

Entire legal regulation of the Fair Competition Act, version of 10 January 2022

Full title

Federal Act of 29 June 1977 on Improvement of Local Supply and Competitive Conditions (Fair Competition Act – FWBG)
 Master: Federal Law Gazette No. 392/1977 (NR: GP XIV IA 4/A and 12/A AB 565 p. 61. BR: AB 1689 p. 366.)

Amendments

Federal Law Gazette No. 121/1980 (NR: GP XV IA 38/A AB 262 p. 27. BR: AB 2126 p. 394.)
 Federal Law Gazette No. 424/1988 (NR: GP XVII IA 175/A AB 694 p. 69. BR: AB 3539 p. 505.)
 Federal Law Gazette No. 590a/1990 (Constitutional Court)
 Federal Law Gazette No. 693/1993 (NR: GP XVIII RV 1096 AB 1202 p. 131. BR: 4635 AB 4626 p. 574.)
 Federal Law Gazette I No. 131/2001 (NR: GP XXI RV 759 AB 788 p. 81. BR: AB 6482 p. 681.)
 Federal Law Gazette I No. 136/2001 (NR: GP XXI RV 742 AB 824 p. 81. BR: 6458 AB 6459 p. 681.)
 Federal Law Gazette I No. 151/2004 (NR: GP XXII RV 643 AB 723 p. 89. BR: 7156 AB 7164 p. 717.)
 Federal Law Gazette I No. 62/2005 (NR: GP XXII RV 942 AB 991 p. 112. BR: AB 7310 p. 723.)
 Federal Law Gazette I No. 50/2012 (NR: GP XXIV RV 1726 AB 1757 p. 153. BR: AB 8715 p. 808.)
 Federal Law Gazette I No. 56/2017 (NR: GP XXV RV 1522 AB 1529 p. 173. BR: AB 9765 p. 866.)
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 Federal Law Gazette I No. 239/2021 (NR: GP XXVII RV 1167 AB 1212 p. 135. BR: AB 10844 p. 936.)
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Other text components

The National Council has adopted:

Text

Chapter 1

General provisions to improve the conditions of competition and supply obligation

Good business conduct

§ 1. (1) Business practices of any undertakings in commercial transactions among each other may be prohibited if they are likely to jeopardise fair competition on the merits.

(2) Such practices include, but are not limited to offering or requesting, granting or accepting money or other benefits, also discounts, special conditions, special product features, take-back obligations or assumption of liability among suppliers and resellers, which are not objectively justified, especially if the additional benefits are not offset by appropriate compensation.

(3) Practices of providers of online intermediation services within the meaning of Art. 2(3) and online search engines within the meaning of Art. 2(6) of Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services, OJ L 186, 11 July 2019 p. 57, towards commercial users within the meaning of Art. 2(1) and users with a corporate website within the meaning of Art. 2(7) of this Regulation, which are in breach of obligations under Articles 3 to 12 of this Regulation, are in any event likely to jeopardise fair competition on the merits.

§ 2. (1) A supplier who grants or offers different conditions to authorised resellers in the same circumstances without objective justification may be sued for a cease-and-desist order.

(2) Similarly, a reseller may be sued for requesting or accepting objectively unjustified conditions from suppliers.

§ 3. The opposing party shall not take any proceedings pursuant to §§ 1 and 2 as a reason to exclude the undertaking affected by a conduct as defined hereunder from further supply or purchase on reasonable conditions.

Ensuring local supply and competitiveness

§ 4. (1) Unless otherwise specified in other legal provisions, undertakings shall be free, particularly in choosing their final sellers. Undertakings which usually deliver to final sellers may be obliged to conclude a contract if non-supply to a final seller threatens local supply or significantly affects the final seller's competitiveness in the goods not supplied.

(2) Local supply is deemed to be threatened if a substantial number of consumers is not able to purchase the goods necessary to satisfy needs of daily life at reasonable costs and time without using a motor vehicle or public transport.

(3) The obligation to supply shall be conditional upon counter performance, taking into account the terms and conditions granted to comparable final sellers as well as the supplier's ability to deliver.

- (4) Such an obligation to supply shall not be ordered particularly in those cases in which a delivery
- a) is economically unreasonable for the supplier, or
 - b) violated a statutory provision or were contra bonos mores.

