



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) 4470048

By e-mail only

Dear Art.4.(b)-Privacy

Thank you for sending us your request via the 'Informal Request for Information Form' on 14 April 2023 concerning the implementation of Directive (EU) 2019/633 on unfair trading practices ('the Directive').

In your request, you enquire about unilateral changes to a supply agreement concerning invoicing. 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. You want to know whether changes made to communications prior to payment (i.e. invoicing) are terms of payment within the meaning of the Directive. Moreover, you specifically refer to a situation in which, following acquisition of the buyer by another company, the acquiring company informed the suppliers of the acquired company that future purchases would be made by the acquiring company and that the corresponding invoices should be sent electronically by the suppliers via Electronic Data Interchange.

First, it could be argued that the concept 'terms of payment' includes the terms of a supply agreement determining, among others, the time and mode of payment, which may indeed include invoicing and other communications between parties made prior to payment. This interpretation is supported by recital 17 of the Directive, which provides that the date of the issuance of the invoice or the date of its receipt by the buyer can be considered as the date in which the amount payable is set for a given delivery period, in accordance with Directive 2011/7/EU ⁽¹⁾. This means that changes to invoicing practices can affect the time and mode of payment. Consequently, unilateral changes to invoicing should be considered unilateral changes to the terms of payment and are therefore prohibited under Article 3(1), point (c) of the Directive.

⁽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, 23.2.2011, p. 1).

Art.4.(b)-Privacy
Swedish Competition Authority
E-mail: Art.4.(b)-Privacy@kkv.se

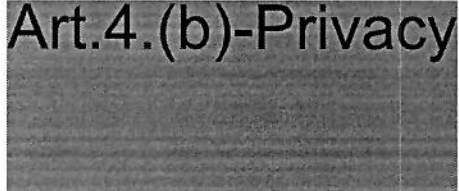
Second, when it comes to unilateral changes to a supply agreement as a result of a business acquisition, it should be noted that, the extent to which the rights and obligations deriving from existing supply agreements are transferred to the acquiring company will have to be determined on a case-by-case basis, taking into account all relevant elements. It may depend on the specific terms of the supply agreement, the consent of the suppliers that are party to the supply agreement, and on the agreement that formalises the acquisition of the company. When the existing supply agreements of a company are transferred as such to the acquiring company, such supply agreements generally subsist in their original terms and any changes made to the original terms of the supply agreements will require the consent of the supplier as party to the original supply agreement. In consequence, changes made to the terms of the supply agreement following the acquisition of the buyer by another company, and not agreed to by the suppliers, are prohibited as unilateral changes pursuant to Article 3(1), point (c) of the Directive.

Finally, certain invoicing practices may result in higher costs for suppliers, who may be required to invest in new technologies or even face additional financial costs in certain supply chain financing arrangements. As a result, certain changes to invoicing practices could also lead to the buyer requiring payments from the supplier that are not related to the sale of the agricultural and food products, which is forbidden pursuant to Article 3(1), point (d) of the Directive.

The present opinion is provided on the basis of the facts as set out in your request for information of 14 April 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


Pierre BASCOU
Acting Deputy-Director General