

CMS | Romanian Competition Council publishes new Instructions on penalties for unfair trading practices in the agricultural and food supply chain



Romanian Competition Council recently published, for public consultation, the Instructions on the individualisation of penalties for offences under Law no. 81/2022 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain and on granting favourable treatment to undertakings which admit to committing an unfair trading practice.

Comments and proposals on the Draft Instructions may still be submitted to Competition Council, until 5 June 2023.

The Draft Instructions regulate the individualisation of penalties for the violations provided for in Article 10 of Law no. 81/2022 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, which transposes the EU's Unfair Trading Practices Directive.

The Draft Instructions establish a mechanism to calculate the fine applicable to undertakings that committed unfair trading practices, based on three levels of seriousness and the duration of the infringement. It also provides for aggravating and mitigating circumstances and a favourable treatment granted to undertakings that acknowledge an unfair trading practice.

The fine is calculated by adding the seriousness and duration of the offence, as follows:

basic level of fine = x (seriousness) + y (duration)

The seriousness of the offence will be assessed, inter alia, by taking into account the following criteria: the nature of the offence, the degree of social danger of the offence, the circumstances in which the offence was committed, the manner and means of committing the offence, the aim pursued, the consequences, and the personal circumstances of the offender.

Depending on the seriousness of the offence, offences are divided into three categories:

◆ **minor offences** – unfair trading practices covered by the provisions of Article 3, paragraphs 1, 2, 7, 8, 10, 12, 14 - 19 of Law no. 81/2022.

The penalty for minor offences is set between RON 250,000 and RON 350,000.

◆ **medium offences** – unfair trading practices covered by the provisions of Article 3, paragraphs 1, 2, 7, 8, 10,

12, 14 - 19 of Law no. 81/2022.

The penalty for medium offences is set between RON 350,000 and RON 500,000.

◆ **serious offences** – unfair trading practices covered by the provisions of Article 3, paragraphs 3 - 6, 9, 11, 13, 20 – 25, Article 4 and Art. 10 para. 2 letter f) of Law no. 81/2022.

The penalty for serious offences has been set between RON 500,000 and RON 600,000. In the case of repeated unfair commercial practices, the fine imposed will be 1% of the total turnover achieved in the previous financial year.

Depending on the duration of the offence, offences are also divided into three categories:

- **short-term offences** of less than six months: no additional amount is applicable;
- **medium-term offences** from six months to one year: increase of up to 25% of the amount determined by the seriousness of the offence;
- **long-term offences**, more than one year: increase of up to 0.5% of the amount determined by seriousness of the offence for each month of participation in the infringement.

Once the basic level of the fine has been set, the amount may be increased or reduced by between 5% and 10% for each aggravating or mitigating circumstance found.

The following are considered **aggravating circumstances**:

- the existence of a previous offence, which cannot constitute the offence referred to in Article 10(2)(f) of Law no. 81/2022;
- the continuation of the infringement after the initiation of the in-depth investigation procedure by the Competition Council;
- other similar circumstances, which make the infringement serious.

The following are considered **mitigating circumstances**:

- promptly ending the infringement after the Competition Council started to investigate it;
- cooperating effectively and fully with the Competition Council beyond the legal obligation to cooperate;
- taking steps to remedy the harm caused by the unfair trading practice;
- other similar circumstances.

Additionally, the Competition Council can increase the fine when:

- other penalties for infringement have been applied by the Competition Council in the last three years prior to the offence, in which case an increase of 10% corresponding to each previous penalty will be applied.
- it is necessary to ensure a dissuasive effect of the fine.

The Draft Instructions also provide for **favourable treatment for undertakings that admit to committing an unfair trading practice** as sanctioned by Law no. 81/2022.

Throughout the in-depth investigation, undertakings can acknowledge the unfair trading practice under scrutiny. A reduction in the fine is only possible if the undertaking files an express request, at the latest when the company's point of view on the offence is submitted. The request should contain an express, clear and unequivocal acknowledgement of liability for the unfair trading practice.

The Competition Council may apply:

- a reduction of between 10% to 15% of the level of the final fine for full acknowledgement;
- a reduction of between 1% and 9 % of the level of the final fine for partial acknowledgement.

If the undertaking submits the acknowledgement after the initiation of the in-depth investigation but before the submission of the point of view, the Competition Council may apply a simplified procedure, which would make the reductions even more significant:

- a reduction of between 21% to 25% of the level of the final fine for full acknowledgement;
- a reduction of between 16% to 20% of the level of the final fine for partial acknowledgement.

Filing an action for the annulment of the decision of the Competition Council regarding the subject of acknowledgment entails the loss of the benefit of the reduction in the fine.

The Draft Instructions provide for a similar mechanism for the individualisation of the procedural offences (i.e. the supplying of incorrect, incomplete or misleading information or documents to the Competition Council; the unjustified refusal to submit to an inspection carried out by the Competition Council; and the failure to comply with the measures imposed by the Competition Council).

The Draft Instructions further provide that:

- If the same undertaking commits more than one of the offences provided for in Law no. 81/1991, the penalties are applied individually for each offence.
- The fine should be paid within 30 days from the date of communication of the sanctioning decision. If the document proving payment of the fine is not submitted, the Competition Council will forward a copy of the decision to the National Tax Administration Agency for enforcement within 30 days of the expiry of the time limit period to appeal the decision.
- In case of unjustified refusal of undertakings to submit to an inspection carried out by the Competition Council, the fine is applied by minutes and must be paid within 15 days from its delivery or communication.
- **For a period of six months from the date of entry into force of the Draft Instructions**, the Competition Council will apply a **warning for minor offences**, which are not repeated.

The Competition Council may adopt amendments to the Draft Instructions after the public consultation period has ended.

For more information on the enactments described in this article and Unfair Trading Practices in Romania, contact your CMS client partner or CMS experts: **Cristina Popescu** and **Carmen Turcu**.