



Macra na Feirme

**Opening Statement by Macra na Feirme President John Keane to the Joint Oireachtas Committee on Agriculture, Food and the Marine
Wednesday, 13th July at 5.30 pm**

Agricultural and Food Supply Chain Bill 2022

Macra na Feirme would firstly like to thank the Chairperson and the members of The Joint Oireachtas Committee on Agriculture Food and The Marine for the invitation to discuss the topic of Pre-Legislative Scrutiny of the General Scheme of the Agricultural and Food Supply Chain Bill 2022. Macra na Feirme welcomes the opportunity to bring forward its views on the Bill in the context of its recent submission on the topic to the committee but also in relation to contributions made to this committee from relevant stakeholders in recent weeks.

The Bill reflects a commitment in the Programme for Government, and European Union policies that seek to improve market transparency in the agricultural and food supply chain and to improve the position of farmers, fishers and smaller food businesses in the agricultural and food supply chain.

The members within Macra na Feirme have consistently highlighted the need for a redistribution of power within the Food Supply Chain. Given the fragmented nature of farm families and their distribution across the country along with the enterprise variation that exists all levers of the UTP regulation and further are needed to ensure the balance of power is evenly distributed across all actors in the supply chain. There have been concerns consistently among farmers in relation to price fluctuations in some markets along with the requirements of certain farm produce demanded by the consumer, however at times of constrained supply certain requirements are no longer a barrier to entry to the market.

Macra na Feirme also highlights that farmers remain in the weakest position within the Food Supply Chain. With five larger retailers controlling in the region of 90% of the domestic market share it is clear that the individual farmers position is particularly vulnerable and weak. This is particularly evident in the Beef Sector where for example the average Suckler farm consist of in the region of twenty cows.

Macra na Feirme welcomes the establishment of The Office of Fairness and Transparency for the enforcement of The UTP regulations but also has reservations that the new body has not been given a suite of powers commensurate with the responsibility to ensure fairness and transparency. In its recent submission Macra na Feirme highlighted the need for ensuring that powers of investigation into activity of a criminal nature under the auspices of an Ombudsman be conveyed onto the new body. At recent sittings of this committee different perspectives on the Bill were put forward and in direct contradiction in relation to the investigative powers of the new body. Macra na Feirme requests clarity regarding the powers of investigation of the new office which may ultimately lead to prosecution.

Macra na Feirme notes that under Head 45 of the Bill the ‘The Chief executive may appoint in writing such persons or classes of persons as he or she considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer under this Bill, as specified in the appointment’. When comparisons are drawn with the Law Reform Commission’s Data Protection Act section 129 it states that ‘The Commission may appoint such and so many members of its staff, and such and so many other suitably qualified persons, as it considers appropriate to be authorised officers for the purposes of this Act’.

When a comparison is drawn it is clear that the difference exists between the perceived internal capacity of the new office versus those offices already established in other areas of enforcement. Macra na Feirme raised this issue in the context of The Food Ombudsman in its submission and is also seeking further clarity with regard to the designation of an ‘Authorised Officer’ and the origin or potential origin of such an officer.

Macra na Feirme welcomes the role that the new office plans to execute in relation to price and market analysis. However, concerns remain that to establish the exact breakdown of value from producer to end consumer is not clearly laid out as a function of the new office. Transparency is largely evident at the point of sale from the primary producer to the processor in most supply chains. There is also a degree of transparency at the point of sale to the end user i.e., the consumer. There is however a section in the supply chain pertaining to many large actors where the price breakdown is unknown.

Macra na Feirme highlights the recent Grant Thornton report commissioned by the now decommissioned Beef Taskforce in which it found that actors within the supply chain between primary producer and end user were in some circumstances difficult to ascertain and garner information from. Leaving the provision of information within the supply chain as a voluntary contribution to the office on behalf of large actors within the supply chain will do little to achieve the objective of the new office as stated above. Macra na Feirme would like to see the addition of powers that allow for the new office to examine and determine the exact breakdown of price and value within the Agri Food Supply Chain at all levels.

Macra na Feirme also raises concerns over the definition of commercially sensitive information which has been an area of focus in recent sittings of this committee. The exact nature of this information is unknown in the context of its relative importance to determining price breakdown within the food supply chain. Under the current form this Bill has no mention in relation to the access to commercially sensitive information or what the new office interprets as commercially sensitive. It is essential for transparency and fairness that this be clarified and ascertained and also to ascertain the willingness of retailers to engage in providing information. In that context Macra na Feirme has reservations about this sectors willingness to share such information and engage on the basis of exchanges between this committee and the retail sectors representatives at a recent sitting. Macra na Feirme would call on this committee to ascertain the willingness to engage and determine if a recommendation to add amendments in this area is necessary.

