

THE CROATIAN PARLIAMENT

2703

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

DECISION PROMULGATING THE ACT ON PROHIBITION OF UNFAIR TRADING PRACTICES IN THE FOOD SUPPLY CHAIN

I hereby promulgate the Act on Prohibition of Unfair Trading Practices in the Food Supply Chain, adopted by the Croatian Parliament at its session on 17 November 2017.

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Zagreb, 22 November 2017

President of the Republic of Croatia
Kolinda Grabar-Kitarović, m.p.

ACT ON PROHIBITION OF UNFAIR TRADING PRACTICES IN THE FOOD SUPPLY CHAIN

TITLE I BASIC PROVISIONS

Objective and Subject Matter of the Act

Article 1

(1) This Act specifies the rules and a system of measures for prevention of imposition of unfair trading practices, it defines unfair trading practices in the food supply chain, the imposition of which enables the use of strong bargaining power of the buyer and/or processor or re-seller with respect to their suppliers, and it also specifies the powers, duties and activities of the authority competent for enforcement of this Act.

(2) The objective and purpose of this Act is to establish, ensure and protect fair trading practices that safeguard participants in the food supply chain.

Definitions

Article 2

Individual terms shall have the following definitions within the meaning of this Act:

a) *food supply chain*: it encompasses all participants in the production, processing and trade of agricultural or food products, including in particular: producers, buyers and/or processors, wholesalers and retailers

b) *unfair trading practices*: contract terms and business practices imposed upon the supplier by the buyer and/or processor and/or re-seller, using their respective strong bargaining power in their relationship with the supplier, contrary to the principles of good faith and fair dealing, equality of contracting parties, principle of equal value of mutual performances and good business practice in the production and/or trade of agricultural or food products; or, more precisely, contract terms and business practices that are not in line with the provisions of Articles 4 to 12 of this Act

c) *agricultural and food product*: any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans, including drink, chewing gum and any substance, including water, intentionally incorporated into food during its manufacture, preparation or treatment, as well as live animals that are intended for food production in accordance with Article 2 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002) (hereinafter: Regulation (EC) No. 178/2002), apart from wild-caught sea fish and other marine organisms

d) *fresh agricultural and food products*: products that, from a microbiological point of view, are easily perishable and/or unprocessed products: meat, fish – except wild-caught sea fish and other marine

organisms – , fruits and vegetables, eggs, raw milk, fresh milk, fresh cheeses, fermented milk products, bakery products and cakes (hereinafter: fresh products)

e) *primary producer*: a natural or legal person that produces the primary agricultural product within the meaning of the provision of Article 3, item 17 of the Regulation (EC) No. 178/2002.

f) *supplier*: natural or legal person (including the primary producer) that produces and/or processes and/or buys and then sells an agricultural or food product to the buyer and/or processor, or directly to the re-seller, regardless of whether the supplier has its permanent residence or registered office in the Republic of Croatia or abroad

g) *buyer*: natural or legal person that buys an agricultural or food product in order to further sell it to the re-seller

h) *processor*: natural or legal person that processes the bought agricultural or food product and sells the resulting processed product to the re-seller

i) *re-seller*: natural or legal person, established in accordance with general trade regulations, that buys the agricultural or food product for the purpose of further selling thereof

j) *fee*: any payment in cash or in kind

k) *connected companies*: legally independent companies that are connected by one company holding a majority share in another company or holding a majority of voting rights in it; by one company being the dependent and the other the controlling company; by being a member in a group of companies; by being companies with mutual shares in one another; or companies connected by virtue of affiliation agreements, in accordance with the applicable regulations on companies and accounting

l) *turnover*: total turnover or revenue of buyers and/or processors or re-sellers and their connected companies realized in the Republic of Croatia and declared in the last submitted financial statements

m) *place of delivery of an agricultural or food product*: the place where the supplier delivers the agricultural or food product to the buyer and/or processor or re-seller and where at the moment of delivery all risks and responsibilities related to the agricultural or food product are transferred to the buyer and/or processor or re-seller

n) *price of production*: sum of all fixed and variable costs incurred in the production of a unit of product

o) *purchase price*: supplier's unit price at which an agricultural or food product is bought, less all rebates and discounts exclusively indicated on the invoice and plus all costs related to the purchase of the product. Related costs normally include the costs of transport, insurance, freight forwarding and customs.

p) *trade secret*: business-related information stipulated as being a trade secret by general competition regulations and

r) *chain of supply*: it comprises all entities that participate in the production and/or supply of a specific agricultural or food product from the moment when the product has been prepared for sale to the end consumer until the moment when the product is sold to the end consumer.

CHAPTER I STRONG BARGAINING POWER AND UNFAIR TRADING PRACTICES

Prohibition to Use Strong Bargaining Power

Article 3

(1) It is prohibited to use strong bargaining power of the buyer and/or processor or re-seller with respect to their suppliers by imposition of unfair trading practices.

(2) A re-seller whose total annual turnover and total annual turnover of companies connected to the re-seller realized in the Republic of Croatia exceeds the amount of HRK 100,000,000.00 is considered to possess strong bargaining power within the meaning of this Act.

(3) A buyer whose total annual turnover and total annual turnover of companies connected to the buyer realized in the Republic of Croatia exceeds the amount of HRK 50,000,000.00 is considered to possess strong bargaining power within the meaning of this Act.

