



Brussels, 8 January 2021
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By e-mail only

[Art 4.1 (b)-Privacy]

Thank you for your questions of 30 November 2020 on the implementation of the Directive (EU) 2019/633 on unfair trading practices ('the Directive').

In your email you raise several questions regarding the sales transaction between a cooperative and its farmer members, also with reference to the derogations from the payment deadlines that Article 3 of the Directive stipulates for the products of 'grapes and must' in the wine sector.

Are cooperatives subject to the Directive?

With your first and partially also your second question you wish to know whether it is possible under the Directive to have any exemptions from the rule that agricultural cooperatives are subject to the prohibition of unfair trading practices, when they act as buyers within the meaning of Article 2 of the Directive.

The Directive does not provide for any such exemption. With the exception of Article 3(1)(f) of the Directive, which contains special rules for producer organisations including cooperatives regarding written contracts, there are no special rules for agricultural cooperatives.

However, as stated in recital 17 of the Directive, not every transaction between a farmer and its cooperative constitutes a sales transaction.

Regular deliveries

With your second question you indicate that Slovenia intends to define regular deliveries as a maximum of 3 deliveries, relying on Article 9 of the Directive. You ask whether exemptions from this rule could be made for agricultural cooperatives.

Firstly, we would like to point out that the Directive provides for the possibility to combine a number of recurring deliveries for payment purposes under the condition that the agreed delivery period shall not exceed one month. According to Article 9 of the

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Directive, Member States can be stricter, and e.g. allow for the combination of recurring deliveries for a shorter period than one month (3 deliveries in your example), as long as such national rules are compatible with the rules on the functioning of the internal market.

However, if Slovenia wished to introduce a derogation from its stricter national rules for just one group of suppliers (here cooperatives), it would have to assess whether such special treatment is compatible with the rules on the functioning of the internal market and the non-discrimination principle. I refer you to the answer given to Belgium on 9 November 2020, in which the Commission points out that the Member State will want to verify that the general principles of European law, e.g. the principle of non-discrimination as laid down explicitly for the agricultural sector with regard to the non-discrimination between producers in Article 40(2) of the Treaty on the Functioning of the European Union (TFEU), are respected.

Grapes and must

With your third and fourth question you would like to establish whether the value sharing mechanism referred to in Article 3(1) third sub-paragraph, first indent, can also be applied to the sale of grapes and must. Furthermore you would like to know whether the payment period of 30 days can be counted from the date of delivery or when the amount payable is set, whatever is the later date.

I would like to recall that for perishable and for non-perishable products a payment period of respectively 30 and 60 days apply under the Directive. This period is counted after the delivery/or the end of the delivery period or after the date on which the amount payable is set, whichever of these two dates is the later, see Article 3(1)(a) of the Directive.

While there is a derogation for ‘grapes and must’ according to Article 3(1) third subparagraph, third indent of the Directive, Member States can be stricter, based on Article 9 of the Directive, and indeed apply the ‘normal’ payment periods to the sale of grapes and must.

The possibility of agreeing to a value sharing mechanism within the meaning of Article 172a) of Regulation (EU) 1308/2013, according to Article 3(1) 2nd subparagraph, 2nd indent of the Directive, is not limited to any specific sector. Value sharing can therefore be agreed on in the relation of a supplier and a buyer of grapes and must. The payment delays stipulated in Article 3(1)(a) of the Directive do not apply to the part of the payment that is subject to the value sharing.

The present opinion is provided on the basis of the facts as set out in your email of 30 November 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,

(e-signed)

Michael SCANNELL

c.c.:

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Permanent Representation of the Republic of Slovenia to the European Union