



STATUTORY INSTRUMENTS.

S.I. No. 625 of 2023



AGRICULTURAL AND FOOD SUPPLY CHAIN (UNFAIR TRADING)
REGULATIONS 2023

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I, CHARLIE MCCONALOGUE, Minister for Agriculture, Food and the Marine, in exercise of the powers conferred on me by Sections 57, 58, 59, 60, 61, 62, 63, 64 and 65 of the Agricultural and Food Supply Chain Act 2023 (No. 19 of 2023) and, in relation to Regulation 13 of these Regulations, section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019¹, after consulting with the Commission of the European Union, hereby make the following regulations:

Part 1

Preliminary and General

Citation and commencement

1. (1) These Regulations may be cited as the Agricultural and Food Supply Chain (Unfair Trading) Regulations 2023.
- (2) These Regulations come into operation on 13 December 2023.

Interpretation

2. (1) For the purposes of these Regulations the following definitions apply:

"Act" means the Agricultural and Food Supply Chain Act 2023 (No. 19 of 2023);

"annual compliance report" has the meaning assigned to it by Regulation 7;

"annual turnover" has the meaning assigned to it by the second subparagraph of Article 1(2) of the Directive;

"compliance reporting buyer" means any natural or legal person (or group of persons) established in the State, who buys agricultural and food products, and had an annual turnover of more than €50,000,000 in the previous year;

"invoice" means a request for payment made by the supplier to a buyer or by a buyer to a supplier in respect of the sale or supply of agricultural and food products;

"supply agreement" means a contract (whether orally or in writing) for the sale or supply of agricultural and food products by a supplier to a buyer.

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

¹ OJ L 111, 25.4.2019, p. 59

Scope of Regulations

3. (1) These Regulations shall be without prejudice to the provisions of any Act or instrument made under such Act aimed at combating unfair trading practices that are not within the scope of these Regulations, provided that those provisions are compatible with the rules on the functioning of the internal market.

(2) Where a prohibition specified in Regulations 5 or 6 conflicts with a provision in another Act, or instrument made under such Act, which falls within the scope of the prohibition, the provision of Regulation 5 or 6 relating to that prohibition shall, in accordance with Article 3(4) of the Directive, prevail over such other provision.

Application of Regulations

4. (1) These Regulations apply to unfair trading practices which occur in relation to sales of agricultural and food products by-

- (a) (i) a supplier which has an annual turnover less than that of its buyer, and
- (ii) the buyer has an annual turnover of more than €2,000,000, and
- (b) a supplier to a buyer which is a public authority.

(2) These Regulations apply to-

- (a) sales where either the supplier or the buyer, or both, are established in the European Union, and,
- (b) services, insofar as explicitly referred to in Regulations 5 or 6, provided by the buyer to the supplier.

(3) These Regulations apply to a supply agreement concluded before or after the coming into force of these Regulations.

(4) These Regulations do not apply to agreements between suppliers and consumers.

Part 2

Prohibited Unfair Trading Practices

Prohibited Unfair Trading Practices, Unconditional

5. (1) A buyer to whom these Regulations apply shall not pay a supplier-

- (a) where a supply agreement provides for the delivery of products on a regular basis-
 - (i) for perishable agricultural and food products, later than 30 days after the end of an agreed delivery period in which deliveries have been made or later than 30 days after the date on which the amount payable for that delivery period is set, whichever of those two dates is the later, or

- (ii) for other agricultural and food products, later than 60 days after the end of an agreed delivery period in which deliveries have been made or later than 60 days after the date on which the amount payable for that delivery period is set, whichever of those two dates is the later, or
- (b) where the supply agreement does not provide for the delivery of products on a regular basis-
 - (i) for perishable agricultural and food products, later than 30 days after the date of delivery or later than 30 days after the date on which the amount payable is set, whichever of those two dates is the later, or
 - (ii) for other agricultural and food products, later than 60 days after the date of delivery or later than 60 days after the date on which the amount payable is set, whichever of those two dates is the later.
- (2) For the purposes of the payment period in paragraph (1)(a), the agreed delivery period shall be not more than one month.
- (3) Notwithstanding paragraph (1), where the buyer sets the amount payable-
 - (a) the payment period referred to in paragraph (1)(a) shall start to run from the end of an agreed delivery period in which the deliveries have been made, and
 - (b) the payment period referred to in paragraph (1)(b) shall start to run from the date of delivery.
- (4) Any outstanding payment due and payable after the expiry of the periods specified in paragraph (1) may be considered by the Regulator, if the circumstances permit, to be a late payment under paragraph (1) whether or not a payment was made in respect of that payment.
- (5) Paragraph (1) is without prejudice-
 - (a)
 - (i) to the consequences of late payments and remedies as laid down in Directive 2011/7/EU (and the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (S.I. No. 580 of 2012)), and
 - (ii) by way of derogation from the payment periods set out in Directive 2011/7/EU (and S.I. No. 580 of 2012), the consequences of late payments and remedies referred to in clause (i) shall apply, where applicable, on the basis of the payment periods set out in the Directive and these Regulations, and
 - (b) to the option of a buyer and a supplier to agree on a value sharing clause within the meaning of Article 172a of Regulation (EU) No 1308/2013.
- (6) Paragraph (1) shall not apply to a payment-

