



Competition Council of the Republic of Latvia

Criteria for Recognising Fresh Fruits,
Berries, Vegetables and Potatoes as
Perishable Agricultural and Food
Products under the Prohibition of Unfair
Trading Practices Law

Informative Material for Buyers

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ABBREVIATIONS AND DEFINITIONS USED IN THE DOCUMENT

PUTPL – Prohibition of Unfair Trading Practices Law¹

Directive No. 2019/633 – Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain²

OSAPUAP Law – Law “On the Settlement of Accounts with the Producers of Unprocessed Agricultural Produce”³

TFEU – Treaty on the Functioning of the European Union

PERISHABLE AGRICULTURAL AND FOOD PRODUCTS agricultural and food products which by their nature or at their stage of processing are liable to become unfit for sale within 30 days after harvest, production or processing⁴

SUPPLIER – a supplier of agricultural and food products or a person who sells products to a retailer of non-food products⁵

BUYER – a natural or legal person or an association of such persons irrespective of their place of economic activity if its net turnover in the last financial year exceeds EUR 2 000 000 or an institution in the European Union (national, regional or local institution or an association of several such institutions which operates in accordance with the principles of public law) that purchases agricultural and food products.⁶

PRODUCTS – fresh fruit and vegetables, berries, and potatoes that are not peeled, cut, or similarly processed

¹ Available at: <https://likumi.lv/ta/en/en/id/322554-prohibition-of-unfair-trading-practices-law>

² Available at: <https://eur-lex.europa.eu/eli/dir/2019/633/oj>

³ Available at: <https://likumi.lv/ta/en/en/id/37862-on-the-settlement-of-accounts-with-the-producers-of-unprocessed-agricultural-produce>

⁴ PUTPL Section 1, Part 1

⁵ PUTPL Section 1, Part 6

⁶ PUTPL Section 1, Part 7

INTRODUCTION

- 1 Perishable agricultural and food products, according to PUTPL Section 1, Part 1, are agricultural and food products which by their nature or at their stage of processing are liable to become unfit for sale within 30 days after harvest, production or processing. However, the law does not provide detailed criteria to determine whether a product is perishable.
- 2 The PUTPL sets different payment deadlines for perishable and non-perishable agricultural and food products.⁷ For fresh vegetables and berries purchased directly from a producer or a cooperative society of producers and delivered at least three times a week, unless otherwise agreed in writing, payments must be made within 20 days after delivery.
- 3 In the course of market supervision "Payment Terms in the Supply Chain of Fresh Fruit, Vegetable and Berry", the Competition Council (hereinafter – the CC) observed different payment practices for perishable goods. To ensure clarity and uniform interpretation of the law and prevent potential violations, this material clarifies criteria for determining whether fresh fruits, vegetables, berries and potatoes without indication of the date of minimum durability are deemed to be perishable under the PUTPL.
- 4 This material is intended for buyers⁸ at all stages of the supply chain – production, processing, marketing, distribution and retail – including institutions purchasing these products, to assess and apply appropriate payment deadlines in line with PUTPL requirements.
- 5 The material is based on Directive (EU) 2019/633, transposed into the PUTPL.
- 6 Fresh fruits and vegetables represent a significant share of Latvia's exports and imports.⁹ According to Regulation (EU) No 1169/2011¹⁰, fresh fruits and vegetables, including unpeeled and uncut potatoes, do not require

⁷ PUTPL Section 1, Part 2: **agricultural and food products** - products listed in Annex I to the Treaty on the Functioning of the European Union, and also products not listed in the abovementioned Annex, but processed for use as food using products listed in the abovementioned Annex, and also packaged water, including mineral water, and other non-alcoholic beverages

⁸ PUTPL Section 1, Part 7: **buyer** - a natural or legal person or an association of such persons irrespective of their place of economic activity if its net turnover in the last financial year exceeds EUR 2 000 000 or an institution in the European Union (national, regional or local institution or an association of several such institutions which operates in accordance with the principles of public law) that purchases agricultural and food products.

