



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

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

Brussels,  
AGRI.DDG3/G1/  
(2020) 505945  
By Email Only

[Art 4.1 (b) -  
privacy]

[Art 4.1 (b) - privacy]

Thank you for your questions of 7 January 2020 on the implementation of the Directive (EU) 2019/633 on unfair trading practices ('the Directive').

***Question: supplementary payments***

With your question, you are seeking for clarification on the Paragraph 17 of the Recital. Ultimately, you would like to know whether the financial settlements or payments by a cooperative to its members are subject to payment period provisions.

The Directive applies to sales between a supplier and a buyer of agricultural and food products, as laid down in Article 1 of the Directive.

Cooperatives also fall under the definition of a "buyer" contained in Article 2 of the Directive, as the definition covers also legal persons and groups of natural and legal persons.

However, as stated in Recital 17, not all payments within a cooperative (or producer organisation), taking place between the cooperative and its member will constitute sales. According to Paragraph 17 of the Recital of the Directive, supplementary payments are explicitly excluded and therefore they do not fall within the scope of the Directive and would thus not be prohibited by the unfair trading practices listed in Article 3. Such payments could e.g. be payments resulting from the statutory obligations (e.g. membership fees, dividends) or ownership structure of the cooperative. However, it will ultimately depend on the classification of the concrete transaction between the cooperative and the member whether it qualifies as a 'sale' to establish whether the Directive applies. The Directive does not provide for any definition of the notion of "sale".

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[Art 4.1 (b) - privacy]

Subdirección General de Apoyo y Coordinación  
Secretaría General de Agricultura y Alimentación  
Ministerio de Agricultura, Pesca y Alimentación

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The present opinion is provided on the basis of the facts as set out in your email of 7 January 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

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