(4) A processor whose total annual turnover and total annual turnover of companies connected to the processor realized in the Republic of Croatia exceeds the amount of HRK 50,000,000.00 is considered to possess strong bargaining power within the meaning of this.

(5) The turnover referred to in paragraphs 2, 3 and 4 of this Article does not include the turnover realized through the sale of goods or provision of services between connected companies (companies within a group).

Imposition of Unfair Trading Practices

Article 4

(1) Unfair trading practices within the meaning of this Act may be present in the following relationships:

- Between suppliers and buyers and/or processors and
- Between suppliers and re-sellers.

(2) The following constitutes unfair trading practices in the production, processing and/or trade of agricultural or food products that are imposed on suppliers through the use of strong bargaining power:

1. A written agreement between the buyer and/or processor or re-seller and their suppliers that has not been drawn up in accordance with the provisions of this Act or any obligations imposed on the supplier that have not been foreseen in the written agreement concluded between the buyer and/or processor or re-seller and their suppliers
2. Payments that are not clearly indicated or specified on the issued invoice or goods receipt note
3. General operating terms and conditions of the buyer and/or processor or re-seller that are not in compliance with the provisions of this Act
4. Possibility of unilateral termination of the agreement concluded with the supplier, on the part of the buyer and/or processor or re-seller, without written notice or without specifying any justifiable reasons for such contract termination, or the possibility of cancelling the agreement concluded with the supplier without an adequate cancellation period, or the possibility of the agreement being unilaterally amended by the buyer and/or processor or re-seller
5. Disproportionately high liquidated damages with respect to the value and importance of the object of the actual obligation and
6. Other unfair trading practices prescribed by this Act.

SECTION 1 AGREEMENTS

Form and Mandatory Content of Agreements between Suppliers and Buyers and/or Processors

Article 5

(1) The agreement between the supplier and buyer and/or processor shall be concluded in written form and it shall contain all provisions that are material to the business relationship between the contracting parties; in particular, it shall contain provisions that pertain to the following:

1. Price of the product and/or the manner of establishing or calculating the price
2. Quality and type of the agricultural or food product that is supplied to the buyer and/or processor
3. Terms and conditions as well as time limits for payment for the supplied agricultural or food product. The time limit for payment shall not exceed the period of 60 days from the date of receipt of the supplied agricultural or food product, or it shall not exceed 30 days from the date of receipt of the supplied fresh product
4. Terms and conditions as well as time limits for delivery of agricultural or food products that are the subject matter of the agreement
5. Place of delivery of the agricultural or food product, and
6. Term of the agreement.

(2) An agreement that is not concluded in written form and that does not contain all provisions referred to in paragraph 1 of this Article, shall be considered invalid.

(3) By way of derogation from paragraph 1 of this Article, a written agreement is not required if the primary producer accepts the order from the buyer and/or processor on the basis of publicly accessible terms and conditions of the buyer and/or processor if they contain all of the provisions referred to in paragraph 1, items 1 to 5 of this Article, in which case they shall be binding to the parties and attached to the goods receipt note; or, if the primary producer and buyer and/or processor have concluded a joint production agreement that also contains the provisions referred to in paragraph 1, items 1 to 6 of this Article.

(4) By way of derogation from paragraph 1 of this Article, when the primary producer supplies an agricultural or food product to the buyer and/or processor which is a co-operative that includes the primary producer as one of its members, no written agreement is required if the articles of association of the co-operative or any written rules and decisions that are defined within the articles of association or that derive therefrom, contain provisions the content of which is in accordance with paragraph 1 of this Article.

Form and Mandatory Content of Agreements between Suppliers and Re-sellers

Article 6

(1) The agreement between the supplier and re-seller shall be concluded in written form and it shall contain all provisions that are material to the business relationship between the contracting parties; in particular, it shall contain provisions that pertain to the following:

1. Price of the product and/or the manner of establishing or calculating the price
2. Quality and type of the agricultural or food product that is supplied to the re-seller
3. Terms and conditions as well as time limits for payment for the supplied agricultural or food product. The time limit for payment shall not exceed the period of 60 days from the date of receipt of the supplied agricultural or food product, or it shall not exceed 30 days from the date of receipt of the supplied fresh product
4. Terms and conditions as well as time limits for delivery of agricultural or food products that are the subject matter of the agreement
5. Place of delivery of the agricultural or food product, and
6. Term of the agreement.

(2) An agreement that is not concluded in written form and that does not contain all provisions referred to in paragraph 1 of this Article, shall be considered invalid.

SECTION 2

INVOICING AND GENERAL OPERATING TERMS AND CONDITIONS

Rules Governing Invoicing

Article 7

(1) For every delivery of an agricultural or food product in accordance with the agreement concluded between the supplier and re-seller or the supplier and buyer and/or processor, or for every service connected to the delivery of an agricultural or food product, an invoice or a goods receipt note must be issued in accordance with the applicable tax regulations.

(2) The invoice that the supplier issues to the re-seller or buyer and/or processor, must contain a clear indication of the amount of any agreed discounts or rebates and the exact specification as to what the amounts specified pertain to, in accordance with the agreement between the supplier and re-seller or between the supplier and buyer and/or processor.

