



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Deputy Director-General, in charge of Directorates G, H and I

Brussels,
[Art 4.1 (b) - privacy] Ares (2020)
2110274

By Email Only

[Art 4.1 (b) - privacy]

Thank you for your questions of 25 March 2020 on the implementation of the Directive (EU) 2019/633 on unfair trading practices ('the UTP Directive').

First question: Competence of the enforcement authority to establish unlawful use of trade secrets

In your letter, you request the Commission's clarification on the relation of the UTP Directive with Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (Trade Secrets Directive)¹. You seek clarity if under the UTP Directive (Article 3 (1)(g)) the Member State's designated enforcement authority would be competent to come to the conclusion that a buyer unlawfully acquires, uses or discloses trade secrets within the meaning of the Trade Secrets Directive, see Articles 4 seq. You argue that under the Trade Secrets Directive it is national courts which pronounce a view on whether trade secrets have been violated. You wonder whether any existing transposition of the Trade Secrets Directive, granting competence to civil courts, would be sufficient for the transposition of the UTP Directive.

The transposition of the Trade Secrets Directive is not sufficient for the transposition of the UTP Directive. The objectives of both Directives and their regulatory scope are different. According to Article 6 and Recital 10, the Trade Secrets Directive regulates the civil redress for unlawful use of trade secrets, whereas Articles 3(1)(g), 4 and 6 of the UTP Directive enable the designated enforcement authority to find that the prohibition of unfair trading practices has been infringed, stop that infringement and possibly impose fines or other appropriate penalties. The reference to the Trade Secrets Directive therefore is to be understood in that the designated enforcement authority can conclude whether a trade secret has been unlawfully acquired, used for or disclosed. For the definition of a trade secret as well as for the 'unlawful' or 'lawful' disclosure it would apply Articles 2 seq (in particular Articles 3 to 5) of the Trade Secrets Directive.

[Art 4.1 (b) - privacy]

Ministry of Rural Affairs of the Republic of Estonia
Agricultural Policy Department

[Art 4.1 (b) - privacy]

¹ OJ L 157 of 15.6.2016, p. 1-18.

Second question: Organisations that can file a complaint according to Article 5 paragraph 2 of the UTP Directive

With your second question you inquire about the organisations that can file a complaint on behalf of their members according to Article 5(2), first sentence of the UTP Directive.

In answer to your question on recognised producer organisations, we can confirm that recognised producer organisations can file such complaint on behalf of their members, but would like to point out that also producer organisations, which are not recognised (as stipulated in Recital 10 of the UTP Directive), could file such a complaint.

As to the examples for supplier organisations, these could for example cover organisations of processors or certain wholesale distributors or importers/exporters.

The present opinion is provided on the basis of the facts as set out in your letter of 25 March 2020 and expresses the view of the Commission services and does not commit the European Commission. In the event of a dispute involving Union law it is, under the Treaty on the Functioning of the European Union, ultimately for the European Court of Justice to provide a definitive interpretation of the applicable Union law.

Please be advised that we intend to share your questions and our replies with other Member States via the CIRCABC system so as to facilitate the consistent transposition of the Directive. Doing so, we will redact any personal information.

Yours sincerely,

Michael SCANNELL
Acting Deputy Director General

Cc: [Art 4.1 (b) - privacy] Estonian Ministry of Rural Affairs