⁹ Ministry of Agriculture. Foreign trade of food, agricultural, and fishery products (report for 2023): Available: <https://www.zm.gov.lv/lv/media/13683/download?attachment>

¹⁰ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 Text with EEA relevance. Available at: <http://data.europa.eu/eli/reg/2011/1169/oj>

indication of minimum durability. Therefore, uncertainty may arise as to their classification as perishable and application of fair and reasonable payment terms.

- 7 A buyer checklist is included to simplify assessment of whether a product qualifies as perishable under the PUTPL.

I REGULATORY FRAMEWORK

- 8 The PUTPL¹¹ establishes a prohibition on applying unfair and unreasonably long payment terms for supplied agricultural and food products:
 - **for perishable products** — the buyer shall not apply payment period longer than 30 days after delivery;
 - **for non-perishable products** — the buyer shall not apply payment period longer than 60 days after delivery;
 - **for fresh vegetables and berries** supplied to agricultural and food retailers¹² at least three times within one calendar week — the payment period shall not exceed 20 days after delivery.
- 9 The CC has explained¹³ that the agricultural and food products purchased by buyers are converted into financial resources before supplier invoices become due. If payment of invoices is delayed for a long period, buyers may use the obtained financial resources to purchase assets and develop their businesses. Therefore, excessively long payment terms or late payment of invoices essentially constitute an interest-free loan for the buyer's growth, financed at the expense of suppliers¹⁴. To ensure greater protection of suppliers of agricultural and food product and their liquidity, regulation provides that, for non-perishable agricultural and food products, the payment period may not exceed 60 days after delivery.
- 10 With respect to **European Union institutions** (national, regional or local institution or an association of several such institutions which operates in accordance with the principles of public law) that purchases agricultural and food products, the PUTPL¹⁵ provides an exemption from the specified payment terms. Specifically, the PUTPL¹⁶ requirements do not apply to the payments transferred by such institutions providing healthcare within the meaning of Article 4(4)(b) of Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions. Likewise, under the PUTPL¹⁷, the

¹¹ PUTPL Section 5, Part 4 and 5

¹² PUTPL Section 1, Part 4: **retailer of agricultural and food products** - a performer of economic activity or an association of the performers of economic activity which sells agricultural and food products in retail at a permanent sales location;

¹³ CC. Guidelines for the application of PUTPL, 2022, in point 179. available at: <https://www.kp.gov.lv/lv/media/9853/download>

¹⁴ Relations between Industry and Distribution across Europe: Proposals for a CIAA Agenda, Madrid, May 2006, 2. page

¹⁵ PUTPL Section 5, Part 6(4)

¹⁶ PUTPL Section 5, Part 4

¹⁷ PUTPL Section 5, Part 6 (3)

payment period rules do not apply to the payments of the buyer to the supplier of agricultural and food products within the scope of the school distribution scheme in accordance with Article 23 of Regulation (EU) No. 1308/2013.

- 11 The OSAPUAP Law establishes the procedure for settlements between:
 - **producers** of unprocessed agricultural produce (i.e., natural or legal persons engaged in agriculture and selling their self-grown produce in an unprocessed form), including agricultural service cooperatives; and
 - **merchants** engaged in the processing, trade, or use of such produce in their economic activity.
- 12 Under the OSAPUAP Law¹⁸, unprocessed agricultural produce means primary plant or animal products, consumed directly or used as a raw material for the production of food and other products. These Products do not fall within the scope of Regulation (EU) 2023/2429.
- 13 In accordance with the OSAPUAP Law¹⁹, the payment term stipulated in contracts between producers of unprocessed agricultural produce and merchants shall not exceed 30 days from the date of delivery. This payment term does not apply to grain supply contracts.
- 14 Settlements between producers of unprocessed agricultural produce (suppliers) and merchants shall be made within 10 days from the date of delivery²⁰. Likewise, the 10 day payment term from the date of delivery does not apply to grain supply contracts.
- 15 Unlike the PUTPL, which applies to buyers whose net turnover in the previous financial year exceeds EUR 2,000,000 or to EU institutions (national, regional, or local institution or an association of several such institutions which operates in accordance with the principles of public law), the OSAPUAP Law does not establish turnover thresholds for merchants. Merchants engaged in processing, trading, or using such produce must comply with the law regardless of their turnover.
- 16 At the production stage of the agricultural and food supply chain, the legislator has established shorter payment periods for delivered products than those stipulated in the PUTPL. Therefore, merchants settling with producers of unprocessed agricultural produce must ensure compliance with both the PUTPL and the OSAPUAP Law. Consequently, payments must be made in accordance with the shorter of the applicable terms to avoid breaching legal requirements.

