

NEW OPERATING PROVISIONS OF LAW 321/2009 AND DIRECT EFFECTS ON SMALL VEGETABLES PRODUCERS

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Abstract

The changes brought by Law no. 150/2016 regulating the definitions of fresh food products and the transactional process involved in the agrifood sector affect the general evolution of the social-economic business context, in which small vegetables producers should play an important role as suppliers of fresh products on the market. Short chains of supply to supermarkets/distributors are not clearly defined and the interdiction of invoicing by distributors of certain services to small farmers would exclude them latter from the list of fresh food suppliers due to their lack of logistical means. Since they are an important resource, small farmers should remain competitive and have access to modern distribution and the support thereby provided. This paper explores how the new changes made by Law no. 150 would affect transactions on the market, the key points that might need revision and their effects on small farmers.

Keywords:

Food law, small farmers, wholesale distribution, competitiveness, vegetable production

Introduction

The current economic environment and market demand show an important trend in consumers' preference and consumption in favour of local agro-products coming from small and medium farms. In this context, the amendments to Law no. 321/2009 regarding the marketing of food products were expected to bring more clarity, as well as more support to small farmers, including vegetables producers, in accordance with sub-measure 16.4 of the National Plan for Rural Development for 2014-2020 (NPDR 2014-2020). The analysis of the text of these laws (Law no. 150/2016, Law no. 321/2009) reveals the importance given to local/Romanian products and the desire to assure consumers that they will find such products on shelves. At the same time, we note a number of restrictions on commercial contracts that can affect small vegetables producers, which we believe should be revised in the sense that supporting such producers should become a priority of national economy. Moreover, we wish to underline that a stable set of laws would encourage more entrepreneurs to invest and develop new activities in the agribusiness sector.

1. New operating provisions of the Law

The main amendments to Law no. 321/2009 on the marketing of food products made by Law no. 150 relate to Romanian products, Romanian meat, production cost, fresh food and frozen food products, short supply chain, various aspects regarding commercial contracts: acquisition price, time limit for payment, time limit for the acceptance/refusal of goods, the obligation of big distributors to procure from short supply chains 51% of products in certain categories (meat, fruit, vegetables, honey, eggs, dairy products and bakery goods), the interdiction for big distributors/resellers to charge suppliers for marketing activities or services etc. (Law no. 150/2016). From our point of view, we will refer specifically in this paper to those aspects that relate to Romanian products, time limits for payment, short

supply chain and the interdiction for distributors to charge for marketing activities and services.

According to the new law, a “Romanian product” is a product obtained in the national territory using raw ingredients originating 100% exclusively from producers (farms) located in Romania.

Specifically, Article 10 of Law no. 150 (Law 150/2016) is dedicated to “Romanian meat”, which may only come from animals reared in Romanian farms. According to this definition of meat, Chapter III details how the label of meat products must provide consumers with “details on the product origin:

- animal country of origin;
- animal born in country _____;
- animal slaughtered/cut up in country _____, with clear specification of the operating company;

- for Romanian meat products, it is mandatory that the distributor/reseller clearly mark the product with the information <<Romanian meat>>, while for processed meat products it is mandatory to indicate the percentage of local meat used as ingredient in the final product”.

While there are specific definitions for meat, as presented above, the meaning of “Romanian product” is not clearly defined for fruits and, more importantly, vegetables. We consider this to be an omission of the law, which also raises other questions. We need to understand how we can consider a vegetable obtained from imported seeds of standard or genetically modified plants to be a Romanian product? Can small farmers use imported seedlings or seedlings coming from imported seeds? We should understand these aspects as well, and try to have them regulated by this law. In this respect, we consider this to be an important opportunity to preserve and cultivate local species in order to obtain quality and tasty products.

Another important aspect of the law relates to the commercial terms of contracts defining the time limit for payment as per Article 8 (Law no. 150/2016), which was previously negotiable and is now established as a fixed 7-day deadline. Faster collection of the income generated by delivered products is very helpful indeed, especially for those small farmers operating in open fields where product seasonality is very short. This advantage can help small producers in planning their cash-flow and other economic activities.

The creation of short supply chains was initially designed as an opportunity for small farmers to diversify their range of products and to promote and sell these “close to the source of production” (Family farms, 2015) in order to respond to the market demand for fresh and high quality products. Transactions conducted at the place of production would therefore simplify the marketing and promotional activities of producers who could thus focus mainly on production. This also creates another advantage for producers with limited resources for transportation. Thus, distributors would be the agents who have to organize the transport and pick-up of the goods to be sold in their modern commercial premises.

Article 2 point 16 of the current Law no. 150 defines the “short supply chain” as involving a “limited number of economic operators who are engaged in local cooperation and economic development activities, as well as tight geographical and social relations between producers, processors and consumers” (Law 150/2016). In other words, there should be a limited number of intermediaries between the final producer and the consumer, which, at first sight, seems to have a positive impact on logistic time and, of course, on the final price of the product.

The article of the law generating the strongest debate is the one stipulating the mandatory requirement that retailers with annual turnover of two million euro must source through the “short supply chain” at least 51 percent (of the volume of merchandise displayed on shelf) for each of the following food categories: meat, fruit, vegetables, honey, eggs, dairy

products and bakery goods; only those retailers with annual net turnover or total assets inferior to two million euro, in Lei equivalent, are not subject to this obligation. Exotic fruit coming from other countries are also exempt from this requirement. In addition, distributors are no longer allowed to charge their suppliers for services or marketing. At the same time, supermarkets/distributors must organise promotion and sale events for Romanian food products, as scheduled by Local Councils (Articles 10³-10⁶ of Law no. 150/2016).

