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Price Negotiations: Maximising Existing Levers and Taking Advantage of the Agricultural Emergency Act

As the next round of annual price negotiations approaches, suppliers may wish to revisit the legal tools available to protect their pricing policies and strengthen their contractual position. Particular attention should be paid to the measures introduced by Act No. 2026-796 of 18 August 2026 on the Protection and Sovereignty of Agriculture (the **Agricultural Emergency Act** or **AEA**), which provides suppliers with additional mechanisms to address cost fluctuations and enhance their negotiating leverage.

Although these mechanisms mostly apply to food products and pet food products, suppliers of other product categories may use these mechanisms as a model to adopt similar ones. Besides, the AEA introduced two new restrictive practices which are applicable to all product categories.

1. Strengthening General Terms and Conditions Through Price Adjustment Mechanisms

a. Food products (FPs) and pet food products

FPs and pet food products benefit from a specific protective framework, compliance with which is secured through administrative fines of up to €375,000 for legal entities (doubled in the event of a repeat infringement within two years):

- **Transparency Requirements Relating to Agricultural Raw Materials**

To support the principle that the portion of the price corresponding to agricultural raw materials (**ARMs**) and processed products consisting of more than 50% ARMs (**Processed Products**) is non-negotiable, suppliers' general terms and conditions (**GTCs**) must include, at the supplier's discretion, one of the three disclosure mechanisms provided for in Article L.441-1-1 of the French Commercial Code (**FCC**):

1. the share of each ARM and each Processed Product in the FP or pet food's volume and price;
2. the aggregated share of ARMs and Processed Products in the FP or pet food's volume and price; or
3. where prices have changed compared with the previous year, certification by an independent third party (at the supplier's expense) of the proportion of the price variation attributable to ARMs and Processed Products.

Under the first two options, distributors remain entitled to appoint an independent third party, at their own expense, to verify the information provided by the supplier.

- **Automatic Price Revision Formula**

The AEA allows suppliers to determine freely in their GTCs a price revision formula, the ARMs concerned and the indicators used (Article L.441-1-1 of the FCC).

Benefit. Where a supplier elects to include such a formula in its GTCs, the distributor may not negotiate it. The formula must be incorporated unchanged into the agreement (*see Section 3 (a) below*).

Potential limitation. The formula must operate symmetrically, applying both to increases and decreases. Furthermore, unless the supplier adopts GTCs differentiated by purchaser category (category-specific GTCs), it will apply across all distributors falling within its scope.

b. **For other products:**

In the absence of specific statutory provisions, suppliers remain free to include comparable mechanisms in their GTCs.

Benefit. Such mechanisms help frame negotiations around objective criteria. While they remain open to negotiation, distributors are required to act in good faith and refrain from engaging in restrictive trade practices during the negotiation process (*see Section 4 below*).

Potential limitation. Unless category-specific GTCs are implemented, the mechanism will apply uniformly across all distributor relationships. Moreover, although not expressly required by statute, a mechanism operating both upwards and downwards would be recommended to reduce the risk of challenge.

2. Reminding Distributors of Their Obligation to Justify Any Rejection of the GTCs

a. For fast-moving consumer goods (**FMCGs**), distributors were already required to provide, within a reasonable period of time, an explicit and detailed written explanation of any refusal of, or request to negotiate, all or part of a supplier's GTCs (Article L.441-4 of the FCC).

b. The AEA reinforces this obligation for **FPs and pet food** products. Within one month of receiving the supplier's GTCs and price list, the distributor must either (i) provide an explicit and detailed written justification of any refusal or of the provisions it wishes to negotiate; or (ii) notify its acceptance. Any request for a price reduction must be supported by objective evidence (Article L.443-8 of the FCC).

c. For **other products**, no specific statutory provision generally requires a distributor to justify its refusal. Nevertheless, the overarching duty of good faith and the rules governing restrictive trade practices remain fully applicable (*see Section 4 below*).

