



**CZECH AGRICULTURE AND  
FOOD INSPECTION AUTHORITY**

## **Selling food online**

**Basic requirements demanded on food business  
operators**



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### 1) Definition

Internet sale of foodstuffs is one of the forms of distance sale ("distance contract conclusion") with the use of distance communication tools enabling conclusion of a contract without simultaneous presence of contracting parties.

Pursuant to food legislation, an entity selling foodstuffs over Internet (which is placing on the market) is regarded as a food business operator (FBO) (see Article 3 Para 3 and 3 of Regulation (EC) No. 178/2002) who is responsible for safety, quality, proper labelling of offered products and keeping of other requirements (hygiene, storage, etc.).

FBO has to comply with basic obligations stated below. Moreover, further specific requirements for single food categories may exist as well.

### 2) Legislation

There is a range of CZ and EU food legislation, below there are the most important which have direct relation to Internet sale of foodstuffs and Internet advertisements:

- Act No. 110/1997 Coll., on Foodstuffs and Tobacco Products, as amended;
- Act No. 480/2004 Coll., on Certain Information Society Services, as amended;
- Act No. 634/1992 Coll., on Consumer Protection, as amended;
- Act No. 89/2012 Coll., Civil Code, as amended;
- Act No. 40/1995 Coll., on the Regulation of Advertising and on Amendments to Act No. 468/1991, on Radio and Television Broadcasting, as amended;
- Regulation of the European Parliament and Council (EC) No. 178/2002, laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, as amended;
- Regulation of the European Parliament and Council (EC) No. 1169/2011 on the provision of food information to consumers, as amended;
- Regulation of the European Parliament and Council (EC) No.1924/2006 on nutrition and health claims made on foods, as amended;
- Regulation of the European Parliament and Council (EC) No.852/2004 on food hygiene;

### 3) Basic obligations of food business operators (hereinafter FBO only)

#### a) to place safe foodstuffs on the market

Placing only safe foodstuffs on the market in compliance with Article 14 of Regulation (EC) No. 178/2002 is absolutely essential obligation of each FBO. Pursuant to Article 17 of this Regulation, FBO shall ensure that foods or feeds satisfy the requirements of food law which are relevant to their activities and shall verify that such requirements are met at all stages of production, processing and distribution within the businesses under their control. Each FBO is responsible for ensuring safety, quality and proper labelling of foodstuffs that he/she places on the market. This FBO shall ensure that the product placed on the market complies with legislation and it is safe for consumers.

**b) to comply with information obligation**

Pursuant to Section 3 Para 1 letter i) of Act on Foodstuffs, every FBO shall notify in writing or electronically in a manner enabling distance data transmission the relevant supervisory body of commencing and ceasing the performance of the subject of activity, at the latest on the day of its commencement or cessation, including the name, surname or name of business firm, seat and address of business, in case of natural person, or name of business firm or name, and seat and address of business, in case of legal person as well as identification number and subject of (business) activities.

Registration form is available on the CAFIA websites SZPI

(<https://www.szpi.gov.cz/en/download.aspx?nid=11380>). FBO fills whether retail, wholesale (in the case of B2B) etc. is concerned. FBO fills detailed specification of business activities indicating OI code (e-shop with storage) or OJ (e-shop without storage) and also addresses of websites (all domain names) where the Internet business takes place.

Apart from that, this FBO shall be registered as a person doing business in the field of organic farming and shall have concluded a contract with an authorised supervisory organisation in the case the FBO offers organic foodstuffs over the Internet. Registration of the FBO into the organic farming system is regulated by Section 6 of Act No. 242/2000 Coll., on Organic Farming, as amended and Article 28 of Regulation (EC) No. 834/2007 on organic production and labelling of organic products, as amended. The fact that also e-shops are subject to the registration obligation as well as to a control system is laid down by the statement of DG AGRI. The application for registration is available on the website of the Ministry of Agriculture: <http://eagri.cz/public/web/mze/zemedelstvi/casto-kladene-otazky/postup-pri-registraci.html>

If FBO places fresh fruit and vegetables or potatoes on the market over the Internet, he/she is obliged to notify relevant supervisory body of this fact at the latest on the day of commencing placing this goods on the market (Section 3 Para 1 and 2 of Act No. 110/1997 Coll.). Mandatory information is stated in the form which is available on the CAFIA website – see <https://www.szpi.gov.cz/en/download.aspx?nid=11380>