Following on from its submission in relation to the general functions of the office Macra na Feirme also highlighted the need to ensure that a ban on below cost selling was an additional enforcement power attributed to the new office. Below cost selling was banned as part of the 1987 Restrictive Practices (Groceries) Order, the ban prevented retailers from using food as a loss leader in their business. This ban was removed in 2006 by the then Minister for Trade Enterprise and Employment TD Michael Martin. The position of the primary producer has only been weakened as a result of this ban. Macra na Feirme acknowledges the recent rise in the cost of food but also highlight that the proportionate share of the farmers increase remains unknown and also remains negligible when compared to the rising input price at farm level.

Macra na Feirme would like to see the introduction of a ban on below cost selling as a priority for the new office. Macra na Feirme would also like an exercise carried out regularly to ascertain the costs of production of various farm systems in each sector. Once this is established and updated the financial requirements to meet the definition of farm economic viability need be added to ascertain the fair

price for agricultural produce at the point of sale from the primary producer to the processor/factory/retailer. This is not something that is unique as when examine it is clear that the Spanish Government have passed a bill to ban the sale of certain goods at levels below the cost of production.

Strengthening the Confidentiality Measures

Macra na Feirme would also like to see a strengthening of the confidentiality measures contained within the Bill. This is in particular reference to ensuring the protection of primary producers/suppliers who come forward with complaints of suspected breaches of the UTP legislation. Macra na Feirme would echo the comments made by The CCPC at this committee in relation to the confidential nature of complaints. Macra na Feirme considers this a matter of high importance as ensuring confidence in the office from the start is paramount and also ensuring that the resources available to weaker actors in the supply chain are made available and protected.

Timeline to Investigate

Macra na Feirme is seeking for an extension for the time period outlined in the Bill for investigation and prosecution of breach of the UTP legislation. The current proposal outlines a two-year period post any potential offence to be brought to the attention of the new office and investigated. Macra na Feirme would request this to be extended to 3 years on a permanent basis but also for a potential short-term extension to 4 years to allow for a bedding in period of both the new body itself but also so actors in the agri food supply chain can familiarise themselves with the remit of the new office. This request is also reinforced by the fact that the new office will have to establish a database of information which has been outlined may take some time.

Data Set Formulation and Relationship

It is hugely important that the new office be furnished with information relevant to its remit from any and all existing public bodies. This will facilitate smoother establishment and faster progress towards effective running. Macra na Feirme questions if any preparatory work has been conducted between the bodies responsible for the establishment of the new office and the relevant statutory bodies. Macra na Feirme points out that The CCPC would be of particular note in relation to this given their

recent investigations into activity in the Beef sector and their experience in the area. An affective hand over from The CCPC and relevant bodies/departments will be necessary for an effective transition.

Macra na Feirme also would like clarification in the Bill regarding the relationship between competition law, the offices responsible for its monitoring and implementation and the new office of Fairness and Transparency. Uncertainty pertains with regard to reporting and monitoring of activity such as cartel behaviour in the agriculture sector. In the event that cartel activity exhibits characteristics that fall foul of legislation under UTP and also Competition Law primary producers need certainty as to the relevant authority which will be persuading any potential investigation or in the event of both what are the requirements to fulfil in order for an investigation to be commenced.

Budget and Workforce Size

Macra na Feirme would request an indicative funding amount and potential workforce scale and size for the initial start-up phase of the new office. The CCPC has a budget in the region of €13m in 2019 rising to €18m in 2021 with a workforce in the region of 100. It is paramount that the new office be furnished with the financial, knowledge and skills resources it needs to discharge its function fully while also establishing the relevant data sets and information that will be required. A Budget of €4m was announced in the budget 2022 for the establishment of the new office, Macra na Feirme request clarity on the use of this funding allocation to date and also the €1m that was announced in budget 2021.

Definitions

Macra na Feirme requests clarity around definitions particularly related to the enforcement of the Bill, namely,

1. Evidence for an Investigation
2. Criteria for Investigation
3. Requirements of a Search Warrant

The basis of this request is to provide clarity for primary producers in relation to the information needed by the new office to pursue an investigation or further. This issue was raised at this committee with the CCPC and there still remains ambiguity as to the requirements of the above.

Communications

With knowledge of the new office among primary producers in the region of 50% and the knowledge of UTP's in the region of 14% significant work will be needed to communicate to role, function and remit of the new office to the primary producer and to all actors in the supply chain. An effective communication strategy will need to be developed and appropriate funding put in place to implement the strategy.

Conclusion

Macra na Feirme welcomes the establishment of the new office of Fairness and Transparency. It does however have reservations that the remit of the new office does not extend far enough. Ensuring that the power in the agricultural food supply chain is rebalanced is the direct ambition of the UTP legislation along with being a priority of the CAP. Macra na Feirme would like to see constant engagement by the new office with representatives of the farming sector and also a constant review of the implementation of the UTP legislation and the potential for additions to the legislation. Finally, Macra na Feirme thanks the Chairperson and The Committee for their ongoing engagement with Macra na Feirme on all issues relevant to Rural Youth in Ireland.