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# Unfair Trading Practices in the Baltics

Food and Agriculture supply chain

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# Which products?

“**Agricultural and food products**” are defined as products listed in [Annex I to the TFEU](#), as well as products not listed in that Annex, but processed for use as food using products listed in that Annex.

## Products of



- agricultural origin (e.g. live trees and other plants, cereals, **cut flowers**, vegetables, fruits, nuts, coffee, tea, **spices**, vegetable fats, sugar, cocoa);



- animal origin (e.g. meat, dairy produce, live animals, guts of animals, lard, **tallow**);



- **fish** (fish, fats and oil of fish and marine mammals, preparations of fish, crustaceans and molluscs);



- other (e.g. honey, **vinegar**, unmanufactured tobacco, natural **cork**, true hemp, **alcohol** – e.g. wine of fresh grapes, other fermented beverages, ethyl alcohol obtained from agricultural products listed in Annex I)

## Differences by country:

**Latvia:** *all non–alcoholic drinks, including bottled water, are covered*

# Who is affected?

	Estonia	Latvia	Lithuania
<b>Who is affected?</b>	All buyers and sellers of agricultural and food products that are established or who reside in the European Union.	Agri–food products: All businesses and public authorities buying agri–food products Non–food products: Retailers with substantial bargaining power over suppliers	Buyers and sellers of agricultural and food products that are established or who reside in the European Union.
<b>Who is excluded?</b>	Only such buyers that are consumers or other persons who buy the aforementioned products for their own use are excluded.	No exclusions (apart from the turnover threshold mentioned below)	<ul style="list-style-type: none"> <li>• Supplier of agricultural and food products with an annual turnover of more than 350 million EUR during the preceding financial year;</li> <li>• Agreements with consumer;</li> <li>• Agreement with cooperative societies (cooperatives) or small partnerships and their members;</li> <li>• Small buyers, i.e. those whose annual turnover does not exceed 2 m EUR, will not be subject to the rules in relation to grey and black listed practices.</li> </ul>
<b>Turnover thresholds</b>	No turnover thresholds - there are no exemptions even when the supplier is a larger undertaking than the buyer.	Agri–food products: Buyers with annual turnover $\leq$ 2 m EUR are not subject to the new rules	Suppliers of agricultural and food products with annual turnover of up to 350 m EUR based on criteria of supplier–buyer turnover ratio.

# Prohibited unfair practices (“black list”)

	EE	LV	LT
Buyer pays the supplier for perishable agricultural and food products later than 30 days	✓	✓	✓
Buyer pays the supplier for other agricultural and food products later than 30 days	✓		✓
Buyer pays the supplier for other agricultural and food products later than 60 days after delivery		✓	✓
Buyer cancels orders at short notice (*for perishable agricultural and food products)	✓	✓	✓*
Buyer changes orders 2 days or less before delivery		✓	
Buyer unilaterally changes the terms of a supply agreement	✓	✓	✓
Buyer requires payments that are not related to the sale of the agricultural and food products	✓	✓	✓
Buyer requires to pay for the deterioration or loss, or both, of agricultural and food products that occurs on the buyer's premises or after ownership has been transferred to the buyer, where such deterioration or loss is not caused by the negligence or fault of the supplier	✓	✓	✓
Buyer refuses to confirm in writing the terms of a supply agreement	✓	✓	✓
Buyer unlawfully acquires, uses or discloses the trade secrets of the supplier	✓	✓	✓

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# Prohibited unfair practices (“black list”)

	EE	LV	LT
Buyer threatens to carry out, or carries out, acts of commercial retaliation	✓	✓	✓
Buyer requires compensation for the cost of examining customer complaints relating to the sale of the supplier's products despite the absence of negligence or fault on the part of the supplier	✓	✓	✓
Buyer returns unsold agricultural and food products without paying for those products or without paying for the disposal of those products, or both		✓	✓
Buyer imposes unfair sanctions on the seller		✓	
Buyer refuses to accept products with less than 2/3 of shelflife remaining (where total shelflife exceeds 30 days)		✓	
Buyer imposes a most-favoured-customer clause on the seller (*applicable to major retailers)		✓	✓*
Buyer requests the supplier to compensate the costs of buyer's staff		✓	
Buyer charges the supplier for stocking, listing or making products available on the market (*applicable to major retailers)		✓	✓*
Buyer requests from the supplier such discounts that are unfair or have not been agreed in a prior written agreement		✓	

