

Retail & Consumer Business Alert

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In this issue:

Amendments to Law no. 321/2009 on trading food products

Starting with July 18, 2016 came into force a part of the amendments to Law no. 321 on trading food products, the other part being applicable from subsequent dates. The proposed actions and too vague legal provisions may raise issue regarding the application of the principle of contractual freedom between trading partners and may fall under provisions of the Treaty on the Functioning of the European Union on the free movement of goods, persons, services and capital. Please find below more details on the amendments.



Amendments to Law no. 321/2009 on trading food products

The Romanian president promulgated the Law amending the Law no. 321/2009 on trading food products (the "Law") on the 11th of July, 2016. The law was published in the Romanian Official Gazette, Part I on the 14th of July, 2016.

Main amendments

1. Special obligations regarding retailers - Romanian food products' shelf

The new regulation aims to boost local production of foods by establishing the obligation for traders with an annual net turnover or total assets value above EUR 2 million in RON equivalent to sell a minimum of 51% volume of Romanian food products.

Furthermore, the retailer has the obligation allocate special space in the store to promote and sell local products, as well as to organize events to promote and sell the products.

Also, the label for meat traded in Romania shall contain mandatory mentions, inter alia, the following: the animal's birthplace, the country where it was bred and, if necessary, the mention "Romanian meat".

As an exception to the threshold of 51% volume of local products, the necessary amount of food products can be filled with products outside the short supply chain, but only after consulting the entities from the common market organization and only if there is a regulation from the Ministry of Agriculture and Rural Development.

2. Withdrawal of fees for services provided to producers by retailers

The new regulation states that fees and services provided to producers by retailers are prohibited. Consequently, providers shall not pay anymore for services such as logistic services, refurbishment of the selling spaces, promotional activities, for depositing the goods in the trader's main deposit and other "shelf fees".

From a tax perspective, the impact of this amendment may bring consequences for both past and future periods. Moreover, the implementation of these provisions requires an amendment of the agreement concluded between retailer and producer/distributor, thus requiring their urgent re-review from a tax perspective.

From an accounting perspective, the new regulation might have a significant impact with respect to the revenue recognition by the retailers, respectively of the costs recognition by the suppliers, in connection with the taxes and services which cannot be further invoiced by retailers, but for which there are contracts in place at the date when the new regulation applies. Particular attention should be paid to such accounting implication during the period between 18 July until the completion of the respective contracts renegotiation.

3. Regulation of certain contractual aspects in the merchant-provider relation

- The retailer can refuse the reception of merchandise only at the moment when it is delivered, and if the provider and the retailer decide that the reception can be made after the delivery, this cannot go further than 24 hours from the moment of the delivery. Fresh food cannot be received after the delivery.
- The retailer can pay the trader for the merchandise delivered in a maximum of 30 days. As an exception, for fresh food, the payment cannot be made after more than 7 days.

These new provisions might have significant implications on the accounting for trade payables from the acquisition of merchandise by the traders, on the inventory management, and the revenue recognition related to sale of merchandise by the suppliers, in particular for the deliveries performed within the last days of the reporting period.

4. Introduction of new notions in regards to the commercialization of fresh foods

The law introduces terms such as "Romanian product", "commercial contract" or "production cost".

The notion of short supply chain is facing a lot of criticism due to the ambiguous way in which it is defined: supply chain which involves a limited number of economic operators engaged in cooperation activities and local economic development, as well as strong geographical and social relations between producers, processors and consumers. Basically, the regulation favors the Romanian producers and the acquisition, by merchants, of local products.

Sanctions

New sanctions have been introduced for failure to observe the provisions of Law no. 321/2009, with a value between 50.000 lei and 150.000 lei, as far as Competition Law nr. 21/1996 is not applicable.

Disregarding the rules regarding the 51% proportion of Romanian products displayed on the shelves and those regarding the mentions on the label for the meat traded in Romania, will be sanctioned with a penalty fee between 100.000 RON and 150.000 RON, as far as Competition law no. 21/1996 is not applicable.

The application of the sanctions will be done by the Ministry of Public Finances.

Entering into force

As a rule, the law will take effect in 3 days since being published in Romanian Official Gazette part 1.

However, in regards to certain dispositions, they will take effect at a later date.

Thus, the rule regarding the obligation to bring on the shelves Romanian products in a proportion of at least 51%, it will take effect within 6 months from its publication in the Romanian Official Gazette part 1.

Also, the regulation regarding the content of the label for the meat commercialized in Romania, will take effect within 90 days from the communication of the decision of the Romanian Commission.

Challenges and further steps to take in relation to the new law

We consider that the new law will bring about a series of challenges for the retailers, these being, in principle:

- Observing the obligation to bring on the shelves Romanian products in a proportion of minimum 51%. The new rule does not have implementation norms, thus application problems arise in relation to: the way in which the local products will be displayed in stores, considering that they will take up a serious proportion and that they benefit from a specific space, the time frame in which the 51% ration needs to be achieved in, daily, monthly, or during a specific term, the existence of a sufficient quantity of merchandise that the local provider can give to the retailer for satisfying the 51% rule within the specific time frame etc.;

- The review and the renegotiation of contracts between retailers and providers, in regards to the quantity of delivered products, delivery deadlines, payment deadlines etc.;
- The analysis and review in the context of the new regulations in force of the existing accounting policies by both the suppliers and retailers, with respect to the inventory management, and accounting estimates for revenues from sales of stocks and services, as well as the expenses related to the contracts between suppliers and retailers.

For further questions regarding the aspects mentioned in this alert, please contact us.

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