- (a) made by a buyer to a supplier where such payment is made in the framework of the school scheme pursuant to Article 23 of Regulation (EU) No 1308/2013,
- (b) made by a public entity providing healthcare in the meaning of point (b) of Article 4(4) of Directive 2011/7/EU,
- (c) under a supply agreement between a supplier of grapes or must for wine production and their direct buyer, provided-
 - (i) that the specific terms of payment for the sales transactions are included in standard contracts which have been made binding by the Member State pursuant to Article 164 of Regulation (EU) No 1308/2013 before 1 January 2019, and that this extension of the standard contract is renewed by the Member State from that date without any significant changes to the terms of payment to the disadvantage of suppliers of grapes or must, and
 - (ii) that the supply agreement between the supplier of grapes or must for wine production and their direct buyer is multiannual or becomes multiannual.

(7) A buyer to whom these Regulations apply shall not cancel orders of perishable agricultural and food products at such short notice that a supplier cannot reasonably be expected to find an alternative means of commercialising or using those products.

(8) A buyer to whom these Regulations apply shall not unilaterally change the terms of a supply agreement for the agricultural and food products that concern—

- (a) the frequency, method, place, timing or volume of the supply or delivery of the agricultural and food products,
- (b) the quality standard,
- (c) the terms of payment or the price, or
- (d) the provision of services insofar as these are explicitly referred to in Regulation 6.

(9) A buyer to whom these Regulations apply shall not require payment from a supplier that is not related to the sale of the agricultural and food products of the supplier.

(10) A buyer to whom these Regulations apply shall not require a supplier to pay for the deterioration or loss, or both, of agricultural and food products that occurs on the buyer's premises or after ownership has been transferred to the buyer, where such deterioration or loss is not caused by the negligence or fault of the supplier.

(11) A buyer to whom these Regulations apply shall not refuse to confirm in writing the terms of a supply agreement between the buyer and the supplier for which the supplier has asked for written confirmation. This shall not apply where the supply agreement concerns products to be delivered by a member of a producer organisation, including a cooperative, to the producer organisation

of which the supplier is a member, if the statutes of that producer organisation or the rules and decisions provided for in, or derived from, those statutes contain provisions having similar effects to the terms of the supply agreement.

(12) A buyer to whom these Regulations apply shall not unlawfully acquire, use or disclose trade secrets of a supplier within the meaning of Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016².

(13) A buyer to whom these Regulations apply shall not threaten to carry out, or carry out, acts of commercial retaliation against the supplier if the supplier exercises its contractual or legal rights, including by filing a complaint with enforcement authorities or by cooperating with enforcement authorities during an investigation.

(14) A buyer to whom these Regulations apply shall not require compensation from the supplier for the cost of examining customer complaints relating to the sale of the supplier's products, in the absence of negligence or fault on the part of the supplier.

(15) Subject to paragraph (16), for the purposes of paragraph (7), notice of less than 30 days shall always be considered as short notice.

(16) For the purposes of paragraph (7), the Minister may set periods shorter than 30 days for specific sectors in duly justified cases having regard to the purpose of the Directive.

(17) Where the Minister sets a period shorter than 30 days under paragraph (16) for a specific sector-

- (a) details of that shorter period shall be published on a website maintained by, or on behalf of, the Minister, and
- (b) notice of the shorter period shall be published in *Iris Oifigiúil*.

