EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

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

Brussels, 22 July 2020
[Art 4.1 (b)-Privacy] Ares (2020) 3863542

BY EMAIL ONLY

[Art 4.1 (b)-Privacy]

Thank you for your questions of 25 May 2020 on the implementation of the Directive (EU) 2019/633 on unfair trading practices (‘the Directive’) You supplemented your request with a further question to [Art 4.1 (b)] by email of 2 July 2020 regarding Article 3(1) 2nd subparagraph, 1st indent of the Directive, regarding the consequences of late payment.

**Payment deadlines**

In your letter of 25 May 2020 you raise questions on the applicability of the payment deadline stipulated in Article 3(1)(a) of the Directive. You describe that under the current delivery contracts in the sugar sector in Finland, a sugar undertaking pays for beet 90% within a deadline of 30 days, whereas the remaining 10% are settled within a further period of 8 to 10 months, when all details of the purchase, e.g. sugar content and transport costs, have been established.

*Firstly*, you ask whether the payment deadlines stipulated by the Directive also apply to the sugar sector and *secondly*, whether the above arrangements that 10% of the payment will be paid after the 30 days deadline, is acceptable.

We understand your question to refer to Article 3(1)(a)(ii) first indent of the Directive, which refers to payment for the sale of ‘perishable’ agricultural and food products, whereby the products are not delivered on a regular basis.

With regard to your *first question*, the Directive applies to all agricultural and food products, including sales in the sugar sector including sugar beets. The reference of Article 3 of the Directive to Article 172a of Regulation (EU) No 1308/2013 to which you point does not alter that finding. The possibility of parties to agree a value sharing mechanism applies to all sectors covered by Regulation (EU) No 1308/2013, but is an agreement which is voluntarily decided by the individual contract partners. It does not exempt sales in the sugar sector from complying with the payment deadlines of Article 3(1)(a) of the Directive.

[Art 4.1 (b)-Privacy]

Ministry of the Agriculture and Forestry
Hallituskatu 3 A, Helsinki P.O. Box 30
FI-00023 Government Finland
[Art 4.1 (b)-Privacy]

As regards your *second question concerning the consequences of late payments*, I would like to point out that the Directive does not provide for payments in instalments, so the Directive requires the payment of the total amount within the stipulated deadline. However, I draw you attention to the fact that depending on who 'sets the payable amount', the payment periods can be more flexible. The payment by a buyer (i.e. the sugar undertaking) for a perishable product must not occur later than 30 days either after the delivery of the beet by the supplier *or* after the date on which the payable amount is set by the supplier, *whichever date is later*. The payable amount can be set by invoice of the supplier (i.e. of beets), see recital 17 of the Directive. The Directive does not prevent the supplier, when setting the amount payable by way of invoice, to send two invoices covering together the overall sales price at different points in time and thus generate two respective payment periods .

In the situation in which a buyer (i.e. the sugar undertaking) sets the amount payable, the payment period is calculated from the day of the date of the delivery of the beets by the supplier of beets.

In your email of 2 July 2020, you wish to receive further clarification on the provision of Article 3(1) second subparagraph, first indent of the Directive, which refers to the consequences and remedies of late payments by the buyer to Directive 2011/7/EU on combating late payment in commercial transactions.[1]

The consequences of late payments according to the Late Payment Directive are (i) the entitlement of interest payments and (ii) the compensation for recovery costs.

Article 3(1) second subparagraph 1st indent of the Directive firstly clarifies that these consequences of interests and remedies still apply to a late payment by the buyer and are not affected e.g. by a complaint and subsequent enforcement actions by the enforcement authority under the Directive. Secondly, as the Directive stipulates its own payment periods for the agricultural and food sector in Article 3(1)(a) of the Directive - e.g. a 60 days period for perishable agri-food products, which contrary to the Late Payment Directive cannot be prolonged by the contract of the parties, it was necessary to clarify that e.g. interest payments would be due and have to be calculated from the payment period set in the Directive. In the given example, this means that interests would be due after 60 days, even if the parties had agreed a payment period longer than 60 days.

***

The present opinion is provided on the basis of the facts as set out in your email of 25 May 2020 and email of 2 July 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,

---

[1] Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, OJ L 48 of 23.2.2011, p.1.

Michael SCANNELL
(e-signed)

[Art 4.1 (b)-Privacy]

Finnish Ministry of Agriculture and Forestry