

CMS România | Romania's regulation on the procedure for resolving complaints over unfair trading practices in the agri-food supply chain enters into force



On 14 March 2023, the Regulation on the procedure for the registration, investigation and resolution of complaints concerning unfair trading practices between undertakings in the agricultural and food supply chain finally entered into force in Romania.

The Regulation implements the provisions of Law no. 81/2022 on unfair trading practices between undertakings in the agricultural and food supply chain, transposing the EU's Unfair Trading Practices Directive. Law no. 81/2022 entered into force on 15 April 2022 and provided that a regulation on the procedure for dealing with complaints should be adopted within 30 days after its entry into force.

The Regulation has been long awaited by all parties affected by Law no. 81/2022 on unfair trading practices between undertakings in the agricultural and food supply chain, transposing the EU's Unfair Trading Practices Directive, because it clarifies many provisions that are incomplete or whose application is difficult to foresee.

Among others, the Regulation provides the following clarifications:

→ In connection with the thresholds provided by Law no. 81/2022:

- Where an undertaking involved in an unfair trading practice belongs to a group, the turnover will be calculated by aggregating the turnover of the members of the group.
- When starting negotiations, the buyer may request an affidavit on turnover from the supplier to verify the thresholds referred to in Law no. 81/2022. The affidavit will be annexed to the contract concluded between the buyer and the supplier.

→ The Regulation clarifies the subject matter of certain practices provided by Law no. 81/2022, such as the express prohibition to apply financial and commercial discounts in the form of commercial rebates.

In connection with the procedure *per se*:

- Complaints may be filed with both the Ministry of Agriculture and Rural Development and the Romanian Competition Council (RCC), but the Ministry of Agriculture and Rural Development is required to forward all complaints to the RCC since the latter has the power to investigate and sanction companies for unfair trading practices.

- Complaints should be filed in a standard form, annexed to the Regulation, which must contain all mandatory information for the purposes of the complaint. In case the information is insufficient, the RCC will grant a three-day term for the complainant to supplement the complaint.

- The admissibility conditions of the complaint are: (a) the subject matter of the complaint: an alleged unfair trading practice provided by Art. 3 and 4 of the Law no. 81/2022; (b) the legitimate interest on the complainant; and (c) the evidence to support the complaint.

- The RCC decision ordering the cessation of the unfair trading practice applies to all similar commercial contracts concluded by that buyer with all its suppliers containing clauses with the same content.
- The RCC will monitor compliance with the decision. The manner and period for monitorisation will be set on a case-by-case basis and will be provided in the decision of the RCC.

Before its adoption by the Government, the Regulation also contained provisions on the individualisation of the sanctions provided by Law no. 81/2022. These, however, were eliminated from the final form of the Regulation and will be subject to separate instructions to be drawn up by the RCC.

Lastly, while the Regulation supplements Law no. 81/2022 and fills certain regulatory gaps, questions remain about how competent authorities will implement the Regulation.

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or more information on the above and the regulations around Unfair Trading Practices in Romania, contact your CMS client partner or CMS experts: **Cristina Popescu** and **Carmen Turcu**.