



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

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

Brussels,  
AGRI.DDG3/G.1/[Art D (2019)  
4856577

BY E-MAIL ONLY

[Art 4.1 (b) - privacy]

Thank you for your email of 24 June 2019 addressed to DG AGRI, unit G.1, in which you raise a question as to the interpretation of the Directive on unfair trading practices in business-to-business relations in the agricultural and food supply chain ('Directive').<sup>1</sup>

You would like to know how Article 5 paragraph 1 of the Directive should be applied in cases with cross-border dimensions. Your question concretely is whether an enforcement authority, which has been submitted a complaint by a supplier against a buyer located in another Member State (or located outside the European Union), should transmit that complaint to another enforcement authority, e.g. in another Member State.

You rightly point out that Article 5 paragraph 1 describes that the enforcement authority to which the supplier complains 'is competent to enforce the prohibitions laid down in Article 3 of the Directive'. This applies regardless of whether the buyer suspected of the infringement is located in the Member State of the enforcement authority or not. In answer to your question, the Member State's enforcement authority addressed by the supplier, i.e. the complainant, is competent to enforce the prohibitions laid down in Article 3.

While the Directive does not confer any enforcement powers to the enforcement authority to act in another Member State, it does not mean that its investigation is diminished or that its decision are devoid of effect. For one, the reputational risk of a negative decision may play a role in a buyer's trading behaviour.

The enforcement authority, which acts against a buyer located in another Member State or outside the European Union, can still investigate and adopt a decision, which orders the infringement of the prohibitions in Article 3 to be ended. If, in order to investigate the matter fully, it needs help from another enforcement authority, it can seek for administrative assistance as provided for in Article 8 of the Directive. In case of fines or other penalties, the enforcement authorities can ask for administrative assistance which

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<sup>1</sup> OJ L 111 of 25 April 2019,p.59.

[Art 4.1 (b) - privacy]

Dutch Ministry of Agriculture, Nature and Food Quality

[Art 4.1 (b) - privacy]

may be granted by the other enforcement authorities according to existing bilateral agreements between Member States or national rules.

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The present opinion is provided on the basis of the facts as set out in your email of 24 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,

Michael SCANNELL  
Acting Deputy Director General

[Art 4.1 (b) - privacy]

