

# Bird & Bird

New Italian legislation implementing Directive (EU) 2019/633 on unfair business-to-business trading practices in the agricultural and food supply chain



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The legislative decree no. 198/2021 (“**UTP Decree**”) transposing in Italy Directive (EU) 2019/633 on unfair business-to-business trading practices in the agricultural and food supply chain (the “**UTP Directive**”), finally entered into force on 15 December 2021, repealing the previous legislation under Article 62 of the Italian Decree-Law no. 1/2012 (“**Article 62**”).

## Scope

The UTP Decree applies to B2B relationships involving supplies of agricultural and food products by suppliers established in Italy, irrespectively of the turnover of the suppliers and buyers. Contracts with consumers are excluded.

While the UTP Directive is intended to protect the supplier, the UTP Decree may apply to the benefit of both the supplier and the buyer.

The agricultural and food products covered by the UTP Decree are all those listed in [Annex I of the TFEU](#) and other products processed for use as food using such products.

## Written form

The UTP Decree, like the previous Article 62, requires that the supply agreements are concluded in writing and include the indication of the term, the quantities and characteristics of the products, the price (which may be fixed or determinable based on criteria set out in the contract), and the modalities of delivery and payment.

It is specifically provided that the written form may also be fulfilled with equivalent forms, provided that the contractual elements mentioned above are agreed between the parties by means of a framework agreement.

## Duration

The duration of the supply agreements shall be not less than 12 months unless there is a justified reason for providing a shorter term.

If the agreement provides for a shorter term, unless any exemptions apply, the term shall be extended to 12 months.

## Prohibited practices

According to the UTP Decree, trading practices resulting in the following are always prohibited (so called “black list”):

- payment terms of more than 30 days for perishable products and more than 60 days for other agricultural and food products, in accordance with periods identified according to different criteria. Please note that such

terms may differ from the terms provided for under Article 62, which starting date was the last day of the month in which the invoice is issued;

- the cancellation by the purchaser of orders for perishable products giving a notice shorter than 30 days, with certain exceptions;
- unilateral changes of the terms relating to frequency, method, place, timing or volume of supply or delivery of the products, quality standards, terms of payment or prices or terms relating to the provision of services;
- request of payments from the supplier that are not related to the sale of the supplier's agricultural and food products;
- request of payments from the supplier for deterioration and/or loss of products occurring on the buyer's premises or after ownership has been transferred to the buyer, where such deterioration or loss is not caused by the supplier's negligence or fault;
- the refusal to confirm in writing the terms of a supply agreement at the supplier's request, except in certain cases;
- the unlawful acquisition, use or disclosure by the buyer of the supplier's trade secrets;
- threatening or carrying out acts of commercial retaliation against the supplier if it exercises its contractual or legal rights;
- request of compensation from the supplier for the cost of examining customer complaints relating to the sale of the supplier's products, despite the absence of negligence or fault on the part of the supplier;
- the sale of agricultural and food products through the use of electronic tenders and auctions with double discounts;
- the sale of agricultural and food products under excessively onerous contractual terms, including selling at prices manifestly below production costs;
- the absence of at least one of the requirements set forth by Article 168(4) of Regulation (EU) no. 1308/2013 on the common organisation of the markets in agricultural products;
- the direct or indirect imposition of sale, purchase or other contractual conditions unjustifiably onerous;
- the provision of objectively different terms for the performance of equivalent obligations;
- making the conclusion and performance of the agreements and the continuity and regularity of trading relations subject to the performance of obligations which, by their nature and according to commercial uses, have no connection with the subject matter of the agreements or the trading relations;
- obtaining the performance of undue unilateral obligations not justified by the nature or content of the trading relationship;
- any further commercial conduct which appears unfair also considering the overall commercial relations characterising the supply terms;
- the imposition of the obligation to provide additional services with no objective connection with the products supplied under the agreement;
- the exclusion of the application of default interest to the detriment of the creditor or the costs for recovering debts;
- the provision of the supplier's obligation not to issue the invoice before a certain time period after the delivery of the products, with certain exceptions;
- the unjustified and disproportionate transfer of the economic risk to the other party;
- the provision by the supplier to the buyer of products with expiry dates which are too short;
- the imposition by the supplier to the buyer of the contractual obligation to maintain a specific assortment of products;
- the imposition by the supplier to the buyer of the inclusion of certain products in the assortment;

- the imposition by the supplier to the buyer of the obligation to reserve to certain products privileged positions on the shelves or in the stores.

Moreover, the following trading practices are prohibited, unless previously agreed in clear and unambiguous terms in the supply agreement or in the framework agreement or in a subsequent agreement between the supplier and the buyer (so called “grey list”):

- the buyer returns unsold agricultural and food products to the supplier without payment for such unsold products and/or their disposal;
- the supplier is charged a payment as a condition for stocking, displaying, listing or making its products available on the market;
- the buyer requires the supplier to bear the cost of discounts on agricultural and food products sold by the buyer as part of a promotion, with certain exemptions;
- the buyer requires the supplier to pay the costs of the purchaser's advertising of the products;
- the buyer requires the supplier to pay for the marketing by the buyer;
- the buyer charges the supplier for staff for fitting-out premises used for the sale of the supplier's products.

Furthermore, the UTP Decree also regulates certain aspects of the sales below cost of fresh and perishable food products.

## Good practices

The UTP Decree also provides for certain criteria to determine that the trading practices are good and the related right to use a specific claim in such respect in advertising communications.

## Penalties

The UTP Decree provides for specific penalties up to the 10% of the infringer (buyer or supplier, as the case may be)'s turnover of the preceding financial year.

Each infringement is subject to a specific penalty range.

The maximum amount of 10% may only apply in certain cases (e.g. in case of continuation of certain infringements or reiteration of the same infringement during the same year).

## Authorities and complaints

The new enforcement authority is the Central Inspectorate for the protection of quality and fraud repression of agri-food products (ICQRF), whereas the Competition Authority (AGCM) remains competent in case such practices result in unfair commercial practices under the Italian Consumer Code.

The ICQRF may enforce the provisions of the UTP Decree ex officio or upon a complaint. The UTP Decree also provides for the protection of anonymity of complaints, where requested.

It is also provided for the possibility of using mediation or alternative dispute resolution mechanisms.

## Compliance

Any contracts providing for the supply of agricultural and food products concluded as from 15 December 2021 must comply with the UTP Decree, whereas contracts which are already in force shall be brought into compliance with within six months starting from 15 December 2021.

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