

# New Rules on Unfair Trading Practices Laws in the Baltics

COBALT provides an overview of the new rules on unfair trading practices.

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## Baltic countries implement EU's unfair trading practices directive with some customisations

Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain ([ENG](#) / [LAT](#) / [EST](#) / [LIT](#)) seeks to protect **farmers and other weaker suppliers** of agricultural and food products against stronger buyers. The Directive opts for a 'minimum harmonisation' approach, meaning that EU Member States may adopt **stricter** measures. Member States must start to apply the measures required by the Directive not later than **1 November 2021**, but **grace period** is afforded to allow for adaptation of pre-existing supply agreements.

The core of the minimum protection required by the Directive is a **'grey list'** of 6 buyer-favouring practices which are allowed only if 'previously agreed in clear and unambiguous terms', and a **'black list'** of 10 buyer-favouring practices which are prohibited even if there is a prior, clear and unambiguous agreement between the parties. For example, under the Directive, the return of unsold products is a grey list practice, and short-notice cancellation of perishable agri-food products is a black list practice.

The Directive applies to trade in 'agricultural and food products', which 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.'* **Annex I** ([ENG](#) / [LAT](#) / [EST](#) / [LIT](#)) to the Treaty on the Functioning of the European Union or 'TFEU' uses chapter titles and heading descriptions of the so-called **Brussels Nomenclature** to catalogue products of the soil, of stockfarming and of fisheries (not to be confused with EU's Combined Nomenclature). Typical examples are meat, fish, dairy, milling industry products, sugar and alcohol. The 'agricultural' limb of the definition merits special emphasis. The scope of products covered by the Directive is **considerably broader than food**. Items such as live animals, animal fodder, live trees and other plants and cut flowers are 'agricultural products' and therefore subject to the prohibition of unfair trading practices.

The Directive aims to protect suppliers in **the entire supply chain**. Therefore 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.

The prohibitions introduced by the Directive are applicable not only to intra-EU supply agreements, but **also to agreements where only the supplier or only the buyer is established within the EU**. The rationale is that a buyer should not be incentivised to purchase from non-EU suppliers or to establish purchasing entities outside the EU, and a supplier should not be less protected when selling outside the EU.

In the following sections we report on the steps taken and choices made in each of the Baltic countries to implement the Directive. In particular buyers, but also suppliers of agri-food products should use the remaining grace period to **review their existing agreements and templates** for compatibility with the new rules, and ought to bear in mind that several aspects of the national measures are **country-specific** and **go beyond** the minimum harmonisation required by the Directive.

## Latvia: protection against the bargaining power of buyers refurbished

The new Unfair Trading Practices Prohibition Act ([LAT](#)) was adopted on 7 April 2021 and entered into force on **1 November 2021**. Supply agreements which existed on 20 April 2021, i.e. the date the Act was published, will have to be brought into compliance with the new rules within 12 months, i.e. by **20 April 2022**. The 2021 Act **replaces** the

earlier Unfair Retail Practices Prohibition Act, adopted in 2015, that targeted only retailers' bargaining power.

The **buyers** to whom the new Act applies in relation to agri-food products are entities with annual turnover above 2 m EUR. This represents a significant expansion of the unfair trading practices regime, which until now restrained only retailers. Processors, wholesalers and, indeed, all sufficiently large buyers (by way of example: hotels, hospitals, airlines, manufacturers of pharmaceuticals and biofuels) of agri-food products will find their contracts governed by the new rules. In relation to non-agri-food products the Act applies to retailers which enjoy appreciable buying power and thus may exploit the dependence of their suppliers; here the scope of the pre-existing bargaining power regime has not changed.

**Small retailers**, i.e. those whose annual turnover does not exceed 2 m EUR, will see their red tape cut. As the 2015 Act has lost force on 1 November 2021, they are no longer be subject to any rules designed to protect the suppliers of food products against the supposed bargaining power of small retailers.

All **suppliers** of agri-food products are afforded protection, regardless of their size. Whereas the Directive only requires that suppliers with annual turnover of up to 350 m EUR be protected and also makes that protection conditional on the supplier-buyer turnover ratio, Latvia has chosen to go further and dispense with the limiting criteria of supplier's turnover.

**Agri-food products** are defined somewhat more broadly than in the Directive: in Latvia, the term also comprises bottled water and non-alcoholic beverages. An important new feature in the Latvian context is the **inclusion of non-food agricultural products** in the scope of the unfair trading practices regime. Especially retailers will need to remember to check their existing agreements with the suppliers of non-food items such as live plants and cut flowers for compliance with the new rules.

Both lists — the **grey list** of practices which are allowed only on the basis of a prior written agreement and the **black list** of practices which are prohibited regardless of the form of agreement — are **broader** than those contained in the Directive, insofar as they concern agri-food products. Here too Latvia has chosen to go beyond the minimum standard. For example, return of unsold goods and charging of payment for stocking, displaying or listing of products are blacklisted practices, except for some narrowly tailored exceptions. As regards non-agri-food products, i.e. products falling outside the scope of the Directive, the situation remains unchanged: only a relatively short black list exists, and it applies only to stronger retailers that may exploit the dependence of their weaker suppliers.

