

Macra na Feirme's response to the general scheme of the agricultural and food supply chain bill 2022

For many years now there have been issues in relation to transparency in the food supply chain within Agriculture and the varying levels of both power and scale that exists within the supply chain. Farmers and primary producers including fishermen have long been at the receiving end of price inequality and an unfair bias towards larger-scale businesses that hold considerable power and determinant ability of both price and conditions when it comes to the point of sale or transaction.

The commitment within the programme for the government there is a commitment that a new National Food Ombudsman would be established. At the launch of the public consultation on the 26th of April 2021, The Minister for Agriculture himself referred to the office as The Food Ombudsman and said he wanted it to bring greater transparency to all parts of the supply chain (DAFM, 2021).

When we look at short-chain examples of the current position within the food supply chain and examine the interactions between large-scale businesses and small family-run primary producers it highlights in sharp focus the lack of fairness that currently exist in the food supply chain. The horticulture sector is one primary example where the number of actors in the supply chain is two:

1. The primary producer
2. The retailer

In recent years and months, Ireland has seen a reduction in the number of active farmers in this sector. Some exiting farmers cite the lack of available labour as an issue but the majority cite the price received being unsustainable for those family farms to remain in existence.

When examining the larger beef sector there have been serious concerns on behalf of farmers for a long number of years regarding the price breakdown in terms of payment received by the farmer but also in terms of the distribution of carcass value across the supply chain and the exact nature of that breakdown remains largely unknown. We have seen the Grant Thornton report that was compiled for the Beef taskforce and the evidence produced within said report reflects the willingness of the sector to engage constructively in providing transparency across all levels and all actors within the food supply chain.

With increasing costs associated with food production in recent months, there is an ever-increasing need for a clearly defined Food Ombudsman office, established to ascertain the breakdown within the food supply chain. There is also a need for a communication tool between the supply chain as a whole and the consumer to ensure that the primary producer is protected across all levels of the supply chain including at the point of sale. As it stands the primary producer has largely no direct point of contact with the consumer at the point of sale with the role to communicate left solely in the retailers' hands.

Response to General Functions

Macra na Feirme have previously highlighted that the need for the establishment of the National Food Ombudsman has been identified by farmers as an urgent measure that is needed to rebalance the position of farmers in the food supply chain. Farmers have long been at the receiving end of sharp price cuts and drops. As outlined in the Programme for Government the office of the Ombudsman was

committed. Macra na Feirme feel that the powers being attributed to the Office of Fairness and Transparency do not go far enough in ensuring that the office is successful in protecting farmers within the supply chain.

The Office of Ombudsman brings with it greater powers when it comes to enforcement and powers. The budget requirement set aside for the office of Fairness and Transparency is also insufficient when compared to budget allocation for other Ombudsman offices established. The Ombudsman for An Garda Síochána currently has a budget of €13.4 million.

Previous submissions in relation to UTP's Macra na Feirme also highlighted areas for additional legislative requirements to ensure greater transparency and Fairness. The option to add additional requirements under that legislation at the time of introduction was not availed of and was a missed opportunity for the Government. Macra na Feirme had given numerous examples of additional practices that could be added while also ensuring that all outlined practices were defined as black. Given the nature and distribution of primary producers, every effort must be made to ensure that their position in the food supply chain is protected and enhanced.

The powers laid out under Heading 8 General Roles and Function of the office should include,

- 1. Establish fairness and transparency in the agricultural and food supply chain and in particular for farmers, fishers and small food businesses whose natural position is weaker within the food supply chain given their scale and distribution.***

Promotion and encouragement of the adoption of practices by large companies and huge corporations will not suffice in redistributing the power within the food supply chain. Ensuring fairness and transparency can only be achieved by the nature of enforceable regulations with penalties associated with the degree of the breach of rules and procedures.

- 2. make an available analysis of information on price and market data in the agricultural and food supply chain in Ireland and also comparable with price returned in markets across the EU.***

An examination of price variability across the EU and also across global markets gives a far greater understanding of the market orientation at a given time. In recent years we have seen a divergence in the price received particularly in the beef sector when compared to the UK and indeed across The EU. Given the number of actors at certain levels within the food supply chain in Ireland, it is necessary to have this comparison and available research to give a completely transparent perspective on markets and prices.