An ordered obligation to supply shall be revoked upon application if reasons that were decisive for ordering such obligation cease to exist. Upon application, the obligation to supply shall be restricted or revoked if the competitors' economic existence is substantially jeopardised by such obligation.

Statutory duty to supply

§ 5. (1) Commercial final sellers may not conceal their stocks of goods serving the necessary needs of daily life. They are obliged to sell to consumers from their stocks of these goods a quantity that is usually given to consumers.

(2) Final sellers pursuant to para. 1 shall grant officials of the district administrative authorities' access to and inspection of their premises and store rooms during the business hours in order to allow for examination of an obligation pursuant to para. 1. They shall also provide the required information to such officials, submit all necessary documents and if required enable them to inspect stock inventories as well as records on incoming and outgoing goods.

(3) When performing their official actions pursuant to para. 2, the officials of the district administrative authorities shall inform the owner of the business or his deputy when entering the business premises or store rooms and shall avoid any disturbance or disruption of business that is not absolutely necessary. Any information obtained during such inspections shall only be used for enforcing para. 1.

Chapter 2

Unfair trade practices in relation to the sale of agricultural and food products

Subject matter and scope

§ 5a. (1) The provisions of this chapter regulate the combat against unfair trading practices in relation to the sale of agricultural and food products. They serve to implement Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agriculture and food supply chain, OJ no. L 111, as of 25 April 2019 p. 59 (hereafter referred to as "Directive (EU) 2019/633"). The first chapter and the Cartel Act 2005 - KartG 2005, Federal Law Gazette I No. 61/2005, shall remain unaffected.

(2) The provisions of this chapter shall apply to commercial practices relating to the sale of agricultural and food products by

1. suppliers who have an annual turnover not exceeding two million euro to buyers who have an annual turnover exceeding two million euro;
2. suppliers having an annual turnover of more than two million euro and not more than ten million euro to buyers having an annual turnover of more than ten million euro;
3. suppliers having an annual turnover of more than ten million euro and not more than 50 million euro to buyers having an annual turnover of more than 50 million euro;
4. suppliers who have an annual turnover of more than 50 million euro and no more than 150 million euro to buyers who have an annual turnover of more than 150 million euro;
5. suppliers who have an annual turnover of more than 150 million euro and no more than 350 million euro to buyers who have an annual turnover of more than 350 million euro,

6. suppliers who have an annual turnover of more than 350 million euro and no more than 1 billion euro to buyers who have an annual turnover of more than 5 billion euro.

(3) This chapter applies to sales where either the supplier or the buyer or both are established in the European Union. This chapter shall also apply to services provided by the buyer to the supplier where such services are explicitly mentioned in **Annex I** or **Annex II**. The annual turnover of suppliers and buyers referred to in para. 2 subparas. 1 to 5 shall be understood in accordance with the relevant parts of the Annex to Recommendation 2003/361/EC concerning the definition of micro, small and medium-sized enterprises, OJ no. L 124, 20 May 2003, p. 36, in particular Articles 3, 4 and 6, including the definitions of "autonomous enterprise", "partner enterprise", "linked enterprise" and in accordance with other contents of this Recommendation related to annual turnover.

(4) Where the buyer is a national, regional or local authority, authority body governed by public law or an association made up of one or more of those authorities or one or more of those bodies governed by public law, the provisions of this chapter shall apply to all suppliers with an annual turnover not exceeding 350 million euro.

(5) This chapter shall take precedence over § 459 of the Austrian Commercial Code (Unternehmensgesetzbuch – UGB), dRGBI. S 219/1897, with regard to payment periods.

Definitions

§ 5b. Within the meaning of the provisions of this chapter mean:

1. "Agricultural and food products" means products listed in **Annex I** to the Treaty on the Functioning of the European Union and products not listed in that **Annex** but processed from products listed therein for use as food;
2. "Buyer" means any natural or legal person, provided that he is not a consumer, wherever that person may be established, or any public authority within the European Union who buys agricultural and food products; the term "buyer" may also refer to a group of such natural and legal persons;
3. "Supplier" means any agricultural producer or any natural or legal person, irrespective of his place of establishment, who sells agricultural and food products; the term "supplier" may also include a group of such agricultural producers or a group of such natural and legal persons such as producer organisations, organisations of suppliers and associations of such organisations;
4. "Perishable agricultural and food products" means agricultural and food products which, by their nature or at their stage of processing, are not expected to be suitable for sale within 30 days after harvest, production or processing.