(3) Fees for services provided by the re-seller to the supplier, the payment of which depends on actual and measurable performance on the part of the re-seller or buyer and/or processor, but which are not considered to constitute imposition of an unfair trading practice, must not be included in the invoice referred to in paragraph 2 of this Article.

(4) Provisions of this Article do not affect any tax regulations governing the form and content of invoices.

General Operating Terms and Conditions

Article 8

(1) The buyer and/or processor and re-seller are obligated to advise the supplier of the application of general operating terms and conditions as well as of the manner in which the general operating terms and conditions are published.

(2) Provisions of the general operating terms and conditions shall be clear and comprehensible.

(3) General operating terms and conditions must not contain any provisions that constitute unfair trading practices within the meaning of this Act.

SECTION 3

INVALIDITY OF THE AGREEMENT AND LIQUIDATED DAMAGES

Termination of the Agreement, Cancellation of the Agreement and

Unilateral Amendments to the Agreement

Article 9

(1) Any provision of the agreement concluded between the supplier and buyer and/or processor or between supplier and re-seller, allowing the buyer and/or processor or re-seller to unilaterally terminate the agreement without written notice or without specifying any justifiable reasons for termination of the agreement, shall be considered invalid.

(2) Any provision of the agreement concluded between the supplier and buyer and/or processor or between supplier and re-seller, allowing the buyer and/or processor or re-seller to cancel the agreement without an adequate cancellation period, shall be considered invalid.

(3) Any provision of the agreement concluded between the supplier and buyer and/or processor or between supplier and re-seller, allowing the buyer and/or processor or re-seller to unilaterally amend the agreement, shall be considered invalid.

Liquidated Damages

Article 10

(1) It is prohibited to impose on the supplier any liquidated damages that are disproportionately high with respect to the value and importance of the object of the actual obligation.

(2) It is prohibited to collect liquidated damages from the supplier when supplier's failure to fulfil, delay in fulfilment or improper fulfilment of obligations is caused by the buyer and/or processor or re-seller, or when supplier's failure to fulfil, delay in fulfilment or improper fulfilment of obligations is the result of a cause not attributable to the supplier.

CHAPTER II

OTHER UNFAIR TRADING PRACTICES

Other Unfair Trading Practices of Buyers and/or Processors

Article 11

Apart from the unfair trading practices referred to in Articles 4 and 5 and in Articles 7 to 10 of this Act, other unfair trading practices in the relationship between the supplier and buyer and/or processor in the trade in agricultural or food products are the following:

1. Non-transparent reduction of quantity and/or value of agricultural or food products of standard quality
2. Delivery of a blank promissory note for the handed-over production material, without the buyer and/or processor having the obligation to issue any security instrument for the handed-over but unpaid agricultural or food products
3. Making the conclusion of an agreement and business cooperation conditional upon barter arrangements
4. Failure to take over agreed quantities of agricultural or food products in accordance with the agreed purchasing schedule, except in justified situations as established by virtue of the relevant agreement
5. Charging a fee for concluding an agreement with the supplier that is disproportionate to the administrative costs that the supplier should normally bear
6. Refusal to receive a delivery of agricultural or food products upon falling due of the supplier's delivery obligation, unless this is caused by reasons stipulated in the agreement as justified reasons for refusing to receive a delivery.
7. Charging a fee to the supplier for ullage, spillage, spoilage and theft of products after delivery of the agricultural or food products, or transfer of operational risk to the supplier
8. Imposing an obligation not to sell agricultural or food products to other buyers and/or processors at prices that are lower than the ones paid by the buyer and/or processor, and
9. Payment to the supplier within a period exceeding 60 days from the date of receipt of the supplied agricultural or food product or exceeding 30 days from the date of receipt of the supplied fresh product.

Other Unfair Trading Practices of Re-sellers

Article 12

Apart from the unfair trading practices referred to in Article 4 and in Articles 6 to 10 of this Act, other unfair trading practices in the relationship between the supplier and re-seller in the trade of agricultural or food products are the following:

1. Charging listing fees for the supplier's agricultural or food product
2. Charging slotting fees in order to have the product placed on the shelves in the re-seller's retail outlets, unless the supplier expressly requests from the re-seller to have its product placed on a specific shelf in the re-seller's outlets
3. Returning of delivered but unsold products, charging fees for disposal of such products, charging fees to the supplier for products that have remained unsold past their expiration date, unless products are delivered to the re-seller for the first time and unless the supplier has expressly requested that the products be sold even after

having been notified by the re-seller, in advance and in writing, that the expiration date of these products may pass due to low turnover.