First of all, not every supplier that may qualify for the “short chain” has the capacity to deliver the entire quantities requested; secondly, other issues may occur in locations near borders, where the full range of products is not available all the time and cross-border transactions are regular, therefore the requirement of 51% local products on shelf may prove impossible to meet in certain circumstances. This is not a singular case; there are also regions where climate does not allow cultivating certain vegetables. There should be an exception that allows local consumers to benefit from fresh products, including fresh vegetables, from suppliers outside the “short chain”.

On the other hand, the interdiction of invoicing by distributors of certain services contradicts to a certain extent the requirement imposed by the law, i.e. that they should organize promotion and sale events for Romanian products. The requirement to organize promotional events is intrusive with regard to the marketing plan of distributors given that they do plan anyway, at their own initiative, such campaigns taking into account product seasonality, local traditions, consumers’ behaviour, consumption habits, etc.

With regard to fees for services, we need to understand that most of the time such services relate to packaging and transportation. To be able to state whether this article of the law brings positive effects for distributors and small farmers or not, we need to be aware of the current economic situation of small vegetable producers.

2. Economic situation of small local producers of vegetables

The National Plan for Rural Development for 2014-2020 (NPRD 2014-2020) presents the following *status quo*:

“Romania has a high number of small subsistence and semi-subsistence farms using a significant share of the agricultural land. Currently, some farms are vulnerable due to their economic size, many of these having limited prospects to improve their economic performance and be market-oriented. These farms have low productivity, poor technical endowment, are often affected by high degree of fragmentation, apply traditional agricultural practices with low economic efficiency and thus have difficulties in adapting to new technologies. Therefore, small farms need concerted support for small investments and for elaboration and development of a business plan to become market-oriented and to improve their farm management. Also, 100 small livestock farms need support to make investments in storage facilities for manure, in order to comply with the mandatory minimum environmental requirements. Also, subsistence and semi-subsistence farms need to be encouraged to associate as cooperatives or producer groups. The farmers with fragmented agricultural parcels need support in order to consolidate the parcels, helping them to improve the efficiency and the yield of the agricultural holdings, both in terms of productivity and environmental protection.”

Regarding assets and professional equipment, the same document (NPDR 2014-2020) describes the current situation (pages 99, 96):

“Romanian agriculture is characterized by an insufficient level of endowment with machinery and equipment, often physically or morally worn and having a negative impact on productivity. Currently, many farmers use outdated and poor quality mechanization and inadequate storage facilities in their production systems. Their physical assets are not adapted to the conditions of production, particularly during peak periods. Many farms are

facing difficulties in adopting new technologies, as a result of insufficient financial means and limited access to funding. Small and medium farms need support to capitalize their potential and become competitive. They need investments in modernization and construction of facilities, equipment, machinery, post-harvest facilities, sorting systems, calibration, means of production etc”.

Based on this official report, we need to review the interdiction of invoicing services to suppliers by distributors introduced by the new law. In such conditions, small farmers who have already signed contracts with distributors/retailers would lose these contracts as they do not comply with the current law. We need to find solutions for those local producers who do not have the capacity to use modern means for harvesting, sorting, and transportation. Distributors have the financial power and are willing to support such small producers with modern packaging solutions and transportation by refrigerated trucks. Small producers would thereby be able to offer their products directly from their farms, while distributors would be able to pick up these products from the very place of production. As presented, the short supply chain is herewith respected and consumers would benefit therefrom by finding very fresh vegetables on shelves. Sharing the costs of goods handling between distributors and small producers would be a win-win option, which is the reason why this aspect of the law should be reconsidered.

3. Direct effects of the Law on small vegetables producers

Taking into account the facts presented above, we can identify other effects on the activity of small producers deriving from this new law:

- small farmers will have to cancel existing contracts, under which transportation and marketing activities were the responsibility of distributors/retailers;
- commercial relationships with big distributors will change (if not cease altogether) given that small producers do not have sufficient resources of their own to deliver their products; the implementation of the short supply chain will fail as another operator will interfere as third party responsible for logistics and the absorption of products, which will influence pricing policies;
- small farmers’ competitiveness will decrease as they will have to operate through third parties to deliver their own products;
- small farmers’ access to market and their integration, as well the absorption of production will thereby be limited.

Therefore, the economic future and sustainable development of vegetables small farmers becomes uncertain, while their transformation into producers with the status of economic operator is herewith delayed.

Conclusions

To support the development of small farmers as the back bone of Romanian agriculture, some aspects of the law need revision, such as those regarding short supply chains and fees for services. Local distributors and local farmers’ associations can draw the attention of authorities to all the sensitive elements of Law no. 150 that need both adjustment and alignment with the current measures of NPRD (NPDR 2014-2020), while avoiding any restriction on collaboration for both distributors and small producers.

By the 16th measure of NPRD 2014-2020, the Ministry of Agriculture and Rural Development demonstrates that supporting, promoting and consolidating small farmers is a priority of this sector, stimulating cooperation, involving them in the tourism sector and enabling them to access new sale channels.

Nevertheless, small farmers need to take action and establish functional associations able to represent their legal and economic interests on the market.

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