

## ART. 62

### (Rules applicable to commercial relationships concerning the sale of farming and food products)

1. Contracts having as their object the sale of farming and food products, except for those executed with end consumers, shall mandatorily be stipulated in **writing** and shall **indicate the duration, the quantities and characteristics of the products sold, the price as well as the payment and delivery modalities**. The contracts shall conform with the principles of transparency, fairness, proportionality and mutual reciprocity of the obligations with respect to the products supplied.
2. The following shall be forbidden in the commercial relationships between economic operators, including the sale contracts mentioned under paragraph 1 above:
  - a) to directly or indirectly impose unjustifiably burdensome purchase, sale or other contractual conditions, as well as **out of contract and retrospective conditions**;
  - b) **to apply objectively different conditions for equivalent performances**;
  - c) to make the conclusion and the performance of contracts, as well as the continuation and regularity of the same commercial relationship subject to the execution by the parties to the contract of performances which, by their nature and according to commercial practices, do not bear any relation with one another's subject matter;
  - d) to obtain **abusive unilateral performances** which are not justified by the nature or contents of the commercial relationship;
  - e) to adopt any other **unfair commercial practice**, which proves so also having regard to the whole commercial relationships characterizing supply conditions.
3. For the contracts mentioned under paragraph 1, the price shall be paid, for perishable goods, within the statutory term of 30 days and for all other goods within 60 days. In both instances the term shall run from the last day of the month in which the invoice has been received. The interests shall automatically accrue from the day following the expiry of the **payment term**. In these cases, the **interest rate** is increased by two percentage points and may not be derogated from.
4. «Perishable food products» shall mean any product falling under one of the following categories:
  - a) packed farming products, seafood and other food products displaying an expiry date or a minimum preservation period not longer than 60 days;
  - b) unpacked farming products, seafood and other food products, including aromatic plants and herbs, even if wrapped in protective wrappings or cooled, which have not been treated in order to extend their shelf-life for a period of over 60 days;
  - c) meat based products presenting the following organoleptic characteristics:
    - a)  $a_w$  higher than a 0,95 and pH higher than 5,2
    - or
    - a)  $a_w$  higher than a 0,91 or
    - pH equal to or higher than 4,5;
  - d) all sorts of milk.
5. Without prejudice to any criminal qualification of the facts, the contracting party, except for the end consumer, who violates the obligations set out in paragraph 1 shall be subject to an **administrative monetary sanction from euro 516,00 to euro 20.000,00**. The extent of the fine shall be determined by making reference **to the value of the goods which have been sold**.
6. Without prejudice to any criminal qualification of the facts, the contracting party, except for the end consumer, who **violates the obligations set out in paragraph 2** shall be subject to an **administrative monetary sanction from euro 516,00 to euro 3.000,00**. The extent of the fine shall be determined **on the basis of the benefit derived from the party that has violated the prohibitions set out in paragraph 2**.
7. Without prejudice to any criminal qualification of the facts, the debtor **contravening the payment terms** established under paragraph 3 shall be punished with an **administrative monetary sanction from euro 500,00 to euro 500.000,00**.

The fine's extent shall be determined on the basis of the company's turnover, of the frequency and extent of the delay.

8. The Competition Authority shall be competent for the monitoring of the application of these provisions and for the imposition of the fines provided hereunder, pursuant to law 24 November 1981, no. 689. To this end, the Authority may avail itself of the operative aid of the Financial Police, without prejudice of the provisions of art. 13 of the aforementioned Law no. 689/1981 with respect to the investigative powers of the police officers or agents acting as judicial aides. The proceedings for the ascertainment of the violations of paragraphs 1, 2 and 3 shall be started by the Authority ex officio or upon reporting of any interested party. The activities governed by this paragraph shall be performed with the financial, instrumental and human resources already available under the current legislative framework.

9. The income generated from the application of the sanctions under paragraphs 5, 6 and 7 shall be paid to the inland general revenues and thereafter be reassigned and allocated by way of decree of the Ministry of finance and economy and imputed in the provisions of Ministry of economic development under the Fund deriving from the administrative sanctions applied by the competition authority and destined to the advantage of consumers for the financing of food educational programs and of food related research, study and analysis projects, within the scope of the Observatory of productive activities, as well as in the provisions of the Ministry for farming, food and forestry policies for the financing of farming and food related initiatives.

10. No prejudice shall derive to the judicial actions for compensation of damages caused by violations of this provision, even if brought by consumers' associations members of CNCU and by the undertakings' associations admitted to the *Consiglio Nazionale dell' Economia e del Lavoro* or which may in any event be held representative at national level. The same associations shall also be entitled to take action for the protection of collective interests, by seeking orders restraining conducts in violation of this provision pursuant to articles 669 – bis and following of the code of civil procedure.

11. Paragraphs 3 and 4 of art. 4 of legislative decree no. 231 of 9 October 2002 and the decree of the Ministry of productive activities of 13 May 2003 are hereby repealed.

11-bis. The provisions of this article shall take effect after 7 months from the publication of the bill transposing into law the present law decree. By way of decree of the Ministry for farming, food and forestry policies, in concert with the Ministry for the economic development, to be issued within three months from the publication of the law transposing this law decree, the application modalities of the provisions of this article shall be defined.