

New legislation on unfair commercial practices and payment terms in relations between food companies in Italy: attention to the national e cross border supplies.

- Edoardo d'Ippolito -

On 15 December 2021, came into force the new legislative decree no. 198/2021 on unfair commercial practices in business-to-business relations in the agricultural and food supply chain, implementing EU Directive 2019/633. As we will see below, actually the Italian legislator has completely overturned the apparently more correct approach held by the European legislator.

The new decree applies in commercial relations between buyers and suppliers of agricultural and food products. These are, therefore, relations between companies, while relations with the final consumer are excluded. The stated aim is to bring greater balance to commercial relations between businesses at different levels of the agricultural and food chain. Although the objective is appreciable, it seems from initial comments that this new decree has the result of further tightening commercial relations in the supply chain.

Among other things, the new decree has abolished Article 62 of Decree-Law No. 1/2012, which previously governed the sale of agricultural and agri-food products, and has made it compulsory for companies to adapt existing contracts within six months of the entry into force of the new decree, i.e. by 15 June 2022.

Under the new rules, written contracts must be drawn up prior to the delivery of the products, indicating in the contract text certain essential elements, such as price, duration and quantity. Contractual aspects may also be regularized by signing a "framework contract" to be followed by orders of various kinds. These contracts must have a duration of not less than twelve months, except for a number of justified exceptions.

The new decree then identifies commercial practices that are definitely prohibited, the so-called 'black list', and practices that are prohibited unless there is a prior agreement between the parties, the 'grey list'.

The prohibited commercial practices include, inter alia, (i) derogation from payment terms within thirty or sixty days, depending on the perishability or otherwise of the goods; (ii) cancellation of orders of perishable goods with less than thirty days' notice; (iii) unilateral modification by the buyer or supplier of the terms of a contract for the supply of agricultural products and food.

Other practices such as (i) the return of unsold products, and (ii) requiring the buyer to pay as a condition of storing or marketing the supplier's products are prohibited unless otherwise agreed.

The legislation identifies the Inspectorate for the Repression of Fraud of the Ministry of Agriculture and Forestry (ICQRF) as the law enforcement authority responsible for investigating violations and,

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in fact, the Ministry has already prepared and made available on its website the appropriate forms for submitting complaints of alleged violations.

In conclusion to the analysis of the Italian legislation, it should be pointed out that the administrative penalties appear, in theory, to be very high: the maximum penalties are equal to variable percentages of the turnover of the companies involved, up to 5% of the turnover achieved in the last financial year prior to the assessment.

As anticipated, there are substantial differences between Legislative Decree no. 198/2021 and EU Directive 2019/633, which will certainly be relevant for "cross-border" supplies, but which may also be relevant in the interpretation of the Italian legislation.

First, the national decree applies only to supplies of products carried out by suppliers who are established in the national territory, so these rules will not apply to foreign suppliers, while the rules of the directive must apply to such supplies.

Secondly, to mention only the main difference, EU Directive 2019/633 applies only where the buyer of the goods has a higher turnover than the supplier, thus excluding - and with good reason - the opposite situation where the supplier has a higher turnover than the buyer: it is difficult for there to be unfair behaviour of the buyer in such a case. This difference between the Directive and the national legislation may be an interesting subject for the evaluations of the interpreters and, it is hoped, of the law enforcement authorities.