Prohibited Unfair Trading Practices, Conditional

6. (1) A buyer to whom these Regulations apply shall not, unless they have been previously agreed in clear and unambiguous terms in a supply agreement or in a subsequent agreement between the supplier and the buyer-

- (a) return unsold agricultural and food products to the supplier without paying-
 - (i) for those unsold products or
 - (ii) for the disposal of those products,
 or both,
- (b) require a supplier to make a payment to the buyer or a third party as a condition for stocking, displaying or listing its agricultural and food products, or of making such products available on the market,

² OJ L 157, 15.6.2016, p. 1

- (c) require a supplier to bear all or part of the cost of any discounts on agricultural and food products that are sold by the buyer as part of a promotion,
- (d) require the supplier to pay for the advertising by the buyer of agricultural and food products,
- (e) require the supplier to pay for the marketing by the buyer of agricultural and food products, or
- (f) charge the supplier for staff for fitting-out premises used for the sale of the supplier's products.

(2) Where a buyer engages in the trading practice referred to in paragraph (1)(c), the buyer shall, prior to a promotion that is initiated by the buyer, specify the period of the promotion and the expected quantity of the agricultural and food products to be ordered at the discounted price.

(3) Where a buyer requires payment for the situations referred to in paragraph (1)(b), (c), (d), (e) or (f), if requested by the supplier, the buyer shall provide the supplier with an estimate in writing of the payments per unit or the overall payments, whichever is appropriate, and, insofar as the situations referred to in paragraph (1)(b), (d), (e) or (f) are concerned, shall also provide, in writing, an estimate of the cost to the supplier and the basis for that estimate.

Part 3

Compliance Requirements

Annual Compliance Report

7. (1) A compliance reporting buyer to whom these Regulations apply shall, as soon as practicable, but not later than 31 March of each year, submit a report (in these Regulations referred to as an “annual compliance report”) to the regulator detailing the compliance reporting buyer’s compliance with these Regulations to cover the period of the previous calendar year.

- (2) The annual compliance report shall be-
 - (a) signed by a director of, or secretary to, the compliance reporting buyer, and
 - (b) submitted in such form and manner as may be specified by the regulator.
- (3) The annual compliance report shall include-
 - (a) a detailed and accurate account of the compliance reporting buyer’s ongoing implementation of and ongoing compliance with the requirements of these Regulations, including where a breach or alleged breach of these Regulations has been identified by, or notified to, the compliance reporting buyer, and the steps taken to rectify it;
 - (b) a record of any cancelled orders of perishable products;
 - (c) a record of any returns to the supplier of unsold products;

- (d) a record of any payment by the supplier to the buyer in respect of agricultural and food products, for –
 - (i) unsold products returned to the supplier or disposal of those products, or both,
 - (ii) stocking, display and listing, or of making such products available on the market,
 - (iii) promotion,
 - (iv) advertising,
 - (v) marketing, or
 - (vi) staff for fitting-out premises used for the sale of the supplier's products;
- (e) details of any costs borne by a supplier of any discounts on agricultural and food products that are sold by the buyer as part of a promotion;
- (f) the names and addresses of all suppliers of agricultural and food products with whom the compliance reporting buyer has a supply agreement, including applicable dates of the supply agreements, a description of the agricultural and food products subject to the agreement and categorised in the view of the buyer as perishable or otherwise, and an indication of any supply agreement entered into, renewed, changed or terminated during the period covered by the annual compliance report.

Maintenance of Records

8. (1) A buyer or supplier to whom these Regulations apply shall, on request by the regulator, provide a financial statement showing the annual turnover of the business as recorded and declared in the latest annual accounting period, such statement to be used to establish the relative size of the buyer to the supplier, or to establish if a buyer is a compliance reporting buyer.

(2) The statement referred to in paragraph (1) shall provide a true and fair view of the annual turnover of the business and shall be approved by the board of directors and signed on behalf of the board by a director or the secretary of the company.

(3) A buyer or supplier to whom these Regulations apply shall maintain records of the annual turnover of the business.

(4) Notwithstanding paragraph (1), where a buyer chooses to do so, the buyer may, rather than providing the annual turnover of the business referred to in paragraph (1), make a declaration that it may be considered larger than either the relevant supplier or a specified amount and where such a declaration is made, the buyer shall be deemed larger than the relative supplier or the specified amount for the purposes of these Regulations.

