



New regulations on unfair trade practices between companies

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General Considerations

In the Official Gazette, Part I, no. 363 of 12.04.2022 was published the Law no. 81/2022 on unfair trade practices between companies within the agricultural and food supply chain (“**Law no. 81/2022**”) transposing the provisions of Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trade practices between companies within the agricultural and food supply chain (“the **Directive**”).

The Law no. 81/2022 regulates the commercial relationships between suppliers and buyers within the supply chain, regarding the unfair trade practices committed in connection with the sale of agricultural and / or food products.

The new regulation enters into force within 3 (three) days as of the date of publication in the Official Gazette.

Forbidden Unfair Trade Practices

The new regulation aims to provide farmers and small and medium-sized businesses with protection against unfair trade practices. Therefore, Law no. 81/2022 regulates two categories of actions and behaviors qualified as unfair trade practices, respectively:

(1) Unfair trade practices

Among these, the most relevant are:

- exceeding the payment term established according to the contract with certain periods;
- establishment of notice periods of less than 30 working days for the cancellation of orders for agricultural and / or food products and 60 days for the delisting of a private label product of a producers for product categories that include the sale of the retailer’s own brand;
- invoicing and / or re-invoicing and collection from the supplier of costs other than those agreed in the commercial contract - *in this sense, the costs related to the extension of the buyer's distribution network, arrangement of retail*

outlets and events to promote the activity and image cannot be charged to the supplier;

- requesting the supplier for payments for damage or loss of agricultural and / or food products, which occurred in the premises of the buyer after receipt, when such damage or loss did not occur due to the negligence or fault of the supplier; exceptions are hidden defects in agricultural and food products for which the supplier will have to bear the cost or replacement;
- requesting the supplier for compensation for the costs of examining customer complaints regarding the sale of the supplier's products, in the absence of negligent conduct or fault on the part of the supplier;
- returning to the supplier of unsold agricultural and / or food products;
- imposing the supplier a payment for the listing of his agricultural and food products, as well as for their exposure for sale;
- requesting the supplier for taxes, regardless of their form and name, which obliges the supplier to artificially increase the invoicing price of the product;
- applying different trade conditions for the private label products of the producers compared to the own brand products of the trader, for listing / displaying on the shelf.

(2) Flexible trade practices - *prohibited only if they have not been agreed by clear and unambiguous contractual terms, at the request of the supplier.*

Among these, the most relevant are:

- requesting a payment from the supplier for advertising of agricultural and / or food products made by the buyer or for marketing services provided by the buyer regarding agricultural and / or food products;
- the buyer's refusal to renegotiate the price within more than 10 days as of the date of the supplier's request;
- requesting a payment from the supplier for the staff in charge of arranging the sales premises or forcing the supplier to make staff available for this purpose;
- imposing taxes for the secondary placement of the supplier's products for sale;
- requesting the supplier to bear all or part of the value of any discounts for products sold by the buyer on a promotional basis.

**Exceeding the payment
term**

Law no. 81/2022 qualifies as unfair trade practice the exceeding by the retailer of the payment term established according to the contract with certain periods, respectively :

- i. **14 calendar days** as of the maturity of the payment obligation, in the case of perishable agricultural and food products. Perishable product means an agricultural product or foodstuff which, by its nature or at its processing stage, is likely to become unsuitable for sale within 30 days after harvest, production or processing;
- ii. **30 calendar days** as of the maturity of the payment obligation for other agricultural and food products.

During the legislative process, this unfair trade practice took several forms, initially the aim was to set the maximum limit of payment terms depending on the category of agricultural and food products. However, this initial approach seems to have been abandoned, with the legislator opting to establish as an unfair trade practice the exceeding of the payment term as set by the contract.

In such a situation, in the absence of any clarifications or additional steps from the legislator, for the establishment in the contract of the payment terms for agricultural and food products, the provisions of Law no. 321/2009 on the sale of agricultural and food products which stipulates that the payment term by the retailer to the supplier for the contracted and delivered products is established by negotiating the contract, except for the payment term for fresh agricultural and food products which may not exceed 14 business days as of the receipt of the products.

**Invoicing and / or re-
invoicing and collection
from the supplier of costs
other than those agreed
in the commercial
contract**

Law no. 81/2022 prohibits the retailer from invoicing and / or re-invoicing to the supplier any costs other than those agreed in the commercial contract, establishing that the costs related to the extension of the buyer's distribution network, arrangement of retail outlets and events to promote the activity and image of the retailer can not be charged to the supplier.

In the current regulation, respectively Law no. 321/2009, the prohibition on invoicing costs to the supplier provides as an exception the situation where the costs are related to the commercial act without providing a clear definition for the notion of commercial act or for the phrase "*related to the commercial act*".

Thus, Law no. 81/2022 provides a welcome clarification on the costs that can be invoiced / re-invoiced to the supplier, establishing as a general rule that this practice is prohibited, unless the parties provide otherwise in the contract in compliance with the legal provisions and clearly customize the categories of costs for which a contractual adjustment is not possible (costs related to the extension of the buyer's distribution

network, arrangement of retail outlets and events to promote the activity and image of the retailer).

We consider that in order for the parties to establish the costs that will be invoiced / re-invoiced to the supplier, the prohibition on requesting taxes from the supplier regardless of their form and name, which obliges the supplier to artificially increase the price of the product must be taken into account.

The new regulation also provides that the supplier may be required to pay for (i) advertising of agricultural and / or food products made by the retailer; (ii) marketing services provided by the retailer in respect of agricultural and / or food products; (iii) costs related to the staff in charge of arranging the sales premises; (iv) the secondary placement of its agricultural and food products for sale; (v) covering all or part of the cost of any reductions in agricultural and / or food products sold by the retailer as a promotion, **only if the invoiced / re-invoiced services are provided at the request of the supplier and governed by clear and unambiguous clauses in the commercial contract or by an additional act subsequently concluded and the amount of the invoiced services is not exceeding 5% of the contract price.**

Sanctions

Law no. 81/2022 regulates severe sanctions for violating the prohibitions on unfair trade practices, the amount of the fine may be set, depending on the violation, both in a fixed amount of up to RON 600,000 or in a percentage of up to 1% of the total turnover registered in the previous financial year.

Competent authorities

The competent authorities for the implementation of the new regulations are the Ministry of Agriculture and Rural Development, as well as the Competition Council, their attributions being detailed in art. 6.

Final and transitory provisions

Law no. 81/2022 applies for commercial contracts concluded after the date of its entry into force, and for those previously concluded, the parties have the obligation to bring them into line with the provisions of the Law until December 31, 2022.

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