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Act on Prevention of Unfair Trade Practices in the Agricultural Product and Food Supply Chain¹

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Amended by the following acts

Reception	Publication	Enforcement
20.06.2023	RT I, 30.06.2023, 1	01.07.2023; On the basis of § 105.19 subsection 7 of the Government of the Republic Act, the word "Ministry of Rural Affairs" replaced by the words "Ministry of Regional and Agricultural Affairs" in the corresponding case

Chapter 1 General settings

§ 1. Scope and scope of application of the Act

(1) This Act stipulates a transaction or an act of economic or professional activity, the object of which is an agricultural product and food, and which is considered an unfair trade practice for the purposes of this Act, which is prohibited or which is permitted if certain conditions are met, these conditions are stipulated, and the execution of this Act the basis and procedure of state and administrative supervision, as well as responsibility for violating the requirements of the law.

(2) The provisions of this Act on unfair trade practices also apply to the service directly related to the sale of agricultural products and food offered or provided by the buyer to the seller of agricultural products and food.

(3) This Act applies to buyers and sellers of agricultural products and food who are established or whose residence is in the European Union.

(4) This Act does not apply to a buyer who buys agricultural products and food for his own use.

(5) This Act applies to the buyer and seller of agricultural products and food regardless of the law applicable to the contract regulating the relationship between them.

(6) The provisions of the Administrative Procedure Act apply to the administrative procedure prescribed in this Act, taking into account the specifics of this Act.

Chapter 2 Dishonesty in the supply chain of commercial agricultural products and food

§ 2. Prohibition of unfair commercial practices

(1) Unfair trade practices are prohibited.

(2) For the purposes of this Act, unfair commercial practice is a transaction or an act of economic or professional activity provided for in this Act, the object of which is an agricultural product and food, which is prohibited or which is prohibited in case of non-fulfillment of the conditions provided for in this Act.

(3) Only unfair trade practices provided for in this Act are permitted if the buyer and seller of agricultural products and food enter into a clear and unequivocal agreement for this purpose in a form that allows reproduction in writing (hereinafter *unfair trade practices are conditionally prohibited*).

§ 3. Agricultural product and food and the obligation to organize the fulfillment of the obligations of their buyer and seller

(1) An agricultural product and food for the purposes of this Act is a product specified in Annex I of the Treaty on the Functioning of the European Union or a product not specified in this Annex, which has been processed into food using the product specified in the same Annex.

(2) For the purposes of this Act, a buyer of agricultural products and food is a person who purchases agricultural products and food, including a government agency or an agency managed by a government agency, an authority of a local government unit or an authority managed by an authority or an association of these authorities, a public legal entity or an association of these individuals.

(3) For the purposes of this Act, a seller is a person, including a producer or supplier organization or their association, who sells agricultural products and food to the person specified in subsection 2 of this section.

(4) The legal representative of the legal entity buyer or seller of agricultural products and food arranges the fulfillment of the obligations arising from this Act for the legal entity.

§ 4. Prohibited unfair trade practice related to the payment deadline

(1) In the case of the regular delivery of agricultural products and food provided for in the sales contract, an unfair trade practice is prohibited, according to which the payment term is longer than 30 days from the day of the end of the agreed delivery period or from the day of determining the fee to be paid for the delivery period in question, depending on which date is later.

(2) In the case specified in subsection 1 of this section, an unfair trade practice is prohibited, according to which the payment term is calculated based on a delivery period that is longer than one calendar month, regardless of the actual length of the agreed delivery period.

(3) If the amount to be paid for the delivery period provided for in subsection 1 of this section is determined by the buyer, the payment term begins on the day of the end of the agreed delivery period during which the deliveries were made.

(4) If the sales contract does not provide for the regular delivery of agricultural products and food, an unfair trade practice is prohibited, according to which the payment term is longer than 30 days from the day of delivery or from the day of determining the amount to be paid for the delivery, whichever date is later.

(5) If the amount to be paid for the delivery specified in subsection 4 of this section is determined by the buyer, the payment term starts from the day of delivery.