4. Charging a fee for concluding an agreement with the supplier that is disproportionate to the administrative costs that the supplier should normally bear
5. Charging a fee for delivery of an agricultural or food product outside the agreed place of delivery
6. Charging a fee for storage and handling after the agricultural or food product has been delivered to the re-seller
7. Charging a fee for extension of the re-seller's store network, improvement (refurbishing) of the re-seller's existing outlets, extension of the re-seller's warehouse capacities, extension of the re-seller's distribution network
8. Refusal to receive a delivery of agricultural or food products upon falling due of the supplier's delivery obligation, unless this is caused by reasons stipulated in the agreement as justified reasons for refusing to receive a delivery
9. Making the conclusion of an agreement and business cooperation conditional upon barter arrangements
10. Making conclusion or renewal of an agreement and receipt of delivered agricultural or food products, which are the subject matter of such agreement, dependent upon accepting the request to produce and deliver agricultural or food products comparable to the agreed or delivered products (re-seller's own brand)
11. Charging a fee for services that have not been provided or for services that have been provided even though they have not been agreed upon by the parties
12. Charging a fee for re-seller's reduced turnover, sales or margin caused by falling sales of a specific agricultural or food product
13. Transfer of operating risk from the re-seller to the supplier, by charging a fee for ullage, spillage, spoilage and theft of products and charging a fee for any fines or other penalties imposed on the re-seller by virtue of a decision issued by a competent authority, unless such penalties imposed by virtue of decisions of competent authorities are a consequence of a defect in the product attributable to the supplier within the meaning of general regulations governing civil obligations
14. Sale of an agricultural or food product to the end consumer at a price that is lower than any purchase price in the chain of supply of this particular product including value added tax, unless these products are nearing their expiration date or this particular agricultural or food product is being recalled from the re-seller's product range or unless there is a closeout sale due to closing of a particular store. Where the supplier is at the same time a wholesaler and a company connected to a retailer, the establishing of the purchase price of a product within the meaning of this Act may involve the examination of contractual relations between the wholesaler and a supplier and/or producer that is not considered to be its connected company within the meaning of this Act
15. Sale of an agricultural or food product below the price of production in case of the re-seller's own production (re-seller's own brand), unless where these products are nearing their expiration date or this particular agricultural or food product is being recalled from the re-seller's product range or unless there is closeout sale due to closing of a particular store
16. Stipulating a fee in the agreement that is not indicated on the invoice, other than the fee that is conditional upon the actual and measurable performance of the re-seller in connection with the service that the re-seller provides to the supplier
17. Charging a fee for the re-seller's marketing and advertising services, unless the supplier has expressly requested from the re-seller special advertising of its products that are available in the re-seller's outlet
18. Stipulating a fee in the agreement for conducting market research
19. Charging a fee for sales data for the supplier's products at the re-seller's outlets, unless the supplier has expressly requested this type of data from the re-seller
20. Making the conclusion of an agreement or business cooperation dependent upon imposition of the obligation to participate in discounts or special offers through reduction of the purchase price at the detriment of the supplier
21. Obligation not to sell agricultural or food products to other re-sellers at prices lower than the ones paid by the re-seller
22. Removal of certain products from the list of agreed products that the supplier supplies to the re-seller or significant reduction in orders of a particular agricultural or food product, without the re-seller's prior sending of a written notice to that effect within the time limit stipulated in the agreement or, where no time limit been established by virtue of the agreement, within a time limit of at least 30 days.
23. Payment to the supplier within a period exceeding 60 days from the date of receipt of the supplied agricultural or food product or exceeding 30 days from the date of receipt of the supplied fresh product, and

24. Failure to take over the agreed and produced quantities of agricultural or food products produced under the re-seller's brands, except in justified circumstances as established in the agreement.

TITLE II BASIC PROCEDURAL PROVISIONS

CHAPTER I COMPETENCE, CONFLICT OF INTERESTS OF EMPLOYEES AND ACTIVITIES OF THE AGENCY

Competence of the Authority Responsible for Enforcement of the Act and Decision-Making Process

Article 13

(1) Enforcement of this Act shall fall within the competence of the Croatian Competition Agency (hereinafter: Agency).

(2) Decisions within the meaning of this Act shall be issued by the Competition Council (hereinafter: the Council), the members of which are appointed pursuant to the applicable competition regulations, by a majority vote of at least three votes, with no member of the Council being allowed to abstain from voting.

(3) Procedures referred to in this Act shall be conducted by employees of the Agency who are legal professionals with passed bar examination.

(4) In order to be able to conduct a procedure for determining the grounds for imposing the administrative fine or to actually impose the administrative fine referred to in Article 19 and in Articles 23 to 27, the requirement referred to in paragraph 3 of this Article has to be fulfilled and one also has to have at least four years of experience in legal affairs after passing the bar examination.

Expert Department of the Agency

Article 14

Expert Department of the Agency performs administrative and expert tasks within the meaning of this Act, including in particular the following:

- It establishes facts and circumstances related to determining the prescribed amount of total annual turnover of the re-seller, buyer and processor
- It conducts the administrative procedure for establishing whether there has been any use of strong bargaining power through imposition of unfair trading practices as well as the procedure for establishing whether grounds exist in individual cases for imposing of an administrative fine; and, after it has established all relevant facts and circumstances necessary for reaching a decision, it informs the Council to that effect, which then acts upon every administrative matter separately in accordance with the provisions of this Act
- It prepares the draft of the annual activity report within the meaning of this Act and
- It performs other tasks upon instruction of the Council with respect to enforcement of this Act.

Conflict of Interests of Employees

Article 15

(1) Employees of the Agency may not be members of management or supervisory boards or boards of directors of different legal or natural persons in the food supply chain or members of any other type of interest groups that could jeopardize their impartiality in conducting procedures that fall under the competence of the Agency.

(2) By way of derogation from the provision of paragraph 1 of this Article, employees may be members and participate in the work of scientific organizations, associations and projects, unless this threatens their impartiality in conducting the procedure.

Activity Report

Article 16

Activity Report for the previous calendar year within the meaning of the provisions of this Act shall be delivered by the Agency to the Croatian Parliament as a constituent part of the Activity Report of the Agency, in accordance with the provisions of general regulations on competition.

