CLIFFORD

CHANCE

BADEA

NEW LEGISLATION IN THE FOOD RETAIL SECTOR IN ROMANIA

The Romanian Parliament has recently adopted a law which amends the provisions of Law no. 321/2009 on food products trading (the "**New Law**") and which aims to reinstate the compliance with the European legislation. Among other amendments, the New Law repeals the legal obligation of the large retailers to purchase at least half of certain types of food and agricultural products at shelf from the so-called "*short distribution chain*" - a provision aimed at securing fresh food produced by local farmers. The New Law is supposed to be sent to the President of Romania for promulgation and will enter into force within 45 days from its publication into Romanian Official Gazette.

Background of the amendments

Following the introduction in 2016 of the legal obligation of the large retailers (*i.e.* those having an annual net turnover or owning assets representing more than EUR 2,000,000) to procure at least 51% of the total volume of displayed meat, eggs, vegetables, fruits, honey, milk and bakery products from local producers and, therefore, to promote products of Romanian origin, the European Commission launched an infringement procedure against Romania alleging that these provisions raise concerns with respect to freedom of movement of goods and freedom of establishment and, therefore, breach the provisions of the Treaty on the Functioning of the European Union. As a response, the Romanian legislator prepared the draft of the New Law which was registered at the Senate in 2016.

Most relevant amendments

The most important amendments under the New Law concern the following aspects:

a) **The repeal of the large retailers' obligation to purchase at least 51% of the food and agricultural products from the short distribution chain**

The large retailers can acquire the products belonging to the category of meat, eggs, vegetables, fruits, honey, milk and bakery products ***gradually*** and based on ***direct partnerships*** in order ensure the access of the consumers to fresh food. Therefore, the short distribution chain is replaced

Key issues

- The large retailers are no longer required to purchase at least 51% of food and agricultural products from local producers.
- The "*short distribution chain*" is replaced by direct partnerships between retailers and suppliers.
- The obligation of the retailers to ensure distinct exhibition and selling spaces for the Romanian products is no longer applicable.
- Retailers are allowed again to charge taxes/fees for services provided to suppliers to the extent these are directly related to the sale operation.

by the direct partnership of the retailers with the agricultural cooperatives, the associations of agricultural producers, agricultural production companies, agro-food producers and distributors, concluded for at least 12 months.

Consequently, the retailers and the suppliers which have in place agreements for food supply at the entry into force of the New Law will have six months at their disposal in order to amend such agreements to be in line with the provisions of the New Law.

b) The obligation of the retailers to ensure distinct exhibition and selling spaces for the Romanian products becomes an option

According to the New Law, the retailer may ensure distinct display and sale areas for each food product by country of origin, as agreed with the supplier.

c) The payment obligation between the retailer and the food products supplier

The maximum term within which the retailer may pay the supplier for the contracted and delivered products, respectively 30 calendar days, has been eliminated, the payment term being subject to the negotiation of the parties. In addition, the maximum payment term of seven calendar days for the fresh food products has been increased to 14 business days.

d) The possibility of the retailer to charge the supplier with taxes and/or fees for services directly related to purchased products

Under the New Law, the retailer may charge the suppliers with fees for the services which are ***directly connected to the sale operation*** and specified in the agreement concluded between the retailer and the supplier. For example, the New Law clarifies that the services related to the development of the distribution network of the retailer, to the refurbishment of the sale areas or to the operations and events related to the promotion of the retailer's activity and image are not directly related to the sale operation.

In addition, the New Law introduces an exception in the sense that the services requested by the buyer (retailer) to the supplier which are related to the promotion and marketing operations may be charged by the buyer if such services were previously agreed by the supplier and the buyer in a clear and un-ambiguous way.

e) The increase of some sanctions

The pecuniary sanctions for non-observance of the legal provisions related to the payment term for the delivered products and the refuse of the food products by the retailers upon their delivery have been increased under the New Law from RON 50,000 – 100,000 to RON 150,000 – 200,000.

Also, the pecuniary sanction applicable to the retailers who do not observe the obligation to acquire products belonging to the category of meat, eggs, vegetables, fruits, honey, milk and bakery products *gradually* and based on *direct partnerships* in order ensure the access of the consumers to fresh food has been increased from RON 100,000 – 150,000 to RON 200,000 – 250,000.

On the other hand, under the New Law, the repeated failure to comply with certain provisions (*e.g.* prohibition of the trader to charge the supplier with any taxes and/or fees for services) may no longer lead to the suspension of the retailer's operating authorization for a period of up to six months, such provision being repealed.

f) Implementation deadlines

The New Law provides that, within 6 months from the date of its entering into force, the ongoing commercial contracts between traders and suppliers shall be amended to ensure compliance with the new legal provisions.

Secondary norms for the implementation of the New Law are supposed to be approved by Government Decision within 30 days from the entering into force of the law.

The New Law shall enter into force within 45 days from the date of it publication in the Official Gazette.

Conclusion

Given that the general and uncertain terms used within the Law no. 321/2009 on food products trading, in particular, on the definition of the short distribution chain by means of which the promotion of local products in a quota of at least 51% was intended, were not clarified (*i.e.*, what was to be included in such terminology) by means of secondary legation as it was expected, their applicability were very limited and their scope was never fully achieved.

From this perspective, the amendments brought by the New Law, even if welcome and useful for clarifying the food trading legal framework, are not expected to have a significant impact on the current business activity of the suppliers or the retailers.

On the other hand, as regards the existing contractual relationships between the retailers and the suppliers, the entering into force of the New Law may trigger new rounds of negotiations and contractual amendments, should such amendments be needed to ensure compliance with the new provisions or if the parties aim to re-enforce certain taxes or fees to be charged by the retailers for services directly related to the sale operation. The potential impact of such negotiations from legal, operational and financial perspective should be considered by the parties involved.

CLIFFORD CHANCE BADEA

CONTACTS

Nadia Badea
Partner

T +40 21 6666 102
E nadia.badea@cliffordchance.com

Loredana Ralea
Counsel

T +40 21 6666 122
E loredana.ralea@cliffordchance.com

Andrei Caloian
Senior Associate

T +40 21 6666 256
E andrei.caloian@cliffordchance.com

Alexandra Voicu
Lawyer

T +40 21 6666 140
E alexandra.voicu@cliffordchance.com

www.cliffordchance.com

Clifford Chance Badea SPRL, Excelsior Center, 28-30 Academiei Street, 12th Floor, Sector 1, Bucharest, 010016, Romania

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Doha • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.