(5) A buyer to whom these Regulations apply shall maintain the following records insofar as they apply to the sale and supply of agricultural and food products:

- (a) supply agreements between the buyer and its suppliers, including any record of agreements made orally;
- (b) records of payments made by the buyer to its suppliers including invoices, receipts, rebates, discounts, bank statements, electronic fund transfers and cheques;
- (c) records of payments made by a supplier to the buyer including invoices, receipts, rebates, discounts, bank statements, electronic fund transfers and cheques;
- (d) records of estimates provided to suppliers by the buyer under Regulation 6(1)(b), (c), (d), (e) and (f);
- (e) records of the names and addresses of each supplier with whom the buyer has a supply agreement, including applicable dates of the supply agreement, a description of the agricultural and food products subject to the agreement and categorised in the view of the buyer as perishable or otherwise, and the details of any supply agreement entered into, renewed, reviewed and changed or terminated;
- (f) relevant policy and procedural documents in respect of demonstrating compliance with these Regulations, including those relating to complaint and breach management;
- (g) records of the board of directors in respect of unfair trading practices matters;
- (h) any other records that are relevant for the purposes of demonstrating compliance with these Regulations, including where a breach or alleged breach of these Regulations has been identified by, or notified to, the buyer, and the steps taken to rectify it.

(6) A compliance reporting buyer to whom these Regulations apply shall maintain copies of the documents and records used in the preparation and submission of annual compliance reports.

(7) Copies of records referred to in paragraphs (3), (5) and (6) shall be provided to the Regulator on request.

(8) Records referred to in paragraphs (3), (5) and (6) shall be maintained for 6 years after the end of the financial year in relation to which the information, documents or records relate or, where relevant, from the date of notification of an investigation by the Regulator, whichever is the later.

(9) Records referred to in paragraphs (3), (5) and (6) and to which section 887 of the Taxes Consolidation Act 1997 applies, may be preserved by electronic, photographic or other process in accordance with that section, if they are made available to the Regulator on request in an accessible format.

(10) In this Regulation “latest annual accounting period” means the year representing the latest annual accounting period as audited, closed and signed by the Directors of the business.

(11) Where a buyer or supplier is newly established and does not have approved annual accounts, the buyer or supplier should provide a declaration that includes a bona fide estimate (in the form of a business plan) made over the course of the financial year.

Designation of liaison officer

9. (1) A compliance reporting buyer shall, as soon as practicable (but not later than 6 months after commencement of these Regulations), designate a suitably qualified staff member (in this Regulation referred to as a “liaison officer”) to liaise with the Regulator in relation to these Regulations.

(2) A compliance reporting buyer shall, as soon as practicable after the nomination of a liaison officer (and any replacement liaison officer), confirm the officer’s name, position and contact details to the Regulator.

Monitoring and Evaluating

10. A buyer to whom these Regulations apply shall monitor and evaluate, on a regular basis (and in any event annually), the adequacy and effectiveness of policies and procedures, systems, internal control mechanisms and arrangements relating to unfair trading practices, and, where issues are identified, take appropriate measures to address any deficiencies.

Data sharing

11. Information, including personal data (within the meaning of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016³ and section 69 of the Data Protection Act 2018) held by–

- (a) the regulator,
- (b) the Minister, or
- (c) an enforcement authority of another Member State,

for the purposes of these Regulations or an act of the institutions of the European Union, may be exchanged by them with each other for the performance by them of their functions.

Part 4

Enforcement and revocation

Penal provisions

12. (1) Regulations 5(1) (7) (8) (9) (10) (11) (12) (13) and (14), 6, 7 and 8 are penal provisions to which section 66 (b) of the Act applies.

(2) Regulations 9 and 10 are penal provisions to which section 66(a) of the Act applies.

³ OJ L 119, 4.5.2016, p.1

Revocation

13. (1) The European Union (Unfair Trading Practices in the Agricultural and Food Supply Chain) Regulations 2021 (S.I. No. 198 of 2021) are revoked.

(2) Any reference made in an instrument to the Regulations revoked by paragraph (1) shall be construed as a reference to these Regulations.



GIVEN under my Official Seal,
12 December, 2023.

CHARLIE MCCONALOGUE,
Minister for Agriculture, Food and the Marine.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation.)

These Regulations give effect to Part 3 of the Agricultural and Food Supply Chain Act 2023 provisions on unfair trading practices. The unfair trading practices included in this S.I. are specified in Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on Unfair Trading Practices in business-to-business relationships in the agricultural and food supply chain. The Regulations also sets out requirements on compliance reporting for certain buyers.

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