Prohibition of unfair trade practices

§ 5c. (1) The commercial practices listed in **Annex I** are prohibited. The commercial practices listed in **Annex II** are prohibited unless they have been clearly and unambiguously agreed in advance in the supply agreement or in a subsequent agreement between the supplier and the buyer.

- (2) The prohibition pursuant to **Annex I** subpara. 1 (a) shall apply without prejudice
 1. to the consequences of late payments and the remedies pursuant to §§ 455 to 460 UGB;
 2. to the possibility of a buyer or supplier to agree on a value sharing clause pursuant to Art. 172a of Regulation (EU) No 1308/2013 on a common organisation of the markets in agricultural products, OJ No L 347, 20 December 2013 p. 671.
- (3) The prohibition pursuant to **Annex I** subpara. 1 (a) shall not apply to payments
 1. made by a buyer to a supplier if such payments are made under the school scheme pursuant to Art. 23 of Regulation (EU) No 1308/2013;
 2. made by public authorities whose predominant activity is the provision of health care services;
 3. made within the framework of supply agreements between suppliers of grapes and must for wine production and their direct buyers, provided that
 - a) the specific payment terms for sales are included in the standard contracts made mandatory under Article 164 of Regulation (EU) No 1308/2013 before 1 January 2019, and that such extension of the model contracts is renewed as from that date without any significant changes to the payment terms to the detriment of suppliers of grapes or must, and
 - b) that the supply agreements between suppliers of grapes or must for wine production and their direct buyers are or become multiannual contracts.

(4) Where the buyer requires payment in the cases referred to in **Annex II** subparas. 2, 3, 4, 5 or 6, the buyer shall, where appropriate, provide the supplier, at the supplier's request, with an estimate of the

payments per unit or overall payments in writing and, in the cases referred to in **Annex II** subparas. 2, 4, 5 or 6, also with an estimate of the costs and the basis for that estimate in writing.

(5) Should a contract contain a commercial practice listed in **Annex I** or a commercial practice listed in **Annex II** without this having been clearly and unambiguously agreed in advance in the supply agreement or in a subsequent agreement between the supplier and the buyer, these clauses shall be absolutely invalid. The validity of the remaining provisions of the contract shall not be affected.

Establishment of an initial contact point

§ 5d. (1) For complaints concerning trade practices in relation to the sale of agricultural and food products, an instruction-free and independent initial contact point shall be established as a department within the meaning of § 278 of the Civil Service Law Act 1979 - BDG 1979, Federal Law Gazette No. 333/1979, at the Federal Ministry of Agriculture, Regions and Tourism with effect from 1 March 2022. The Federal Minister for Agriculture, Regions and Tourism shall provide the initial contact point with the human and material resources required to perform its tasks.

(2) The initial contact point has the following tasks:

1. general counselling activities and analysis of complaint cases,
2. referral of the subject matter of the appeal to the respondent in agreement with the appellant,
3. commissioning of a conciliation board within the meaning of § 5f at the request of the appellant and the respondent,
4. commissioning of an appropriate interest group in agreement with the complainant if the initial contact point deems this appropriate with regard to the handling of a specific complaint or due to the general importance of a complaint beyond the individual case.

(3) The initial contact point shall establish rules of procedure. The rules of procedure shall be submitted to the Federal Minister for Agriculture, Regions and Tourism for approval. The approval shall be given in agreement with the Federal Minister for Digital and Economic Affairs. Within the framework of these rules of procedure, the following shall be regulated in particular:

1. the activities to be carried out by the initial contact point,
2. the handling of enquiries or complaints received by it,
3. information obligations such as maintaining a continuously updated website,
4. provisions on cooperation with the investigating authority and interest groups,

(4) To the extent necessary for the performance of its duties under this Federal Act, the initial contact point shall be authorised to obtain information from the parties involved within a reasonable period of time to be set in each case. It shall only be authorised to submit documents to the investigating authority at the request of the appellant.

(5) The services of the initial contact point may be used anonymously and confidentially. Unless waived by the supplier, the initial contact point shall take the necessary measures to adequately protect the supplier's identity and any other information the disclosure of which the supplier believes would be prejudicial. The initial contact point shall be entitled to process all personal data necessary for the execution of its tasks under this chapter.