Data Collection

Article 17

(1) The Agency is authorized to send written requests to parties to procedures or to other legal or natural persons that are not parties to procedures, as well as co-operatives, expert or economic interest groups or associations and chambers, requesting whatever information is required to be delivered in the form of written statements, or requesting that agreements and other necessary data and documentation be delivered for review.

(2) The request referred to in paragraph 1 of this Article shall include an indication of the legal basis, subject and purpose of the request, time limit for its fulfilment as well as a warning that, should the parties fail to act pursuant to the request, a procedure for establishing whether there are grounds for pronouncing an administrative fine within the meaning of paragraph 3 of this Article shall be initiated against the party to the procedure or other legal and natural persons referred to in paragraph 1 of this Article.

(3) If the party to the procedure or other legal and natural persons referred to in paragraph 1 of this Article fail to act pursuant to the request, the Agency shall initiate a procedure for establishing whether there are grounds for pronouncing an administrative fine.

(4) The Agency shall serve to the person against which it has initiated the procedure referred to in paragraph 3 of this Article, a notice on the established facts and a summons to the main hearing, after which it shall issue a decision establishing whether this Act has been infringed and in case of infringement, it shall pronounce the administrative fine for such infringement in accordance with this Act.

(5) If the data and documentation referred to in paragraph 1 of this Article contain a trade secret, persons referred to in paragraph 1 of this Article shall be obligated to mark for the Agency the part that is considered a trade secret, at the same time providing a valid explanation.

(6) In the event referred to in paragraph 5 of this Article, persons referred to in paragraph 1 of this Article shall be obligated to also deliver to the Agency a version of their business documentation that contains no trade secrets. If they merely indicate the data that they consider to be a trade secret but fail to deliver a version of a letter and/or business documentation without any trade secrets in it, the Agency shall once more invite those persons to deliver a letter and/or business documentation containing no trade secrets. Should the persons referred to in paragraph 1 of this Article fail to act in accordance with the reiterated request, the Agency shall consider that such letter and/or business documentation contains no trade secrets.

(7) The provisions of the general competition regulations shall apply to trade secrets and the manner of dealing with trade secrets, *mutatis mutandis*.

(8) If the person referred to in paragraph 1 of this Article fails to deliver the data and documentation referred to in paragraph 1 of this Article, when establishing the facts, the Agency shall assess the significance of the failure to deliver the data and documentation and it shall establish the relevant facts accordingly.

Assumption of Obligations by the Buyer and/or Processor or Re-seller

Article 18

(1) The party against which a procedure has been initiated may provide a proposal to the Agency, within 40 days from the date when the procedure was initiated, proposing that such party assume the obligation of implementing certain measures and requirements as well as time limits for their implementation, in order to eliminate unfair trading practices.

(2) Depending on the severity, scope and duration of the infringement, all of which shall be determined within the investigative procedure, the Agency shall assess whether the proposed measures, requirements and time limits referred to in paragraph 1 of this Article, are sufficient for eliminating unfair trading practices and if so, the Agency shall issue an interim decision accepting the proposed measures, requirements and time limits, which shall thereafter become obligatory for the proponent.

(3) By virtue of the interim decision referred to in paragraph 2 of this Article, the Agency shall require from the party to deliver evidence confirming that the measures and requirements have been fulfilled within the prescribed time limit.

(4) The Agency shall issue a decision discontinuing the procedure after it has received evidence confirming that the measures and requirements have been fulfilled within the prescribed time limit, or in the event where the supplier prevented measures and requirements from being fulfilled within the prescribed time limit.

(5) If the Agency finds that the proposed measures, requirements and time limits referred to in paragraph 1 of this Article are insufficient for the elimination of unfair trading practices or if the party fails to deliver evidence within the meaning of paragraph 3 of this Article, the Agency shall provide written notification to the party to that effect, and continue to conduct the investigative procedure.

Procedure for Establishing the Grounds for Pronouncing the Administrative Fine

Article 19

(1) After the facts and circumstances have been established within the investigative procedure and after the Council has established, in accordance with the powers referred to in Article 13, paragraph 2 of this Act, that the party to the procedure has used strong bargaining power by imposing unfair trading practices upon its supplier, i.e. that it has violated the provisions of this Act, the Agency shall deliver to the party a Notice on the established facts in the case in question and it shall inform it on the contents of the decision reached by the Council on the basis of such established facts.

(2) Together with the Notice referred to in paragraph 1 of this Act, the Agency shall deliver to the party a summons to the main hearing, on which occasion the party shall be given an opportunity to raise a defence and present evidence for the purpose of establishing whether there are grounds for pronouncing the administrative fine as well as for the purpose of establishing whether there are any mitigating or aggravating circumstances, as the criteria for determining the exact amount of the administrative fine prescribed by the provisions of this Act.

(3) The summons to the main hearing referred to in paragraph 2 of this Article shall in particular contain the following:

- Name and registered office of the legal person; name, surname and place of permanent residence of the natural person
- Name, surname and address of the person authorized to represent, or of the proxy, if the persons referred to in subparagraph 1 of this paragraph have one
- Factual description of actions or failures to act that constitute an infringement of this Act
- Date and time of the main hearing
- Indication of the room in the registered office of the Agency where the main hearing shall be held
- Indication of the capacity in which one is to appear
- Warning that if the person fails to appear at the main hearing after the first summons, the person shall once again be summoned to appear at the hearing, and if the person fails to appear at the main hearing for the second time, it may be decided that the person be brought to the hearing by force or that the main hearing be held *in absentia*, and
- Official stamp of the Agency and signature of the person authorized to conduct the procedure for pronouncing the administrative fine.

