

Slovak Act (No. 91/2019 Coll.) on Unfair Terms in Food Trade

The issue of business relationships between food suppliers and food retailers in Slovakia has recently been subject to a considerable evolution due to legislative changes, in the framework of which Act No. 362/2012 Coll. on unfair terms in business relationships regarding foodstuffs has been repealed and replaced by Act No. 91/2019 Coll. on unfair terms in the food trade (hereinafter referred to as “**UTFT Act**”), which is stricter. Pursuing the protection of the legitimate economic interests of food suppliers, which in this context are considered to be the weaker side, the previous legislation was often criticized for being too benevolent and mainly because its enforcement was ineffective. To overcome these shortcomings, the new legislation establishes a framework for legal relationships between suppliers and food retailers by defining what behaviour is considered unfair, prohibiting such behaviour and determining the sanctions that can be imposed by the competent administrative authority for any breach of this prohibition. The UTFT Act, which came into force on 1 May 2019, applies automatically to all contracts concluded since that date, while all contracts concluded before that date must be brought into line with the provisions of the UTFT Act by 30 September 2019. As to its territorial scope, it should be noted that the UTFT Act also applies

to relationships that would otherwise be governed by the law of another country, in case they have an impact in Slovakia.

Most important changes:

To fulfil the aim of its adoption, the UTFT Act extended the existing list of unfair terms, changed the wording of some provisions taken over from the previous law which were regularly circumvented and, finally, tightened the conditions for inspections conducted by the competent authority and the sanctions that can be imposed.

In respect of the definition of what is considered unfair, the most significant changes vis-à-vis the previous legislation are as follows:

- Introduction of a general clause, by which even practices other than those expressly listed in the UTFT Act might be considered unfair terms if they deviate from fair behaviour in business. What is considered “fair behaviour in business”, and deviations therefrom, is not defined in the law and should be established by practice.
- Reduction of the maximum maturity period for the obligation to pay the price of the delivered food, from the original 45 days following the date of delivery to 30 days. This period may not be longer than the maturity period for the supplier's obligations to the retailer.



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- Introduction of a specific maximum maturity period for the price of perishable food, established as 15 days following the date of delivery.
- Change in the minimum purchase price, which may not be lower than the economically justified costs of the food supplier, as well as a change of the maximum guaranteed price duration from the original 3 months to 60 days.
- Introduction of the unfair term of imposing a contractual penalty or other contractual sanction for non-delivery by the supplier if the supplier has receivables overdue vis-à-vis the food retailer or if there is no agreement on the purchase price within two months following the date of delivery of the written proposal to the food retailer for the change of the purchase price.
- Extending the range of procedures that are regarded a failure to fulfil a contractual obligation by the food retailer.
- Tightening the prohibition to make the supply of food conditional on the production of a foodstuff under the trademark of the food retailer. This is considered unfair even if the food retailer is involved in the development of the foodstuff.

The new legislative framework also affects marketing issues, since it establishes that when the food trader is promoting or marketing agricultural products and foodstuffs through a leaflet (in paper or electronic format), it is compulsory to ensure that at least half of the

agricultural products and foodstuffs of the total quantity being promoted or marketed are agricultural products and foodstuffs labelled as having been produced in the Slovak Republic. However, this provision is heavily discussed and it is expected that it will be challenged at the European level.

The instrument provided by law for monitoring compliance with its provisions is the inspection, which is carried out by the Ministry of Agriculture and Rural Development of the Slovak Republic on its own initiative, on the initiative of a business relationship participant or on the initiative of another person. Unlike the previous legislation, the UTFT Act has introduced the possibility to submit anonymous complaints, since in the past food suppliers were often discouraged from filing a complaint in their own name against their retailer, fearing possible reprisals.

According to the UTFT Act, an administrative offence is committed by the party of the business relationship that requires, agrees or applies an unfair term that puts the other party at a disadvantage. In this regard, it is important to note that despite the main purpose of the UTFT Act being to protect suppliers, even a food supplier can commit an administrative offence by using an unfair term and be sanctioned for it.

Last but not least, believing that the severity of the adopted measures can have a deterrent effect on potential wrongdoers, the legislator has also increased the maximum amount of the fine that can be imposed to EUR 500,000 and has eliminated the suspensive effect of appeal against the decision to impose the fine.



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