



EUROPEAN COMMISSION

## MEMO

Brussels, 08 July 2020

# Improving market transparency in the agricultural and food supply chain – Q&A No. 2

This note provides answers to questions helpful to address implementation issues with the new market transparency rules (Regulation (EU) 2019/1746<sup>1</sup>, amending Regulation (EU) 2017/1185<sup>2</sup>).

This note complements a previous note, dated 29 November 2019. This second note should be read in conjunction with that first note.

The note is organised in the following sections: general issues; confidentiality; buying prices; indicative Member States shares table.

### (1) General issues

**For certain products (such as milk) the Regulation foresees contract prices to be reported. However, contract prices are fixed over long periods of time and don't vary much over time. Invoice prices (within contracts), on the other hand, do vary on a weekly basis – shouldn't Member States report invoice prices instead of contract prices?**

Note that the provisions on notifications based on contract prices for milk and milk products have not changed. As such, and under Art. 7 (in particular data series continuity) Member States should continue to report pre-existing data using the same methodology as before.

For new notification requirements, and also under Art. 7 (in particular that the "information notified is relevant to the market concerned"), the most relevant market information should be notified. Note also that under Art. 8 ("Additional Information"), Member States may notify further information, where such

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<sup>1</sup> <https://europa.eu/!pk73KK>.

<sup>2</sup> <https://europa.eu/!FR89tb>.



information is considered relevant. This allows the possibility that both invoice prices and contract prices can be notified separately, if to have both prices published is deemed useful by Member States.

**Market prices are affected by many elements, including discounts on volume, bundling of several products in an order, agreements on product placement in stores, etc. When reporting prices, how can Member States take this into account? Doesn't this render the price data collected and reported meaningless?**

Market prices form through complex processes, which include the elements listed as well as many others. The Regulation maintains the same approach to these issues as before the amendment: price and quantity data are reported for the market using an approach that seeks to reduced reporting burden on operators. For example, the Regulation does not ask for details of contract clauses beyond prices. Still, if further refinement of the data is deemed desirable by Member States, in the spirit of Art. 7 (in particular that the "information notified is relevant to the market concerned"), it is possible to segment the data reported by contract type, or according to different contract elements (including under Art. 8). Art. 9 requires that Member States "notify the source and methodology used", and this would include any identified data limitations. It is also possible, still under Art.7, to notify data for a part of the market if that data is significant for the market as a whole. This may mean that data for certain contracts is reported, if they are deemed to be particularly representative of overall market conditions or to cover a significantly large share of the market and to carry information useful for the part of the market that is not covered. Prices reported should be based on the information known at the time of reporting.

**It is possible that in the first months of the application of the Regulation the data submitted by Member States will still not be of the best quality. How will the Commission treat these data, in view of the Member States obligations under the Regulation?**

The Commission understands if there is a learning phase in the first instances of the application of the Regulation for some of the new types of notification. If a Member State has concerns about data quality these should be communicated to the Commission (Art. 7), and will be used to qualify the data at the time of publication. Still, efforts should be made to notify data that is reliable as soon as possible, in line with the requirement to produce a consistent series of data that is relevant, accurate and complete.



**There have been delays in implementing the Regulation due to the ongoing health crisis. Will the Commission postpone the date of application of the Regulation for later in 2021?**

The Commission understands that there are challenges in implementing the Regulation due to the health crisis. Still, much progress has been made in the Committees, in particular concerning selling prices which are by essence very similar to other selling prices communicated to the Commission over the past decades, and several months are still ahead before the Regulation applies, from 1 January 2021. As such, the date of application of the Regulation is not changed. However, the Commission will accommodate ad hoc for a learning curve in the starting stages of application (see reply above on data quality in the initial stages of reporting). The organisation by the Commission of “regular meetings with Member States and stakeholders to share best practices” mentioned in recital 12 of Regulation (EU) 2019/1746 will serve to shorten the learning curve and dispose of robust time series as soon as possible.

**(2) Confidentiality**

**For certain products there are very few operators in a certain Member States. How will the Commission approach the publication of such data?**

The rules on data publication in regard of confidentiality are set out in Art. 4 of the Regulation (protection of personal data):

*“... 2. Member States shall take the necessary steps to protect the confidentiality of data received from economic operators.*

*3. Where information notified to the Commission is obtained from less than three operators, or where information from a single operator accounts for more than 70 % of the quantum of such information notified, the Member State concerned shall signal this to the Commission when notifying the information.*

*4. The Commission shall not publish information in such a way that can lead to the identification of an individual operator. Where such a risk exists, the Commission shall only publish such information in an aggregate form.”*

These rules are strictly respected by the Commission in any price or other type of data published on the Agri-Food Data Portal or on the different websites of the market observatories.