(4) The Notice referred to in paragraph 1 of this Article shall in particular contain the following:

- Name and registered office of the legal person or name, surname and address of the natural person that infringed the provisions of this Act
- Detailed factual description of actions or failures to act through which unfair trading practices were imposed together with an indication of the provisions of this Act that have been infringed through such actions or failures to act
- Time, place and duration of the infringement of this Act
- Indication of the article of this Act stipulating the amount of the administrative fine for such infringement
- Invitation to the party to present additional evidence or propose witnesses, if there are any
- Invitation to the party to deliver a written defence and indication of a time limit for its delivery, which may be not be shorter than eight (8) days or longer than thirty (30) days.

(5) Unless otherwise stipulated by this Act, the form and content of the summons to the main hearing, the course of the main hearing, the manner of bringing the parties and third persons to the main hearing as well as the minutes on the main hearing, shall be governed by the general misdemeanour regulations, *mutatis mutandis*.

(6) After the completion of the main hearing referred to in paragraph 2 of this Article, the Council shall decide, in accordance with the powers referred to in Article 13, paragraph 2 of this Act, whether grounds exist for pronouncing the administrative fine, and it shall determine the amount of the fine, as well as the time limits and the manner of payment thereof.

(7) In accordance with the Council's decisions establishing the use of strong bargaining power through the imposition of unfair trading practices, i.e. establishing the infringement of this Act, and establishing the existence of grounds for pronouncing an administrative fine as well as the amount of the fine, the Agency shall conclude the procedure by issuing a uniform decision.

CHAPTER II
DOCUMENTS ISSUED BY THE AGENCY

Documents Issued by the Agency and Court Protection

Article 20

(1) Within the meaning of this Act, the Agency shall issue decisions by virtue of which it shall do the following:

– It shall establish the use of strong bargaining power on the part of the buyer and/or processor or re-seller with respect to their suppliers by imposition of unfair trading practices within the meaning of Articles 3 to 12 of this Act; it shall determine the duration of such actions; it shall prohibit any further actions of this kind; it shall determine the measures, requirements and time limits for elimination of such actions and it shall establish and pronounce the prescribed administrative fines

– It shall establish that a party has failed to act in accordance with the Agency's decision referred to in paragraph 1, subparagraph 1 of this Article, specifically the part that pertains to the determined measures, requirements and time limits for the elimination of unfair trading practices and it shall consequently establish and pronounce the prescribed administrative fine

– It shall establish that a party has failed to act in accordance with the Agency's request within the meaning of Article 17, paragraph 3 of this Act and it shall establish and pronounce the prescribed administrative fine

– It shall discontinue the procedure within the meaning of Article 18, paragraph 4 of this Act when there are no longer any legal prerequisites for conducting the procedure and

– It shall discontinue the procedure initiated *ex officio* when it establishes that there are no legal prerequisites, within the meaning of this Act, for the procedure to be conducted any further.

(2) The Agency shall issue an interim decision within the meaning of this Act, accepting the measures and requirements proposed by the proponent, and determining the time limits for implementation within the meaning of Article 18, paragraph 2 of this Act.

(3) No appeal may be filed against the Agency's decision, but an administrative dispute may be initiated.

(4) The claim referred to in paragraph 3 of this Article shall not delay implementation of the decision, except for the part of the decision that pertains to the pronounced administrative fine.

(5) Claims submitted against the Agency's decision with regard to deciding upon procedural issues, shall not suspend the course of the procedure.

(6) All disputes initiated before the competent administrative courts on the basis of the provisions of this Act shall be considered urgent.

Time Limits for Issuing the Agency's Decisions

Article 21

(1) The Agency shall issue the decisions referred to in Article 20, paragraph 1 of this Act within the period of 60 days from the date when it establishes all the facts that are relevant for reaching a decision.

(2) The Agency shall issue the interim decision referred to in Article 20, paragraph 2 of this Act within the period of 30 days from the date of receiving the proposal for assumption of obligations referred to in Article 18, paragraph 1 of this Act.

Publication of the Agency's Decision

Article 22

(1) Decisions referred to in Article 20 of this Act shall be published on the website of the Agency.

(2) Trade secrets contained in the decision referred to in paragraph 1 of this Article shall not be made public.

TITLE III
ADMINISTRATIVE FINES

CHAPTER I
OBJECTIVE AND TYPE OF ADMINISTRATIVE FINE

Objective of the Administrative Fine

Article 23

The objective of the administrative fines that the Agency establishes and pronounces within the meaning of this Act is to establish, ensure and protect fair trading practices that safeguard participants in the food supply chain, to punish perpetrators of infringements and to deflect potential perpetrators and other persons from infringing this Act.

Administrative Fines for Serious Infringements of the Act

Article 24

(1) Any legal or natural person considered to be the buyer and/or processor or re-seller within the meaning of this Act that sells a product at a price lower than any purchase price in the chain of supply of that product (Article 12, item 14) shall be fined by no more than HRK 5,000,000.00 for a legal person, and no more than HRK 2,500,000.00 for a natural person, for committing a very serious infringement of this Act.

