

# Proposal for amendments to the UTPs Act: will things be simpler?

12 June 2023. | Legal Alerts no. 14 | Act on Prohibition of Unfair Trading Practices in the Food Supply Chain

Are you an undertaking operating in the food supply chain? If so, you are by now certainly familiar with the fact that the Republic of Croatia has adopted specific rules for contractual relations between buyers and suppliers in the mentioned sector (Act on Prohibition of Unfair Trading Practices in the Food Supply Chain). Although you have certainly already adapted your business to the rules of aforementioned regulations, we are confident that you will be interested in the changes that may soon occur.

## Proposal for a new Act

As we have pointed out in the introduction, the Republic of Croatia – as well as other EU Member States – has invested great efforts in regulation of the food supply chain in recent years. The mentioned refers to specific rules that exclusively bind buyers and suppliers in the sector concerned and relate to the way these entrepreneurs have to enter into contractual relationships, execute them and, ultimately, what they must not do when "exiting" such contractual relationships.

At the same time, it is already well known that within this regulatory framework, the focus of responsibility is placed on buyers with significant bargaining power. It is namely considered that buyers' bargaining power is mainly the cause of imbalances in these contractual relations.

In Croatia, these rules are defined in the Act on Prohibition of Unfair Trading Practices in the Food Supply Chain (Official Gazette No. 117/2017, 52/2021; hereinafter referred to as the "UTPs Act"), which is currently in effect. However, a public consultation on proposals for amendments to the UTPs Act has recently been opened and will last until 25 June 2023.

## Proposed amendments

In a few key points, we hereby present to you the summary of proposed changes, i.e. we highlight some changes that will most likely have the greatest

resonance among addressed undertakings (primarily buyers!):

- (1) Probably the most significant proposal is to change the definition of significant bargaining power of the buyer so that it would now read:

*It is considered that the buyer who has achieved a total annual revenue of at least EUR 2,000,000.00 and is financially stronger (more revenue-efficient) than the supplier holds significant bargaining power within the scope of this Act unless the buyer proves that the supplier is financially stronger as a contracting party in relation to the buyer.*

Not only does this proposal harmonize the amounts of revenue from Croatian kuna into euros, but it also proposes a balance between the revenue power of the buyers and the suppliers. The current UTPs Act (as well as its predecessor) does not provide such ratio, so there is currently no mechanism for a more precise assessment of the specific customer-supplier relationship – i.e., which of the two undertakings really has significant bargaining power.

- (2) It is proposed to remove provision regarding final selling price, and consequently, those practices that were directly related to the mentioned term (currently points 26 and 27 under Article 11(1) of the UTPs Act).

As a reminder, the provision on the final selling price is the default framework for the formation of the resale prices so that the purchase price of agricultural and food products is multiplied by at least a coefficient of 1.10, thus preventing the buyer's right to freely determine his prices.

- (3) Apparently, a need to define certain unfair practices referred to in Article 11 of the UTPs Act more precisely has been detected, so the amended proposal introduces new definitions of unfair practices relating to (i) cancellation of orders of perishable agricultural and food products, (ii) charging fees for storage and manipulation after delivery of agricultural or food products and (iii) so-called fictitious services.
- (4) In the context of sales in seasonal facilities, a particularly interesting proposal is that the sale of agricultural and food products at a price lower than the purchase price with value added tax (or the price of production in the case of buyer brand) is not to be considered as an unfair practice in cases of sale due to the temporary closure of a seasonal facility.

- (5) Undertakings operating on the basis of the purchase block are advised to pay attention to the proposals for amendments to the provisions relating to the purchase block. The proposals relate to the part of the regulations of the current UTPs Act that determine the details of delivery events. As a reminder, the moment of delivery is important for calculating the payment deadlines for agricultural and food products and for fulfilling contractual obligations in the relationship between supplier and buyer.

### More detailed information

If you are interested in participating in the consultation on proposals for amendments to the UTPs Act, or you simply wish to be informed in more detail, here we add a link to access the mentioned public consultation: <https://esavjetovanja.gov.hr/Econ/MainScreen?EntityId=24184>, and our expert BMWC team is always at your disposal for any kind of assistance or additional advice.

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