

Section 1: company obligations

<i>Company obligations under the EU Voluntary Framework</i>	Obligations under national scheme	Assessment of compatibility	Suggested resolution ¹
<p><u>Registration</u> <i>Company registration by executive(s) having the power to commit the whole company in the EU including all subsidiaries in the EU.</i></p>	<p>Article 62 (Decree Law 1/2012) and its implementing act are applicable to all commercial relationships concerning the sale of farming and food products.</p>	<p>Registration of companies is not required: art. 62 and the attached Principles of Good Practice in vertical relationships in the Food Supply Chain are mandatory, as they are a provision of law.</p>	<p>No action required.</p>
<p><u>Geographical scope</u> <i>“Registered companies are expected to implement the principles throughout their organisations independently of the geographical origin of their business counterpart provided that the obligations under the contract are to be performed in the EU”; “SMEs based outside the EU may resort to the dispute resolution options (...) as long as the obligations under the contract are to be performed in the EU”</i></p>	<p>The delivery of products must be carried out on the Italian territory.</p>	<p>Although the provisions are constructed differently, there is compatibility.</p>	<p>No action required.</p>
<p><u>Product scope</u> <i>“This framework applies only to food (fresh and processed) and drink products.”</i></p>	<p>Larger scope: it is applicable to all farming and food products.</p>	<p>There is full compatibility: the product scope of art.62 includes all those products covered by the voluntary code, as well as some products not covered by the</p>	<p>No action required.</p>

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		voluntary code.	
<p><u>Self-assessment</u> <i>“Before registering companies must carry out a self-assessment by reviewing their internal procedures to ensure compliance with the principles” including training, dispute resolution options, communication, internal contact person</i></p>	<p>Art. 62, paragraph 2, has led companies to a comprehensive review of all business and contractual practices.</p>	<p>There is compatibility. Companies had to change all their contracts with suppliers and update the trading practices. This activity resulted in an intense internal training to deal with all the different aspects of trade relations, including the management of disputes with suppliers.</p>	<p>No action required.</p>
<p><u>Designated contact point</u> <i>“Each registered company will also designate a contact person for any follow-up actions such as monitoring.”</i></p>	<p>In order to implement art. 62, companies had to designate a contact person able to manage the relationship with suppliers to tackle all the different business issues, on the basis of the new rules.</p>	<p>There is compatibility.</p>	<p>No action required.</p>
<p><u>Compliance officer</u> <i>“Participating companies will be required to prepare for the dispute resolution procedure.....and to designate a contact point at the moment of registration.</i> <i>The designated contact point must be independent from the commercial negotiation and is responsible for issues related to the resolution of disputes.</i></p>	<p>In art. 62 the dispute resolution is dealt by the Court of Justice for the compensation of damages and by the Antitrust Authority to monitor the compliance of companies with the law and to impose fines, when there is a breach to the law.</p>	<p>There is compatibility. In Italy, dispute resolution is a prerogative of the Court of Justice. However, companies have designated persons to manage relationships with supplier, before the dispute is brought to the Court of Justice.</p>	<p>No action required.</p>
<p><u>Training</u> <i>“Participating companies will be required to set-up and/or adapt training to ensure compliance with</i></p>	<p>Training is not expressly required by art.62, but it is necessary to implement the law.</p>	<p>There is compatibility. Companies had carried out an intense internal training to deal with all the different aspects of trade</p>	<p>No action required.</p>