The Latvian **competition authority** is the enforcer of the Act, and has the power to impose fines of up to 0.2% of the annual turnover of the infringer. The Act also expressly allows the authority to substitute the fine for a caution, when the 'circumstances and character of infringement' warrant such leniency. In addition to public enforcement by the competition authority, the Act may be invoked in private litigation.

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## Estonia: rules on bargaining power implemented in Estonia for the first time

Estonian Parliament has adopted the Unfair Trading Practices in the Agricultural and Food Supply Chain Prevention Act. This is the first time that the Estonian state intervenes in business-to-business trading practices to address imbalance of bargaining power. The Act entered into force on 1 November 2021. Supply agreements which existed before the publishing date of the Act, will have to be brought into compliance with the new rules within 12 months.

**All buyers and suppliers** of agri-food products are covered by Estonian Act (only such buyers that are consumers or other persons who buy the aforementioned products for their own use are excluded). Thus, Estonia has opted for a broader protection of suppliers than is required by the Directive: there are no exemptions even when the supplier is a larger undertaking than the buyer.

**Agri-food products** are defined similarly as in the Directive, without any additional product categories having been added.

Both lists — the **grey list** of practices which are allowed only on the basis of a prior written agreement and the **black list** of practices which are prohibited regardless of the form of agreement — are somewhat **broader** than those contained in the Directive. For example, the only maximum payment period allowed in Estonia is 30 days, although a longer period could have been set for non-perishable products. Also, at the request of suppliers' trade association, an additional unfair trading practice has been added to the grey list: requiring the supplier to use specific (e.g. retailer's own) packaging (unless that packaging is mandated by law).

In case of most grey list practices, supplier's silence or inaction also can be considered to constitute acceptance of the conditions, which means that the supplier must take active steps to protect itself.

The Estonian **Competition Authority** is the enforcer of the Act. This is a completely new competence for it. Six additional officials will be hired to supervise the compliance with the new requirements.

Based on Estonian general administrative law, the Authority has two enforcement tools: misdemeanour fines of up to **400 000 EUR**, and penalty payments (i.e. a coercive measure that can be imposed repeatedly until the infringement is remedied) of up to **100 000 EUR**.

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## Lithuania: broader and more nuanced bargaining power rules

Lithuania has opted to implement the Directive with two pieces of legislation, both of which entered into force on **1 November 2021**:

- amendments to the Act on the Prohibition of Unfair Practices of Retailers;
- a new Act on Prohibition of Unfair Trade Practices in the Chain of Agricultural and Food Products.

The **amended Act** extends the scope of suppliers to which the Act is applicable by increasing the turnover threshold to 350 million EUR. It also introduces new prohibitions to be observed by retailers, increases fines for infringements up to 0.7% of annual turnover and extends enforcement powers of the Lithuanian Competition Authority. Following the entry into force of the amended Act, the authority will be able to perform the so-called 'dawn raids' at the premises of retailers suspected of infringement to inspect documents, e-mail correspondence and other records without prior warning.

In addition, a **new Act** on Prohibition of Unfair Trade Practices in the Chain of Agricultural and Food Products has been adopted and has come into force on **1 November 2021**. Supply agreements concluded before 1 November 2021, i.e. the date of entry into force of the new Act, will have to be brought into compliance with the new rules within 12 months, i.e. by **1 November 2022**.

The **buyers** to whom the new Act applies in relation to agri-food products are natural or legal persons, including public entities, operating in Lithuania or another Member State of the European Union. **Small buyers**, i.e. those whose annual turnover does not exceed 2 m EUR, are only be subject to the prohibition of unduly long payment periods.

**All suppliers** of agri-food products with annual turnover of up to 350 m EUR are be afforded protection, but certain limiting turnover-based criteria apply.

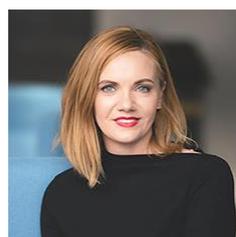
**Agri-food products** are defined similarly as in the Directive.

Both lists – the **grey list** of practices which are allowed only on the basis of a prior written agreement and the

**black list** of practices which are prohibited regardless of the form of agreement – are transposed into the new Act as they are set out in the Directive, without any significant modifications. In respect of the prohibition for the buyer to require payments from the supplier that are not related to the sale of the agri-food products, the new Act indicates in more detail that both direct and indirect payments are prohibited.

**Rural Business and Markets Development Agency** is the enforcer of the new Act, and has the power to impose fines of up to 0.7% of annual turnover of the infringer for the grey and black-listed practices. The **Lithuanian Competition Authority** supervises the compliance with the provisions of the new Act in relation to retailers with significant market power. In relation to buyer's delay in paying the supplier, the enforcer may impose fines of up to 20% of the amount of overdue debts. The new Act also deals with aggravating and mitigating circumstances in the calculation of fines. It too gives powers to the enforcement authorities to raid at the premises of suspected infringers.

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