**Can the Commission commit to only publish prices at EU level, rather than Member State level?**



The approach to data publication will remain the same as before the amendments to the Regulation, namely in accordance with the rules of Art. 4. Where the conditions of Art. 4 are not met, aggregating the data to a level above Member State level can be a solution to still publish the data and offer greater market transparency, such as is the case with regional aggregates in the sugar sector or with EU averages. The Commission does not expect this to occur in a significant number of cases, but will strictly respect Art. 4 conditions when publishing any time series.

**Can the publication and confidentiality rules be stated in the technical fiches? This would help administrations show more clearly to operators what the rules are.**

Yes, the Commission will reproduce the rules for publication in the technical fiches for clarification.

**The draft Art. 9 methodological forms circulated by the Commission for comments ask that the names of operators be communicated to the Commission. Can the Commission remove this requirement?**

The Commission confirms that in the case of notifications to the Commission *by Member States* the identity of the operators is not required. Note that this change was already made in the last draft of the Art. 9 methodological forms that was shared, for the June 2020 Horizontal Questions CMO Committee<sup>3</sup>. Note also that in the case of *direct transmission* of the data to the Commission by operators the name of the operators and other relevant information would need to be provided for obvious reasons, i.e. possibility to contact the provider for correcting possible transmission mistakes (see Art. 9 (1.a) of EU regulation 2019/1746).

**The draft Art. 9 methodological forms circulated by the Commission for comments ask that the market shares of operators be communicated to the Commission. Can the Commission remove this requirement?**

The market shares listed in the Art. 9 forms are indicative. Member States should determine the extent of the market coverage necessary to ensure that the requirement of Regulation are met, including that the data is representative, and that the data reported are 'relevant, accurate and complete' and 'constitute

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<sup>3</sup> <https://europa.eu/lxv48tK>.



a consistent statistical series', in accordance with Art. 7. Also, Member States should explain in the Art. 9 methodological forms how these criteria are met.

### **(3) Buying prices**

**Other data may already be available to Member States that is close to the stage of the food supply chain for which the amended Regulation sets new notification requirements, but is not the requested new data. Can Member States use existing data instead, for instance applying a correction factor to that data?**

The Regulation requires data that is "relevant to the market concerned, accurate and complete" (Art. 7). As such, the use of correction factors on wholesale selling prices in place of actual buying prices, on ex-packaging station prices in place of farmgate prices, etc. would not answer these conditions. This is because applying a correction factor does not allow capturing what is happening in the market between the two distinct prices. In fact it would just produce two time series that are moving in parallel to each other, which would render the exercise meaningless.

**Are transport, insurance, storage or other such intermediary costs included in buying prices?**

The definition of buying prices reads as follows<sup>4</sup>:

*"Official currency, net of VAT, expressed per 100 kg of product.*

*Invoiced price, including premiums, rebates and discounts when these are invoiced in related to the product and known at the time of price notification".*

Further guidance, offered in the same document, reads:

*"Purchasers' prices are the prices most relevant for decision making by buyers."*<sup>5</sup>

Intermediary costs should be included in buying prices, given they affect the buyer's decision to purchase or not the product. The spread between selling prices (not including intermediary costs) and buying prices (including intermediary costs) can offer among others an approximation of the value of intermediary costs.

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<sup>4</sup> <https://europa.eu/!Gh84kV>.

<sup>5</sup> Based on: <https://bit.ly/35BPwwL>.



**The product definition that we would like to use in our Member State is different or more specific than the one agreed in the relevant Committee with the Commission (including what is described in the technical fiches). How to proceed?**

According to Art. 9 of the Regulation, Member States define the methodology for data collection. This includes the product definition. The product definitions agreed in the Committee seek only to provide a degree of harmonisation to the notifications by different Member States (Recital 10). They are not a requirement – Member States may deviate or establish more specific product definitions, as long as these stay within the basic requirements set out in the legal text. This has now been further clarified in the Art. 9 methodological forms, within which Member States should clearly document their product definitions if they deviate from the agreed ones.

**(4) Indicative Member States shares table**

**In some cases the data used in the indicative shares table is only an approximation of what the Regulation requires. Can the Commission provide better data or disaggregate further the data?**

The indicative shares table seeks to offer the best possible indication of reporting obligations to Member States. It is based on the best data available, to our knowledge and based on Commission staff expertise and subsequent contributions by Member States. In some cases the data is the best available proxy to help Member States determine their reporting obligations.

The Commission would welcome further contributions by Member States to further fill out the indicative table.