

New Italian provisions
on
contracts for the sale of agricultural products
and foodstuffs

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Art. 62 of the Law Decree on competition and liberalizations

(Law Decree No. 1 of 24 January 2012, converted by Law No. 27 of 24 March 2012, amended by Art. 36-bis of Law Decree No. 179 of 18 October 2012)

Inter-ministerial Decree of application

(Ministerial Decree No. 199 of 19 October 2012)

Paragraph 1

«Contracts for the sale of agricultural products and foodstuffs (except those stipulated with final consumers) have to be in writing and indicate the life span, quantity, features, price, delivery and payment methods of the product sold. With reference to the goods supplied, such contracts have to be synallagmatic and informed by the principles of transparency, fairness, and proportionality»

Scope

In writing requirement

Mandatory content of the contract

- ◉ Agricultural products:

products listed in Annex I referred to in Art. 38, Paragraph 3, TFEU

- ◉ Foodstuffs:

products referred to in Art. 2 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002

Paragraph 1

«Contracts for the sale of agricultural products and foodstuffs (except those stipulated with final consumers) **have to be in writing** and indicate the life span, quantity, features, price, delivery and payment methods of the product sold. With reference to the goods supplied, such contracts have to be synallagmatic and informed by the principles of transparency, fairness, and proportionality»

Art. 3(1), Inter-ministerial Decree

«...“in writing” means any form of written communication, transmitted in electronic form or by telex too, whose function is to express the will of the parties to establish, regulate or extinguish among themselves a patrimonial legal relationship whose object is the sale of products...»

Paragraph 1

«Contracts for the sale of agricultural products and foodstuffs (except those stipulated with final consumers) have to be in writing and **indicate the life span, quantity, features, price, delivery and payment methods of the product sold.** With reference to the goods supplied, such contracts have to be synallagmatic and informed by the principles of transparency, fairness, and proportionality»

6 mandatory elements

- ⦿ life span
- ⦿ quantity
- ⦿ features
- ⦿ price
- ⦿ delivery method
- ⦿ payment method

Where should/can the 6 mandatory elements be?

Problem of the contract unity

- ⦿ there is no problem if the contract is contained in one single document
- ⦿ however, the contract is often fragmented into several contractual texts

Diversity of systems

'Single level' buyer
(e.g., a single retailer)

'Multilevel' buyer
(e.g., retail chains)

Art. 2(1), lett. i), Inter-ministerial Decree

«Framework contract, framework agreement or base contract: agreements, concluded **also at GPO (i.e., Group Purchasing Organization) level**, whose object is to regulate the resulting contracts for the sale of agricultural products and foodstuffs, including the conditions of sale, products' features, price list, provision of services and their possible restatements. With regard to prices, the framework contract may identify the method to determine the price applicable at the time of the single order, providing that reference to the price list should be made. Framework contracts concluded with a GPO have to indicate in an annex the names of the partners of the Group who have gave it their proxy»

Art. 3(2), Inter-ministerial Decree

«The mandatory elements, in writing, referred to in Article 62, Paragraph 1, ... can be contained either in contracts or agreements referred to in Article 2, Paragraph 1, letter i) and l) ..., or in the resulting documents listed below, provided that they give the data and make reference to the corresponding contracts or agreements:

- a) contracts for the sale of products;*
- b) documents of transport or delivery, or the invoice;*
- c) purchase orders with which the buyer commissioned the delivery of products»*

Impact on contracts stipulated ? ? ?

It depends on the 'contract system'
with individual suppliers and individual buyers

Purchases/Supplies in the presence of a contract

Art. 3(3), Inter-ministerial Decree

«The mandatory elements, in writing, referred to in Article 62, Paragraph 1, ... may be contained in the exchange of communications and orders, prior to the delivery of products»

Purchases/Supplies in the absence of a contract

Art. 3(4), Inter-ministerial Decree

«Documents of transport or delivery, as well as invoices, integrated with all the mandatory elements referred to in Article 62, Paragraph 1, ... comply with the regulatory requirements referred to in Paragraph 1 above and have to mention the following statement: “It fulfills the regulatory requirements referred to in Article 62, Paragraph 1, Law Decree No. 1 of 24 January 2012, converted with amendments by Law No. 27 of 24 March 2012”»

Sanctions

- ⦿ Voidability of the contract ? ? ?
- ⦿ Financial penalty

«Unless the fact constitutes a crime, the contractor who contravenes the regulatory requirements referred to in Paragraph 1 is subject to an administrative financial penalty ranging from 516.00 to 20,000.00 Euros. The amount of the penalty is determined by reference to the value of goods sold.