FBO providing public catering service by means of the Internet sale of meals has to notify the relevant public health protection body at the latest on the day of commencing of the activities, as well as subject and extent of business and location of the premises, significant modification of the business subject or extent or ceasing of provision of public catering. Legal person further states business company name, seat and legal form; natural person authorised for business according to specific legislation states business company name and address (Section 23 Para 5 of Act No. 258/2000 Coll. on Public Health Protection, as amended). Each Regional Public Health Office (RPHO) has its own form for registration. RPHO forwards information to other supervisory bodies.

Pursuant to provision of Section 3d Para 1 of Act on Foodstuffs, FBO producing or placing on the market food supplements has to notify Ministry of Agriculture in written or electronically in a manner enabling distance data transmission that such food supplement will be placed on the market including mandatory information on foodstuffs which will be stated on the packaging or label (for more information go to <http://eagri.cz/public/web/mze/potraviny/legislativa/doplanky-stravy/>). FBO has to send the notification prior to placing the food supplement on the market.

Pursuant to Section 3d Para 3 of Act on Foodstuffs, FBO who at the place of destination receives foodstuffs defined by implementing legislation from another EU Member State or a third country shall inform the relevant supervisory body on its arrival. This obligation is described in detail by Decree No. 172/2015 Coll., which applies to foodstuffs of which place of destination is on the Czech territory where the goods is accepted, treated or manipulated for the first time. The obligation applies to e-shops operators with a storage on the Czech territory as well. To find out more about information obligation of FBO, go to:

Further notification or “registration” obligation for further certain commodities may exist (e.g. for wine).

**c) to show identity (to make information for example on trade terms or contacts public)**

Address and identity of the seller or a person acting on his/her behalf or on his/her account are regarded as so-called *important information* pursuant to Section 5a) Para 3 of Act No. 634/1992 Coll., on Consumer Protection, as amended. Failure to indicate this information is, in the case of Internet sale, regarded as misleading practice in the form of misleading omission pursuant to Section 4 Para 3 of Act No. 634/1992 Coll.

Obligation of the entrepreneur (seller) to show his/her identity is required by the Civil Code in its Section 435. Pursuant to this provision, every entrepreneur shall indicate his/her name and seat in business documents and within information made public by means of distance access. Business documents of the entrepreneur who is recorded in the Trade Register include also information on this record including Section and Insert; entrepreneur recorded in another public register indicates information on this record; entrepreneur who is not recorded in any public record, indicates record into another evidence. If the entrepreneur got and identification data, this data is stated as well.

You can increase your credibility by a voluntary certificate confirming achieving a certain quality standard of the provided service and sale. For example certificate of the Association of e-commerce (APEK) (see [www.apek.cz](http://www.apek.cz)).

**d) to respect consumers' rights**

Rights of consumers in the case of Internet sale of foodstuffs are defined in particular by Act No. 634/1992 Coll., on Consumer Protection and Act No. 89/2012 Coll., Civil Code. FBO indicates compliance with the below-mentioned rights of consumers for the particular e-shop in trade terms or another similar document which is available on the websites.

In the case of Consumer Protection Act, obligations of FBO toward consumers are laid down in particular by Section 6 to Section 19. In particular provision of relevant information to consumers, such as features and way of use of the product (Section 9), whether there are any limitations as regards delivery of the products (Section 11a), which payment methods are accepted (Section 11a), information on the price of the products (Section 12), conditions and way of implementation of law followed from defects (Section 13), extrajudicial solution of consumers' disputes (Section 14) etc. are concerned. FBO shall (if it is required by the nature of the product) sell products in hygienically safe packaging or wrap them into such packaging during sale (section 17). FBO must not offer or sell products which are unsafe due to their changeability with foodstuffs (Section 7a), etc.

Selected obligations of FBOs towards consumers during distance contracts conclusion and commitments following from the contracts concluded outside the selling areas are also stipulated in Act No. 89/2012 Coll. (Civil Code), namely in provisions of Sections 1820 to 1839. In general ensuring protection of consumers as regards his/her rights for information, right to check data in the order before it is sent, right for confirmation of the order, right for withdrawal from the contract, etc. are concerned.

