

## The New Law regarding the Sale of Food Products in Romania

Dear reader,

Following the verifications performed last year by the Competition Council in the food industry and the irregularities ascertained in the commercial practice, the President of Romania, Mr. Traian Băsescu, promulgated on 18.10.2009 the Law regarding the sale of food. The law will enter into force on 20.11.2009.



By this newsletter, we would like to present to the supermarket chains the mandatory provisions of the new law.

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### The context for the promulgation of the new law

After the European Parliament has signalled certain aspects regarding the investigation and remedy of the abuse of power of the supermarket chains within the European Union

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and due to the fact that these aspects were extremely sensitive in Romania, the direct investigation of the accusations of unfair competition and monopoly practice brought against the supermarkets was initiated in 2009.

The employer associations and the trade unions from the food industry started the negotiations for drafting a code of good practice due to the very serious accusation made against the supermarkets with regard to the increase of the profits by raising the prices without any reason and artificially and by using hidden fees. The "Code of Good Practice for the Agro-alimentary Products" was signed in July 2008. Due to the fact that this Code had no law character, it has not proven its efficiency in the commercial relationships between suppliers and supermarkets. The drafting of a law in this sense became imperative. By Decree no. 1470/2009 as of 14.10.2009, the President of Romania promulgated the new law regarding the sale of food

products. The Law no. 321/2009 regarding the sale of food products (hereinafter referred to as the "Law 321") was published in the Official Gazette on 20.10.2009 and will become effective 30 days after its publication.

### Commercial practices prohibited by Law 321

Law 321 regulates strictly the relationships between retailers and suppliers by strengthening the protection against the unfair understandings and practices.

Thus, all the fees which are "not directly connected to the sale activity" and which are "not included in the acquisition costs" are forbidden. The acquisition cost at the tradesman is clearly defined by Law 321 as being the "the net standard price appearing on the acquisition invoice, obtained by deducting the discount offered by the supplier, to which the direct expenses specific to the resale and the costs of the services provided by the trades-

man (retailer) to the supplier are added."

There are also eliminated some fees collected before by the retailers from the producers, such as the payment of certain services connected to:

- the expansion of the distribution network of the retailer;
- the fitting of the sale spaces of the retailers;
- promotion activities and events of the retailer.

The contractual provisions by which a retailer requests to the supplier not to sell to other tradesmen the same products at an acquisition price smaller or equal to the price at which it has acquired the respective products are strictly forbidden. The non-observance of this interdiction as well as of the facts mentioned above will be punished by fine from RON 100,000 to 150,000, as far as the penal law or the provisions of the Competition Law no. 21/1996 do not apply.

### Other provisions

Law 321 regulates and imposes certain provisions for the parties (retailers and suppliers) with a strict interpretation in connection with: the delisting, the acceptance of the merchandise, the payment and the contractual penalties. The breach of these provisions will be punished by a fine from RON 50,000 to RON 100,000, as far as the penal law or the provisions of the Competition Law no. 21/1996 do not apply.

Law 321 understands by delisting the cessation of the direct sale by the tradesman of the products offered by the sup-

plier by the commercial agreement. The retailer may delist a product of the supplier only after having notified the supplier in writing two months before the delisting date. In case the delisting occurs out of the contractual guilt of the supplier, then this notification is no longer mandatory. In case the retailer unilaterally delists the products, it has to fully refund the amounts of money collected from the supplier in connection with the obligation of direct sale of the products of that supplier towards the consumers.

The retailer may waive the products within maximum 24h as of their acceptance/delivery by written notification. The omission of the notification is interpreted as acceptance of the merchandise, of the products. In case the parties stipulate other acceptance deadlines, the acceptance/notification will take place in writing, within maximum 48h since the merchandise has been put at the retailer's disposal.

### Payment terms

Furthermore, Law 321 imposes to the parties certain terms in connection with the payment of the price depending on the delivered products, as follows:

- fresh products – the payment term cannot exceed 12 days;
- for frozen food – 20 days;
- for other food products – 35 days.

The contractual penalties for the non-fulfilment or the improper fulfilment of the obligation have to be set out in equal amounts by the parties during the negotiation of the agreement. In case of default of payment until the established term, the retailer will pay without any other legal formality (without putting in default and without the possi-

bility of granting grace periods) a daily penalty representing the double of the reference interest of the Romanian National Bank for the owed amount.

### Conclusions

Taking into consideration the above mentioned facts, we can draw the conclusion that the regulations regarding the contractual relationships between retailers and suppliers are extremely strict and their breach will result in harsh fines.

Law 321 will enter into force within 30 days since its publication in the Official Gazette, respectively as of 20.11.2009. It has to be pointed out that all the contracts between retailers and suppliers in process of fulfilment at the moment when Law 321 enters into force have to be amended in accordance with the new regulations. The term imposed by Law 321 for conforming is of 60 days as of the date when Law 321 enters into force, respectively until 19.01.2010 including. It is worth mentioning that Law 321 does not stipulate an express sanction for not conforming within the mentioned term. Nevertheless, the control bodies will apply the sanctions stipulated for the non-observance of the commercial practices imposed by Law 321.

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