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# Prohibited unfair practices (“black list”)

	EE	LV	LT
Buyer requests the seller to compensate lower profits (*applicable to major retailers)			√*
Buyer charges the seller for the renewal or installation of the shops (*applicable to major retailers)			√*
Buyer requests the seller to acquire products, services or assets from third parties (*applicable to major retailers)			√*
Buyer changes the essential supply procedures or products specifications without due notice (*applicable to major retailers)			√*

# Conditionally prohibited unfair practices (“grey list”)

	EE	LV	LT
Buyer returns unsold agricultural and food products without paying for those products or without paying for the disposal of those products, or both	✓		✓
Supplier is charged payment as a condition for (i) stocking; (ii) displaying; (iii) listing its agricultural and food products or (iv) making such products available on the market	✓		✓
Buyer requires to cover the costs of:			
• discounts;	✓		✓
• advertising; or	✓	✓	✓
• marketing.	✓	✓	✓
Buyer requires to cover the staff costs for fitting-out premises used for the sale of the supplier's products	✓		✓
Buyer requires the use of only a certain type, shape and size of packaging	✓		
Buyer requires the supplier to pay for logistics		✓	
Buyer instructs the supplier to enter into a transaction with a third party specified by the buyer		✓	
Buyer continues to sell promotional goods at a discount, where the originally agreed period of promotion has expired but the intended quantity has not yet been sold		✓	

# Latvia: non–food products

- **Suppliers of non–food products are protected vis–à–vis retailers that meet all of the following criteria:**
  - has had “purchasing power over a sufficiently long period”
  - enjoys “dependence of suppliers on the relevant market”
  - “is able directly or indirectly to apply or impose unfair and unreasonable terms, conditions or charges on suppliers”
  - may “hinder, restrict or distort retail competition”
- **Six categories of practices are prohibited**
  - payments for processing of a supply agreement (unless special assessment is needed in relation to a new supplier)
  - payments for stocking, listing or making products available on the market (by way of exception, payments for placement in “special” displays are permitted)
  - contributions to the costs of opening of new or refurbishment of existing retail premises
  - return of unsold products, except where the products are:
    - defective;
    - new, and have been supplied upon the initiative of the supplier; or
    - returned upon the initiative of the supplier
  - unfair penalties for infringements of contract
  - unfairly long payment delays in contract or in practice

# What needs to be done

	Estonia	Latvia	Lithuania
Entry into force	1 November 2021		
Deadline to bring existing agreements into compliance with the new legislation	20 September 2022	20 April 2022	1 November 2022

# Why it needs to be done

	Estonia	Latvia	Lithuania
Consequence when not complied with the prohibitions	A transaction or its condition (trading practice) that is in conflict with the prohibition is void.	Fines, interim measures, liability in damages.	Fines, interim measures (to cease potentially illegal activities, to perform certain actions).
Enforcement Authority	Estonian Competition Authority	Latvian Competition Council	Rural Business and Markets Development Agency Lithuanian Competition Council (in respect of major retailers)
Coercive measures	Penalty payment up to EUR 100,000 (can be imposed repeatedly).	Daily penalty payment of up to 2% of average daily turnover for non-compliance with an interim or final injunction.	Delay in paying - fines of at least 200 EUR, up to 20% of the amount of overdue debts. Failure to provide the information on the income • EUR 3,000-10,000 • if repeated within one year - EUR 6,000-20,000 EUR. Non-compliance or improper performance of the Agency's requirements - up to EUR 700.
Fines	Fines in misdemeanour proceedings: • up to EUR 1,200 or arrest (natural person); • up to EUR 400,000 (legal person).	Fine of up to 0.2% of annual turnover.	Fines of up to 0.7% of annual turnover.

