

THE SALE OF FOOD BY MEANS OF DISTANCE COMMUNICATION BECOMING FURTHER REGULATED

As you might already be aware, a **brand-new Food Act** entered into force on 9 June 2020. Among others, the new act affects a market that has constantly been growing in recent years and even more in the last months in light of the global Covid-19 situation, namely **the market for foods offered for sale by means of distance communication (basically, distance food selling)**. Since this business did not fall within the scope of the previous Food Act, the new act provided for entirely new regulation of the said market.

The new Food Act established, among others, a set of **rules for distance food selling** and provided for the **registration of certain entities operating in this field** (e.g., restaurants, online food ordering marketplaces, etc.) in a public register kept by the Bulgarian Food Safety Agency (BFSA).

Register kept by BFSA: Generally, the 3-month period of grace for registration that applied to those entities engaged in selling food by means of distance communication before the adoption of the new Food Act has already expired. Nevertheless, it seems that the establishment of the public register is still pending.

On the other hand, respective entities that now enter the distance food selling market must **apply** for registration at least **14 days prior to the commencement of services**. So, the question is still how such entities could comply with this obligation if there is no relevant public register yet.

Draft ordinance setting further conditions: Nevertheless, it seems that there has been even a more interesting development in the field. Recently, an **additional ordinance on the specific conditions** of selling of food by the means of distance communication was issued. Presently, it is subject to public discussion. Since this ordinance would further regulate the market, it seems recommendable for everyone interested in this business to carefully **review the draft ordinance** and submit suggestions/comments (if any) by **9 November 2020**.

For example, although the **definition of distance food selling** provided for in the draft ordinance is not crystal clear, it seems that it includes both B2B and B2C offering and distribution of food through electronic means of communication (e.g., webpages, social media, phone numbers, etc.). Further, the draft ordinance provides for two ways of delivery – on one hand, there is direct delivery where the one ordering the food receives it directly by postal or courier services or by respective entity's own means (e.g., bicycles, cars, etc.) and, on the other hand, there is a delivery at a specific place defined by the recipient. It doesn't seem easy to differentiate between the two ways of delivery.

Further, among the **conditions** set by the draft ordinance and that must be met by respective entities are the following:

- **Vehicles used for the transportation of certain types of food, namely food of animal origin, flour, bread, bakery products and confectionary must be registered** in advance with the Regional Food Safety Directorate. The receptacles (i.e., compartments, containers used to keep the food) in the vehicles must be kept clean and used only for the transportation of foodstuffs;

PETERKA PARTNERS

THE CEE LAW FIRM

- **Bicycles** and **motorcycles** used for delivery have to be marked with the name of the respective entity and **equipped with special containers** that must be kept clean and should be capable of maintaining foodstuffs at appropriate temperatures.
- Deliveries could be made **without the use of vehicles** as well but, in this case, the usage of the abovementioned containers is obligatory as well;
- Employees responsible for the delivery of food are obliged to have **personal health documents** that evidence preliminary and subsequent medical exams. If requested, they must show them to the supervisory authority's officials. In practice, this means that the employees involved must keep such documents with them while performing their work;
- **The BFSA** is the competent supervisory authority. The control is performed by officials who order food by means of distance communication and take a sample of it. The officials that take the sample identify themselves and clarify the goal of the order but in some cases, they may perform the examination without identification;
- The entity that has been subject to examination by BFSA has the right to receive a **second expert opinion** on the sample that was subject to examination.

In conclusion: There is no doubt that the distance food selling market will continue developing in the weeks, months and years to come. However, it is also clear that this business sector is becoming more and more regulated. In our view, such development would require, among others, stricter and more detailed internal policies and procedures, more paper work, compliance with administrative procedures (such as registration) as well as a deeper understanding of the rules of law.

Therefore, we see it as recommendable for all players (current and future ones) on the market not to miss their chance to participate actively in the development of the Bulgarian legislation that would affect their business.

This article was prepared by Mr. Georgi Kanev, Senior Associate and Deputy Director, and Lora Dimitrova, Associate, both at PETERKA & PARTNERS Bulgaria. It reflects the status as of 26 October 2020. This article is for informational purposes only and may not be considered a legal opinion or advice.