<p><i>the principles of good practice.”</i></p>		<p>relations, including the management of disputes with suppliers.</p>	
<p><u>Information to suppliers</u> <i>“Registered companies are required to inform business partners of their participation in the framework. Companies are free to choose the means by which this is done”.</i></p>	<p>Information is not required, since art. 62 is a law.</p>	<p>There is compatibility. As art. 62 and the Principles are law, are they must be known by all business parties.</p>	<p>No action required.</p>
<p><u>Dispute settlement</u> <i>The voluntary agreement envisages four modes of dispute settlement:</i></p> <ul style="list-style-type: none"> • <i>Commercial track</i> • <i>Contract options</i> • <i>Internal dispute resolution</i> • <i>Mediation</i> • <i>Arbitration</i> • <i>“Jurisdictional” methods.</i> <p><i>The complainant may choose the method. However</i></p> <ul style="list-style-type: none"> • <i>There is a presumption that complainants “are expected to resort first to the options that are less adversarial and costly”.</i> • <i>Mediation and arbitration require the consent of both parties.</i> <p><i>Disputes should be settled within 4 months “with the exception of disputes solved through mediation, arbitration and traditional jurisdictional methods”.</i></p>	<p>The dispute settlement is set by law.</p> <p>According to art.62, the Italian Antitrust Authority, supported by “Guardia di Finanza” (Tax Police), is in charge of monitoring the implementation of the law and imposing sanctions in case of breach. These penalties are non-negotiable by the parties and are to be paid directly to the Treasury and the parties do not have the possibility.</p> <p>However, companies have designated persons to manage relationships with supplier, before the dispute is brought before the Court of Justice.</p> <p>The recent Law decree 132/2014 envisages a new procedure (“convenzione di negoziazione assistita dagli avvocati”) to find a voluntary settlement. This procedure is mandatory for payment up to a maximum of 50.000 €.</p>	<p>There is compatibility.</p>	<p>No action required.</p>

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<u>Aggregated disputes (see section#2 below)</u>	Art.62 e the Italian law do not provide any aggregated dispute.	There is compatibility.	No action required. Risk of violation of the Italian antitrust law and rules.
<u>Breaches of process commitments</u> "A permanent procedure will enable companies to flag issues with process commitments arising with registered companies. The governance group will deal with these issues".	Companies must comply with all the restrictive rules of art.62.	There is compatibility.	No action required.
<u>Reporting requirements</u> "there will be a simple survey (...) to serve as a basis for evaluation and compliance". It will be based on: <ul style="list-style-type: none"> • Training • Reporting on dispute resolution options (#complaints lodged and received, principles allegedly breached, method for dispute resolution, satisfaction) • Communication Reporting is national	Art. 62 is the law, this means that companies must abide by it without the need of final reports. However, companies are used to register any irregularity that may occur in the implementation of the law, to adapt their behavior and update the internal training.	There is compatibility. Even if the reporting activity is not mandatory, companies are used to register any irregularity that may occur in the implementation of the law, to adapt their behavior and update the internal training.	No action required.

The Italian law imposes mandatory rules for the supply chain relations (Article 62 - Decree Law 1/2012) both on the management of commercial transactions and the penalties in case of breaches of the law, that could be imposed by Antitrust Authority, non- negotiable by the parties. According to the Italian legislation, resolution of disputes must be resolved through jurisdictional procedures and only in certain cases through mediation or arbitration. A new procedure, avoiding any intervention of a Judge, has been recently introduced ("*convenzione di negoziazione assistita dagli avvocati*") for disputes raised between producers and retailers with a request for payment up to a maximum of 50,000 € (the procedure is optional if the amount exceed 50.000 €).

The Italian legal framework goes much further than the SCI in terms of obligations, commitments and foresees clear and very strict sanctions. However, regarding internal procedures every company has defined its own rules to deal with disputes, before appealing to the Court.

Section 2: national platforms

“Signatories (...) will encourage the establishment of similar procedures involving stakeholder associations at national level”

Countries where there is a national platform are asked to fill in this table; where there is no platform, associations may use existing guidelines from the EU level model as they see fit according to their national circumstances and based on the key requirements set out below.

EU level requirements	Obligations under national scheme	Assessment of compatibility	Suggested resolution
<u>Composition of EU Governance Group</u> <ul style="list-style-type: none"> • <i>Farmers and agri-cooperatives²</i> • <i>Agricultural traders</i> • <i>Food and drink industry</i> • <i>Brands</i> • <i>Retail</i> • <i>SMEs</i> 	No provision under the Italian law, however to constantly monitor the enforcement of the legislation there exist control authorities, such as Tax Police, Antitrust etc., and, at political level, the Ministry of Agriculture.	There is compatibility.	No action required.
<u>National platforms</u> <i>Purpose is to analyse disputes regarding a serious breach of the principles that affects several members of an interest group represented in the EU level governance group. (see definition of aggregated disputes).</i>	No provision under the Italian law, however to constantly monitor the enforcement of the legislation there exist control authorities, such as Tax Police, Antitrust etc., and, at political level, the Ministry of Agriculture.	There is compatibility.	No action required.
<u>Issuing guidance and interpretation</u> <i>National platforms must communicate to the EU governance</i>	Not necessary, due to a legal obligation of Article 62, which provides that the interpretation is	There is compatibility.	No action required.