# Additional obligations of the major retailers in Lithuania

	The Law on the Prohibition of Unfair Practices of Retailers
<b>Who is affected?</b>	5 major retailers (at present such companies include the supermarkets <b>MAXIMA, RIMI, IKI, NORFA, LIDL</b> ) and sellers of agricultural, food and drink products that are established or who reside in the European Union.
<b>Who is excluded?</b>	Suppliers of agricultural, food and/or drink products with an annual turnover of more than EUR 350 million in the preceding financial year (turnover of all related undertakings is taken into consideration).
<b>Enforcer</b>	Lithuanian Competition Council
<b>Relationship between two laws</b>	<ul style="list-style-type: none"> <li>• 5 major retailers are prohibited from engaging in the „black“ and „grey“ listed practices referred to in both laws.</li> <li>• Compliance to both laws in relation to 5 major retailers is supervised by the Lithuanian Competition Council.</li> <li>• Both laws contain similar „black“ and „grey“ listed practices (not all are identical!).</li> </ul>
<b>Which law and when applies to the major retailers?</b>	The Law on the Prohibition of Unfair Practices of Retail Businesses will apply if a retailer violates the provisions of the Law on the Prohibition of Unfair Commercial Practices in the Agricultural and Food Supply Chain and / or the Law on the Prohibition of Unfair Practices of Retail Businesses by the same actions.
<b>Fines</b>	Fines of up to 0.7% of annual turnover as well as fines for delay to pay.

# What needs to be checked and done?

- **Applicability:** Check whether the relevant law is applicable! The same entity, e.g. a distributor, may be subject to the grey list and black list prohibitions when buying, and benefit from these prohibitions when selling.
- **Compliance:**
  - I. Review and amend the agreement that are in force during transitional period;
  - II. Prepare the checklist of prohibited practice for the future negotiations and agreements;
  - III. Prepare the checklist of conditional practices (“grey list”) and what conditions need to be complied with for such practices;
  - IV. Double-check and prepare the checklist on actions to be performed during the validity of agreement (e.g. under Lithuanian law, the buyer must provide certain information upon request of the supplier if some of grey listed practices are established).

# Lithuania: recent practice on the Law on the Prohibition of Unfair Practices of Retailers (I)

## UAB „Palink“ (2020)

- **Infringement:** UAB „Palink“ required suppliers to use the marketing budget, which was specified in the contracts only as preliminary, in the course of a given year.
- **Evidence:** E-mails received during the dawn raid, supplier survey
- **Responsibility:** Communication of one employee - responsibility applied to the entire company
- **Fine:** EUR 78,000

# Lithuania: recent practice on the Law on the Prohibition of Unfair Practices of Retailers (II)

## UAB „Norfos mažmena“ ir UAB „Rivona“ (2021)

- **Facts of the investigation:**
  - UAB Rivona and UAB Norfos mažmena required suppliers under the concluded agreements to allocate a certain amount of money for commercial promotions for each category of goods during the term of the agreements.
  - UAB Rivona does not engage in retail trade, unlike UAB Norfos mažmena
  - UAB Rivona and UAB Norfos mažmena belong to the same shareholder and are therefore considered as related companies.
- **Infringement:** the companies indicated in the agreements with the suppliers the obligation for suppliers to pay certain amounts for commercial promotions but did not specify in details the commercial promotion activities.
- **Responsibility:** the related company does not have necessarily to engage in retail in order to be sanctioned
- **Fine:** EUR 72,000

# Contacts



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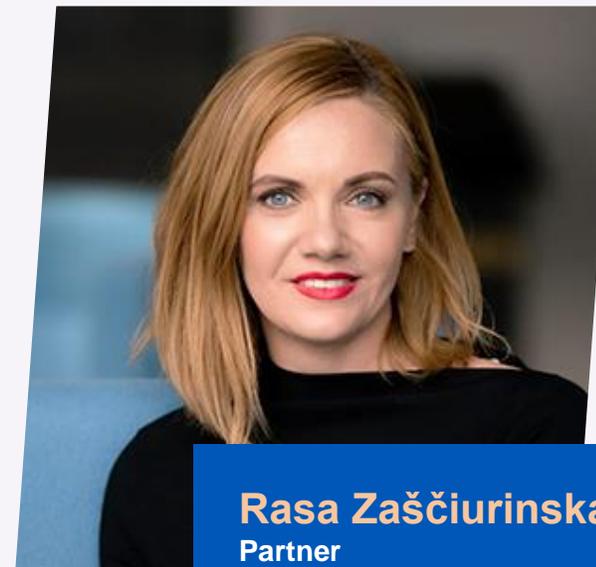


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