Obligations of FBO laid down by Act on Consumer Protection and Civil Code are, inter alia, a result of transposition of relevant EU legislation in this area (in particular Directive of the EP and Council 2011/83/EU on Consumer Rights and Directive of the EP and Council 2005/29/EC on misleading business practices).

**e) to avoid misleading business practices**

Pursuant to Act No. 634/1992 Coll. on Consumer Protection, as amended, the seller must not apply misleading business practices to consumers (Section 4 para 4). The Act also defines what misleading practice is and defines misleading act (Section 5) and misleading omission (Section 5a).

Business practices which regarded as misleading are defined in Annex No. 1 and No. 2 to Act on Consumer Protection. There are situations when for example untrue information states that product or service will be offered during limited time only or they will be offered during limited time under certain conditions with the aim to persuade consumers to make immediate decision without providing him an appropriate time necessary for informed choice (Annex No. 1 f)), etc.

**f) to provide information on foodstuffs being sold**

Requirements for food labelling are laid down in particular by Regulation (EU) No. 1169/2011 on the provision of foodstuffs to consumers, as amended. This Regulation also applies to labelling of foodstuffs sold on-line.

Regardless the way of sale, FBO shall ensure elementary requirements for food labelling laid down by Article 7 of the Regulation, which means following aspects:

- 1) Food information shall not be misleading, in particular: (a) as to the characteristics of the food and in particular its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of production or acquisition; (b) by attributing effects or properties which the food in question does not possess; (c) giving the impression that the food in question has special characteristics if all similar foods in fact have the same characteristics, in particular by expressly emphasizing the presence or absence of certain ingredients or nutrients; (d) giving the impression, on the basis of the appearance, description or presentation, that a food or ingredient is present, when in fact a naturally occurring ingredient or ingredient commonly used in that food has been replaced by a different ingredient or ingredient.
- 2) Food information must be accurate, clear and easy for consumers to understand.
- 3) Subject to the derogations provided for in EU legislation applicable to natural mineral waters and foodstuffs intended for particular nutritional uses, food information shall not attribute to, or refer to, properties of any food that can prevent, mitigate or cure a particular human diseases.
- 4) Paragraphs 1), 2) and 3) shall also apply to: (a) related advertising; (b) presentation of the food, its shape, appearance or packaging, used packaging materials, method of preparation and place of display.

Art. Article 14 of Regulation (EU) No 1169/2011 on the provision of food information to consumers requires provision of mandatory food information when selling distance way. However, these are not only the information laid down by Article 9 of the Regulation, but all mandatory data according to other EU legislation.

Art. 2 Para 2 (c) Regulation (EU) No 1169/2011 states that "mandatory food information" means particulars that are required to be provided to the final consumer by Union provisions.

The list of basic mandatory food information is given in Article 9 of Regulation (EU) No. 1169/2011, as follows:

- (a) the name of the food;
- (b) the list of ingredients;
- (c) any ingredient or processing aid listed in Annex II or derived from a substance or product listed in Annex II causing allergies or intolerances used in the manufacture or preparation of a food and still present in the finished product, even if in an altered form;
- (d) the quantity of certain ingredients or categories of ingredients;
- (e) the net quantity of the food;
- (f) the date of minimum durability or the 'use by' date;
- (g) any special storage conditions and/or conditions of use;
- (h) the name or business name and address of the food business operator referred to in Article 8(1);
- (i) the country of origin or place of provenance where provided for in Article 26;
- (j) instructions for use where it would be difficult to make appropriate use of the food in the absence of such instructions;
- (k) with respect to beverages containing more than 1,2 % by volume of alcohol, the actual alcoholic strength by volume;

(l) a nutrition declaration.

It is not only these data, but also other mandatory data related to individual commodities (e.g. food supplements), which are listed in relevant decrees, which are transposition of European regulations.

These particulars may be indicated by words, numbers, pictograms or symbols (without prejudice to Article 35 of the Regulation). Details on the presentation of individual mandatory particulars are subsequently elaborated in other articles of Regulation (EU) No. 1169/2011. The provision of mandatory food information offered via the Internet is governed by Article 14 of the Regulation.