The penalty does not apply if the contractor is a final consumer»

Paragraph 3

«For contracts referred to in Paragraph 1, the payment of the consideration for perishable goods has to be made within the statutory time limit of thirty days from the delivery or collection of the products, or the related invoices, and within the time limit of sixty days for all the other goods. Interests accrue automatically from the day after the expiration of the time limit. In these cases, the rate of interests is increased by a further two percentage points and is mandatory»

Statutory time limits for payments

Starting date of interests

Rate of interests

Time limits for payments

Goods:

- ◉ perishable → 30 days
- ◉ others → 60 days

Perishable foodstuffs

- a) **pre-packaged** agricultural products, fish, and foodstuffs that bear an expiration date or a minimum shelf life not exceeding sixty days;
- b) **unpackaged** agricultural products, fish, and foodstuffs, including herbs and aromatic plants, even if placed in a protective wrapping or cooled, not subjected to treatments to prolong their durability for a period exceeding sixty days;
- c) **meat** products with the following physicochemical characteristics: an a_w higher than 0.95 and a pH higher than 5.2, or an a_w higher than 0.91, or a pH equal to or higher than 4.5;
- d) all types of milk.

Art. 2(1), lett. c), Inter-ministerial Decree

«The durability of the product (more or less than 60 days) refers to the total duration of the product as established by the manufacturer»

The durability is disclosed to the consumer.

Starting date of time limits

Art. 62 provides three time limits

Inter-ministerial Decree provides only one time limit:

«Time limits for payments referred to in Article 62, Paragraph 6, ... run from the last day of the month in which the invoice was received»

Question of the date in which the invoice is receipted

Art. 5(3), Inter-ministerial Decree

«For the determination of the interest payable to the creditor in the event of late payment ... the date of receipt of the invoice is validly certified only in case the invoice is delivered by hand, sent by registered mail or certified mail (i.e., PEC), or by using EDI (Electronic Data Interchange), or any other equivalent means, as provided for by the relevant tax regulations»

Risk that invoices that do not comply with this rule will be rejected.

Art. 5(4), Inter-ministerial Decree

*«If the date of receipt of the invoice is not certain, in order to comply with the terms provided for by Art. 62, Paragraph 3, it is assumed that the invoice is received on the date of the delivery of the products, **unless it is proved otherwise**»*

Alcoholic products

Art. 5(5), Inter-ministerial Decree

«With reference to the sale of alcoholic products, the provisions of Art. 22 of Law No. 28 of 18 February 1999 and subsequent amendments still apply»

Invoice's issuing modality

Art. 5(2), Inter-ministerial Decree

«For the purposes of Art. 62, Paragraph 3, ... the seller must issue a separate invoice for the sale of products subject to different payment time limits»

Risk that invoices that do not comply with this rule will be rejected.

Interests

Art. 6(1), Inter-ministerial Decree

«Default statutory interests are calculated using the reference rate pursuant to Art. 5, Paragraph 2, of Legislative Decree No. 231 of 9 October 2002, on contrasting late payments in commercial transactions»

Rate: $x + 7 + 2$

Payments ordered in time but not timely executed by the bank?