(2) Any legal or natural person considered to be the buyer and/or processor or re-seller within the meaning of this Act that uses strong bargaining power with respect to its suppliers by imposition of unfair trading practices within the meaning of this Act, shall be fined by no more than HRK 3,500,000.00 for a legal person and no more than HRK 1,500,000.00 for a natural person, for committing a serious infringement of this Act, if:

1. It fails to conclude an agreement in writing with the prescribed obligatory content or if it imposes upon the supplier any obligations that are not foreseen in the written agreement concluded between the buyer and/or processor or re-seller and their suppliers, and/or if the agreement concluded between the buyer and/or processor or re-seller and their suppliers has not been drawn up in accordance with the provisions of this Act (Article 4, paragraph 2, item 1; Articles 5 and 6)

2. It imposes payments that are not clearly indicated and specified on the issued invoice or, contrary to the agreement, fails to issue an invoice for every delivery of an agricultural or food product, or fails to issue an invoice or a goods receipt note for every service connected with the delivery of these products, or if the invoice does not contain all the established fees or specifications (Article 4, paragraph 2, item 2 and Article 7)

3. The provisions of the general operating terms and conditions are unclear or incomprehensible, or if their suppliers have not been warned about the application of the general operating terms and conditions or about the manner of their publication, or if the general operating terms and conditions contain provisions that are considered unfair trading practices within the meaning of this Act (Article 4, paragraph 2, item 3 and Article 8)

4. It imposes unilateral termination of the agreement without written notice or without specifying justified reasons for termination of the agreement, or if it imposes cancellation of the agreement concluded with its supplier without an adequate cancellation period, or if it imposes unilateral amendments to the agreement (Article 4, paragraph 2, item 4 and Article 9)

5. It imposes to the supplier liquidated damages that are disproportionately high with respect to the value and importance of the object of the obligation, or if it collects liquidated damages from the supplier when supplier's failure to fulfil, delay in fulfilment or improper fulfilment of obligations is caused by the buyer and/or processor or re-seller, as well as when supplier's failure to fulfil, delay in fulfilment or improper fulfilment of obligations is the result of a cause not attributable to the supplier (Article 4, paragraph 2, item 5 and Article 10)

6. It imposes any of the other defined unfair trading practices of buyers and/or processors (Article 4, paragraph 2, item 6 and Article 11)

7. It imposes any of the other defined unfair trading practices of re-sellers (Article 4, paragraph 2, item 6 and Article 12, items 1 to 13 and items 15 to 24)

8. It fails to act in accordance with the Agency's decision referred to in Article 20, paragraph 1, subparagraph 1 of this Act, specifically the part which orders fulfilment of certain measures, requirements and time limits for elimination of unfair trading practices, and if

9. It fails to harmonize with this Act, within the time limit referred to in Article 32 of this Act, any agreement not in accordance with this Act concluded before entry into effect thereof.

Administrative Fines for Minor Infringements of the Act

Article 25

Any legal or natural person that is considered to be the buyer and/or processor or re-seller within the meaning of this Act and that has the status of a party to the procedure shall be fined by no more than HRK 1,000,000.00 for a legal person, and no more than HRK 500,000.00 for a natural person, for committing a minor infringement of this Act, if:

1. It fails to act in accordance with the written request by the Agency requesting whatever information is required to be delivered for the purpose of data collection in the form of written statements, or if it fails to provide the necessary data and documentation for review (Article 17, paragraph 3)
2. It fails to act in accordance with the proposed assumed obligations to implement certain measures and requirements within specific time limits, which have become compulsory for the party to the procedure by virtue of the interim decision of the Agency (Article 18, paragraphs 1, 2 and 3 and Article 20, paragraph 2).

Administrative Fines for Other Infringements of the Act

Article 26

(1) Any legal person not having the status of a party to the procedure that fails to act in accordance with the request of the Agency (Article 17, paragraph 3) shall be fined by no more than HRK 100,000.00.

(2) Any natural person that does not have the status of a party to the procedure and that fails to act in accordance with the request of the Agency (Article 17, paragraph 3) shall be fined by no more than HRK 25,000.00.

CHAPTER II

CRITERIA FOR ESTABLISHMENT AND ENFORCEMENT OF THE ADMINISTRATIVE FINE

Criteria for Establishing the Administrative Fine

Article 27

(1) When establishing and pronouncing an administrative fine, within the meaning of Articles 24 to 26 of this Act, the Agency shall take into account the severity, scope, duration and consequences of that infringement with respect to the suppliers. The established amount of the administrative fine shall be decreased or increased, depending on the established mitigating and/or aggravating circumstances referred to in paragraphs 2 and 3 of this Article.

(2) The following in particular shall be considered as mitigating circumstances referred to in paragraph 1 of this Article:

1. Delivery of evidence confirming cessation of unlawful actions before initiation of the procedure within the meaning of this Act
2. Delivery of evidence confirming cessation of unlawful actions no later than within three months from the date of initiation of the procedure within the meaning of this Act
3. Brief duration of the infringement but, in any case, no longer than one year, and
4. Good cooperation with the Agency during the course of the conducted procedure.