(6) Subsections 1 and 4 of this section do not apply if:

1) the buyer makes a payment within the framework of the school plan of Regulation (EU) No. 1308/2013 of the European Parliament and of the Council establishing the common market organization of agricultural products and repealing Council Regulation (EEC) No. 922/72, (EEC) No. 234/79, (EC) No. 1037/2001 and (EC) No. 1234/2007 (OJ L 347, 20.12.2013, pp. 671–854), in accordance with Article 23;

2) the buyer is a public legal entity providing health care services, which makes the payment Article 4(4)(4) of the Directive 2011/7/EU of the European Parliament and of the Council on combating late payment in the case of business transactions (OJ L 48, 23.02.2011, pp. 1–10) according to b;

3) the buyer makes a payment to the seller for the grapes used to make wine or the grape must to be used on the basis of a long-term contract concluded before January 1, 2019, and the payment conditions for sales transactions are stipulated in accordance with Article 164 of Regulation (EU) No. 1308/2013 of the European Parliament and of the Council.

(7) The payment deadlines set forth in subsections 1 and 4 of this section do not apply to the deadlines for the obligation to pay the fee provided for in § 82

(8) The prohibition provided in subsections 1 and 4 of this section does not exclude the possibility of the buyer and seller to agree on the distribution of value within the meaning of Article 172a of Regulation (EU) No. 1308/2013 of the European Parliament and of the Council.

(9) A transaction or its condition contrary to the prohibition provided for in this section is null and void.

§ 5. Prohibited unfair trade practice related to delivery

(1) The buyer is prohibited from demanding a fee from the seller that is not related to the sale of the seller's agricultural product and food.

(2) The buyer is prohibited from demanding payments from the seller for the wastage or loss of the agricultural product and food, if this wastage or loss did not occur through the fault of the seller and:

1) the wastage or loss of the agricultural product and food took place on the premises of the buyer or

2) the ownership of the agricultural product and food has passed over to the buyer.

(3) The buyer is prohibited from refusing the purchase of agricultural products and food as his contractual obligation with such a short notice period, in which case it cannot reasonably be expected that the seller will find another way of marketing or using the product.

(4) The buyer is prohibited from unilaterally changing the terms of the contract for the sale of agricultural products and food, which are related to the frequency, method, place, time or volume of delivery of said products, quality standards, payment terms or prices, or services directly related to the sale of agricultural products and food provided or performed by the buyer .

(5) The buyer is prohibited from failing to provide a confirmation letter regarding the conditions of the agricultural product and food sales contract concluded with the seller within the meaning of § 32 (1) of the Law of Obligations Act, if the seller has requested a confirmation letter from the buyer.

(6) Subsection 5 of this section does not apply if the buyer is a for-profit cooperative or a non-profit organization and the transaction includes agricultural products and food that the seller sells to a for-profit cooperative or a non-profit organization of which he is a member, if the articles of association of the relevant for-profit cooperative or non-profit organization or the decision made on the basis thereof contain provisions, which has a similar effect to a contract of sale.

(7) The buyer is prohibited from illegally obtaining the seller's trade secret and using or publishing it within the meaning of § 5 of the Act on the Prevention of Unfair Competition and the Protection of Trade Secrets.

(8) The buyer is prohibited from threatening the seller with the implementation of commercial coercive measures or applying commercial coercive measures against the seller, if the seller uses its contractual or statutory rights, including submitting a request for unfair trade practices or cooperating with the Competition Authority during the investigation.

(9) The buyer is prohibited from demanding compensation from the seller for costs related to the review of a customer complaint related to the sale of agricultural products and food, if the cause of the complaint is not related to the fault of the seller.

(10) A transaction or its condition contrary to the prohibition set forth in this section is null and void.

(11) The buyer's silence or inaction is also considered as failure to issue the confirmation letter provided for in subsection 5 of this section.

§ 6. Conditionally prohibited unfair trade practice

(1) If the buyer and seller of the agricultural product and food have not clearly and unequivocally agreed on the terms of delivery in a form that allows for written reproduction, the buyer of the agricultural product and food is prohibited:

- 1) to return the unsold agricultural product and food to the seller without paying for them or for their disposal;
- 2) demand a fee from the seller for storing, displaying, adding to the goods list or making available on the market agricultural products and food;
- 3) require the seller to cover the costs of the agricultural product and food discount sold during the sales promotion;
- 4) require the seller to cover the marketing costs of the agricultural product and food being sold;
- 5) require the seller to cover the costs of marketing the agricultural product and food sold;
- 6) require the seller to cover personnel costs for arranging sales areas used for the sale of agricultural products and food;
- 7) require the seller to use only transport packaging of a certain type, shape and size, unless otherwise stipulated in the legislation governing the handling of agricultural products and food.