² These seats will be reserved for the associations representing farmers and agri-cooperatives if and when they join the EU level framework

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<p><i>group any guidance and interpretation (on the principles) within 10 working days.</i></p>	<p>reserved to the legislator, to the Courts or the Antitrust Authority.</p>		
<p><u><i>Relations between EU and national levels</i></u> <i>“The governance group will only appreciate issues that have an EU cross-border dimension or issues with a national scope as long as there is no national equivalent option to deal with it in an aggregated and anonymous way.”</i></p>	<p>Not necessary due to an obligation of national law.</p>	<p>There is compatibility.</p>	<p>No action required.</p>

Section 3: principles of good practice

All the Principles of Good Practice in vertical relationships in the Food Supply Chain are mandatory for the Italian law, as they are attached to the Ministerial Decree of the 19th October 2012 of art.62 = FULL COMPATIBILITY

Moreover art. 62 explicitly refers to some of them:

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.
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- 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.

EU level Principles of good practice	Substantive obligations under national scheme	Assessment of compatibility	Substantive requirements of the EU level principles not covered by national scheme
<u>Consumer interest</u>			
<u>Freedom of contract</u>			
<u>Fair dealing</u>			
<u>Written agreements</u> <i>"Agreements should be in writing, unless impracticable, or where oral agreements are mutually acceptable and convenient. They should be clear and transparent, and cover as many relevant and foreseeable elements as possible, including rights and procedures for termination."</i>			
<u>Predictability</u> <i>"Unilateral change to contract terms shall not take place unless this possibility and its circumstances and conditions have been agreed in advance. The agreements should outline the process for each party to discuss with the other any changes"</i>			

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<p><i>necessary for the implementation of the agreement or due to unforeseeable circumstances, as provided in the agreement.</i></p>			
<p><u>Compliance</u> <i>“Agreements must be complied with.”</i></p>			
<p><u>Information</u> <i>“Where information is exchanged, this shall be done in strict compliance with competition and other applicable laws, and the parties should take reasonable care to ensure that the information supplied is correct and not misleading.</i></p>			
<p><u>Confidentiality</u> <i>Confidentiality of information must be respected unless the information is already in the public or has been independently obtained by the receiving party lawfully and in good faith. Confidential information shall be used by the recipient party only for the purpose for which it was communicated.</i></p>			
<p><u>Responsibility for risk</u> <i>All contracting parties in the supply chain should bear their own appropriate entrepreneurial risk”.</i></p>			
<p><u>Justifiable request</u> <i>“A contracting party shall not apply threats in order to obtain an</i></p>			

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<i>unjustified advantage or transfer an unjustified cost.”</i>			
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Section 4: examples

All these examples are mandatory for the Italian law, as they are attached to the Ministerial Decree of the 19th October 2012 of art.62 = FULL COMPATIBILITY

Examples - Illustrations	Substantive obligations under national scheme	Assessment of compatibility	Substantive requirements of the EU level principles not covered by national scheme
<i><u>Agreements – written/unwritten</u></i>			
<i><u>General terms and conditions</u></i>			
<i><u>Termination</u></i>			
<i><u>Contractual sanctions</u></i>			
<i><u>Unilateral actions</u></i>			
<i><u>Information</u></i>			
<i><u>Entrepreneurial risk allocation</u></i>			
<i><u>Listing fees (upfront access payment)</u></i>			
<i><u>Threatening business disruption</u></i>			
<i><u>Tying</u></i>			
<i><u>Delivery and reception of goods</u></i>			