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Romania transposes the Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain

Law no. 81/2022, which transposes the Directive, aims to implement a mechanism for the protection of vulnerable suppliers in relation to economic operators with a high bargaining power within the agricultural and food supply chain.

Romania transposes the Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain

The Law no. 81/2022 on unfair commercial practices between enterprises within the agricultural and food supply chain was published in the Official Gazette no. 363 of 12.04.2022.

Law no. 81/2022 transposes Directive 633/2019 on unfair commercial practices and aims to implement a mechanism for the protection of vulnerable suppliers in relation to economic operators with a high bargaining power within the agricultural and food supply chain.

Therefore, Law no. 81/2022 (i) **sanction unfair commercial practices** in connection with the sale of agricultural and food products and (ii) **aims to protect both producers and intermediaries of food and agricultural products** (i.e., any producer, sole proprietorship, family business or legal person involved in the sale of agricultural and food products) which **achieves** a turnover of up to EUR 350 million from the unfair trading practices committed by buyers with a turnover of over 2 million euros.

The table below summarizes the thresholds that attract protection according to the law:

Supplier's annual turnover	Buyer's annual turnover
a) Less than/ equal to the equivalent of a 2.000.000 EUR	over 2.000.000 EUR
b) over 2.000.000 EUR – max. 10.000.000 EUR	over 10.000.000 EUR
c) over 10.000.000 EUR – max. 50.000.000 EUR	over 50.000.000 EUR
d) over 50.000.000 EUR – max. 150.000.000 EUR	over 150.000.000 EUR
e) over 150.000.000 EUR – max. 350.000.000 EUR	over 350.000.000 EUR

According to the Law, the annual turnover of suppliers and buyers is interpreted in accordance with the relevant parts of the Annex to Commission Recommendation 2003/361/EC and in particular Articles 3, 4 and 6 thereof, including the definitions of 'autonomous enterprise', 'partner enterprise' and 'linked enterprise', and other issues relating to the annual turnover.

Unfair commercial practices prohibited

According to the Law no. 81/2022, besides others prohibitions, it is forbidden to the buyer to:

- (i) to request invoicing and / or re-invoicing and to collect from the supplier any costs other than those agreed in the commercial contract; the costs related to the extension of the buyer's distribution network, the arrangement of the merchant's sales spaces and the costs related to the events promoting the activity and the image of the buyer cannot be borne by the supplier;
- (ii) to invoice the value of the services provided (services allowed under certain conditions provided by law, such as for advertising, marketing, secondary placement, discounts applied by the buyer) over the amount of maximum 5% of the value received by the supplier under the contract concluded between the parties;
- (iii) to apply financial and commercial discounts in the form of rebates, except of cumulative rebates not exceeding 20%, applied according to the value invoiced between the buyer and the supplier, for agricultural products and / or food, by derogation from the provisions of Law no. 227/2015 (Fiscal Code);
- (iv) to list and to display on the shelf only the buyer's own brand;
- (v) to apply different trade conditions for the private label products of the manufacturers than the private label products of the trader, for listing / display on the shelf;

- (vi) to purchase and sell food products without verifying their traceability if the purchase price is lower than the average cost of production on the relevant market at the time of purchase, according to official statistics at European Union level;
- (vii) to set a notice period of less than 60 days for delisting a manufacturer's own branded product, for product categories that include the marketing of the buyer's own brand;
- (viii) to return unsold products to the supplier;
- (ix) to charge the supplier for taxes, whatever their form and name, which oblige the supplier to artificially increase the billing price of the product;
- (x) to refuse to list an agricultural and / or food product registered under national and / or European quality schemes because of its lack of volume and seasonality;
- (xi) to threaten the supplier with commercial retaliation if the supplier exercises his legal and / or contractual rights, etc.

Permitted commercial practices - under certain conditions

If, at the request of the supplier, it has been previously agreed by clear and unambiguous clauses in the commercial contract/addendum subsequently concluded, the buyer is allowed to request payment from the supplier for:

- (i) advertising of agricultural and/or food products by the buyer;
- (ii) for the marketing services provided by the buyer in respect of agricultural and/or food products;
- (iii) for the staff in charge of arranging the sales premises used;
- (iv) for the secondary placement of its agricultural and food products for sale;
- (v) to bear all or part of the cost of any reductions in agricultural and / or foodstuffs sold by the buyer on a promotional basis.

Also, only under the same conditions as above, the buyer could refuse the supplier a price renegotiation within more than 10 days from the date of the request.

In the absence of the above-mentioned conditions (i.e., the supplier's request and clear and unambiguous clauses), the mentioned commercial practices will also qualify as unfair commercial practices, sanctioned by Law 81/2022.

The Competition Council is the authority empowered to ascertain and sanction unfair commercial practices in this sector

The authority empowered to ascertain and, as the case may be, to sanction unfair commercial practices, within the limits of the competences provided by the present law, is **the Romanian Competition Council**.

Unfair commercial practices introduced by Law no. 81/2022 are sanctioned with **fines between RON 250,000 and RON 600,000** or with a fine in **amount of 1% of turnover** (in certain cases).

Law no. 321/2009 regarding the commercialization of food product is not repealed

Finally, we emphasize the fact that, unlike the version adopted by the Senate, the Law no. 81/2022, in its published form, no longer repeal Law 321/2009 on the marketing of food products. It will be interesting to analyze how these two normative acts will be harmonized, taking into account the different and sometimes contradictory provisions.

Starting with the entry into force of this law, there will certainly be a number of changes in local trade relations between suppliers and buyers. The provisions apply to commercial contracts concluded after the date of entry into force of the legislation, and for those previously concluded, the parties have the obligation to comply with the above provisions until December 31, 2022. Exercises to review current contracts and change the model already implemented business can generate tax implications that should not be neglected.

For more details, please feel free to contact us.



Florentina Munteanu
Partner
Reff & Asociații
fmunteanu@reff-associates.ro



Mihnea Radu
Senior Associate
Reff & Asociații
mradu@reff-associates.ro



Camelia Malahov
Director
Deloitte Tax
cmalahov@deloittece.com



Victoria Dobre
Senior Manager
DeloitteTax
vdobre@deloittece.com

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