(6) The initial contact point shall prepare and publish a report on its activities every year. This report shall be submitted to the Federal Minister for Agriculture, Regions and Tourism and the Federal Minister for Digital and Economic Affairs by 15 February of each year and shall be published on the website established pursuant to para. 3 subpara. 3 by 15 March. The report shall include at least the following contents:

1. type and number of complaint cases brought to the initial contact point,
2. breakdown into different product groups,
3. number of complaint cases that could be resolved by the initial contact point itself,
4. number of complaint cases that were referred to another authority and
5. other perceptions on the behaviour of market participants.

Management and supervision of the initial contact point

§ 5e. (1) The director and a deputy director shall be appointed by the Federal Minister for Agriculture, Regions and Tourism after consultation with the Competition Commission for a maximum period of five years. The provisions of the Tender Act 1989 - AusG, Federal Law Gazette No. 85/1989, shall apply to the appointment of the director. Reappointment for a limited period of time is permissible. The director shall not be bound by any instructions and shall be impartial in the performance of his or her duties. The director and all employees of the initial contact point shall be bound to official secrecy.

(2) The director and the deputy director may not, for the duration of their function, engage in any other activities which hinder them in the performance of their duties or which are likely to cast doubt on their complete impartiality or otherwise jeopardise essential interests of their function.

(3) The Federal Minister for Agriculture, Regions and Tourism may dismiss the director or the deputy director if he or she

1. is permanently unable to perform the duties associated with his or her function due to his or her state of health or
2. if he or she has grossly violated or permanently neglected the duties associated with his or her function.

(4) The initial contact point shall be subject to supervision by the Federal Minister for Agriculture, Regions and Tourism. The supervision shall extend to

1. compliance with the laws and ordinances,
2. the fulfilment of the tasks incumbent on the initial contact point under this Act and
3. the budgetary management of the initial contact point.

(5) The Federal Minister for Agriculture, Regions and Tourism shall supervise the initial contact point to ensure that it fulfils the tasks incumbent upon it by law, does not violate the laws and ordinances in the performance of its tasks and does not exceed its scope of duties. The Federal Minister for Agriculture, Regions and Tourism shall be entitled to obtain information within the scope of his or her competence pursuant to paras. 3 and 4. The initial contact point shall provide the requested information without undue delay, but within two weeks at the latest. In order to perform the tasks of the national contact point, the Federal Minister for Digitisation and Economic Location shall be provided with the necessary information.

Commissioning of a conciliation board

§ 5f. (1) The initial contact point may refer conciliations within the meaning of § 5d para. 2 subpara. 3 to a conciliation board agreed upon by the complainant and the respondent.

(2) Only a conciliation board established by a corporation under public law, in particular by a chamber of notaries or a bar association, may be considered as a conciliation board within the meaning of para. 1.

Proceedings before the investigating authority

§ 5g. (1) A supplier established in Austria may file complaints with the investigating authority. Other suppliers may file a complaint with the investigating authority if the buyer suspected of being involved in an unfair commercial practice is established in Austria. If the complaint concerns a buyer in another member state, the complaint shall be forwarded via the national contact point to the investigating authority in the other member state where the buyer is established. The investigating authority may also initiate and conduct investigations *ex officio*.

(2) Producer organisations, other supplier organisations and associations of such organisations, may, at the request of one or more of their members or, where appropriate, at the request of one or more members of their member organisations, file a complaint with the investigating authority if those members consider that they have been subjected to an unfair trade practice. Other organisations representing suppliers may file a complaint at the request of a supplier and in the interest of that supplier, provided that such organisations are independent legal entities which pursue a non-profit purpose in their activities.

(3) The investigating authority shall, at the request of the person concerned or the organisation, take the necessary measures to adequately protect the identity of the appellant or the members or suppliers referred to in para. 2, as well as any other information the disclosure of which, in the appellant's opinion, would be prejudicial to the interests of the appellant or the members or suppliers. The appellant shall identify any information in respect of which he requests confidential treatment.

(4) The investigating authority shall inform the appellant informally within a reasonable period of time whether it will initiate investigations. If it does not see sufficient grounds for a violation of provisions of this chapter, it shall inform the appellant of the reasons for not initiating the proceedings. Complaints that are not sufficiently substantiated may be referred to the initial contact point.

