



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

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

Brussels

AGRI Art.4.(b)-Privacy D(2023) 1093570

By e-mail only

Dear Art.4.(b)-Privacy,

Thank you for sending us your request via the 'Informal Request for Information Form' on 20 January 2023 concerning the implementation of Directive (EU) 2019/633 on unfair trading practices ('the Directive').

In your request, you enquire about the classification of certain practices by buyers when the supply agreement contains only reference prices (pig meat sector) or no indication on prices at all (milk sector). You observe that, in the absence of an agreement on the price, buyers sometimes proceed to unilaterally determining the price at a later stage during the performance of the agreement. You enquire whether in such cases the determination of the price by the buyer constitutes a unilateral change to the terms of the supply agreement pursuant to Article 3(1), point (c) of the Directive.

Firstly, it should be noted that the concrete assessment of such practices may depend on the characteristics of the sector concerned and the specific circumstances surrounding the transaction, such as the specific terms of supply, supplementing agreements, the existing invoices, or other available sources of evidence.

Pursuant to Article 3(1), point (c) of the Directive, it is forbidden that the buyer unilaterally changes the terms of the supply agreement, such as the frequency, method, place, timing or volume of the supply or delivery, the quality standards, the terms of payment or the prices. Therefore, the unilateral change of an agreement by the buyer involving the setting of prices without any negotiations with the supplier could be considered as an unfair trading practice under Article 3(1), point (c) of the Directive.

In addition, you enquire whether price-setting by the buyer in a non-transparent manner could mask the existence of non-related payments, against the prohibition laid down in Article 3(1), point (d) of the Directive; the purpose of this prohibition is to cover payments required by the buyer that are not related to the sale of the agricultural and food products of the supplier. This would be the case when the buyer deducts from the final price to be paid amounts for costs not related to the transaction. Depending on the

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Authority for Consumers & Markets, The Netherlands

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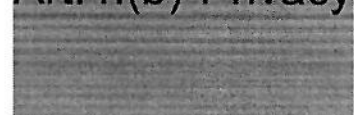
evidence available in each case, unilateral, non-transparent changes to the price could lead to the inclusion of costs that are not related to the sale of the agricultural and food products and therefore to the constitution of an unfair trading practice within the meaning of Article 3(1), point (d).

Finally, suppliers should have the right to request that buyers confirm in writing the terms of supply. Refusing to do so may amount to an unfair trading practice pursuant to Article 3(1), point (f) of the Directive. Pursuant to Articles 148(1a) and 168(1a) of Regulation (EU) 1308/2013 ('CMO Regulation'), producers of milk and other agricultural products may request that any delivery of their products to processors, distributors or first purchasers be the subject of a written contract or written offer between the parties. Such written contracts should set out inter alia, as an essential element of the contract, the price payable for the delivery, and, when the price is not static, the various factors used to calculate the price in an easily accessible and comprehensible manner.

The present opinion is provided on the basis of the facts as set out in your request for information of 20 January 2023 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 implementation of the Directive. Doing so, we will redact any personal information

Yours sincerely,

Art.4.(b)-Privacy


Michael SCANNELL