Payments' suspension

Art. 6(2), Inter-ministerial Decree

«It is forbidden in any case to withhold the full payment for a supply because of mere partial claims related to the supply in dispute»

Sanction

Article 62(7)

«Unless the fact constitutes a crime, the debtor's failure to pay within the time limits set out in Paragraph 3 is punished with an administrative financial penalty ranging from 500.00 to 500,000.00 Euros. The amount of the penalty is determined taking into account the company's revenue and the number and the extent of the delays»

Paragraph 1

«Contracts for the sale of agricultural products and foodstuffs (except those stipulated with final consumers) have to be in writing and indicate the life span, quantity, features, price, delivery and payment methods of the product sold. **With reference to the goods supplied, such contracts have to be synallagmatic and informed by the principles of transparency, fairness, and proportionality**»

Paragraph 2

«It is forbidden:

- a) to impose directly or indirectly any condition on the purchase or on the sale, or any other unjustified harsh contractual condition, as well as non-contractual and retroactive conditions;
- b) to apply objectively dissimilar conditions to equivalent performances;
- c) to subordinate the conclusion and execution of contracts, and the continuity and regularity of the same business relationships, to contractors' performances which, by their nature or according to commercial customs, have no connection with the object neither of the contract, nor of the business relationship;
- d) to obtain undue unilateral performances, not justified by the nature or content of the business relationships»

Paragraph 2

«It is forbidden:

a) ...

b) ...

c) ...

d) ...

e) to implement any further unfair trading practice, which would appear as unfair taking into account also the trading relationships that characterize the supply's conditions»

Art. 4(1), Inter-ministerial Decree

«...It falls within the definition of “unfair trading practice” also the non-observance of the principles of good practice and those unfair practices identified by the European Commission and the representatives of the agro-food sector at Community level within the High Level Forum for a Better Functioning Food Supply Chain, approved on 29 November 2011...»

Attached to the Inter-ministerial Decree

Unjustified harsh conditions

Art. 4(2), Inter-ministerial Decree

«The provisions of Art. 62, Paragraph 2, ... forbid any conduct of the contractor who, abusing of his market dominance, imposes unjustified contractual conditions, including those that:

- a) impose to one party the inclusion of services and/or performances that are ancillary to the main object of the supply, even when provided by third parties, without any objective, direct, and logical connection with the sale of the product covered by the contract;
- b) exclude the application of default interests at the creditor's expenses or exclude the reparation of the costs incurred for the recovery of debts;
- c) determine, in contrast to the principle of good faith and fair practice, prices clearly below the average **cost of production** for products covered by business relationships and sales by agricultural entrepreneurs»

Invoicing

Art. 4(3), Inter-ministerial Decree

«Another unfair trade practice is the inclusion in the contract of a clause that imposes to the seller, after the delivery of the products, a minimum period of time before which he cannot invoice; an exception is when products are delivered in various units in the same month, in which case it is possible to invoice only after the last delivery of the month»

Summarized invoices are allowed, but the supplier is time limit free.

Sanctions

«Unless the fact constitutes a crime, the contractor who contravenes the regulatory requirements referred to in Paragraph 2 is subject to an administrative financial penalty ranging from 516.00 to 3,000.00 Euros. The amount of the penalty is determined by reference to the benefit received by the party who did not comply with the prohibitions referred to in Paragraph 2. The penalty does not apply if the contractor is a final consumer»

Entry into force

Art. 8(1), Inter-ministerial Decree

«This Inter-ministerial Decree applies to every sale contract ... stipulated starting from 24 October 2012»

Art. 8(2), Inter-ministerial Decree

- ◉ *«contracts already in existence on 24 October 2012, in relation only to the requirements referred to in Paragraph 1 of Art. 62, ... have be adjusted no later than 31 December 2012;*
- ◉ *contracts stipulated before 24 October 2012, in the presence of EU rules imposing time limits for the stipulation of such contracts, have to be adjusted for the next crop season;*
- ◉ *the provisions of Paragraphs 2 and 3 of Art. 62 apply automatically to every contract as of 24 October 2012, even in the absence of contractual adjustments to comply with such rules»*

Supervision and application of sanctions

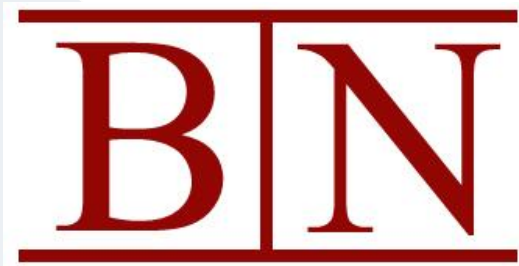
Italian Antitrust Authority

+

Italian Guard of Finance

+

Court



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