

## competition - legislative retrospective

### **Law no. 321/2009 on the marketing of food products, published in Official Gazette no. 705 of October 20, 2009.**

The provisions stipulated in the new normative act, which shall come into force within 30 days following the date of its publication, set out the payment obligations between the tradesperson and the supplier of food products. Thus, the law provides that, for fresh food products, the tradesperson's term of payment to the supplier should not exceed 12 days. For frozen products, the payment term should not exceed 20 days, and for any food products other than those that are fresh or frozen, the tradesperson's term of payment to the supplier should not exceed 35 days. The law also sets out that for failing to comply with their contractual obligations, the parties may set out penalties in an equal quantum, but for failing to comply with the aforementioned payment terms, the defaulting party shall be obligated to pay daily penalties representing twice the interest of the NBR reference rate, calculated on the owed amount.

At the same time, the new law offers protection against anti-competition practices. A series of clauses are prohibited in the agreements regulating the supplier-tradesperson relationship:

- The agreements under which parties bind each other to purchase/sell services from/to a third party;
- The clause whereby a tradesperson prohibits a supplier from selling to other tradespersons the same products at an acquisition cost that is either lower than, or equal to, the price for which the former acquired such products.
- Unilateral delisting (ceasing the sale of the products representing the object of the agreement), without prior notification (two months in advance), save in the case where the delisting is due to the supplier's contractual default.
- Sacrifice product sale (at a cost that is lower than the acquisition cost), save in the events provided for in case of bargain sales, clearance sales etc.

It is prohibited for tradespersons to request and to cash from the supplier services that have no direct connection to the product sale operation and are not included in the acquisition cost. The following fees are especially prohibited:

- fees related to the extension of the tradesperson's distribution network;
- fees in view of the arrangement of the tradesperson's sale areas; and
- fees for the promotion of the tradesperson's activity and image.

The agreements containing provisions that contradict the new regulations must be adjusted within 60 days following the date when the new law comes into force.

For more information about the above, please contact:

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