(2) If the buyer and seller of an agricultural product and food have agreed on the use of an unfair trade practice specified in subsection 1, point 3 of this section, the buyer who initiated the sales promotion shall determine the period of the sales promotion and the expected quantity of the agricultural product and food to be ordered at a discount before the start of the promotion.

(3) If the buyer and seller of an agricultural product and food have agreed on the payment of the fee specified in points 2-6 of subsection 1 of this section and the seller submits a corresponding claim to the buyer, the buyer shall also submit the estimated payment amount per unit or the aggregate amount of payments to the seller in a form that allows for written reproduction before delivery.

(4) If the buyer and seller of an agricultural product and food have agreed on the payment of the fee specified in points 2 and 4-6 of subsection 1 of this section and the buyer submits a corresponding claim to the seller, in addition to the information specified in subsection 3, he also submits to the seller the estimated costs and their justification of expenses.

(5) In the event of the use of a conditionally prohibited unfair commercial practice provided for in subsection 1 of this section without proper agreement, the transaction or its condition is void.

(6) Failure to provide the information specified in subsections 2–4 of this section results in the nullity of the agreement specified in these subsections.

(7) In the case of the terms of the transaction specified in subsections 2-4 of this section, the agreement is considered concluded only by agreement of the parties. The seller's silence or inaction is also considered acceptance of the terms of the transaction specified in subsections 2-4 of this section.

Chapter 3 State and administrative supervision

§ 7. Organization of state and administrative supervision

(1) State and administrative supervision over the implementation of this Act is carried out by the Competition Authority.

(2) The Competition Authority may apply the special measures of state supervision provided for in §§ 30–32 and 49–51 of the Law on Law and Order on the basis and according to the procedure provided for in the same Act, in order to carry out the state supervision provided for in this Act.

§ 8. Injunction in case of threat of unfair commercial practice

(1) The Competition Authority may, in an urgent case, oblige the buyer or seller with an injunction to perform the act required in the injunction or to refrain from doing it, if, to the knowledge of the Competition Authority, there is a risk of serious and irreparable damage due to the violation of the prohibition provided for in §§ 4–6 of this Act.

(2) The injunction specified in subsection 1 of this section is valid only as long as it is unavoidably necessary to ward off the danger.

§ 9. Rate of extortion money

In case of failure to comply with the injunction, the maximum amount of enforcement money applied in accordance with the procedure laid down in the Substitute Enforcement and Extortion Money Act is 600 euros for a natural person and 100,000 euros for a legal person.

§ 10. Application

(1) A request to initiate state or administrative supervision over an unfair trade practice may be submitted to the Competition Authority by:

- 1) the seller;
- 2) producer organization or profit-making cooperative on behalf of its member;
- 3) vendor organization;
- 4) the union of organizations provided for in point 2 or 3 of this paragraph on behalf of its member or a member of the union of organizations;
- 5) another organization that operates as a non-profit organization and has a legitimate interest in representing the seller.

(2) The application submitted to the Competition Authority shall be in writing and shall include the data specified in § 14 subsection 3 of the Administrative Procedure Act.

(3) The Competition Authority may, on the basis of a reasoned request of the applicant, declare the applicant's name and other information not to be disclosed to another person.

(4) Information not subject to publication specified in subsection 3 of this section shall be omitted from the text of decisions and prescriptions subject to publication.

§ 11. Failure to review the application

The Competition Board will not consider the request for the initiation of state or administrative supervision over the unfair trade practice, if:

- 1) the request is clearly unfounded;
- 2) the resolution of the application does not fall within the competence of the Competition Authority;
- 3) it is not possible to identify the applicant based on the information provided in the application;
- 4) the applicant does not comply with the provisions of § 10 subsection 1 of this Act.

