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# Legal Bulletin



## Competition Law

1. Law No. 81/2022 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain

### Unfair trading practices in business-to-business relationships in the agricultural and food supply chain

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Law No. 81/2022 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (“**Law 81/2022**”), published in the Official Journal, Part I, No. 363 of 12 April 2022, transposes Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (the “**UTP Directive**”) which is applicable from 30 April 2019.

Law 81/2022 enters into force on 15 April 2022 (within 3 days as of the date of publication in the Official Journal).

#### 1. Scope of Law 81/2022

Law 81/2022 regulates the business relationships between professionals (suppliers and buyers) in the supply chain (irrespective of the level of the market in which the producer operates, i.e. wholesale or retail), with regard to unfair trading practices committed in connection with the sale of agricultural and/or food products<sup>1</sup> concerning:

- Sales made on the territory of Romania or which have effects on the territory of Romania.
- Services provided by the buyer to the supplier, if they concern unfair trading practices under Law 81/2022.

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<sup>1</sup> Agricultural and/or food products covered by Law 81/2022 include the products listed in Annex I to the Treaty on the Functioning of the European Union, as well as products not listed in Annex I, but processed for use as food using the products listed in such Annex I.

- Law 81/2022 does not apply to consumer relations.

Law 81/2022 sets quantitative annual turnover thresholds<sup>2</sup> for buyers and suppliers falling within its regulatory scope, as follows:

Supplier's turnover (EUR)	Buyer's turnover (EUR)
up to 2 million	over 2 million
over 2 million, max. 10 million	over 10 million
over 10 million, max. 50 million	over 50 million
over 50 million, max. 150 million	over 150 million
over 150 million, max. 350 million	over 350 million

## 2. Main unfair trading practices

Within the meaning of Law 81/2022, unfair trading practices are *practices contrary to good commercial conduct, good faith and fairness, which are unilaterally imposed by one trading partner on another, even when they result from an agreement between the parties.*

Law 81/2022 provides for a list of unfair trading practices, taking a stricter approach than the previous legislation in that it defines as unfair a substantially more extensive list of practices than the UTP Directive (at least in terms of trading practices which are not allowed to the buyer regardless the circumstances).

Unfair trading practices are detailed in Articles 3 and 4 of Law 81/2022 and can be structured as follows:

### **A. Twenty-five trading practices not allowed to the buyer regardless the circumstances (the “Black List”), including:**

- Delays in payment beyond the contractual due date (14 days for perishable products, 30 days for other products);
- Minimum notice periods for cancelling orders or delisting products;
- Unilateral amendment of clauses relating, *inter alia*, to the frequency, method, place, timing or volume of supply or delivery of products, payment terms, prices or the provision of services;
- Invoicing of costs other than those provided in the contract; costs such as those incurred in extending the distribution network, setting up sales areas, events to promote the buyer's image are excluded from invoicing in all cases;

<sup>2</sup> The RON equivalent will be calculated as per the official exchange rate of the National Bank of Romania on the last day of the financial year preceding the finding of unfair commercial practices.

- Self-invoicing (with certain exceptions provided in the Fiscal Code);
- Applying financial and commercial discounts by reference to the value invoiced between the buyer and the supplier, under the form of rebates which cannot cumulatively exceed 20% (except for the types of discounts called, in Romanian, *remize* and *risturne*, which are granted by the supplier to the client at the time of supply and do not represent the remuneration of a supply);
- Returning unsold agricultural and/or food products or claiming payment for damage or loss of agricultural and/or food products after acceptance (excluding cases of hidden defects);
- Imposing a payment on the supplier for listing and/or displaying the products for sale;
- Requesting the supplier for a fee that forces the supplier to artificially increase the invoiced price;
- Delisting/Threatening to delist/Withdrawing products from display in order to exert pressure or commercial retaliation against the supplier so that the latter would accept unfavourable contractual terms;
- Applying different commercial conditions for manufacturers' private label products compared to the trader's own label products for listing/on-shelf display;
- Acquiring, using, disclosing trade secrets.

**B. Six trading practices which are not permitted to the buyer unless, upon the supplier's request, they have been agreed in advance by clear and unambiguous clauses (the "Grey List"), including:**

- Requesting the supplier to pay for advertisement of products or for marketing services provided by the buyer for agricultural and/or food products;
- Refusing to renegotiate the price within more than 10 days as of the date of the request;
- Charging payments for secondary placement of the supplier's products for sale or requesting payments for the staff setting up the sales area;
- Requesting the supplier to bear the cost of any discounts for products sold by the buyer on a promotional basis.

**C. The law expressly imposes on both supplier and buyer an obligation to negotiate in good faith - which already existed under the general rules of civil law.**

### 3. Procedural matters

The Ministry of Agriculture and Rural Development is in charge of implementing Law 81/2022 and of monitoring and reporting annually to the European Commission on unfair trading practices identified on the market.

The Competition Council is the designated law enforcement authority responsible for investigating, detecting and sanctioning unfair trading practices.

The same competition authority has the power to launch (in-depth) investigations, ex officio or upon request, and to carry out unannounced inspections during such investigations.

The law allows the offender to admit having committed the offence and to propose measures to remove the causes of the infringement, with consequent reductions of the fine from 1% to 25% of the final amount.

### 4. Sanctions

Sanctions applicable for violation of legal provisions include:

- Fines from **RON 250,000** to **RON 600,000**, depending on the unfair practices committed and for failure to comply with the legal provisions on unannounced inspections, interim measures and requests for information from the competent authorities;
- A fine of **1% of the aggregate turnover** achieved in the financial year preceding the issuing of the penalizing decision, for repeated unfair practices (i.e., committing a new act, regardless of its nature, within 2 years from the date of the issuance of a decision by the Competition Council);
- **Three times the amount of the damage** if the buyer has caused damage to the supplier as a result of unfair trading practices.

Sanctions may only be applied within the prescription term of 3 years as of the date of the offence.

Law 81/2022 applies to contracts concluded after the date of entry into force of the law (i.e. 15 April 2022). By **31 December 2022**, the parties must amend the contracts concluded before the entry into force of Law 81/2022 in accordance with the new legal provisions.

## Editors

The attorneys of Țuca Zbârcea & Asociații specialized in **Competition** provide legal assistance and consultancy services on the applicable regulations in the competition field, including in relation to aspects such as antitrust, domestic and cross-border transactions (mergers, acquisitions, joint ventures, etc.), and state aid. Our attorneys represent the interests of our clients before the national authorities in the competition field, and in disputes before the courts of law in relation to a wide range of specific matters, including unlawful competition.

Moreover, Țuca Zbârcea & Asociații developed a department for compliance with the regulations in the competition field (i.e. preliminary assessment of potential exposure, training programs) to help clients avoid the sanctions applicable as a result of breaching the competition laws. The activity in this field is appreciated by international legal directories as one of the best on the market, and the firm ranks first in the tables of Chambers Europe or other legal publications.



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