of this study is that UTPs have cost farmers and agri-cooperatives €10.9 bn annually in the EU.

In recent years, we have had an intensive lobby campaign to curb this activity, targeting members of the European Parliament, the College of Commissioners and a number of Directorate Generals in Brussels, primarily Agriculture and Competition.

Dominance of Power in the Retail Sector

Across Member States, there is recurring evidence of large retailers dominating the market with excessive buying power and dictating price levels back to farmers, often driving prices to uneconomic levels and even below the cost of production.

For example,

- Here in Ireland, the three biggest retailers - Tesco, Supervalu / Centra and Dunnes control 70%⁵ market share, while five retailers – adding Aldi and Lidl - bring this to 94%.
- and in Finland two retailers control 85% market share, and
- in France, the top three retailers have 56% market share, with the top five holding 79%.

The message is clear – we need unequivocal and immediate action to curb UTPs at EU level.

The Directive that we are discussing today, provides for the introduction of a **minimum common standard of protection across Member States**, which is to be welcomed. This means that the European Commission is targeting the problem of under-protection against UTPs by providing a common minimum standard of protection in the EU.

⁴ Impact of Unfair Trading Practices in the European agri-food sector - 2013

⁵ Kantar Worldpanel Grocery Market Share - 12 weeks ending 9 September 2018

But, this is only a first step in reining in retailers and rebalancing power in the food chain. It should form part of a wider effort in recognising powerful actors in the supply chain, which contribute to the imbalance between downstream and upstream players in the chain.

European Parliament and Council

The European Parliament, under the stewardship of rapporteur Paolo De Castro, who is an Italian MEP, has approved the draft legislation in recent weeks.

I recently chaired the COPA-COGECA Food Chain meeting in Brussels, where Paolo De Castro took our members through the European Parliament amendments and position.

They have called for the scope to be broadened to include all actors in the food supply chain.

The EU Council has also supported the Commission's proposal, with a view to adoption in December.

Grocery Goods Regulations 2016 (Ireland)

You will be aware that in 2016 this Government introduced the Grocery Goods Regulations⁶ which provide for the control of certain UTPs between large supermarkets and wholesalers and their direct suppliers of food and drink products in the grocery goods sector in Ireland.

It is the remit of the Competition and Consumer protection Commission (CCPC), to enforce these Regulations.

⁶ Consumer Protection Act 2017 (Grocery Goods Undertakings) Regulations 2016

Specifically, the Irish Regulations relate to the direct business relationship between suppliers, and wholesalers and retailers of food and drink operating in the country, who have, a worldwide turnover in excess of €50m.

Scope of draft EU Directive

The scope of the draft EU Directive will apply to certain UTPs which occur in relation to the sales of food products by a supplier that is a small and medium-sized enterprise (SME) to a buyer that is not a small and medium-sized enterprise.

Therefore, it will apply to the sales of **food products only** by a supplier that has a turnover of less than €50m to a buyer that has a turnover of more than €50m. This means it will apply to a farmer supplying a co-op / meat factory, but not to the co-op / meat factory supplying a retailer.

IFA's position is that the EU Directive should apply to the full food supply chain.

The proposed Directive;

- Aims to **reduce the occurrence of UTPs** in the chain by introducing a minimum common standard of protection across the EU, that consists of a short list of specific prohibited UTPs and leaves Member States room to keep or provide for further-reaching measures.
- Sets down provisions **targeting minimum enforcement requirements applying to national competent authorities.**
- Sets down a **coordination mechanism between enforcement authorities facilitated by the Commission**, to enable the exchange of data concerning the number and type of infringement investigations carried out and of best practices with a view to improving the effectiveness of enforcement. It references the UK Grocery Code Adjudicator as a role model.
- Is going down the **subsidiarity route**, to complement existing arrangements in Member States, who will have to transpose the UTP rules into national law. 20 Member States, including Ireland, already have some legislation in this area.

As IFA understands it, the draft EU Directive, is not compatible with the Irish Grocery Goods Regulations (2016), primarily because of the scope of the proposed EU legislation.

The proposed **Directive sets out to prohibit the following UTPs but makes no mention of a contract** (these UTPs are prohibited whether or not there is a written contract):

- Payment later than 30 days
- Cancelling orders of perishable food products at short notice
- Buyer changing unilaterally and retroactively the terms of the supply agreement on frequency, timing, or volume
- Supplier paying for the wastage of food products incurred on the buyer's premises

IFA queries, how in the **absence of a written supply contract**, these four UTPs can be proven and outlawed?

The **Directive provides for Member States to ensure that the following specified UTPs are prohibited, unless they are agreed in a supply contract:**

- Buyer returning unsold food products
- Buyer charging a supplier payment to secure or maintain a supply agreement
- Supplier paying for the promotion of food products sold by the buyer
- Supplier paying for the marketing of food products by the buyer

The Irish Grocery Goods Regulations provide for a greater list of UTPs.

IFA has called on the European Parliament to strengthen the legislation by adding other UTPs, so that producers have clear written contracts, and to tackle abuses by retailers, including:

- unsustainable discounting / below-cost selling:
- annual tendering by retailers, and
- payment for retention or better positioning of shelf space.

Designation of a Public Authority

The draft Directive provides for the designation of 'a public authority' for the purpose of enforcement. IFA's experience is that an Independent Retail Regulator with a specific remit is required, similar to the UK Grocery Code Adjudicator which has proved to be a game-changer.

In Ireland's case, this function is being subsumed in the Competition and Consumer Protection Commission (CCPC), where its effectiveness is lost. The proposed Directive holds up the UK model as best practice, and this is the model that IFA wants the Irish Government to follow.

The single biggest issue for farmers is that they have no confidence in the CCPC to enforce the regulations.

IFA notes that in September, the CCPC announced that it is about to start inspections in the grocery sector to ensure traders are complying with their obligations - this is to be welcomed, but it is something that should have happened much sooner.

These regulations were introduced in April 2016, and most farmers either supplying the retailers directly or indirectly through a wholesaler, have no contracts. This is a blatant breach of the Regulations and the CCPC have been invisible in the policing and enforcing of them.

The establishment by the Government of a visible and active Independent Retail Regulator would give confidence to suppliers that their complaints would be taken seriously and pursued.

Market Transparency & Price Reporting

Following this Directive to address UTPs, Commissioner Hogan is working towards bringing in an Implementing Act, which will address Market Transparency, with the aim of having mandatory price reporting by Member States.

IFA has called for greater market transparency at all levels in the food chain, so that margins and profitability of processors and retailers are clearly visible.

The figures don't lie, if we look at the consumer euro⁷: the retailer takes 51% of the final price, the processor gets 28%, but the farmer only gets 21%.

In conclusion, Chairman

- ✓ It's clear that farmers are not getting a fair share of the retail price;
- ✓ That retailers are the modern-day dictators abusing their power to accumulate vast profits;
and
- ✓ That the current situation, where processors and retailers always make a margin, while farmers are sometimes forced to produce at or below the cost of production, is totally unacceptable.

We need the Government here in Ireland to transpose, without delay, the EU Directive when it has been adopted in Brussels.

⁷ Professor Alan Matthews from Eurostat

To be effective this will require,

- the appointment by Government of an Independent Retail Regulator with a specific remit,
- and
- that the Regulator's remit would now be expanded to provide the European Commission with the mandatory price reporting required to comply with the transparency legislation that is to follow in the coming months.

Chairman, I am asking this Committee here today, to support our ask and ensure a rebalancing in the food supply chain.

Thank you.