- 3. Ensure compliance with, and raise awareness of, the rules on unfair trading practices provided for by or under this Bill and examine on an ongoing basis the changing nature of the business-to-business relationships within the food supply chain.***

Encouragement is all well and good but ensuring that compliance is maintained is critical. A single breach of practices or a change in behaviour by a large purchaser may be catastrophic for a smaller primary producer. Therefore ensuring that the rules are abided by is a far better proactive approach than leaving all the enforcement to reactive measures.

4. *Enforce compliance with the rules on unfair trading practices provided for by or under this Bill and constantly revise practices to ascertain new unfair trading practices that may be required.*

There will be a market adjustment and relationship development as a direct result of the changes introduced in this Bill. Ensuring that the Bill has the flexibility to react to changes in contracts or changes in practices is crucial. Should this not be the case larger actors in the supply chain may amend particulars about agreements that operate within the nuances of grey about fairness and transparency.

5. *Investigate instances of suspected breaches of the rules on unfair trading practices and investigate reported breaches.*

Ensuring that the primary producer and small business have a direct route to reporting is critical to ensuring the success of the office but also the confidence that is needed to be built up amongst the primary producer. A direct route to the office must be established with a straightforward route to complain about the primary producer at no cost. Barriers to reporting will only create greater ambiguity and less transparency.

6. *Bring summary proceedings for offences under this Bill.*

Proceedings must lead to the enforcement of strict penalties including monetary payments. Ensuring that compensation for loss of earnings or loss of distribution access is also an important factor that needs consideration.

7. *At its discretion, to refer cases to the Director of Public Prosecutions where the Office has reasonable grounds for believing that an indictable offence under this Bill has been committed.*

There must be an assurance that where reasonable the office has the power to enforce penalties and restrictions at its own discretion. Ensuring that the office has its own enforceable rules means that there is greater confidence among primary producers, greater power amongst the larger actors in the food supply chain and also in keeping with the commitments made in the Programme for Government. The regulator within the UK has real teeth when it comes to enforcement and the office established in Ireland must begin at the same level.

8. *Investigation of the necessary regulation needed to ensure that below-cost selling is no longer permitted.*

This is a critical piece of primary legislation that is required to ensure that retailers and distributors are not acting in the good supply chain with prices below the cost of production/wholesale/distribution or retail. The result is the downward pressure on prices received by the farmers. In the short supply chain, we have seen this result in farmers going out of business. An investigation into short supply chain actions would provide an indicative outline of the interactions between the primary producer and supplier. This is a supply chain with little interpretation needed as

there are only two actors within the supply chain. If this reflects the actions on a wider scale within the supply chain greater focus and regulatory requirements may be needed.

9. Provision of below-cost selling regulations.

As outlined above a huge area of concern for Macra na Feirme is in relation to below-cost selling. It is also necessary to be conscious of the international nature of Irish Agriculture and the nature of the markets that are accessed.

In overview Macra na Feirme firmly believe that an Ombudsman office is the correct way to proceed. An office with attributable powers of enforcement as that of an Ombudsman is needed to give certainty clarity and independence. The make-up of the Board also needs clarification, there are currently two primary producers outlined for the positions on the Board but who or from what background will the remaining three positions be filled.

A review of the current UTP's is also needed with the establishment of more UTP's while also increasing the enforcement of the current grey UTP's. Funding is also a key concern in ensuring any office has the resources to meet the demands of its brief. Farmers and primary producers need the utmost protection and assurance that all legislation is screened to ensure this is achieved is paramount.

References

DAFM. (2021, April). *Minister McConalogue launches public consultation on establishment of a National Food Ombudsman/Regulator*. Retrieved from www.gov.ie:
<https://www.gov.ie/en/press-release/ef17a-minister-mcconalogue-launches-public-consultation-on-establishment-of-a-national-food-ombudsmanregulator/>