(5) The investigating authority is also authorised, insofar as this is necessary for the execution of its duties under this chapter,

1. to request information from undertakings and associations of undertakings within a reasonable period of time to be set in each case,
2. to inspect and analyse business documents which are accessible in or from the undertaking, irrespective of the form in which they are available, or to have them inspected and examined by qualified experts, to make copies of and extracts from the records, and

3. to request in situ any information required to conduct investigations as well as request from all representatives or employees of the undertaking or the association of undertakings explanations on circumstances or documents which are related to the subject and purpose of the investigation.

(6) At the request of the investigating authority, the Cartel Court shall order a search of the premises if this is necessary to obtain information from business records and there is a reasonable suspicion of an infringement of § 5c. The provisions of § 12 paras. 3 to 6 of the Competition Act - WettbG, Federal Law Gazette I No. 62/2002, shall apply mutatis mutandis.

(7) The provision of information and the submission of documents pursuant to para. 5 may also be ordered by means of an administrative decision in application of the General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz - AVG), Federal Law Gazette No. 51/1991. An appeal against this decision to the Federal Administrative Court shall not have a suspensive effect. Upon request, the appellate authority shall grant suspensive effect within two weeks after submission of the appeal, if this is justified after weighing all interests involved.

(8) An undertaking, an association of undertakings or a representative within the meaning of § 11a para. 5 WettbG who provides incorrect or misleading information in an information notice pursuant to para. 5 subparas. 1 and 3 commits an administrative offence punishable by a fine of up to EUR 25,000 by the investigating authority. Anyone who fails to provide information, or provides incorrect, misleading or incomplete information, in contravention of an administrative decision under para. 7 commits an administrative offence and shall be liable to a fine of up to EUR 75,000 imposed by the investigating authority.

(9) Information obtained in the course of investigations may only be used for the purpose pursued by the investigative act. The investigating authority shall be entitled to process all personal data required for the execution of its tasks under this chapter.

Cooperation within the framework of pan-European enforcement

§ 5h. (1) The national contact point for the exchange of information within the framework of the European Union shall be established in the Federal Ministry for Digital and Economic Affairs. The national contact point is responsible for assisting the European Commission as well as cooperating with the European Commission and the other authorities of the member states, whereby it may entrust the investigating authority with participation in meetings of the European information exchange or other specific tasks.

(2) The investigating authority may make requests for administrative assistance to authorities of other member states. It is obliged to provide administrative assistance to authorities of other member states. The administrative assistance concerns in particular requests for information as well as investigations regarding § 5c para. 1 in the case of buyers who are established in Austria. The investigating authority shall inform the national contact point about requests for administrative assistance to authorities in other member states.

(3) The investigating authority shall prepare an annual report on its activities subject to the scope of application of this chapter, indicating, inter alia, the number of complaints received in the previous year and the number of investigations initiated or completed in the previous year. This report shall include a summary description of the facts, the result of the investigation and, if applicable, the decision taken for each completed investigation, in compliance with the confidentiality obligations laid down in § 5g para. 3. The investigating authority shall submit its report by 15 February of each year to the Federal Minister for Digital and Economic Affairs, who, in agreement with the Federal Minister for Agriculture, Regions and Tourism, shall submit an overall report to the European Commission by 15 March of each year. This overall report shall in particular contain all relevant information on how the provisions of this chapter were applied and enforced in the previous year.

Chapter 3

Procedural and other provisions

Procedural rules

§ 6. (1) The Cartel Court shall have jurisdiction to prohibit conduct under § 1 and 3, unjustified conditions under § 2 and unfair trade practices under § 5c, as well as to order, restrict or cancel an obligation to deliver under § 4, provided that the claim is based exclusively on this Federal Act. The provisions of the Cartel Act on court organisation shall apply mutatis mutandis. The provisions of Part V Chapter 1 (Cartel Court and Higher Cartel Court) of the Cartel Act 2005, shall apply mutatis mutandis.

(2) Upon application by the investigating authority pursuant to chapter 2, the Cartel Court may impose a fine of up to a maximum amount of EUR 500,000 on a buyer within the meaning of § 5b(2) who infringes the provisions of § 5c. In assessing the fine, particular consideration shall be given to the gravity and duration of the infringement, the enrichment gained by the infringement, the degree of fault and the economic capacity. § 33 KartG 2005 shall apply *mutatis mutandis*. (Note: Para. 2 comes into force on 1 May 2022)

(3) Final decisions prohibiting an infringement of the provisions of § 5c and imposing a fine shall be published by the Cartel Court. The publication shall state the parties involved and the essential content of the decision including the sanctions imposed. It shall take into account a legitimate interest of the undertakings in the protection of their business secrets. § 37 of the Cartel Act 2005 shall apply *mutatis mutandis*.