§ 12. Termination of proceedings

The Competition Authority may terminate the processing of an application submitted to initiate state or administrative supervision over an unfair trade practice, if:

- 1) there are no signs of a violation of this Act in the buyer's activities;
- 2) misdemeanor proceedings have been initiated in the same case;
- 3) the applicant has withdrawn his application and the termination of the procedure does not harm the rights of a third party;
- 4) the same matter is in the proceedings of the authority responsible for fulfilling the requirements of another member state, or the authority responsible for fulfilling the requirements of another member state has made a decision on the same matter;
- 5) the buyer has completed the activity that is the subject of the procedure and there is no need to issue an injunction;
- 6) the applicant has stated in the application that his name and other information specified in § 10 subsection 3 of this Act are not subject to disclosure to another person, but the said information may be seen in the decision made as a result of the procedure.

§ 13. Cooperation in the European Union

(1) In order to prevent unfair trade practices, the Competition Authority cooperates with the authorities responsible for the prevention of unfair trade practices designated by the member states of the European Union and with the European Commission.

(2) The Competition Authority shall publish on its website as a report information on state and administrative supervision of unfair trade practices initiated and completed last year, taking into account the provisions of § 10 subsection 4 of this Act. The information contains a summary of the content of the procedure, the results and the decisions made.

(3) The Competition Authority submits a report to the European Commission by March 15 of each year on the application of the requirements of this Act and ensuring their fulfillment.

Chapter 4 Responsibility

§ 14. Violation of the prohibition of unfair trade practices

(1) Violation of the prohibition of unfair trade practice related to payment deadline or delivery, as well as the use of conditionally prohibited unfair trade practice without proper agreement - shall be punished with a fine of up to 300 fine units or arrest.

(2) For the same act, if it is committed by a legal entity, - shall be punished with a fine of up to 400,000 euros.

§ 15. Procedure

(1) The statute of limitations for misdemeanors provided for in this Act is three years.

(2) The out-of-court procedure for misdemeanors provided for in this Act is the Competition Authority.

Chapter 5 Implementation provisions and follow-up evaluation

§ 16. Bringing a contract that does not meet the requirements of the law into compliance with the provisions of the law

(1) Agreements for the sale of agricultural products and food entered into before the entry into force of this Act shall be brought into line with this Act within 12 months from the date of its publication in the Riigi Teataja. A contract of sale that is not brought into line with this law or a condition thereof that is inconsistent with this law is void.

(2) If the buyer wishes to bring the contract specified in subsection 1 of this section into compliance with this Act, he shall make a proposal to the seller to change the contract and give the seller a reasonable deadline to accept or reject the proposal. If the seller does not announce his decision within the deadline, the contract is considered amended.

(3) If the seller refuses to change the contract, the buyer has the right to terminate the contract with the seller.

(4) If the contract specified in subsection 1 of this section has not been concluded in writing, the buyer submits a confirmation letter to the seller and gives a reasonable deadline for accepting or not agreeing to it. If the seller does not notify within the deadline that he does not agree to the terms contained in the confirmation letter, they are considered the terms of the contract.

(5) The obligation, deadline and consequence specified in subsection 1 of this section also apply to the statutes of the for-profit cooperative or non-profit association that is the buyer of agricultural products and food, or to the decision made on the basis thereof, which contains provisions that are inconsistent with this Act regarding the seller who is a member.

§ 17. Post-assessment of the law

The Ministry of Regional Affairs and Agriculture will analyze the impact and effectiveness of the implementation of this Act by December 31, 2025.

[RT I, 30.06.2023, 1 - enters into force. 01.07.2023; On the basis of § 105.19 subsection 7 of the Act on the Government of the Republic, the word "Ministry of Rural Affairs" has been replaced by the words "Ministry of Regional and Agricultural Affairs"]

§ 18. Amendment of the Debt Law Act

[Omitted from this text.]

§ 19. Entry into force of the Act

This law enters into force on November 1, 2021.

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Directive (EU) 2019/633 of the European Parliament and of the Council, which deals with unfair trade practices occurring in relations between companies in the supply chain of agricultural products and foodstuffs (OJ L 111, 25.04.2019, pp. 59–72).