II FRUITS AND VEGETABLES AS PERISHABLE PRODUCTS: CRITERIA FOR DEFINING PERISHABLE GOODS

- 17 Since payment terms for supplied perishable agricultural and food products differ from those for other agricultural and food products, it is important to

¹⁸ OSAPUAP Section 1, Part 1

¹⁹ OSAPUAP Section 2, Part 2

²⁰ OSAPUAP Section 3

understand the nature of this distinction and its practical application. Given the variable storage conditions and diversity of Products, the CC explains when Products are deemed perishable agricultural and food products within the meaning of the PUTPL. At the same time, the CC has developed criteria to determine whether a specific Product is considered perishable.

2.1. FRUITS AND VEGETABLES AS PERISHABLE AGRICULTURAL AND FOOD PRODUCTS

- 18 Under the PUTPL, perishable agricultural and food products are those which by their nature or at their stage of processing are liable to become unfit for sale within 30 days after harvest, production or processing²¹. However, the legislator has not further clarified the criteria for determining such perishable agricultural and food products.
- 19 Article 2(5) of Directive (EU) 2019/633 similarly provides that perishable agricultural and food products are agricultural and food that by their nature or at their stage of processing are liable to become unfit for sale within 30 days after harvest, production or processing. At the same time, Recital 17 of the Directive specifies that definitions used in EU acts relating to food law relate to different objectives, such as health and food safety, and are therefore not appropriate for the purposes of this Directive. Recital 17 further stipulates that a product should be considered perishable if it can be expected to become unfit for sale within 30 days from the last act of harvesting, production or processing by the supplier, regardless of whether the product is further processed after sale, and regardless of whether the product is handled after sale in accordance with other rules, in particular food safety rules.
- 20 It is also necessary to take into account Annex I to the TFEU, which lists products considered agricultural and food products, as well as products not listed in the Annex but processed for use as food using products listed in that Annex, including packaged water, including mineral water, and other non-alcoholic beverages²².
- 21 In the Guidelines for the application of PUTPL²³, the CC provides a detailed explanation of the definition of agricultural and food products²⁴ in connection with Annex I to the TFEU, which determines whether a specific product is deemed an agricultural and food product within the meaning of the PUTPL. Annex I to the TFEU lists all agricultural products to which the

²¹ PUTPL Section 1, Part 1

²² PUTPL Section 1, Part 2

²³ Guidelines for the application of PUTPL, 2022. Available at: <https://www.kp.gov.lv/lv/media/9853/download>

²⁴ PUTPL Section 1, point 2: agricultural and food products – products listed in Annex I to the Treaty on the Functioning of the European Union, as well as products not listed in the said Annex but processed into food products using the products indicated in that Annex, as well as packaged water, including mineral water, and other non-alcoholic beverages.

EU Common agricultural policy²⁵ may apply. The product codes in Annex I refer to the 1958 Brussels Nomenclature²⁶, which has been replaced by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff²⁷. Each year, the European Commission adopts the EU Combined Nomenclature (CN), listing the relevant agricultural and food products referred to in Annex I to the TFEU.