(3) The following in particular shall be considered as aggravating circumstances referred to in paragraph 1 of this Article:

1. Repetition of the same actions or committing other actions that represent a breach of the provisions of this Act after having received a decision already establishing that there has been infringement of this Act and establishing and pronouncing the prescribed administrative fine. If the same type of infringement of this Act is found, the amount of the administrative fine may be increased by up to 100%, whereas any other found infringement of this Act shall result in the amount of the administrative fine being increased by up to 50%; however, even in this event, the amount of the administrative fee may not exceed the maximum prescribed amount referred to in Articles 24 to 26 of this Act.

2. Refusal to cooperate with the Agency or causing hindrance to the Agency during the course of the procedure, and

3. Encouraging others to infringe this Act or performing any other actions in order to ensure that others participate in the infringement.

(4) By way of derogation from the provision of paragraph 2 of this Article, the Agency may reduce the amount of the administrative fee imposed on the legal or natural person that is in a difficult financial situation, if such person submits to the Agency relevant evidence confirming that the pronouncing of an administrative fine in the amount prescribed by this Act would seriously endanger its economic viability and that this would lead to a significant decrease in the value of its assets.

Procedure of Enforcement of the Administrative Fine

Article 28

(1) The Agency's decision pronouncing the administrative fine due to infringement of this Act shall also establish the time limit and method of payment of the pronounced administrative fine.

(2) Administrative fines shall be paid upon enforceability of the Agency's decision if no claim has been submitted or upon legal effectiveness of a court decision, and the amount of the administrative claim shall also include the amount of the legally prescribed default interest, counting from the date of delivery of the Agency's decision to the party until the date of payment.

(3) The Agency may allow that the party pay the administrative fine in instalments if the party provides a reasonable explanation of its request and supports it with appropriate evidence.

(4) If the party fails to pay the administrative fine within the prescribed time limit, the Agency shall inform the Regional Office of the Tax Administration of the Ministry of Finance, competent for the area where the party has its permanent residence or registered office, for the purposes of collecting the administrative fine by way of enforcement pursuant to the regulations governing collection of taxes by way of enforcement. Administrative fines collected by way of enforcement by the Tax Administration of the Ministry of Finance, upon the Agency's request, shall be paid directly to the state budget account of the Republic of Croatia.

CHAPTER III STATUTE OF LIMITATIONS AND COSTS OF THE PROCEDURE

Statute of Limitations

Article 29

(1) The procedure for establishing whether this Act has been infringed and for establishing and pronouncing the administrative fine for committing such infringement may not be initiated after lapse of a period of five years from the date when the infringement was committed.

(2) In case of a continuous or repeated infringement of this Act, limitation period shall start running from the date of cessation of the infringement.

(3) The period of limitation referred to in paragraph 1 of this Article shall be suspended each time the Agency takes any action with that regard, if it has notified the party of such action in writing. The suspension shall begin on the date when the party receives notice of the action being undertaken for the purpose of establishing whether this Act has been infringed and for the purpose of establishing and pronouncing an administrative fine due to such infringement.

(4) After every suspension, the period of limitation shall begin to run again; however, no procedure may be conducted after the lapse of twice the period prescribed by paragraph 1 of this Article.

Statute of Limitations for Enforcement of the Administrative Fine

Article 30

(1) Administrative fines pronounced due to infringement of the provisions of this Act cannot be enforced if a period of five years has elapsed from the date when the Agency's decision and/or court decision became legally effective. The period of limitation shall begin to run from the date of the party's proper receipt of the legally effective court decision or from the date of enforceability of the Agency's decision, where the party has not submitted a claim against the Agency's decision.

(2) The period of limitation referred to in paragraph 1 of this Article shall be suspended each time the competent authority takes any action for the purpose of enforcement of the administrative fine, notified to relevant party in writing.

(3) After every suspension, the period of limitations shall begin to run again; however, no procedure of enforcement of the administrative fine may be conducted after the lapse of twice the period prescribed by paragraph 1 of this Article.

(4) Exceptionally, if the Agency allows the party to pay the administrative fine in instalments, the period of limitation shall begin to run from the date of such party's failure to pay a due obligation.

Costs of the Procedure

Article 31

In the event of a procedure initiated *ex officio* by the Agency within the meaning of this Act being concluded in favour of the relevant party, the costs of the procedure shall be covered by such party.

TITLE IV
TRANSITIONAL AND FINAL PROVISIONS

Article 32

Agreements concluded between suppliers and re-sellers or buyers and/or processors before entry into effect of this Act, which are not in accordance with Articles 4 to 12 of this Act, must be harmonized with the above-mentioned provisions no later than 31 March 2018; otherwise, such agreements shall cease to be valid as of 1 April 2018.

Article 33

The Agency shall harmonize its Statute and other general documents of the Agency with the provisions of this Act no later than six months from the date of entry into effect thereof.

Retrospective Impact Assessment of the Regulation

Article 34

The Ministry of Agriculture shall conduct a retrospective impact assessment of this Act within two years from the date of entry into effect thereof.

Entry into Effect

Article 35

This Act shall enter into effect on the eighth day after the day of its publication in the Official Gazette.

Class: 022-03/17-01/77

Zagreb, 17 November 2017

THE CROATIAN PARLIAMENT
Speaker of the Croatian Parliament
Gordan Jandroković, m.p.