(4) The investigating authority under this Federal Act may refrain from making an application to the Cartel Court if this could reveal the identity of the appellant or other information the disclosure of which, in the appellant's view, would be prejudicial to his legitimate interests and he has requested confidential treatment under § 5g para. 3.

§ 7. (1) For proceedings before the Cartel Court and the Supreme Cartel Court, the general provisions laid down in the Non-Contentious Proceedings Act³ shall apply, including the principle that legal expenses shall not be reimbursed, taking into account the particularities set forth in §§ 47 and 49 of the Cartels Act 2005 (KartG 2005), unless otherwise stated in the following.

(2) Applications pursuant to §§ 1 to 4 may be filed by:

1. the Federal Competition Authority, the Federal Cartel Prosecutor, the Federal Economic Chamber, the Federal Chamber of Labour and the Presidential Conference of Chambers of Agriculture or a chamber of agriculture; these entities shall be party to the proceedings, even if they are not applicants;
2. associations that represent economic interests of undertakings if these interests are affected by the subject of the proceedings;
3. any undertaking whose legal or economic interests are affected by the subject of the proceedings.

(2a) The following shall be entitled to apply for injunctive relief in the case of infringements of § 5c

1. the investigating authority within the meaning of chapter 2, the Federal Cartel Prosecutor, the Austrian Federal Economic Chamber and a Chamber of Agriculture or the Presidential Conference of Chambers of Agriculture; even if they are not applicants, they shall have party status in the proceedings;
2. associations that represent economic interests of undertakings, producer organisations, other supplier organisations and associations of such organisations, if these interests are affected by the subject matter of the proceedings;
3. any entrepreneur whose legal or economic interests are affected by the subject matter of the proceedings.

(2b) The investigating authority within the meaning of chapter 2 is the Federal Competition Authority. The investigative powers under the Competition Act shall apply *mutatis mutandis*.

(3) All deadlines shall be set by the presiding judge of the competent court division, except for the four-week statutory period of time to lodge an appeal against a final decision and for submitting the reply to such appeal. The period of time to be set by the presiding judge shall be at least eight days, except for proceedings pursuant to para. 4.

(4) Insofar as the prerequisites for the prohibition of an infringement are certified, the Cartel Court shall, upon application of a party, issue the necessary orders with an interim injunction. The opposing party shall be heard before the issuance of an interlocutory injunction. The appeal against such a decision shall not have suspensive effect. At the request of the appellant, the Cartel Court shall grant suspensive effect to the appeal if this is justified after weighing all interests involved.

(5) Any facts or evidence which according to the contents of the files were not submitted to the Cartel Court, may only be submitted in the appeal proceedings in the event that it is credibly shown (§ 274 Code of Civil Procedure – Zivilprozessordnung (ZPO)) that these facts only occurred after the decision had been taken by the Cartel Court or that without the party's fault such facts and evidence, in the same way as the newly requested evidence, had become known only after that time, or that the party without fault of its own had not been able to submit such facts or evidence in good time.

(6) Settlement agreements shall be permissible; they shall not be subject to any fees.

(7) Interlocutory injunctions of the Cartel Court, final decisions of the Cartel Court and the Supreme Cartel Court as well as any settlements reached by them constitute enforcement titles. In cases of §§ 1 to 3, the enforcing creditor is the affected undertaking, in case of § 4 the final seller affected by non-supply. If no such affected party exists, the applicant may enforce execution. Requests to approve and enforce execution, based on enforcement titles pursuant to §§ 1 to 3, may be filed at the district court of the legal district in which the party obliged has its general place of jurisdiction in case of any legal disputes (§§ 66, 75 Court Jurisdiction Act – Jurisdiktionsnorm (JN)), otherwise at the district court specified in § 18 of the Enforcement Act – Exekutionsordnung (EO).

(8) The court fee shall be set on a sliding-scale between EUR 70 and EUR 3,500. In case of non-success, the sued party shall be liable to pay. §§ 51 to 57 Cartel Act 2005 shall apply.

