



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

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

Brussels, 8 August 2019
[Art 4.1 (b) -] D(2019) 5637046

By E-mail only

Dear [Art 4.1 (b) -],

Thank you for your email of 4 July 2019 addressed to DG AGRI unit G1, in which you raise questions as to the interpretation of the Directive (EU) 2019/633 on unfair trading practices in business-to-business relations in the agricultural and food supply chain ('Directive').¹

Definition of agricultural and food products

With your first question you inquire whether Regulation (EU) No 510/2014 is considered complete, or whether and which products are missing from that Regulation. You refer to the idea put forward by other Member States to refer to this Regulation in order to identify agricultural and food products within the meaning of Article 2 (1) of the Directive.

As it was already discussed in the meeting with Member States on 26 June 2019, any reference to other legal acts, including Regulation (EU) No 510/2014 must ensure that the minimum harmonisation of the Directive continues to be respected. This means that if *products* constitute products 'which are processed for the use as food using products from Annex I to the Treaty on the Functioning of the European Union', they have to be considered to be covered by the Directive, even if they are not forming part of Regulation (EU) No 510/2014. For example, fish/seafood (products under Annex I of the TFEU) and processed fish/seafood products are not listed in Regulation (EU) No 510/2014, but rather in Annex I to Regulation (EU) No 1379/2013 on the common organisation of the markets in fishery and aquaculture products.

On the other hand, Regulation (EU) No 510/2014 also comprises products which are processed products, but not for the purposes of food.

Therefore, Regulation (EU) No 510/2014 can only serve as orientation. Member States cannot refer solely to this Regulation in order to identify agricultural and food products within the meaning of Article 2 (1) of the Directive.

[Art 4.1 (b) - privacy]

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Bundesministerium für Ernährung und Landwirtschaft

[Art 4.1 (b) - privacy]

¹ OJ L 111 of 25 April 2019,p.59.

Perishable agricultural and food products

With your second question you refer to the definition of perishable agricultural and food products and ask how to assess products, which – in order to stay fit for sale – need a certain handling. Your question is whether this ‘handling’ affects the assessment of whether the product (e.g. a cold stored apple) is considered perishable or not.

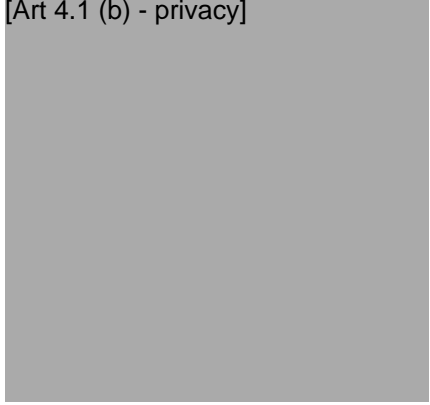
The definition in Article 2 (5) of the Directive does not contain any reference to the ‘handling’ of a product, but refers to the ‘nature or stage of processing’ of the product. For that reason, any subsequent handling, e.g. cold storage, is not to be taken into account when determining whether a certain product is to be considered perishable within the meaning of the Directive.

The present opinion is provided on the basis of the facts as set out in your email of 18 June 2019 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,

[Art 4.1 (b) - privacy]



Acting Deputy Director General