- 22 Chapter 7 of Annex I to the TFEU ("Edible vegetables and certain roots and tubers") includes, among others, potatoes, tomatoes, onions, garlic, cabbages, lettuce, carrots, beets, cucumbers, peas, pumpkins, courgettes, spinach, etc. Chapter 8 ("Edible fruit and nuts; peel of citrus fruit or melons") includes, among others, apples, pears, quinces, cherries, plums, strawberries, raspberries, currants, gooseberries, blueberries, cranberries, etc.
- 23 Therefore, to determine whether a specific Product is considered an agricultural and food product and/or a perishable product within the meaning of the PUTPL, the following must be taken into account:
 - Annex I to the TFEU and the current EU Combined Nomenclature (CN);
 - the characteristics of the Product²⁸ (appearance, freshness, smell and taste, storage conditions, etc.).

The CC notes that all fruits, berries, and vegetables listed in Annex I to the TFEU, including those typical for Latvia²⁹, are to be deemed agricultural and food Products within the meaning of the PUTPL.

2.2. CRITERIA FOR CLASSIFYING FRUITS, BERRIES, VEGETABLES AND POTATOES AS PERISHABLE PRODUCTS

- 24 Given that the PUTPL provides that perishable agricultural and food products are those which by their nature or at their stage of processing are

²⁵ Consolidated version of the Treaty on the Functioning of the European Union, Official Journal C 326, 26.10.2012, pp. 47-390. Available at: http://data.europa.eu/eli/treaty/tfeu_2012/oj

²⁶ As of January 1, 2024, Commission Implementing Regulation (EU) 2023/2364 of 26 September 2023 is in force, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff. Official Journal L series, 31.10.2023.

²⁷ Available at: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=celex%3A31987R2658>

²⁸ Available at: <https://likumi.lv/ta/en/en/id/253451-value-added-tax-law>

²⁹ See Annex of the Value added tax law "Fruits, berries and vegetables to which the reduced tax rate in the amount of five per cent is applied" (Annex shall be in force until 31 December 2024 / see paragraph 30 of transitional provisions):
1. apples, 2. chokeberries, 3. raspberries, 4. red bilberries, 5. pears, 6. carrots, 7. quinces, 8. bergamot berries, 9. sweetcorn, 10. lettuce (head lettuce) and chicory (including leaf chicory), 11. cranberries (including large cranberries), 12. gooseberries, 13. fennel, 14. beetroot, 15. turnips, 16. cabbage, curly kale, broccoli, cauliflower and similar food brassicas, 17. herbs [including dill, parsley, basil, coriander (kinza), mint and similar], 18. cucumbers, 19. viburnum berries, 20. red currants, 21. squash (courgette), 22. swedes, 23. potatoes, 24. blackberries, 25. logan berries, 26. kohlrabi, 27. korinte shadberries, 28. high bush blueberries, 29. garlic, 30. garlic chives, 31. pumpkins, 32. cherries,

liable to become unfit for sale within 30 days after harvest, production or processing, the CC has developed criteria characterising Products that should be considered as perishable.

25 Products are considered perishable if, within 30 days in the supply chain, it is no longer possible to maintain the initial characteristics listed in Table 1. At least one mandatory criterion must be met. Optional criteria are assessed in the context of a specific case; they provide the buyer with additional assurance that the Product is perishable.

Table 1

Criteria for determining perishable products

Mandatory criteria	
<i>Criteria</i>	<i>Description</i>
Appearance	The product loses its attractive shape/colour
Freshness	The moisture level decreases; the product becomes hard, soft or undergoes other texture changes
Smell or taste	An unpleasant smell develops, taste deteriorates or bitterness appears
Optional criteria	
<i>Criteria</i>	<i>Description</i>
Harvest cycle	E.g., new potatoes are less durable due to a thinner peel and lower resistance to damage.
Storage temperature	Applies to all stages of the supply chain to preserve quality; e.g., temperature fluctuations may significantly shorten shelf life.
Moisture content and product characteristics	E.g., cucumbers, lettuce and berries have high moisture content, making them more susceptible to microbial growth and moisture loss, which accelerates spoilage.