(9) Upon application by a party, the presiding judge may authorise such party to publish the final decision on a conduct pursuant to §§ 1 and 2 at the expense of the opposing party within a specified period of time. The scope and form of publication shall be specified in the decision. Upon application, the presiding judge shall by order of the court fix the costs of publication and impose their reimbursement on the opposing party.

Penal provisions

§ 8. (1) Anyone who infringes provisions set forth in § 5 para. 1 or 2, shall be deemed to commit an administrative offence and shall be punished by a fine of up to EUR 2,180 imposed by the district administrative authorities. § 370 of the Trade Regulations 1973 (Gewerbeordnung von 1973) shall apply.

(2) Repeated infringements of § 5 para. 1 and 2 shall be deemed to be offences pursuant to § 87 para. 1 subpara. 2 (a) of the Trade Regulations 1973.

(3) Law enforcement officials shall assist in the enforcement of § 5 as officials of the district administrative authorities by taking actions to prevent imminent administrative offences pursuant to § 8 para. 1, as well as any actions necessary to initiate and implement the respective administrative penal proceedings.

Final and transitional provisions

§ 9. Provisions on unfair competitions shall remain unaffected by this Federal Act.

§ 9a. Insofar as this federal act refers to provisions of other federal acts, these shall apply in their respective applicable version.

§ 10. The following shall be responsible for the enforcement of this federal act with regard to

1. §§ 5, 5a, 5b, 5c, 5g, 5h and 8, the Federal Minister for Digital and Economic Affairs,
2. § 5d paras 1, 2 and 4 to 6, §§ 5e and 5f the Federal Minister for Agriculture, Regions and Tourism,
3. § 5d par. 3, the Federal Minister for Agriculture, Regions and Tourism in agreement with the Federal Minister for Digital and Economic Affairs, and
4. the remaining provisions shall be entrusted to the Federal Minister of Justice.

§ 11. (1) This Federal Act shall enter into force as of 1 October 1977.

(2) § 8 para. 1 as amended in Federal Law Gazette I No. 136/2001 shall enter into force as of 01 January 2002.

(3) § 8 para. 3 as amended in Federal Law Gazette I No. 50/2012 shall enter into force as of 01 September 2012.

(4) This Federal Act as amended in Federal Law Gazette I No. 62/2005 shall enter into force as of 01 January 2006.

(5) The title "Federal Act on the Improvement of Local Supply and Competitive Conditions (Fair Competition Act - FWBG)", the chapter title and heading of the 1st chapter, the 2nd chapter, the chapter title and heading of the 3rd chapter, § 6 paras. 1, 3 and 4, § 7 paras. 2, 2a, 2b and 4, § 9a, § 10, **Annex I** and **Annex II** each as amended by Federal Law Gazette I No. 239/2021 shall enter into force on the day following the promulgation. § 6 para. 2 shall enter into force on 1 May 2022. Delivery agreements concluded before the entry into force of this Federal Act must be brought into conformity with this Federal Act by 1 May 2022. § 5a para. 2 subpara. 6 shall expire on 31 December 2025.

Annex I

Trade practices that are prohibited under all circumstances:

1. The buyer pays the supplier,
 - a) if the supply agreement specifies a regular delivery of products,
 - i) for perishable agricultural and food products more than 30 days after the expiry of the agreed delivery period in which deliveries have been made or more than 30 days after the date of determination of the amount payable for that delivery period, whichever is the later;
 - ii) for other agricultural and food products more than 60 days after the end of the agreed delivery period in which deliveries have been made or more than 60 days after the date of determination of the amount to be paid for that delivery period, whichever is the later. For the purposes of the payment periods referred to in this clause, it shall in any event be assumed that the agreed delivery periods do not exceed one month;
 - b) if the supply agreement does not specify a regular delivery of products,
 - i) for perishable agricultural and food products more than 30 days after the date of delivery or more than 30 days after the date of determination of the amount to be paid, whichever is the later;
 - ii) for other agricultural and food products more than 60 days after the date of delivery or more than 60 days after the determination of the amount to be paid, whichever is the later.