In the case of prepacked foods offered for sale over the Internet, mandatory food information (Article 9 of Regulation (EU) No. 1169/2011) (excluding BBD or UBD) must be available before the purchase is completed (i.e. before the consumer confirms and sends the order) and shall appear on the material supporting the distance selling or must be provided by other appropriate means clearly identified by the FBO. Where other appropriate means are used, mandatory food information must be provided without incurring additional costs for the consumers. All mandatory data (including BBD and UBD data) must be available at the time of delivery.

In the case of non-prepacked foods offered for sale by means of distance communication, the FBO must provide information on allergens before the completion of the purchase and at the time of delivery (Article 9 (1) (c)). Similarly FBO must provide any other information required by national law. This information shall be provided by provision of a distance selling material or other appropriate means clearly identified by the FBO, at no additional costs for final consumers.

Similarly, information on foodstuffs is required by Act No. 110/1997 Coll., as amended, which in its Section 3 para. p) states that when offering food to consumers by distance communication, FBO is obliged to provide data pursuant to Sections 7, 8 and 9a of the Act, with the exception of data on UBD and BBD before the purchase is completed, and include it in material supporting distance selling, or provide it by other means. Where other means are used, mandatory food information must be provided for free and all mandatory information must be available to consumers at the time of delivery.

Pursuant to Article 15 (1) and (2) of Regulation (EU) No. 1169/2011, FBOs are required to provide food information in a language easily understood by consumers in the Member States where the food is marketed. Member States in which a food is marketed may provide in their territory that the particulars must be given in one or more of the official languages of the EU. The Food Act in its Section 3 par. 1 e) further stipulates that FBO is obliged, in the case of foodstuffs placed on the market in the territory of the Czech Republic, to state the mandatory food information stipulated in legal regulations in the Czech language.

The use of nutrition and health claims on foods in online sales is governed by Regulation (EC) No. 1924/2006 on nutrition and health claims made on foods, as amended. Detailed information on the use of the above claims is available on the CAFIA website in the article *Guidelines on health and nutrition claims* - see

<http://www.szpi.gov.cz/clanek/voditka-k-problematice-zdravotnich-a-vyzivovych-tvrzeni.aspx?q=JmNobnVtPTEmaGw9dm9kw610a2E%3d>

The exception not to indicate nutrition values pursuant to Section 6 Para 1 of Act No. 110/1997 Coll., as amended is applied in the case when Internet sale is concerned. The use of the exception is admissible in the case of Internet sale provided that small amount is concerned (see provision of Section 6 Para 4 of Act No. 110/1997 Coll.) and condition of relevant number of employees of the food business (10) and the maximum annual turnover (20mil CZK) and foodstuff is sold directly to final consumers or to a local retail supplying final consumers is fulfilled. The whole CR is regarded as local retail for the purposes of the exception.

Apart from Regulation (EU) No. 1169/2011 and Act no. 110/1997 Coll., there is a range of further requirements, exceptions or additions for indication of information on foodstuffs laid down by further legislation which apply to particular food commodities.

**g) to keep legislation requirements for related advertisement**

Pursuant to provision of Section 1 Para 2 of Act No. 40/1995 Coll., on Regulation of Advertisement, as amended, advertisement is notification, presentation or another form of presentation disseminated in particular by communication media with the aim to promote business activities in particular to support consumption or sale of goods, construction, lease or sale of real estates, sale or use of rights and commitments, support of provision of services, promotion of trademark.

Websites containing information on a particular foodstuff or foodstuffs, however, without an ordering form or another option how to conclude a distance contract, are not regarded as Internet shop, but as advertising websites. The operator thus has to comply with requirements laid down by Act on Advertisement Regulation, Article 7 Para 4 of Regulation (EU) No. 1169/2011 and Regulation (EC) No. 1924/2006. Information on the websites where a distance contract could be concluded can may be assessed as information on the foodstuffs or as an advertisement.

Websites containing general information on certain ingredients of foodstuffs and their possible effects without a link to a particular foodstuff and particular producer or seller are regarded neither as Internet shop nor advertising websites. However, if there is an active link leading to these websites from an e-shop or advertising website, the operator of these websites is responsible for them similarly as for information on his/her own websites.