Source: Developed by the CC

26 An important criterion for classifying agricultural and food products without an indication of the date of minimum durability as perishable shall be their average turnover period at the point of sale or at buyer's premises, along with the ordering and delivery frequency. If the average turnover period for fruits, berries, vegetables, and potatoes at the point of sale or at buyer's

33. cloudberry, 34. mangold, 35. horse-radish, 36. blueberries, 37. radish, 38. wild strawberries, 39. parship, 40. patisson, 41. parsley roots, 42. rowan tree berries, 43. plums, 44. elderberries, 45. field beans, 46. beans, 47. leeks, 48. rhubarbs, 49. radishes, 50. lettuce vegetables (including, romain lettuce, oakleaf lettuce, rucola, endive, mizuna, sprouts), 51. honeysuckle berries, 52. celery (root, stalk, leaf), 53. onions and shallots, 54. spring onions, 55. sorrels, 56. sea buckthorn berries, 57. asparagus, 58. spinach, 59. tomatoes, 60. jerusalem artichokes, 61. turnips, 62. black currants, 63. strawberries, 64. peas. Available at: <https://likumi.lv/ta/en/en/id/253451-value-added-tax-law>

premises is less than 30 days, or if ordering and delivery take place more than once every 30 days, it can be concluded with a high degree of certainty that such products are perishable. Recital 17 of the Directive (EU) 2019/633 also stipulates that perishable Products are normally used or sold quickly.

- 27 If a buyer cannot ensure that fruits, berries, vegetables and potatoes remain fresh for more than 30 days, they should be considered perishable.
- 28 Buyers must also take into account that Products intended for processing may have lower storage and quality requirements and may deteriorate faster. Accordingly, buyers must consider the potentially shorter durability of such Products compared to products intended for retail sale.
- 29 The CC emphasises that buyers, at any stage of the supply chain, must be reasonably able to determine whether specific agricultural and food products meet the definition of perishable Products within the meaning of the PUTPL. This obligation embedded in the requirement to apply the appropriate payment terms.

III SUBJECTS LIABLE FOR COMPLYING WITH PAYMENT TERMS

- 30 The CC clarifies that the trading practices referred to in the PUTPL³⁰, including late payments, are prohibited in sales transactions where a supplier or buyer of agricultural and food products involved performs economic activity in Latvia. Namely, since wholesalers, retailers, cooperative societies, food processors, and institutions that qualify as buyers under the PUTPL perform economic activity in Latvia, they are bound by the PUTPL requirements and may not act contrary to them, regardless of whether the supplier is registered in Latvia or abroad.
- 31 The CC urges buyers at all stages of the supply chain — i.e., in production, processing, marketing, distribution, and retail — to treat their suppliers responsibly and comply with the payment periods established by the PUTPL for delivered agricultural and food products: for perishable products — within 30 days after delivery; for non-perishable products — within 60 days after delivery. At the same time, the CC calls on agricultural and food retailers cooperating with producers or their cooperative societies to respect delivery frequency requirements, namely, if products are supplied at least three times per calendar week, the payment period shall not exceed 20 days after delivery. An exception applies when the agricultural and food retailer and the producer or cooperative society of producers have agreed in writing on another payment periods, insofar as it is not in contradiction with the PUTPL requirements, i.e., payment period of up to 30 days from the delivery date.
- 32 It should also be noted that the PUTPL payment term rules do not apply to buyers participating in the school distribution scheme and institutions providing healthcare.

³⁰ PUTPL Section 3, Part 2 (5)

BUYER'S CHECKLIST FOR PRACTICAL ASSESSMENT OF PERISHABLE GOODS