If the buyer determines the amount to be paid, then, without prejudice to subpara. (a) and (b), the following shall commence

- i) the payment period referred to in subpara. (a) shall begin at the end of the agreed delivery period during which deliveries have been made; and
 - ii) the payment period referred to in subpara. (b) shall commence on the date of delivery.
2. The buyer cancels the order of perishable agricultural and food products at such short notice that a supplier cannot reasonably be expected to find an alternative means of commercialising or using those products; a cancellation period of less than 30 days before delivery shall be deemed to be short notice in any case.
3. The buyer unilaterally modifies the terms of an agriculture and food supply agreement with respect to the frequency, method, place, timing or extent of delivery of agricultural or food products, quality standards, payment terms or prices, or with respect to the provision of services, to the extent that they are expressly referred to in **Annex II**.
4. The buyer requires payments from the supplier that are not related to the sale of the supplier's agricultural and food products.
5. The buyer requires the supplier to pay for quality degradation or loss of agricultural and food products occurring on the buyer's premises or after transfer of ownership to the buyer if the quality degradation or loss is not caused by the supplier's negligence or wilful misconduct.
6. The buyer refuses to confirm in writing the terms of a supply agreement between the buyer and the supplier for which the supplier has requested written confirmation. This shall not apply where the supply agreement relates to products to be supplied by a member of a producer organisation, including a cooperative, to the producer organisation of which the supplier is a member, if the statutes of that producer organisation or the rules and decisions resulting from or provided for in those statutes contain provisions having an effect similar to that of the terms of the supply agreement.
7. The buyer acquires or uses trade secrets of the supplier unlawfully within the meaning of Directive (EU) 2016/943 on the protection of confidential know-how and business information (trade secrets) against unlawful acquisition, use and disclosure, OJ No. L 157, 15 June 2016 p. 1, or discloses them unlawfully within the meaning of the said Directive.
8. The buyer threatens the supplier with retaliatory measures of a commercial nature or takes such measures against the supplier if the supplier asserts its contractual or legal rights, including by filing a complaint with the investigating authority or cooperating with an investigation.
9. The buyer requires compensation from the supplier for the costs of handling customer complaints in connection with the sale of the supplier's products, although there was neither negligence nor wilful misconduct on the part of the supplier.
10. In the event of the existence of an economic imbalance, the buyer grants the supplier different conditions compared to other contracting parties for equivalent performance without objective justification, in particular with regard to the price level or the terms of payment.

11. The buyer requires without objective justification from the supplier of perishable raw products, when securing the agreed delivery quantity to the buyer, as a delivery condition that he does not at the same time market his products himself to an extent subordinate to the delivery to the buyer.

Annex II

Trade practices that are prohibited unless these have been clearly and unambiguously agreed beforehand in the supply agreement or in a subsequent agreement between the supplier and the buyer:

1. The buyer returns unsold agricultural and food products to the supplier without paying for those unsold products or for their disposal.
2. Payment is required from the supplier for stocking, offering for sale, listing or making available on the market its agricultural and food products.
3. The buyer requires the supplier to bear all or part of the cost of discounts on agricultural and food products sold by the buyer as part of a sales promotion. This does not apply to cases where the buyer initiates a sales promotion, prior to the start of which the buyer communicates the period during which the promotion will run and the quantity of agricultural and food products expected to be ordered at the lower price.
4. The buyer requires the supplier to pay for the buyer's advertising of agricultural and food products.
5. The buyer requires the supplier to pay for the marketing of agricultural and food products by the buyer.
6. The buyer requires the supplier to pay for staff to furnish the premises where the supplier's products are sold.

Article 13

Entry into force, repeal, transitional provisions

(Note: from Federal Law Gazette I No. 131/2001, ad § 7, Federal Law Gazette No. 392/1977)

1. This Federal Act shall enter into force as of 1 January 2002.

(Note: subparas. 2 and 3 refer to other legal provisions)

4. By 30 June 2002, any court fee stamps not used before the expiry of 31 December 2001 may be sold back to the respective court accounting division against an equivalent amount in euro.

By 30 June 2002, court fee franking machines with prepaid credit shall be presented to the deposit department of the Higher Regional Court for final accounts; any excess credit shall be paid back in euro; any corrective payments shall be levied and collected in euro. Pre-paid cards shall be returned for examination to the deposit department in charge by 30 June 2002.

(Note: Subpara. 6 refers to a different legal provision)

7. § 7 para. 8 of the Federal Act on Improvement of Local Supply and Competitive Conditions as amended in this Federal Act shall apply if a complaint is received by the courts after 31 December 2001. § 7 para. 9 of the Federal Act on Improvement of Local Supply and Competitive Conditions as amended in this Federal Act shall apply to all documents and official acts on which a justified claim for such fee is based after 31 December 2001.