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Legal Bulletin



Competition Law

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1. Amendment and supplementation of Law No. 321 of 15 October 2009 on the trade with food products

Law No. 150 of 12 July 2016 for the amendment and supplementation of Law No. 321/2009 on the trade with food products

Law No. 150 of 12 July 2016 (the “Law”) for the amendment and supplementation of Law No. 321/2009 on the trade with food products (the “Law on the trade with food products”) was published in the Official Gazette of Romania, Part I, No. 534/15 July 2016.

The Law applies to natural persons and legal entities carrying out commercial relations related to food products (activity of sale and/or purchase of food products).

The main amendments of the Law on the trade with food products are listed hereinafter:

1. **“Any trader is prohibited to request (re)invoicing and to collect taxes and services from the supplier.”**

Pursuant to the amended form of the Law, it is apparent that the reseller (the trader, within the meaning of the law, is the natural person or legal entity carrying out activities of sale of food products to the consumer) shall no longer be entitled to request and collect any type of taxes from suppliers for the services provided thereto (i.e., shelf taxes, listing and promotion taxes, etc.).

The legal provision is ambiguous and does not cover the situation in which the services (for example, logistical, transport or promotion services) are requested by suppliers since they prefer to pay for the centralized transport of the goods rather than transporting the goods themselves to every point of sale of the trader, or to benefit from promotion services with a view to ensuring that the products are visible on the shelf during the local/national campaigns. The interpretation according to which the amended Law establishes an absolute interdiction for the provision and invoicing of services by the trader (irrespective of who requests the provision thereof) may be

unfavourable to the suppliers, who find themselves deprived of a contractual mechanism enabling the traders to provide these useful services in the selling areas.

In the next period, the initiator of the Law (Chamber of Deputies, Agriculture, Forestry, Food Industry, and Specific Services Committee) is expected to clarify the scope of the legal interdiction so as to prevent a provision that apparently aims at protecting suppliers from becoming a major disadvantage for suppliers.

For the failure to observe this interdiction, the Law introduces the sanction of suspension of the trader's operating license for a 6-month period, in addition to the fine ranging from RON 100,000 to RON 150,000.

2. A 7-day payment term for fresh products and a 30-day payment term for the rest of food products were introduced

The term of payment by the trader to the supplier for food products shall be established by negotiating the contract, and such payment term cannot exceed 30 calendar days.

The fresh food products are an exception to this rule as the payment term for this category of products cannot exceed 7 calendar days. The fresh food product is defined as food that is not preserved by sterilization, dehydration, freezing or smoking, except for refrigeration.

The failure to observe these provisions shall be punished by fine ranging from RON 50,000 to RON 100,000.

3. The fresh food products shall be accepted on the spot, and a term of no more than 24 hours following the delivery shall apply to the rest of the food products

The legislator changes the 48-hour term within which the trader was entitled to refuse the acceptance of the food products. According to the new regulations, the refusal to accept the food products shall be expressed at the time of delivery, provided that the goods fail to meet the legal trading conditions, the quantities under the contract or in the order or the delivery terms. The goods shall be considered accepted if the trader does not express its refusal to accept the goods at the time of delivery.

If the parties agree under contract to perform the quantitative and qualitative acceptance after the delivery, the acceptance document shall be submitted in writing to the supplier **within no more than 24 hours as of the time when the goods are made available to the trader**. Thus, the term for the submission by the trader of the acceptance document was reduced to 24 hours compared to the 48-hour term provided for in the previous form of the Law on the trade with food products.

The acceptance of **fresh food products** - which will take place **at the time of delivery** - is an exception to this rule.

4. The obligation of the trader of certain food categories (meat, eggs, vegetables, fruits, honey, dairy and bakery products) to purchase these products in an extent of at least

51% of the volume of on-shelf goods, for each category of food products, from the short food chain

By establishing the obligation of the trader to purchase 51% of the volume of on-shelf goods, for the categories of meat, eggs, vegetables, fruits, honey, dairy and bakery products, from the short food chain, the legislator meant to encourage the trade with Romanian products.

According to the amended Law, the short food supply chain involves a limited number of undertakings operating in local economic cooperation and development activities, as well as close geographical and social relations between producers, processors and consumers. **The methodology for the performance of actions regarding the short supply chain shall be approved by a resolution of the Government, this obligation of the traders shall become effective on 15 January 2017 (6 months as of the date of publication of the amendment).**

The necessary food products can be supplemented with products outside the short supply chain, following consultations with the entities in the common market organization, by an order of the Minister of Agriculture and Rural Development.

The aforementioned obligation **does not apply** (i) to the trade of exotic fruits imported from other countries and (ii) **the traders that have a net annual turnover or hold total assets of up to 2 million Euros, in RON equivalent.**

The failure to observe these provisions shall be punished by fine ranging from RON 100,000 to RON 150,000.

5. The traders have the obligation to make available distinct areas for the display and sale of Romanian products and to organize events for the promotion and sale of Romanian food products

The Law defines the **Romanian product** as the product obtained on the national territory from basic raw materials 100% made in Romanian farms.

The frequency of the promotion events and the timetable shall be determined by decision of the local council. The failure to observe these provisions shall be punished by fine ranging from RON 50,000 to RON 100,000.

6. Rules regarding the labelling of the meat traded on the territory of Romania

The amended Law introduces rules regarding the labelling of meat which shall become effective within 90 days as of the communication of the decision to the European Commission.

The label for the meat traded on the territory of Romania shall indicate as follows: a) country of origin of the animal; b) country the animal was born in; c) country the animal was raised in; d) country the animal was slaughtered in, health/identification mark and name of the undertaking; e) country the animal was cut in, health/identification mark and name of the undertaking.

The trader has the obligation to prominently display the wording “Romanian meat”, for the meat sold directly to the end consumer.

For the meat products traded on the domestic market, it is mandatory to specify the percentage of meat originating from Romania on their label.

The failure to observe these provisions shall be punished by fine ranging from RON 100,000 to RON 150,000.

7. The sanction of suspension of the trader's operating license for up to 6 months was introduced

The Law introduces the possibility to apply the sanction of suspension of the trader's operating license for up to 6 months in case of failure to observe the provisions of Articles 3-6 of the Law, i.e.: (i) the parties are prohibited from being bound to one another, directly or indirectly, to buy or sell products or services from or to a third party; (ii) the trader is prohibited from (re)invoicing and collecting taxes and services from suppliers; (iii) the trader is prohibited from offering or selling products at a loss, except for the situations under Government Ordinance No. 99/2000 on the trade with products and services on the market, as republished, as subsequently amended and supplemented; (iv) the trader is prohibited from asking the supplier not to sell to other traders the same products at a purchase price that is lower than or equal to the price that it purchased the relevant products.

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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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