**h) to ensure traceability of offered foodstuffs**

Pursuant to Article 18 Para 2 and Para 3 of Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, establishing the EFSA and laying down procedures in matters of food safety, as amended, FBOs shall be able to identify any person from whom they have been supplied with a food. To this end, such operators shall have in place systems and procedures which allow for this information to be made available to the competent authorities on demand. FBO shall have in place systems and procedures to identify the other businesses to which their products have been supplied. This information shall be made available to the competent authorities on demand.

In practice, in particular delivery notes, invoices or data from the ordering systems of the e-shop will serve to ensure traceability in the case of Internet sale. In the case of Internet sale, FBO shall be able to clearly prove from whom the foodstuff was purchased and to which company the foodstuff was delivered.

**i) to keep hygiene requirements during sale of foodstuffs**

General rules for food hygiene are laid down by Regulation (EC) No. 852/2004 on Food Hygiene, as amended. FBO shall ensure that foodstuffs in all stages of production, processing and distribution (note: for example storage, transport to consumers, handing out to consumers, etc.) under their control comply with relevant hygiene requirements laid down by this Regulation.

Guidelines for implementation of certain provisions of Regulation on Food Hygiene (EC, Brussels, 18. 6. 2012) stipulates: *"Certain businesses offer their goods for sale over the internet. Although such trade is not specifically referred to in the Regulation, such businesses fall within the definition of a food business and relevant requirements of food law are applicable to them."*

FBO running an e-shop with a storage or issuing place or ensuring transport of foodstuffs to consumers at the same time shall comply with following requirements in particular:

- Pursuant to Article 5 of Regulation No. 852/2004, FBO shall put in place, implement and maintain a permanent procedure or procedures based on the HACCP principles and follow them. FBO shall prove this system to the competent authority with regard to the type and size of business.
- Requirements for food areas pursuant to Annex II Chapter I (or Chapter III) of the Regulation.
- Requirements for transport pursuant to Annex II Chapter IV of the Regulation.
- Requirements for equipment and food contact materials pursuant to Annex II Chapter V of the Regulation.
- Requirements for foodstuffs laid down by Annex II Chapter IX of the Regulation.

FBO should pay particular attention to sale of quickly perishable foodstuff (e.g. meals).



Within conditions of our country, also producers and sellers producing and selling foodstuffs from home and running an e-shop at the same time may exist. Offer of foodstuffs on e-shops requires certain level of organisation and certain level of continuity. Apart from requirements for safety, FBO shall comply with hygiene requirements laid down by Article 4 Para 2 and Annex II Chapter III to Regulation (EC) No. 852/2004 when producing and selling foodstuffs from home. For more details go to:

<https://www.szpi.gov.cz/en/article/inspection-of-production-and-sale-of-foodstuffs-produced-in-households-and-sold-from-home.aspx>

**j) to ensure immediate withdrawal of the unsafe foodstuff from the market**

If FBO is, pursuant to Article 19 of Regulation (EC) No. 178/2002, of the opinion or has the reason to think that the foodstuff he/she imported, produced, processed or distributed (through Internet sale included) is not in compliance with requirements for food safety, then he/she immediately proceeds to withdrawal of the foodstuff in question from the market. If this foodstuff is not under direct control of the original FBO anymore, then FBO notifies competent authorities of this fact.

In the case that the foodstuff might have already got to consumers, FBO effectively and exactly informs consumers of the reason of the recall and if it is necessary he/she recalls the products from consumers if other measures are not sufficient for keeping high level of health protection.

FBO responsible for retail or distribution activities without impact on packaging, labelling, safety or intactness of the foodstuff, takes, within his/her options, steps leading to withdrawal of products failing to comply with food safety requirements and contributes to the safety of the foodstuff by forwarding information necessary for traceability and co-operates with measures taken by producers, processors, manufacturers or competent authorities.

FBO immediately notifies competent authorities if he/she is of the opinion or has the reason to think that the foodstuff which he/she placed on the market could be unsafe (for example based on own detection or information from the supplier in the CR or another Member State). FBO notifies competent authorities of measures taken with the aim to prevent this risk for final consumers and neither impedes nor discourages anybody from co-operation with competent authorities if this can avert, mitigate or exclude risk associated with the foodstuff.

FBOs co-operate with competent authorities within measures taken with the aim to avert or mitigate the risks associated with the foodstuffs which they delivered.

**We wish you every success with selling food online!**