



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

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

Brussels, 4 October 2021
AGRI.DDG3/G.1/[Art 4.1] Ares (2021)
6015450 (b)

By e-mail only

[Art 4.1 (b) - Privacy]

Thank you for the questions in your request for information of 9 September 2021 concerning the implementation of the Directive (EU) 2019/633 on unfair trading practices ('the Directive') sent to the European Competition Network (ECN). Directorate-General for Competition forwarded your request to me, because the questions raised in your request concern an area of law which is under the responsibility of the Directorate-General for Agriculture and Rural Development.

Enforcement of cross-border conflicts and applicable law

By your first question, you inquire information about the competent enforcement authority and applicable law in case of cross-border conflicts.

The Directive gives the enforcement authorities in either the supplier's or the buyer's country the territorial competence to enforce the provisions of the Directive; see Article 3. The Directive does not have provisions that govern the law applicable to the contract.

According to Article 8 of the Directive, the enforcement authorities shall cooperate effectively with each other and with the Commission. They shall also provide mutual assistance in investigations that have a cross-border dimension. However, the Directive does not provide for any concrete mechanism on how decisions by an enforcement authority located in one Member State should be executed in another Member State. A Member State may rely on any existing bilateral administrative agreement, which provides for such cooperation, or examine which routes of cooperation with other enforcement authorities exist under national law. Please see also our reply to your authorities of 24 July 2019 (Annex I) concerning cross-border application of Article 5.

[Art 4.1 (b) - Privacy]

Dutch Authority for Consumers and Markets (ACM)

[Art 4.1 (b) - Privacy]

Reference period (year) for the calculation of the turnover

By your second question, you are looking for information concerning the reference period (year) for the calculation of annual turnover of the relevant undertakings.

In Article 1(2), the Directive refers to the SME Recommendation for turnover purposes and in particular to Articles 3, 4 and 6 thereof. Article 4 of the Annex to the SME Recommendation provides further guidance on the reference period and calculation of the turnover for newly created undertakings. When making the calculations, you should use the data contained in the last approved annual accounts (i.e. prior to the sales transaction under investigation).

As already explained in the letter to the Dutch authorities of 29 October 2020 (Annex II), the sales relation between the parties has to be assessed as it existed when the transaction occurred. If at that moment the turnover of the supplier or the buyer within the meaning of Article 1 of the Directive is such that the supplier is not protected within the meaning of Article 1 of the Directive, this cannot be changed retroactively. This means that Article 3 of the Directive would not come to apply to a 'non-eligible' sales transaction, even if at a later point in time the supplier would merit protection because e.g. the supplier's turnover figures has decreased or the buyer's turnover figures has increased in the meantime.

The present opinion is provided on the basis of the facts as set out in your request for information of 9 September 2021 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 and designated enforcement authorities via the CIRCABC system to facilitate the consistent transposition of the Directive. Doing so, we will redact any personal information.

Yours sincerely,

(Signed)

Michael SCANNELL

Annexes: 2

Annex I: Reply of 24 July 2019 - Ares(2019)4856577

Annex II: Reply of 29 October 2020 - Ares(2020)6108153