3. Including Price Revision and Renegotiation Mechanisms in the Agreement

a. **Annual Agreements**

- **Private-label products.** The agreement must contain an automatic price revision clause reflecting variations in the cost of ARMs or Processed Products. The parties remain free to determine the formula, taking into account, among other things, agricultural production cost indicators. Where the agreement has a term exceeding twelve months, it must also provide for an annual price renegotiation date (Article L.441-7).
- **FPs and pet food products.** The AEA has amended both the purpose and operation of the automatic revision clause previously required by law (Article L.443-8 of the FCC):
    - the agreement must now include an automatic revision formula for the unit price schedule (instead of the “contract prices” before), reflecting, as in the previous version, both increases and decreases in the cost of the ARMs incorporated into the product;

  - the main novelty consists in providing that, if the supplier has included a formula in its GTCs, it must be reproduced '*as is*' in the agreement without negotiation. Otherwise, the parties must agree on the formula jointly;
  - regarding implementation, the core rule remains unchanged, notwithstanding certain formal amendments to Article L.443-8: any price adjustment resulting from the formula must take effect within one month of the mechanism being triggered. However, to balance the mandatory inclusion in the agreement of a formula set unilaterally by the supplier in its GTCs, the AEA allows the distributor to oppose the adjustment by producing objective economic evidence showing that the link between ARM cost fluctuations and their pricing impact is manifestly inaccurate.
- **Agricultural products and food products.** Where the agreement has a duration exceeding three months, it must contain a renegotiation clause specifying the applicable conditions and triggering thresholds where production costs are significantly affected by fluctuations in the cost of agricultural or food products, energy, transportation costs or packaging materials. The clause must permit these fluctuations to be taken into account both upwards and downwards (Article L.441-8 of the FCC).
- **Other products.** In the absence of specific statutory requirements, there is no prohibition on providing for comparable mechanisms.
- **All products.** Article 1195 of the French Civil Code allows a party to request a renegotiation where an unforeseeable change of circumstances renders contractual performance excessively onerous and that party had not agreed to bear the relevant risk. A hardship clause may further organise or adapt this mechanism. During the renegotiation process, however, each party must continue to perform its contractual obligations.

b. Multi-Year Agreements (Two to Three Years)

- Multi-year agreements must establish the mechanisms through which prices may be revised, for example by reference to indicators reflecting variations in production costs (Articles L.441-3, L.441-3-1, L.441-4 and L.443-8 of the FCC, depending on the category of products concerned).
- The specific regimes applicable to annual agreements relating to FPs and pet food products (automatic revision formula) and private-label products (automatic revision clause and annual renegotiation for agreements exceeding twelve months) remain fully applicable.

4. Documenting Negotiations and Recording Any Restrictive Conduct

Maintaining a comprehensive record of negotiations, including oral discussions, remains an essential safeguard. Such records may prove valuable should a supplier need to assert its rights before the Agricultural and Commercial Relations Mediator, the Business Mediator, the DGCCRF or the courts:

a. Suppliers should ensure that they **maintain both a complete documentary record and a clear chronology** of exchanges throughout the negotiation process. This may prove particularly useful in establishing the cause of any delay in concluding the agreement.

b. **Conduct evidencing bad faith should also be formally recorded**. As with all contracts, supply agreements must be negotiated and performed in good faith by both parties (Article 1104 of the French Civil Code). In the FMCG sector, bad-faith negotiations resulting in failure to comply with the applicable statutory deadline also constitute a restrictive trade practice.

c. Finally, suppliers should **carefully record conduct liable to qualify as a restrictive trade practice**. The AEA has expanded the list of restrictive practices covered by Article L.442-1 of the FCC, for which the distributor may be held liable:

- practices already covered prior to the AEA included (i) obtaining undue advantages without consideration, (ii) subjecting a trading partner to a significant imbalance in the parties' rights and obligations, (iii) imposing logistics penalties in breach of Article L.441-17 of the FCC, (iv) applying unjustified discriminatory terms for FMCGs, (v) for FMCGs, engaging in bad-faith negotiations that cause the agreement to be concluded after the statutory deadline, and (vi) abruptly terminating an established commercial relationship;

- In addition to the practices already covered before the adoption of the AEA, the following practices have been added and apply across all sectors:
  - repeated tender procedures or competitive bidding processes whose frequency or modalities are liable to create a significant imbalance. While repeated tendering procedures are not unlawful per se, this provision may prove a useful tool against distributors that rely on such practices to exert undue pressure on suppliers in price negotiations; and

  - substantial reductions in order volumes during contractual negotiations, including where temporary, where their scale, unusual nature or surrounding circumstances are liable to undermine the balance of an established commercial relationship. The latter provision establishes a specific basis for liability and may capture temporary reductions in orders that would not necessarily have qualified as a partial abrupt termination of an established commercial relationship.